IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-cv-329-GKF(PJC)**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S MOTION IN LIMINE TO PRECLUDE EXPERT TESTIMONY OF DEFENDANTS' WITNESS VICTOR BIERMAN, Ph.D. AND INTEGRATED BRIEF IN SUPPORT THEREOF

Plaintiff, the State of Oklahoma ("the State"), pursuant to Fed. R. Evid. 104 and 702 and, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), respectfully moves this Court for an order in limine precluding the expert testimony of Defendants' witness Victor Bierman, Ph.D. ("Dr. Bierman") on the topics of (1) the IRW watershed model prepared by Dr. Engel and (2) alleged errors in the land use/land cover analysis performed by Dr. Engel.

I. Introductory Statement

Dr. Bierman was presented by the integrator defendants, in this case, to opine as to the veracity and reliability of Dr. Engel's Expert Report submitted by the State in this case. Pursuant to the relevant law Dr. Bierman's opinions should be precluded due to his lack of specialized expertise, education, training and experience in the type of watershed modeling performed by Dr. Engel as well as his opinions relating to the interpretation and use of land use/land cover data for such models. Dr. Bierman's lack of experience and expertise in these matters undermines his ability to comment and

give a reliable opinion concerning the reliability and accuracy of Dr. Engel's model analyzing the sources of phosphorus in the entering the surface waters of the IRW.

II. Factual Background

Dr. Bierman was retained by the integrator defendants to provide an opinion regarding the expert report of Dr. Engel. *See* Ex. A (Bierman Expert Report, at pp.1-2). Dr. Bierman conceded during his deposition that:

> (1) Bierman lacks prior experience as an expert in the area of runoff modeling. See Exhibit B (Bierman Depo. 16:10-13, 19:23 – 20:16, 22:1-21, 24:5 – 25:11, 30:25 - 31:9, 36:6-18, 45:8-12, 84:13-23, 110:19 – 111:14, 160:18 – 162:13, 328:8-10 (no prior expert witness experience), and 235:1-10 and 267:24 – 283:2 (no publications in the peer reviewed literature in runoff modeling);
>
> (2) Bierman is not an expert in watershed hydrology. See Exhibit B (Bierman Depo.80:16 – 81:10);
>
> (3) He did not conduct any analysis of the IRW to support his opinions regarding Dr. Engel's watershed modeling. See Exhibit B (Bierman Depo. 56:10 – 57:6, 61:15 – 62:25, and 143:8-22, (no analysis of sources of phosphorus and bacteria), 57:24 – 59:2 (no modeling of IRW rivers or streams or Lake Tenkiller), and 196:2-7, 208:12 – 209:14, 213:16 – 214:24, 312:2-22, 319:25 – 320:15, 330:10-23, 383:19 – 385:20, 386:16-24, 390:2 – 393:8 (no testing or analysis to determine if his criticisms would result in a different modeling output), 85:22 – 86:15 (He and his team performed no field investigations of the IRW); and
>
> (4) He has no experience in evaluation or use of land use/land cover data, nor did he perform any test or analysis to determine if his claimed criticisms had any impact on Dr. Engel's modeling results. See Exhibit B (Bierman Depo 311:1 - 312:1, 313:3 – 314:16, 317:19 – 318:1 and 327:6-20.

Thus, during his deposition Dr. Bierman provided multiple admissions of his lack of relevant modeling experience and lack of any site (IRW) specific data, or peer reviewed journal authority that would support his criticisms of Dr. Engel's modeling analysis.

III. Legal Standard

Federal Rule of Evidence 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness ***qualified as an expert by knowledge, skill, experience, training, or education***, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (emphasis added).

Thus, "Fed. R. Evid. 702 imposes on the trial judge an important 'gate-keeping' function with regard to the admissibility of expert opinions." *Ralston v. Smith & Nephew Richards, Inc.*, 275 F.3d 965, 969 (10th Cir. 2001). As an initial matter, the court must determine the expert is qualified by "knowledge, skill, experience, training, or education" to render an opinion. *Id.* While many Ph.D.s are qualified as experts it is important for the court to delineate exactly what discipline their expertise lies in. *See Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994), *cert. denied*, 513 U.S. 1111, 115 S. Ct. 902, (1995). *See also, Wheeling Pittsburgh Steel Corp. v. Beelman River Terminals, Inc.*, 254 F.3d 706, 715 (8th Cir. 2001) ("To begin with, we agree with the district court that Dr. Curtis . . . easily qualifies as an expert under Federal Rule of Evidence 702. The real question is, ***what is he an expert about***?") (emphasis added); *Westfed Holdings, Inc. v. United States*, 55 Fed. Cl. 544, 571 (2003), *rev'd in part on other grounds*, 407 F.3d 1352 (Fed. Cir. 2005). This very court when examining an expert's qualifications stated:

> *Ralston* and like cases establish that the qualification of the proposed expert is to be assessed only after the specific matters he proposes to address have been identified. The controlling Tenth Circuit cases, exemplified by *Ralston*, establish that ***the expert's qualifications must be both (i) adequate in a general, qualitative sense (i.e., "knowledge, skill, experience, training or education" as required by Rule 702) and (ii) specific to the matters he proposes to address as an expert***. *In re*

Williams Sec. Litig., 496 F. Supp. 2d 1195, 1232 & 1245 (N.D. Okla. 2007) (Emphasis added).

Next, the court must ensure that the scientific testimony being offered is "not only relevant, but reliable." *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993).[1] "To be reliable under *Daubert*, an expert's scientific testimony must be based on scientific knowledge . . . ." *Dodge v. Cotter Corp.*, 328 F.3d 1212, 1222 (10th Cir. 2003). The Supreme Court has explained that the term "scientific" "implies a grounding in the methods and procedures of science." *Daubert*, 509 U.S. at 590. Likewise, it has explained that the term "knowledge" "connotes more than subjective belief or unsupported speculation." *Id.* Thus, "in order to qualify as 'scientific knowledge,' an inference or assertion must be derived by the scientific method. Proposed testimony must be supported by appropriate validation -- *i.e.,* 'good grounds,' based on what is known." *Id.*

The Supreme Court has set forth four non-exclusive factors that a court may consider in making its reliability determination: (1) whether the theory or technique can be (and has been) tested, *id.* at 593; (2) whether the theory or technique has been subjected to peer review and publication, *id.*; (3) the known or potential rate of error and the existence and maintenance of standards controlling the technique's operation, *id.* at 594; and (4) whether the theory or technique has general acceptance in the scientific community, *id.* The inquiry is "a flexible one." *Id.*; *see also id.* at 593 ("[m]any factors will bear on the inquiry, and we do not presume to set out a definitive checklist or test"); *Dodge*, 328 F.3d at 1222 ("the list is not exclusive"). "The focus [of the inquiry]. . . must

[1] The Supreme Court held in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), that the gatekeeping function set out in *Daubert* applies not only to expert testimony based on scientific knowledge, but also expert testimony based upon technical or other specialized knowledge -- *i.e.,* it applies to all expert testimony.

be solely on principles and methodologies, not on the conclusions that they generate." *Daubert*, 509 U.S. at 595.

To be relevant, the testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. This consideration has been described as one of "fit." *See Daubert*, 509 U.S. at 591. "'Fit' is not always obvious, and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes." *Id.*

In sum, "[t]he objective of [the gatekeeping] requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire*, 526 U.S. at 152.

Finally, the party proffering the expert scientific testimony bears the burden of establishing admissibility under the Federal Rules of Evidence and *Daubert*. *See Ralston*, 275 F.3d at 970 fn. 4.

IV. Argument

A. Dr. Bierman's opinions and testimony concerning Dr. Engel's IRW model should be excluded as unreliable because he is unqualified and lacks the requisite knowledge and experience to testify as an expert in watershed modeling.

As a threshold question, before the court can examine an expert's opinion as to relevance and reliability, it must determine whether that expert is qualified, through education and experience, to offer the opinions they intend to. *See Ralston,* at 969.

Dr. Bierman admits he is not familiar with the Illinois River Watershed (IRW), nor is he familiar with the particular circumstances involved in this case. See, Ex. B, at

85:22 – 86:15). Dr. Bierman has no personal experience of studying or gathering data in the IRW, nor does he have general experience in runoff modeling. See Exhibit B (Bierman Depo. 16:10-13, 19:23 – 20:16, 22:1-21, 24:5 – 25:11, 30:25 - 31:9, 36:6-18, 45:8-12, 84:13-23, 110:19 – 111:14, 160:18 – 162:13, 328:8-10 (no prior expert witness experience), and 235:1-10 and 267:24 – 283:2 (no publications in the peer reviewed literature in runoff modeling). He also admits he is not an expert in watershed hydrology. See Exhibit B (Bierman Depo.80:16 – 81:10). These are essential areas of experience that are required to evaluate the accuracy of Dr. Engel's modeling, and whether Dr. Engel's work accurately predicts nutrient runoff in the IRW.

In this instance it is clear that Dr. Bierman, like the experts in *In re Williams* and *Ralston,* is unqualified, as a matter of law, to opine as an expert critiquing the methods employed by Dr. Engel in his IRW watershed modeling. As such, the court must preclude his testimony.

B. Dr. Bierman's testimony is unreliable because he failed to test any of the criticisms he makes of Dr. Engel's IRW model nor does he cite any peer reviewed scientific literature to support his claims.

Assuming, *arguendo*, that Dr. Bierman is qualified to offer an opinion concerning Dr. Engel's model, his opinions concerning the alleged mistakes in Dr. Engel's modeling work are still unreliable and therefore, must be precluded, because Dr. Bierman offers no analysis or authority to support his opinions that criticize Dr. Engel's watershed modeling. Moreover, because modeling provides an *approximation* of the physical world, scientists realize that a properly done model will only approximate physical reality. Dr. Bierman did no work to determine if his criticisms of Dr. Engel's work made any material difference in the modeling outcome.

For example, he did not conduct any of his own modeling analysis or phosphorus sources to support his opinions regarding Dr. Engel's watershed modeling. See Exhibit B (Bierman Depo. 56:10 – 57:6, 61:15 – 62:25, and 143:8-22, (no analysis of sources of phosphorus and bacteria), 57:24 – 59:2 (no modeling of IRW rivers or streams or Lake Tenkiller). Additionally, Dr. Bierman also failed to test his claims by performing any test, reviewing any data, and/or identifying any peer reviewed publication that would support his opinions on the Engel watershed model. See Exhibit B (Bierman Depo. 196:2-7, 208:12 – 209:14, 213:16 – 214:24, 312:2-22, 319:25 – 320:15, 330:10-23, 383:19 – 385:20, 386:16-24, 390:2 – 393:8).

Moreover, Dr. Bierman's skepticism of Dr. Engel's work flies in the face of evidence and analysis of the IRW done by agencies of the federal government, and the governments of Oklahoma and Arkansas that conclude that poultry waste has substantially polluted the waters of the IRW. *See* State of Oklahoma's Motion for Partial Summary Judgment, Dkt. No. ___, May 18, 2009, Uncontested Facts Nos. 42-44, 47 and 48. Expert witnesses retained by both the State and the Defense, and unaffiliated with either, agree. *Id.* Not surprisingly, Dr. Engel's modeling work reaches conclusions similar to those found by federal and state governments and other experts.

Thus, Dr. Bierman conducted no modeling of his own of the streams, rivers of the IRW, or of Lake Tenkiller, to determine if Dr. Engel's work missed the mark. He did not analyze transport of either phosphorus or bacteria. Nor did Dr. Bierman put forth any theory or technique that can be (and has been) scientifically tested to demonstrate that Dr. Engel's conclusions are inaccurate. Instead, Dr. Bierman only offered sweeping generalizations instead of applying actual scientific method. Similarly, Dr. Bierman, who

has written no peer reviewed papers on runoff modeling, referred to no such peer reviewed articles as the basis for his criticism of Dr. Engel's work. Finally, Dr. Bierman did not ground his criticism in any generally accepted scientific theory. Indeed, Dr. Bierman *avoided* supporting his own opinions with real scientific work of his own.

Consequently, Dr. Bierman's opinions are scientifically unreliable, and should not be presented to the Court or to a jury.

C. Dr. Bierman's testimony is unreliable concerning land use/land cover data because he does not know how to use such data and he failed to test any of the criticisms he makes of Dr. Engel's use of such data.

The runoff effect of various kinds of land cover is essential to runoff modeling. Unfortunately, Dr. Bierman admits he has no experience in the evaluation or use of land cover data. Further, he performed no tests or analysis to determine if his criticisms of Dr. Engel's work, even if valid, made a material difference in the modeling outcome. See Exhibit B (Bierman Depo 311:1 - 312:1, 313:3 – 314:16, 317:19 – 318:1 and 327:6-20. Therefore, the Court should exclude his opinions because they are offered by a person who is not qualified in that area and are not supported by any scientific test to determine if his opinions change the modeling results.

V. Conclusion

WHEREFORE, in light of the foregoing, this Court should enter an order *in limine* precluding the expert testimony of Defendants' witness Dr. Bierman on Dr. Engel's IRW model due to his lack of experience and his failure to support his opinions by any tests, data, analysis or peer reviewed scientific literature.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Daniel P. Lennington OBA #21577
ASSISTANT ATTORNEYS GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/ David P. Page
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard

Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice)*
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice)*
Michael G. Rousseau
(admitted *pro hac vice)*
Fidelma L. Fitzpatrick
(admitted *pro hac vice)*
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Daniel P. Lennington, Assistant Attorney General	daniel.lennington@oag.ok.gov
M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com

RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	
Louis Werner Bullock	lbullock@bullock-blakemore.com
Robert M. Blakemore	bblakemore@bullock-blakemore.com
BULLOCK, BULLOCK & BLAKEMORE	
Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Michael G. Rousseau	mrousseau@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
MOTLEY RICE, LLC	
Counsel for State of Oklahoma	
Robert P. Redemann	rredemann@pmrlaw.net
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.	
David C. Senger	david@cgmlawok.com
Robert E Sanders	rsanders@youngwilliams.com
Edwin Stephen Williams	steve.williams@youngwilliams.com
YOUNG WILLIAMS P.A.	
Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.	
John H. Tucker	jtucker@rhodesokla.com
Theresa Noble Hill	thill@rhodesokla.com
Colin Hampton Tucker	ctucker@rhodesokla.com
Kerry R. Lewis	klewis@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE	
Terry Wayen West	terry@thewestlawfirm.com
THE WEST LAW FIRM	
Delmar R. Ehrich	dehrich@faegre.com
Bruce Jones	bjones@faegre.com
Krisann C. Kleibacker Lee	kklee@faegre.com
Todd P. Walker	twalker@faegre.com
Christopher H. Dolan	cdolan@faegre.com
Melissa C. Collins	mcollins@faegre.com

Colin C. Deihl	cdeihl@faegre.com
Randall E. Kahnke	rkahnke@faegre.com
FAEGRE & BENSON, LLP	
Dara D. Mann	dmann@mckennalong.com
MCKENNA, LONG & ALDRIDGE LLP	
Counsel for Cargill, Inc. & Cargill Turkey Production, LLC	
James Martin Graves	jgraves@bassettlawfirm.com
Gary V Weeks	gweeks@bassettlawfirm.com
Woody Bassett	wbassett@bassettlawfirm.com
K. C. Dupps Tucker	kctucker@bassettlawfirm.com
Earl Lee "Buddy" Chadick	bchadick@bassettlawfirm.com
BASSETT LAW FIRM	
George W. Owens	gwo@owenslawfirmpc.com
Randall E. Rose	rer@owenslawfirmpc.com
OWENS LAW FIRM, P.C.	
Counsel for George's Inc. & George's Farms, Inc.	
A. Scott McDaniel	smcdaniel@mhla-law.com
Nicole Longwell	nlongwell@mhla-law.com
Philip Hixon	phixon@mhla-law.com
Craig A. Merkes	cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC	
Sherry P. Bartley	sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC	
Counsel for Peterson Farms, Inc.	
John Elrod	jelrod@cwlaw.com
Vicki Bronson	vbronson@cwlaw.com
P. Joshua Wisley	jwisley@cwlaw.com
Bruce W. Freeman	bfreeman@cwlaw.com
D. Richard Funk	rfunk@cwlaw.com
CONNER & WINTERS, LLP	
Counsel for Simmons Foods, Inc.	
Stephen L. Jantzen	sjantzen@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com

RYAN, WHALEY, COLDIRON & SHANDY, P.C.	
Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Thomas C. Green	tcgreen@sidley.com
Gordon D. Todd	gtodd@sidley.com
SIDLEY, AUSTIN, BROWN & WOOD LLP	
Robert W. George	robert.george@tyson.com
L. Bryan Burns	bryan.burns@tyson.com
Timothy T. Jones	tim.jones@tyson.com
TYSON FOODS, INC	
Michael R. Bond	michael.bond@kutakrock.com
Erin W. Thompson	erin.thompson@kutakrock.com
Dustin R. Darst	dustin.darst@kutakrock.com
KUTAK ROCK, LLP	
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.	
R. Thomas Lay	rtl@kiralaw.com
KERR, IRVINE, RHODES & ABLES	
Frank M. Evans, III	fevans@lathropgage.com
Jennifer Stockton Griffin	jgriffin@lathropgage.com
David Gregory Brown	
LATHROP & GAGE LC	
Counsel for Willow Brook Foods, Inc.	
Robin S Conrad	rconrad@uschamber.com
NATIONAL CHAMBER LITIGATION CENTER	
Gary S Chilton	gchilton@hcdattorneys.com
HOLLADAY, CHILTON AND DEGIUSTI, PLLC	
Counsel for US Chamber of Commerce and American Tort Reform Association	
D. Kenyon Williams, Jr.	kwilliams@hallestill.com
Michael D. Graves	mgraves@hallestill.com
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON	
Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.	

Richard Ford	richard.ford@crowedunlevy.com
LeAnne Burnett	leanne.burnett@crowedunlevy.com
CROWE & DUNLEVY	
Counsel for Oklahoma Farm Bureau, Inc.	
Kendra Akin Jones, Assistant Attorney General	Kendra.Jones@arkansasag.gov
Charles L. Moulton, Sr Assistant Attorney General	Charles.Moulton@arkansasag.gov
Counsel for State of Arkansas and Arkansas National Resources Commission	
Mark Richard Mullins	richard.mullins@mcafeetaft.com
MCAFEE & TAFT	
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen	
Mia Vahlberg	mvahlberg@gablelaw.com
GABLE GOTWALS	
James T. Banks	jtbanks@hhlaw.com
Adam J. Siegel	ajsiegel@hhlaw.com
HOGAN & HARTSON, LLP	
Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation	
John D. Russell	jrussell@fellerssnider.com
FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS, PC	
William A. Waddell, Jr.	waddell@fec.net
David E. Choate	dchoate@fec.net
FRIDAY, ELDREDGE & CLARK, LLP	
Counsel for Arkansas Farm Bureau Federation	
Barry Greg Reynolds	reynolds@titushillis.com
Jessica E. Rainey	jrainey@titushillis.com
TITUS, HILLIS, REYNOLDS, LOVE, DICKMAN & MCCALMON	

Nikaa Baugh Jordan	njordan@lightfootlaw.com
William S. Cox, III	wcox@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC	
Counsel for American Farm Bureau and National Cattlemen's Beef Association	
Duane L. Berlin	dberlin@levberlin.com
LEV & BERLIN PC	
Counsel for Council of American Survey Research Organizations & American Association for Public Opinion Research	

Also on this 18th day of May, 2009 I mailed a copy of the above and foregoing pleading to:

David Gregory Brown
Lathrop & Gage LC
314 E HIGH ST
JEFFERSON CITY, MO 65101

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Dustin McDaniel
Justin Allen
Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

Steven B. Randall
58185 County Road 658
Kansas, Ok 74347

Cary Silverman
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

George R. Stubblefield

HC 66, Box 19-12
Proctor, Ok 74457

Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

/s/ David P. Page