

No. 08-2457

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

DEFENDANTS' MOTION TO EXTEND THE TIME

GAILON ARTHUR JOY, *PRO SE*
P.O. Box 37
Sterling, MA 01564
(978) 333-6052

ROBERT PICKLE, *PRO SE*
1354 County Highway 21
Halstad, MN 56548
(218) 456-2568

Defendants' current deadline for a reply brief is April 9, 2009. Defendant Pickle works and resides in Halstad township, Norman County, Minnesota.

As of March 25, 2009, the National Weather Service expects the Red River of the North to crest at record or near-record levels in Halstad, Minnesota, between March 29 and April 3. (Ex. A pp. 1, 3). Minnesota Governor Tim Pawlenty declared a state of emergency in Norman County on March 20, 2009, and requested of President Obama on March 25 an expedited disaster declaration for Minnesota. (Ex. B–C). The flooding Red River of the North also affects Fargo and Grand Forks, North Dakota. (Ex. A pp. 1–4).

Defendant Pickle's ability to properly produce a timely reply brief during this crisis is nebulous: The flood's severity is major, and its duration will not be short. Extended power outages may occur, affecting research and writing. Defendant Pickle's office may require moving in order to prevent water damage. Travel to the law library at the University of North Dakota in Grand Forks, North Dakota, or access to that facility, may be restricted due to road or facility closures.

The Federal Courthouse in Fargo has closed for an extended period in order to allow staff to assist in flood fighting efforts there. (Ex. D). Defendant Pickle has similarly joined in flood fighting efforts in Halstad and Hendrum, Minnesota.

Opposing counsel represents that he supports this motion. (Ex. E).

WHEREFORE, pursuant to Fed. R. App. P. 26(b), Gailon Arthur Joy and Robert Pickle pray the Court to extend the deadline for Defendants' reply brief to April 30, 2009.

Respectfully submitted,

Dated: March 27, 2009

/s/ Gailon Arthur Joy, pro se
Gailon Arthur Joy, *pro se*
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Tel: (978) 333-6052

and

/s/ Robert Pickle, pro se
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Fax: (206) 203-3751

CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that on March 27, 2009, I served copies of this motion on the following parties and the Clerk of the Court of Appeals by way of U.S. mail:

Gerald Duffy, M. Gregory Simpson, Jerrie M. Hayes,
Kristin L. Kingsbury, William Christopher Penwell
Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.

Siegel, Brill, Greupner, Duffy & Foster, P.A.
100 Washington Avenue South, Suite 1300
Minneapolis, MN 55401

John P. Pucci, J. Lizette Richards
Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.

Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060

Dated: March 27, 2009

/s/ Bob Pickle
Bob Pickle

Ex. A**Flood Statement**

WGUS83 KFGF 260253
FLSF GF

FLOOD STATEMENT
NATIONAL WEATHER SERVICE EASTERN NORTH DAKOTA/GRAND FORKS ND
953 PM CDT WED MAR 25 2009

...THE FLOOD WARNING CONTINUES FOR THE FOLLOWING RIVERS IN
MINNESOTA AND NORTH DAKOTA...

RED RIVER AT PEMBINA AFFECTING KITTSON AND PEMBINA COUNTIES.
RED RIVER AT WAHPETON AFFECTING WILKIN AND RICHLAND COUNTIES.
RED RIVER AT FARGO AFFECTING CLAY AND CASS COUNTIES.
RED RIVER AT HALSTAD AFFECTING NORMAN AND TRAILL COUNTIES.
RED RIVER AT EAST GRAND FORKS AFFECTING POLK AND GRAND FORKS
COUNTIES.
RED RIVER AT OSLO AFFECTING MARSHALL...WALSH...POLK AND GRAND FORKS
COUNTIES.
RED RIVER AT DRAYTON AFFECTING MARSHALL...WALSH...KITTSON AND
PEMBINA COUNTIES.

.MAJOR AND RECORD FLOODING IS EXPECTED ON THE RED RIVER. THE CREST
IS MOVING UPSTREAM TOWARD FARGO AND MOOREHEAD...AND IS EXPECTED TO
REACH THOSE CITIES BY SATURDAY. THE CREST AT ANY GIVEN POINT ON THE
RED RIVER COULD LINGER FOR AN EXTENDED PERIOD DUE TO THE LARGE
VOLUME OF WATER IN BASIN.

THIS FORECAST IS FOR A 7 DAY PERIOD...THE HIGHEST STAGE INDICATED
MAY NOT REFLECT THE CREST FOR THIS FLOOD EVENT. FORECASTS ARE
UPDATED DAILY AND STAGE VALUES WILL CHANGE AS NEW WEATHER AND
RIVER INFORMATION IS USED. THIS FORECAST INCLUDES ANY
PRECIPITATION THROUGH THE NEXT 24 HOURS.

PRECAUTIONARY/PREPAREDNESS ACTIONS...

SAFETY MESSAGES...TURN AROUND, DON`T DROWN...

- DON`T TRAVEL THROUGH FLOODED AREAS!
- CONTACT LOCAL LAW ENFORCEMENT TO REPORT FLOODING.
- PERSONS LIVING IN THE RED RIVER BASIN SHOULD MONITOR RIVER
LEVELS WHILE THE RIVER IS IN...OR NEAR...FLOOD.

FOR MORE INFORMATION...GO TO THE AHPS/RIVER SECTION
ON OUR WEB PAGE AT: WWW.WEATHER.GOV/GRANDFORKS

THE FOLLOWING SEGMENTS CONTAIN RIVER INFORMATION FOR
THE SELECTED LOCATIONS INCLUDED IN THIS MESSAGE.

THIS FORECAST DOES NOT ACCOUNT FOR ICE JAMS THAT CAN
QUICKLY RAISE LOCAL RIVER LEVELS WITH LITTLE OR NO NOTICE.

&&

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 /O.CON.KFGF.FL.W.0007.000000T0000Z-000000T0000Z/
 /WHNN8.3.SM.000000T0000Z.090325T0000Z.000000T0000Z.NO/
 953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR

THE RED RIVER AT WAHPETON.

- * UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
- * AT 9:00 PM WEDNESDAY THE STAGE WAS 16.5 FEET.
- * MAJOR FLOODING IS OCCURRING AND MAJOR FLOODING IS FORECAST.
- * FLOOD STAGE IS 10.0 FEET.
- * FORECAST...THE RIVER WILL CONTINUE TO FALL TO A STAGE OF 15.9 FEET BY FRIDAY MORNING.
- * IMPACT STATEMENT - AT 16.0 FEET...TOP OF THE PERMANENT DIKE.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU 03/26	FRI 03/27	SAT 03/28	SUN 03/29	MON 03/30	TUE 03/31	WED 04/01
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RED RIVER

WAHPETON	16.1	15.7	15.3	14.9	14.6	14.5	14.4
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 /FGON8.3.SM.090321T0150Z.090328T1800Z.000000T0000Z.NR/
 953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR

THE RED RIVER AT FARGO.

- * UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
- * AT 9:15 PM WEDNESDAY THE STAGE WAS 37.0 FEET.
- * MAJOR FLOODING IS OCCURRING AND RECORD FLOODING IS FORECAST.
- * FLOOD STAGE IS 18.0 FEET.
- * FORECAST...THE RIVER WILL CONTINUE RISING TO NEAR 41.0 FEET BY SATURDAY EARLY AFTERNOON.
- * IMPACT STATEMENT - AT 41.3 FEET IN FARGO...TOP ELEVATION OF THE ISLAND PARK PERMANENT LEVEE.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU 03/26	FRI 03/27	SAT 03/28	SUN 03/29	MON 03/30	TUE 03/31	WED 04/01
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RED RIVER

FARGO 39.3 40.6 41.0 41.0 41.0 40.9 40.8

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/HILN8.3.RS.090323T1817Z.090330T0600Z.000000T0000Z.NR/
953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR
THE RED RIVER AT HALSTAD.
* UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
* AT 9:00 PM WEDNESDAY THE STAGE WAS 36.9 FEET.
* MODERATE FLOODING IS OCCURRING AND MAJOR FLOODING IS FORECAST.
* FLOOD STAGE IS 26.0 FEET.
* FORECAST...THE RIVER WILL CONTINUE RISING...WITH A CREST
BETWEEN 40 AND 42 FEET BETWEEN SUNDAY...MARCH 29TH AND FRIDAY...
APRIL 3RD.
* IMPACT STATEMENT - AT 41.0 FEET...TOP ELEVATION OF THE DIKE AT
HALSTAD.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU 03/26	FRI 03/27	SAT 03/28	SUN 03/29	MON 03/30	TUE 03/31	WED 04/01
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RED RIVER HALSTAD	38.3	39.4	40.0	40.4	40.5	40.4	40.2
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/EGFM5.3.RS.000000T0000Z.090330T1800Z.000000T0000Z.NO/
953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR
THE RED RIVER AT EAST GRAND FORKS.
* UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
* AT 8:30 PM WEDNESDAY THE STAGE WAS 44.4 FEET.
* MODERATE FLOODING IS OCCURRING AND MAJOR FLOODING IS FORECAST.
* FLOOD STAGE IS 28.0 FEET.
* FORECAST...THE RIVER WILL CONTINUE RISING...WITH A CREST BETWEEN
50 AND 53 FEET BETWEEN MONDAY...MARCH 30TH...AND SATURDAY...
APRIL 4TH.
* IMPACT STATEMENT - AT 52.6 FEET...WATER ON GATEWAY DRIVE APPROACH
TO KENNEDY BRIDGE IN EAST GRAND FORKS.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU	FRI	SAT	SUN	MON	TUE	WED
	03/26	03/27	03/28	03/29	03/30	03/31	04/01

RED RIVER

EAST GRAND FORKS	47.4	49.4	50.9	51.6	52.0	52.0	51.9
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 /OSLM5.3.RS.000000T0000Z.090402T0000Z.000000T0000Z.UU/
 953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR

THE RED RIVER AT OSLO.

- * UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
- * AT 9:15 PM WEDNESDAY THE STAGE WAS 35.8 FEET.
- * MODERATE FLOODING IS OCCURRING AND MAJOR FLOODING IS FORECAST.
- * FLOOD STAGE IS 26.0 FEET.
- * FORECAST...THE RIVER WILL CONTINUE RISING...WITH A CREST BETWEEN 37 AND 39 FEET BETWEEN MONDAY...MARCH 30TH...AND SATURDAY... APRIL 4TH.
- * IMPACT STATEMENT - AT 37.0 FEET...WATER AFFECTS THE CANADIAN PACIFIC RAILROAD TRACKS EAST OF OSLO.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU	FRI	SAT	SUN	MON	TUE	WED
	03/26	03/27	03/28	03/29	03/30	03/31	04/01

RED RIVER

OSLO	36.7	37.3	37.6	37.9	38.0	38.0	38.1
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 /DRTN8.3.RS.000000T0000Z.090402T0000Z.000000T0000Z.NO/
 953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR

THE RED RIVER AT DRAYTON.

- * UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
- * MAJOR FLOODING IS EXPECTED.
- * FLOOD STAGE IS 32.0 FEET.
- * THE RIVER WILL CONTINUE RISING WITH A CREST BETWEEN 43 AND 45 FEET IN EARLY APRIL.
- * IMPACT STATEMENTS - AT 42.0 FEET...MAJOR FLOOD STAGE. GENERAL URBAN FLOOD DAMAGE TO DRAYTON AND ITS ENVIRONS.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU 03/26	FRI 03/27	SAT 03/28	SUN 03/29	MON 03/30	TUE 03/31	WED 04/01
RED RIVER DRAYTON	37.4	39.0	40.0	40.9	41.9	42.8	43.5

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/O.EXT.KFGF.FL.W.0034.090326T2315Z-000000T0000Z/
 /PBNN8.2.ER.090326T2315Z.090402T0000Z.000000T0000Z.NO/
 953 PM CDT WED MAR 25 2009

THE FLOOD WARNING CONTINUES FOR
 THE RED RIVER AT PEMBINA.

- * FROM THURSDAY EVENING UNTIL FURTHER NOTICE...OR UNTIL THE WARNING IS CANCELLED.
- * AT 9:00 PM WEDNESDAY THE STAGE WAS 39.0 FEET.
- * FLOOD STAGE IS 42.0 FEET.
- * FORECAST...THE RIVER WILL CONTINUE RISING...REACHING MINOR FLOOD STAGE BY THURSDAY EVENING.
- * PRELIMINARY CREST FORECAST...BETWEEN 52 AND 56 FEET DURING THE SECOND WEEK IN APRIL.

&&

DAILY 7 PM CDT/6 PM CST FORECAST STAGE IN FEET:

DATE (MONTH/DAY)	THU 03/26	FRI 03/27	SAT 03/28	SUN 03/29	MON 03/30	TUE 03/31	WED 04/01
RED RIVER PEMBINA	42.1	45.8	47.7	48.8	49.6	49.9	50.3

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Saint Paul - Governor Tim Pawlenty today signed Executive Order 09-05 declaring a State of Emergency in Wilkin, Clay, Marshall, Polk, Norman, Kittson, and Traverse Counties due to rapidly warming temperatures, significant rainfall and other factors that have created the potential for serious flooding.

By his executive order, the Governor is activating the National Guard to assist in flood preparations in the Red River Valley and to provide emergency relief services. Initially, 25 members of the 2nd Combined Arms Battalion, 136th Infantry will help with preparation activities in Moorhead. Additional soldiers will be activated as necessary.

The Governor's executive order also directs the Department of Public Safety, Division of Homeland Security and Emergency Management to activate the Minnesota Emergency Operations Plan and to continue on-site support and assistance to the affected local governments. In addition, all state agencies, in cooperation with appropriate federal agencies, are directed to provide the assistance necessary to help respond to and recover from this emergency.

The following is the text of the Governor's order:

EMERGENCY EXECUTIVE ORDER 09-05

**DECLARING A STATE OF EMERGENCY
IN THE STATE OF MINNESOTA**

I, TIM PAWLENTY, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, including Minnesota Statutes 2008, Chapter 12, do hereby issue this Executive Order:

WHEREAS, many ditches, culverts, rivers and streams in the counties adjacent to the Red River of the North are currently clogged with ice, thus impeding water flows; and

WHEREAS, rapidly warming temperatures, significant rainfall, and additional overland movement of water with ponding have been forecast for the coming week;

WHEREAS, the closure of secondary roads, sandbagging operations, and other emergency measures will likely be required in response to flooding conditions; and

WHEREAS, the resources of local, county, and state governments must be fully utilized to ensure immediate response to protect the life and safety of persons in the affected area, including Wilkin, Clay, Marshall, Polk, Norman, Kittson, and Traverse Counties, and to protect property and infrastructure from additional damage.

NOW, THEREFORE, I hereby order that:

1. A State of Emergency pursuant to Minnesota Statutes 2008, Section 12.31 exists.
2. The Department of Public Safety, Division of Homeland Security and Emergency Management will activate the Minnesota Emergency Operations Plan, continue the provision of on-site support and assistance to the affected local governments, and determine the need for supplementary emergency assistance.
3. All state agencies, in cooperation with appropriate federal agencies, are directed to provide the assistance necessary to help local units of government respond to and recover from this emergency.
4. The Adjutant General of Minnesota will order to state active duty on or about March 20, 2009, in the service of the State, such personnel and equipment of the military forces of the State as required to provide assistance in preparing for the emergency and in providing emergency relief services.
5. The Adjutant General is authorized is authorized to purchase, lease, or contract goods or services necessary to accomplish the mission. The cost of subsistence, transportation, fuel, pay and allowances of said individuals shall be defrayed from the general fund of the State, as provided for in Minnesota Statutes 2008, Sections 192.49, 192.52 and 192.54.

Pursuant to Minnesota Statutes 2008, Section 4.035, Subdivision 2, this Order is effective immediately and shall remain in effect until the emergency status no longer requires emergency response. The peacetime emergency can be extended by the Executive Council or the Legislature in accordance with Minnesota Statutes 2008, Section 12.31, Subdivision 2. The portion of this order activating the National Guard is not subject to any time limitation contained in Minnesota Statutes 2008, Chapter 12.

IN TESTIMONY WHEREOF, I have set my hand this 20th day of March, 2009.

Ex. C

Saint Paul – In a letter to President Obama, Governor Tim Pawlenty today requested an expedited disaster declaration for the State of Minnesota as a result of severe storms and flooding in Clay, Kittson, Marshall, Norman, Polk, Traverse, and Wilkin Counties.

“The outpouring of community support I saw along the Red River this week should make every Minnesotan proud,” Governor Pawlenty said. “Our neighbors are battling the river and the state is working together with local partners to provide every available amount of assistance. Soon we’ll need federal support to help our communities recover from this flooding. I’m hopeful the federal government will grant our request promptly.”

When granted, a Major Disaster Declaration will make the region eligible for a range of federal disaster programs, including disaster unemployment assistance, individual and household assistance, small business disaster loans, crisis counseling, and low-interest loans for affected farmers.

In his letter, the Governor pointed to the deep snow pack and melting snow running off saturated and frozen ground that has resulted in a serious conditions in the Red River Valley. In addition, recent rainfall over the past several days has caused significant overland flooding throughout the Red River Basin in western Minnesota. Many roadways remain under water along with widespread ponding water as the ground remains saturated and frozen. Significant ice jams have occurred on the Red Lake River near Crookston, which resulted in a flash flood warning and voluntary evacuation of residents in low-lying areas. Other ice jams are possible throughout the Red River Valley as significant river flows continue to break up the ice.

On March 20, Governor Pawlenty declared a State of Emergency for seven Minnesota counties as they prepared for serious flooding. His executive order activated the National Guard to assist in flood preparations and directed the Department of Public Safety, Division of Homeland Security and Emergency Management to activate the Minnesota Emergency Operations Plan.

The Governor also announced today that the Minnesota Emergency Operations Center (EOC) is fully operational. Nearly 30 state, federal and volunteer agencies are represented in the EOC to coordinate the response to flooding in northwestern Minnesota.

State agency activity includes:

- **Governor Pawlenty activated the Minnesota National Guard on March 20.** Currently 388 Minnesota National Guard soldiers have been deployed in the region:

- o 290 in Clay County

- o 50 in Norman County

- o 45 in Wilkin County, with the mission to wrap-up on Saturday and those soldiers available to be redeployed elsewhere in the region.

In addition the Guard has a UH60 Blackhawk helicopter with a crew of 5 on standby to support rescue missions and a joint communications platform is now stationed in Moorhead. The Guard is also ready to supply Clay County with their request for 20 large-scale generators, if needed.

- **The Minnesota State Patrol** has two aircraft (fixed wing and helicopter) in the area to respond to any local requests for assistance. In addition, 55 troopers are assisting local sheriff departments in 9 counties.

- **The Minnesota Department of Natural Resources** has 20 conservation officers deployed in the region to assist local officials conduct water missions, including water rescue using airboats, flat bottom boats and jet boats.

- **The Minnesota Department of Agriculture** grain, feed, dairy, food, pesticide and fertilizer inspectors are contacting farmers, grain elevators, grocery stores, convenience stores and ag chemical facilities to determine what level of threat they have and if they need assistance.

- **The Minnesota Department of Health** is sending two mobile medical units to be used as temporary hospital facilities, if needed. MDH also has four preparedness staff, eight environmental health professionals, and six well water program inspectors in the region. MDH coordinators are meeting with county health officials and emergency managers regarding evacuation planning for nursing homes, assisted living facilities and group homes. About 300 people would be affected if evacuation is necessary.

- **Minnesota Department of Transportation** crews are diking 1500 feet of I-94 north of Moorhead in an attempt to keep the freeway from flooding.

FARGO FEDERAL COURT CLOSURE

The Office of Clerk of Court and all Judges' chambers at the Quentin N. Burdick U.S. Courthouse in Fargo, North Dakota are closed starting Monday, March 23, 2009, so staff can assist with flood fighting efforts on the Red River. All hearings set in Fargo from March 23 through April 1, 2009, are cancelled and will be rescheduled. Case filings can continue to be made electronically using the Case Management/Electronic Case Filing system (CM/ECF). The phone numbers for judges' chambers and the clerk's office have been forwarded to the Bismarck federal courthouse. Please monitor the court website for information updates. Call the Bismarck clerk's office for instructions for emergency filings or court appearances at 1-866-827-3601.

Ex. E

Subject: RE: Motion to extend the time
From: "Greg Simpson"
Date: Fri, 27 Mar 2009 10:07:32 -0500
To: "Bob"
CC: "G. Arthur Joy"

Bob-

Of course. I'll sign whatever you need me to sign.

Take care.

M. Gregory Simpson
Direct: (612) 337-6107
e-mail: gregsimpson@...

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-----Original Message-----

From: Bob [<mailto:bob@>]
Sent: Friday, March 27, 2009 7:40 AM
To: Greg Simpson
Cc: G. Arthur Joy
Subject: Motion to extend the time

Counselor Simpson:

Given the state of emergency in Norman County as well as Fargo and Grand Forks, the uncertainty of the severity and duration of the flood,

Halstad's location on the Red River, the probable disaster declaration for Minnesota (if it hasn't occurred already), the uncertainty of the affect of the flood on electrical power, and several other flood-related factors, we are planning on asking for an extension of time to file a reply brief until April 30. Would you stipulate to such an extension?

Bob Pickle