

WRITTEN STATEMENT

of

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through

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Before the
HOUSE SUBCOMMITTEE ON ENVIRONMENT
AND HAZARDOUS MATERIALS
HEARING ON SUPERFUND AND ANIMAL AGRICULTURE

November 16, 2005

STATEMENT SUMMARY

Mister Chairman and Members of the Subcommittee, I would like to thank you for allowing me to present my concerns with the proposal to exempt industrial-scale animal agriculture operations from the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.* This is an issue of great importance to the State of Oklahoma because we are currently trying to put an end to the pollution in Oklahoma caused by the release of hazardous substances by the poultry industry in several important watersheds that Oklahoma shares with Arkansas, Kansas and Missouri. In the Illinois River watershed, after years of negotiations, the State of Oklahoma filed litigation pursuant to Section 107 of CERCLA, as well as other state and federal laws. I have seen several references to this lawsuit in materials prepared by industry groups in support of an animal agriculture exemption and believe it is critical that I provide you with what I believe to be the true facts surrounding the case and explain its importance to the citizens of the State of Oklahoma.

The Illinois River Watershed and Tenkiller Ferry Lake (“IRW”) are natural resources of unparalleled importance to the State of Oklahoma. See Exhibit 1. The IRW is noted for its aesthetic, ecological, recreational, and public water supply values, and the quality of the water is essential to the economy of the region. Water quality is seriously impaired in the region, primarily as a result of the waste disposal practices of a large, concentrated, integrated poultry industry. Accordingly, after years of unsuccessful negotiations with the poultry industry, the State filed litigation to stop the industry’s improper waste management practices and restore the Illinois River and Lake Tenkiller.

The poultry companies that are the subject of the suit, as well as their representatives and proxies, have used a number of tactics to attempt to avoid responsibility for the pollution of

Oklahoma's and Arkansas' waters. For example, during the 2005 Oklahoma Legislative Session, they sought unsuccessfully to remove my statutory authority to file litigation without the approval of the Governor and the Legislature. See Okla. H.B. 1879 (2005). Currently, they are in District Court challenging the Oklahoma Department of Agriculture, Food and Forestry's right to inspect and sample their poultry operations in Oklahoma. See Josh J. Reed, et al. v. State of Oklahoma, Case No. CJ-2001-498 (Okla. 2005). Now it appears that they or their representatives are seeking a complete exemption from Congress from a long-standing, well-established federal environmental law. Apparently, the poultry companies believe that changing or challenging the law is preferable to complying with it.

Despite contrary assertions, exempting animal waste generated by the animal agriculture industry from CERCLA would be a substantial change in the law which would severely limit the States' ability to appropriately respond to releases of hazardous substances and pollution caused by this industry. Accordingly, I urge you to oppose this effort and support the States' ability to protect their citizens and environment from the impacts of pollution caused by the poultry industry.

I. Application of CERCLA to the Agricultural Industry and its Importance to the States

On October 26, 2005, the Oklahoma Office of Attorney General wrote to certain members of Congress regarding a proposed rider to the fiscal year 2006 agricultural appropriations bill that would have exempted animal waste generated by agricultural operations from CERCLA. Specifically, the proposal would have exempted "animal manures" from the definition of "hazardous substances" under Section 101(14) of the Act and excluded the term "manure" from the definition of "pollutant or contaminant" under Section 101(33) of the Act. See Exhibit 2. The letter asked the recipients to oppose the amendment because of the "serious impact this action will have on the

State's ability to protect its citizens and natural resources from the effects of hazardous substances released into the environment by large-scale, corporate agriculture operations." Id.

This rider was not included in the agriculture appropriations bill for fiscal year 2006 that was approved by Senate and House conferees on October 26, 2005. However, to the extent that the Subcommittee is reviewing this proposal, it is important to consider the adverse impacts of exempting animal waste generated by the animal agriculture industry from CERCLA on the States' ability to protect their citizens and the environment.

Amending CERCLA to exclude "animal manure" will severely limit the States' ability to respond to the release of hazardous substances by the animal agriculture industry because the States would no longer be able to recover their response costs or seek damages to restore natural resources under Section 107 of the Act. As described below, the release of hazardous substances from this industry is a serious problem across the nation. CERCLA provides a mechanism for the States to respond to the problem and hold the companies responsible, rather than using taxpayer funds to clean up the industry's pollution.

The animal agriculture industry should be held responsible for the release of hazardous substances, such as arsenic and phosphorus, to the same extent that every other industry is held responsible. CERCLA already provides an exemption for the normal application of fertilizer, *see* 42 U.S.C. § 9601(22), but it does not provide an exemption for massive disposal of animal waste far in excess of crop needs and the resulting releases of hazardous substances. Further, the majority of animal feeding operations are not subject to the permitting requirements of the Clean Water Act and, thus, are not adequately addressed by other federal laws.

Despite representations to the contrary, the animal agriculture industry is not currently

exempt from liability under CERCLA. A serious and substantial change to an important federal law is being proposed. It simply is not a clarification of existing law. If the proponents of such an amendment truly believed that CERCLA already provided such an exemption, clearly there would be no need to amend CERCLA. The Courts are capable of interpreting federal law and determining Congressional intent and numerous legal mechanisms exist for the industry to challenge any decision that it believes misinterprets the law.

A. Pollution from Animal Feeding Operations is a Nationwide Problem

The proponents of this proposed exemption assert that the animal agriculture industry only releases “diffuse, low-level” substances to the environment which are adequately addressed under other federal and state laws. However, according to the the 1998 National Water Quality Inventory Report, “the agricultural sector contributes to the impairment of at least 170,000 river miles, 2.4 million lake acres, and almost 2,000 estuarine square miles.” National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg 2960-01, 2973 (2001). Further, according to the 2000 National Water Quality Inventory Report, the agricultural sector, including Concentrated Animal Feeding Operations (“CAFO”), is the leading contributor of pollutants “to identified water quality impairments in the nation’s rivers and streams, lakes, ponds, and reservoirs.” National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 Fed Reg.7176-01, 7237 (2003); See also 66 Fed. Reg. at 2973, 2976-77.

The EPA also reports that twenty-nine (29) States have specifically identified animal feeding operations as contributors to water quality impairment. See 68 Fed. Reg. at 7237. In the CAFO rule

making documents, the EPA noted numerous studies indicating that the facilities are significant contributors of pollutants to water across the country and noted numerous reports of discharges resulting in fish kills and other environmental impacts. See generally 68 Fed. Reg. at 7237.

Although States report that nonpoint source pollution is the leading remaining cause of water pollution in the United States, the majority of the estimated 238,000 animal feeding operations in the United States are not currently regulated by the EPA under the Clean Water Act. As of 2001, the EPA estimated that, of the 12,000 animal feeding operations that were subject to the CAFO point source permitting requirements, only 2,530 had actually applied for permits. See 66 Fed. Reg. at 2963. Further, the CAFO permit is primarily directed at preventing the pollution caused by nutrients, as opposed to the other constituents of animal waste such as metals and pathogens. See, e.g., 40 C.F.R. 412.4.

In Oklahoma and Arkansas, the majority of the large-scale poultry operations contributing to pollution of Oklahoma's natural resources are not regulated under the Clean Water Act. As of 2002, the estimated total company-owned or contract poultry houses located within the IRW included approximately 2,363 houses in Arkansas and 508 houses in Oklahoma. See Exhibit 3. The overwhelming majority of these poultry operations are not CAFOs and are thus not regulated under the federal Clean Water Act. See Exhibit 4.

Additionally, the overwhelming majority of these poultry operations are located outside the boundaries of Oklahoma and are beyond the regulatory authority of the Oklahoma Department of Agriculture, Food and Forestry. Although the Arkansas Legislature passed legislation governing poultry operations in 2003, the deadline for obtaining even a nutrient or poultry litter management plan has been extended until January 1, 2007. See Ark. Code Ann. § 15-20-1106. Thus, the majority

of the Arkansas poultry operations releasing hazardous substances into Oklahoma's waters are not regulated by either the EPA or the agricultural agencies in Oklahoma or Arkansas. Clearly, CERCLA provides an important mechanism for the State of Oklahoma to respond to this interstate problem.

B. Constituents of Poultry Waste and the Naturally Occurring Substance Provision

The proponents of this exemption characterize the waste generated by this industry as "naturally occurring organic substances" that only include ammonia, hydrogen sulfide and phosphorus, as opposed to dangerous, synthetic chemicals. The description of animal waste as a "naturally occurring organic substance" mischaracterizes both the nature of the waste and the process by which it is generated at large-scale, concentrated agricultural operations. It is also an attempt to downplay the public health threats and environmental problems that are presented by the poultry industry's management of its waste.

The "naturally occurring substance" exemption is contained in Section 104(a)(3) of CERCLA. In general, the EPA cannot undertake a removal or remedial action under Section 104 of CERCLA for the release of a "naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found." 42 U.S.C. §9604(a)(3) [Emphasis added]. This provision was enacted to address situations where releases of hazardous substances and the resulting pollution are not caused by the activities of man.

In considering this issue, it is important to understand that the waste produced by today's animal feeding operation is substantially different than the waste produced by the family farmer in the past. It is not "naturally occurring" and it is not composed of only ammonia, phosphorus and hydrogen sulfide. According to the United States Environmental Protection Agency, the primary

pollutants most commonly associated with animal waste are phosphorus, nitrogen, ammonia, organic matter, solids, pathogens, odorous compounds, trace metals, pesticides, antibiotics, and hormones. 68 Fed. Reg at 7181. Trace elements in manure that are of environmental concern include “arsenic, copper, selenium, zinc, cadmium, molybdenum, nickel, lead, iron, manganese, aluminum, and boron.” 66 Fed. Reg. 2978.

In order to achieve the growth rates which make it possible for a single poultry house to raise 5.5 flocks in a year, broiler feed has been carefully engineered. Arsenic, copper, selenium, and zinc have all been added to the feed to promote growth and inhibit parasites. *Id.* at 2985. As a result, the waste which comes out of the birds and goes into the waste stream coming out of these poultry houses is laden with these metals. A recent U.S. EPA National Exposure Research Laboratory report states that:

Organic arsenic compounds are extensively added to the feed of animals (particularly poultry and swine) in the United States to improve growth rates by controlling parasitic diseases. **The resulting arsenic-bearing wastes are currently introduced to the environment, and even used to fertilize croplands.** Most of the roxarsone appears to be excreted unchanged. Litter (bedding material.. and excrement) of broilers fed roxarsone-treated feed contains 15-30 ppm arsenic. If most of these chickens were fed feed containing roxarsone at the 45.4 g/ton rate, for 1999 alone, there was a potential for more than 300,000 kg of total arsenic to enter the environment through application of litter of roxarsone treated broilers to agricultural land. **The environmental impact may be substantial in geographic regions where the application of arsenic-contaminated litter is concentrated.**

Momplaisir, G.M; C.G. Rosal; E.M. Heithmar, Arsenic Speciation Methods for Studying the Environmental Fate of Organoarsenic Animal-Feed Additives, U.S. EPA, NERL-Las Vegas, 2001; (TIM No. 01-11) [Emphasis added].

Many of the above mentioned pollutants have the potential to affect human health and the environment. Excess phosphorus and nitrogen can cause eutrophication which affects “the dissolved

oxygen content of a water body to levels insufficient to support fish and invertebrates.” 66 Fed. Reg. at 2982. Eutrophication can also cause the growth of toxic organisms such as cyanobacteria and *Pfisteria piscida* which can be harmful to both humans and wildlife. Id. at 2981. Eutrophication also has the potential to cause drinking water impacts by “clogging treatment plant intakes, producing objectionable tastes and odors, and increasing production of harmful chlorinated byproducts (e.g., trihalomethanes) by reacting with chlorine used to disinfect drinking water.” Id. At 2982. Trace metals can also pose a threat to human health and the environment. For example, arsenic is carcinogenic to humans, selenium is associated with liver dysfunction and loss of hair and nails, and zinc can result in changes in copper and iron balances, particularly copper deficiency anemia. Id. at 2984.

Clearly, animal manure produced at animal feeding operations is not a “naturally occurring substance.” **The constituents of the waste are a direct function of the feed supplements provided to the animals by the companies.** Further, the release of hazardous substances into the environment from the disposal of this waste is not a natural occurrence. It is a result of the companies’ practice of disposing of the waste on the ground in a manner that is not sufficient to prevent the release. Accordingly, the “naturally occurring substances” provision in CERCLA does not apply to animal waste from animal feeding operations and it is not indicative of any congressional intent to exclude releases of hazardous substances in this waste from the Act.

C. Industry Waste Disposal Practices

In considering this proposed exemption, it is also important to recognize that we are not discussing the impact of the family farm on the environment. We are talking about the pollution caused by the disposal practices of modern, large-scale integrated agricultural operations. These

integrated operations differ radically from the family farm. The scale of such integrated operations today dwarf these historic enterprises and bring with them environmental problems of equal proportion.

According to the EPA, as of 2003, there were 238,000 “animal feeding operations” in the United States which generated approximately 500 million tons of waste each year, **three times more raw waste than is generated yearly by all the humans in the United States.** 68 Fed. Reg. at 7179-80. In 1934, the United States produced an estimated 34 million broilers. USDA, Economics, Statistics, and Market Information System, usda.mannlib.cornell.edu (2005). Roughly fifty years later, it is estimated that over 5 billion were produced and, over the next five years, over 8 billion were produced. Id.

In the first half of the twentieth century a farm might have a chicken coop or brooder house that might hold 500 chickens, a large one might hold 1,400 birds. Early Poultry Houses, Iowa Barn Foundation, http://iowabarnfoundation.org/magazine/early_poultry_houses.htm. A “smaller” modern poultry house can house a 25,000 bird flock at a time producing an average of 5.5 flocks per year and 125 tons of poultry waste. Nutrient Analysis of Poultry Litter and Possible Disposal Alternatives, Avian Advice, University of Arkansas, Fall 2003, Vol. 5, No. 3, p. 1.

In Eastern Oklahoma and Northwest Arkansas, each poultry operation will generally have more than one house. See e.g; Exhibits 5, 6, 7, and 8. The industry average is 2.3 houses per operator and some of these operations have four or more houses at one location. Holleman, John T., In Arkansas Which Comes First, The Chicken or the Environment, Tulane Environmental L. R., Vol. 6, p. 21, 26. The EPA has found that the trend for “animal feeding operations” has been “toward fewer but larger operations” resulting in concentration of “more manure nutrients and other

waste constituents within some geographic areas. These large operations often do not have sufficient land to effectively use the manure as fertilizer.” See 68 Fed. Reg. at 7180.

EPA has further noted the concentration has resulted in “widespread phosphorus saturation of the soils” in some areas of the United States and that “research shows a high correlation between areas with impaired lakes, streams and rivers due to nutrient enrichment and areas where there is dense livestock and poultry production.” 68 Fed. Reg. at 7196. The USDA has estimated that confined poultry operations “account for the majority of on-farm excess nitrogen and phosphorus . . .” because of the generally higher nutrient composition of poultry waste and the lack of land available for application. See 68 Fed Reg. at 7180.

In the United States, in 1997, 165 counties had the potential for excess manure nitrogen and 374 counties had the potential for excess manure phosphorus primarily because of the lack of available land application areas. 68 Fed. Reg. at 7180-81. In 1999, the USDA speaking about the build up of phosphorus in soils where the waste from concentrated animal operations were disposed of, warned:

Phosphorus accumulation on farms has built up soil P to levels that often exceed crop needs. Today there are serious concerns that agricultural runoff (surface and subsurface) and erosion from high P soils may be major contributing factors to surface water eutrophication. . . . **By the time these water-quality impacts are manifest, remedial strategies are difficult and expensive to implement; they cross political and regional boundaries; and because of P loading, improvement in water quality will take a long time.**

Agricultural Phosphorus and Eutrophication, USDA, ARS 146, July 1999, p. 4 [Emphasis added].

As part of any discussion of reducing federal environmental protections, it is important to recognize that poultry industry expansions are frequently occurring along state borders. See Exhibit 9. For example, as in many areas across the United States, there is major expansion going on along the

borders of Oklahoma, Arkansas and Missouri. Id.

The family farm with its hundreds of birds had plenty of uses for the manure the birds produced. With a single poultry house producing 125 tons of manure every year, the industry is running out of safe places to dispose of its waste. Most recently, the University of Arkansas Extension Service, explained the problem:

The Arkansas poultry industry generates 1.4 million tons of broiler litter annually. While litter is still a valuable fertilizer resource that is needed in many areas, litter generated in poultry producing regions cannot be properly utilized in those regions alone. **By some estimates, alternative uses for perhaps as much as half of the litter generated in concentrated production areas must be found.**

Nutrient Analysis of Poultry Litter and Possible Disposal Alternatives, *supra* at 4 [Emphasis added].

In 2003, the Arkansas Legislature designated the majority of the watersheds bordering Oklahoma as Nutrient Surplus Watersheds, which are defined as an area “which has been determined to be an area in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area are such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state.” Ark. Code Ann. § 15-20-1103 and 1104; See Exhibit 10. Further, as a result of the massive amount of phosphorus produced in this area and the fact that the area is highly conducive to loss of phosphorus runoff, the United States Department of Agriculture identified these Oklahoma watersheds as potential priority water resources for protection of water quality from animal manure. See Exhibit 11. The Arkansas River subregion, which includes the Illinois River, is given the second highest priority in the United States based on the need to address pollution from animal wastes. Id.

The poultry waste generated in Arkansas and Oklahoma is being disposed of on lands far in excess of agronomic crop requirements and soil capacity, and is being applied in a manner that

releases hazardous substances into the soils, surface water and groundwater. There is already an exemption for animal feeding operations that are engaging in the normal application of fertilizer in Section 9601(22) of CERCLA. However, the exemption does not apply to waste disposal in excess of agronomic crop requirements and soil capacity, nor does it exempt the release of hazardous substances from such activities.

The meaning of this provision is illuminated in the Senate Report for the CERCLA legislation as follows:

Certain feedstocks used to produce fertilizer (nitric acid, sulfuric acid, phosphoric acid, anhydrous ammonia) are hazardous substances as defined by the bill, and certain fertilizer products may be listed as hazardous substances as well. . . . Under this exclusion, however, the "normal field application" of fertilizer is not a "release" as defined in the bill. . . . The term "normal field application" means the act of putting fertilizer on crops or cropland, and does not mean any dumping, spilling, or emitting, whether accidental or intentional, in any other place or of significantly greater concentrations or amounts than are beneficial to crops.

S. Rep. No. 96-848, at 46 (1980) [Emphasis added]. In passing the CERCLA legislation, the Senate bill was adopted by the House without amendment, and when this happens, "the Senate report is powerful evidence of congressional intent." State of Colorado v. United States Department of Interior, 880 F.2d 481, 487 (D.C. Cir. 1989).

The current "normal application of fertilizer" provision of CERCLA is adequate to protect all legitimate agricultural interests. This provision does not indicate congressional intent to completely exempt animal manure and associated releases of hazardous substances from CERCLA.

II. Protection of the State's Scenic Rivers

The IRW consists of 1,069,530 acres of land that straddles the Arkansas-Oklahoma border and approximately 576,030 acres of the IRW lies within the boundaries of Oklahoma. In 1970, the

Oklahoma Legislature designated the Illinois River and portions of its tributary rivers, Baron Fork Creek and Flint Creek, as "State Scenic River Areas." 82 Okla.Stat. § 1452 (1970). The designation as "Scenic River Areas" reflects a recognition by the Oklahoma Legislature that these rivers and streams "possess such unique natural scenic beauty, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the state that it is the policy of the Legislature to preserve these areas for the benefit of the people of Oklahoma." *Id.* The early travelers described the Illinois as an exceptional river:

The principal streams that irrigate the country are the Arkansas, the Grand or Neosho River, the Verdigris, coming down from the north and emptying into the Arkansas at Fort Gibson. **On the east side of the Arkansas is the Illinois River, rising in the mountainous regions southeast of Fort Gibson, said to be one of the prettiest rivers on the continent, sparkling with crystal waters.**

Reports of the Board of Indian Commissioners. Appendix 37. Second Annual Report 1870 (Fort Gibson, Indian Territory, December 16, 1870), *reprinted in* Chronicles of Oklahoma Vol. 5, No. 1 (March 27) at 80 [Emphasis added].

These rivers are also designated, in Oklahoma's federally approved water quality standards, as "outstanding resource waters" for protection of their beneficial uses such as aesthetics, recreation, public water supply, and fish and wildlife propagation. See Okla. Admin. Code 785:45-3-2. Tourism has been especially important to the region's economy because the Illinois River is a noted recreational destination for floating, fishing, camping, swimming, diving, hiking, and sightseeing. In addition, the IRW also serves an important source of drinking water to Oklahoma citizens. In all, there are twenty-two (22) public water supply systems which depend on the IRW for clean water.

The Illinois River feeds into the 12,900 acre Tenkiller Ferry Lake, which has been described as the emerald jewel in Oklahoma's crown of lakes. Like the river from which it is formed, before

it began to deteriorate, Tenkiller was known for its pristine waters:

Tenkiller is Oklahoma's most beautiful lake. . . . For a distance of more than 30 miles above the dam near Gore that holds back its deep, crystal clear waters, it stretches in a northeasterly direction through the fabled and picturesque Cookson Hills.

C. Brill, 1957 Brill's Oklahoma Outdoor Guide at 169 (Oklahoma City Consolidated Publishing Company). Lake Tenkiller serves as a valuable source of drinking water, and currently, the primary recreational activities at Lake Tenkiller include boating, fishing, camping, swimming, and sightseeing. As of 1974, the direct benefit of recreation at Lake Tenkiller to the regional economy was estimated at \$31.8 million/year. Badger, D. Daniel, Dean F. Schreiner, and Ronald W. Presley, Regional Impacts of Recreational Expenditures at Two Oklahoma Lakes, Proc. Okla. Acad. Sci. 56:139-142 (1976).

A. Poultry Integrator Company Operations in the Illinois River Watershed

In this river valley are some of the most concentrated poultry growing operations in the entire country. It is the home of Tyson Foods and several other smaller poultry integrators. Arkansas is ranked second in broiler production in the United States and Washington and Benton Counties through which the Illinois River and its major tributaries flow form the center of this industry in Arkansas¹. As of 2002, there were an estimated 2,871 poultry houses in the IRW. Exhibit 3. **The estimated phosphorus in the waste produced by poultry in the Illinois River Watershed is the equivalent to the waste stream of 10.7 million people.** Id. That is more people than live in all of Arkansas, Kansas and Oklahoma combined.

In the IRW, the poultry companies own millions of chickens and turkeys that generate

¹www.ers.usda.gov/Briefing/Poultry/background.htm; Holleman, John T., In Arkansas Which Comes First, The Chicken or the Environment, Tulane Environmental L. R., Vol. 6, p. 26.

hundreds of thousands of tons of waste. The constituents of the poultry waste include, but are not limited to, phosphorus, nitrogen, arsenic, zinc, copper, hormones, and microbial pathogens. Phosphorus, arsenic, zinc, and copper are designated hazardous substances under CERCLA. 40 C.F.R. § 302.4 Photographs of the industry's waste disposal practices are included in Exhibits 12 and 13. Generally, this waste has been improperly stored in large piles that are not isolated from the elements and disposed of on lands within the IRW in excess of crop agronomic needs and soil capacity. These practices are causing an accumulation of hazardous substances, pollutants and contaminants in the soils and are causing runoff and release of large quantities of phosphorus and other waste constituents into the waters of the IRW.

B. Effects of Poultry Integrator Companies on the Illinois River Watershed

The IRW is "highly susceptible" to pollution from land application of animal waste because of "the fractured and dissolved carbonated terrain (karst) of northwest Arkansas." Graening, G.O., Brown, A.V. 2000, Trophic Dynamics and Pollution Effects in Cave Springs Cave, Arkansas: A final report submitted to the Arkansas Natural Heritage Commission. Arkansas Water Resources Center Publication No. MSC-285. p. 44. The lands and waters of the IRW contain elevated levels of a number of the constituents of animal waste and the resulting injury to natural resources is caused by the poultry companies' improper waste disposal practices.

The dangers to water quality caused by land disposal of poultry waste in the IRW, are succinctly summarized as follows:

From a geologic standpoint, the center of the poultry industry could not be placed in a worse area. These two counties [Benton and Washington] are located in the Ozark Highlands region of the state. This area is noted for its mountainous terrain with steep gradients and fast-flowing, spring fed streams. A large percentage of the streams from within this region are designated as extraordinary resource waters. The

fractured limestone geology of the region allows a direct linkage from surface waters to groundwaters.

Holleman, John T., In Arkansas Which Comes First, The Chicken or the Environment, Tulane Environmental L. R., Vol. 6, p. 26.

As a result of the waste disposal practices of the poultry industry, this once pristine watershed is seriously impaired. See, e.g. Exhibit 14. For example, bacteria, nutrients and metals are reported to chronically exceed background levels in groundwater in the IRW. Graening, G.O., Brown, A.V. 2001, Protection of Cave Springs Cave Biota and Groundwater Basin, Arkansas Water Resources Center Publication No. MSC-297. p. 1. In addition, the surface water impacts caused by the phosphorus released from the poultry industry's operations are well known and well documented in both government reports and peer reviewed literature. Releases of phosphorus have caused violations of state water quality standards, periodic algae blooms, excessive algal growths, hypolimnetic anoxia and other adverse impacts in the waters of the IRW, resulting in eutrophication, a degradation in water quality and sediments, injury to biota and impaired beneficial uses of the water. The Illinois River, Baron Fork Creek and Flint Creek are also all impaired by bacterial contamination and are not meeting the standards for primary body contact recreation. These streams have also been found not to support their use as public or private water supplies.

In spite of the amount of waste produced by the industry in this region; the potency of that waste; the dangers of bacterial or viral diseases being transmitted by the waste from poultry to the human population; and the unsuitable nature of the geology in this region for such practices, the poultry industry continues to dispose of hundreds of thousands of tons of untreated animal waste every year by spreading it onto the ground in the IRW.

C. Requested Relief in Oklahoma v. Tyson

The State of Oklahoma first began discussions with the poultry industry to stop pollution of the State's natural resources by improper animal waste disposal in November of 2001. In the years that followed, Oklahoma attempted a number of settlement mechanisms in order to prevent litigation, including informal negotiations through the Arkansas Attorney General; a joint negotiation with Arkansas and Oklahoma agencies with the assistance of Region VI of the U.S. Environmental Protection Agency, and a formal mediation with the assistance of retired United States District Judge Thomas Brett, assisted by former Region EPA VI Administrator, Gregg Cooke. All of these efforts failed to bring resolution to this problem.

On June 13, 2005, the State of Oklahoma filed a lawsuit against fourteen poultry companies for pollution of the Illinois River Watershed and Tenkiller Ferry Lake (hereinafter "IRW"). The case, *State of Oklahoma v. Tyson Foods, Inc., et al.*, Case No. 4:05-cv-000329-JOE-SAJ, was filed in federal District Court for the Northern District of Oklahoma. The Complaint alleges that the poultry companies are legally responsible for the waste, the improper disposal of the waste and the resulting pollution, damage and injury to natural resources in the IRW. Accordingly, the lawsuit does not name any individual farmers, commonly referred to as "poultry growers" or "poultry producers," with which the poultry companies often contract to raise their birds and manage their waste. Rather, the lawsuit is directed at the actions of the poultry companies who either own or control the poultry operations in the IRW.

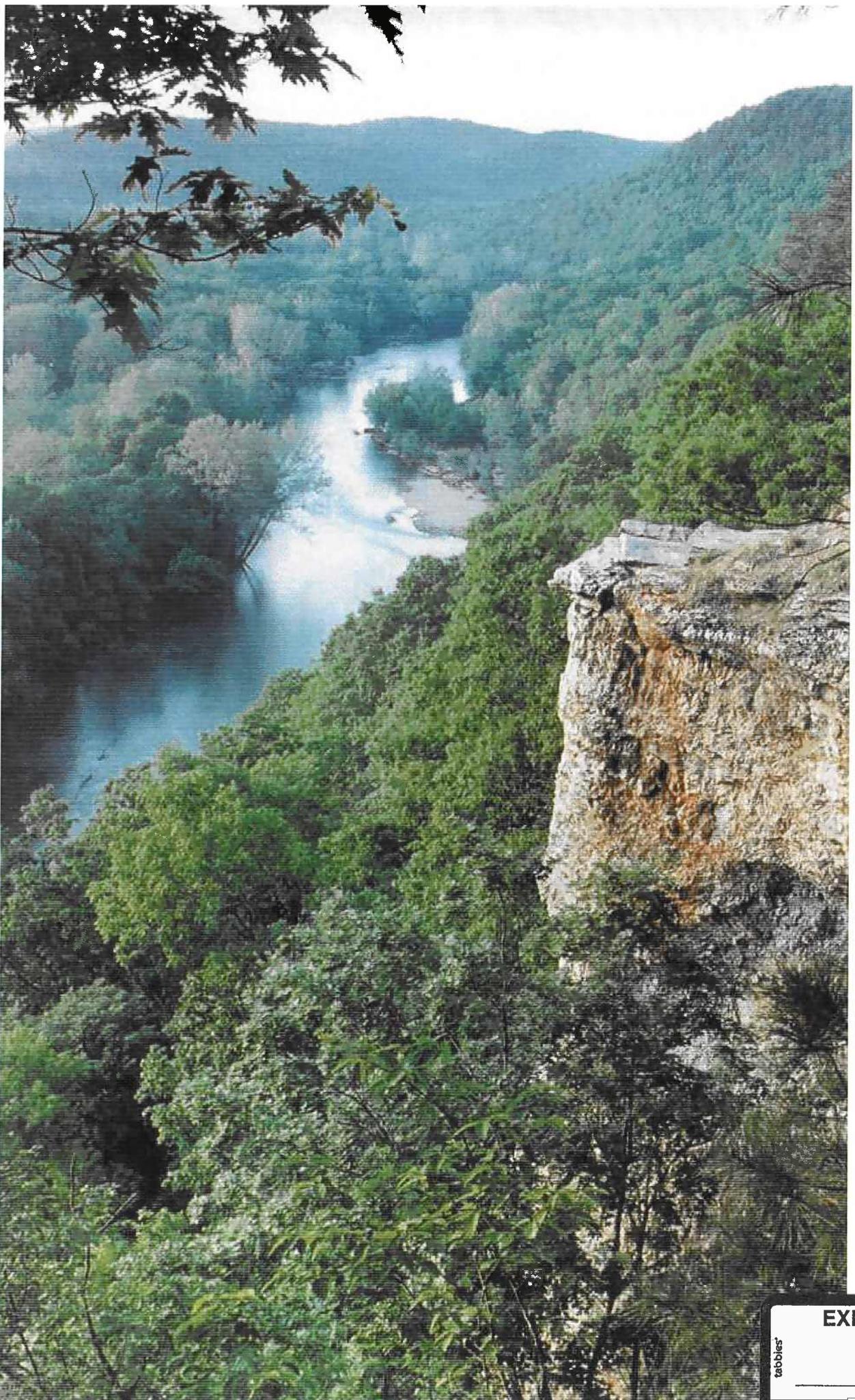
The Amended Complaint includes three counts based on federal law, including cost recovery and natural resource damages under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607; an Imminent and Substantial Endangerment action for

injunctive relief and other available remedies under the Solid Waste Disposal Act, 42 U.S.C. § 6972 ((a)(1)(B) and (b)(2)(A)); and equitable relief, costs and damages under the federal common law of nuisance. The Complaint also includes state law claims. The State seeks, among other things, abatement, remediation, damages, declaratory relief, costs, penalties, and equitable relief. In sum, the State is seeking to stop the actions of the poultry companies which are causing pollution, clean up the pollution, restore the natural resources that have been injured, and compensate the public for the damages done by the industry's practices.

III. Conclusion

The amendment you are considering is not an effort to protect the family farmer, as is so often claimed by the poultry industry public relations efforts. It is a blatant attempt by a multi-billion dollar industry to protect its practice of dumping waste in an environmentally damaging manner. No other industry in the country has that kind of protection. Since adoption of the federal clean water and air legislation, no other industry has so callously polluted our land and waters.

Normal practices of crop fertilization are already protected. Hazardous substance disposal, far in excess of any crop needs, should not receive the blessing of Congress by adoption of the amendment here proposed. Thank you again for the opportunity to present my views to the Subcommittee on this issue of national importance.



EXHIBIT

1

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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

October 26, 2005

The Honorable Henry Bonilla
Chairman
SubCommittee on Agriculture, Rural
Development, Food and Drug Administration
and Related Agencies
United States House of Representatives
2458 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bonilla:

It has come to my attention that the Senate Conferees yesterday approved a rider proposed by Senators Larry Craig and Sam Brownback to the fiscal year 2006 agricultural appropriations bill that would exempt agricultural operations from the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Specifically, the language would exempt "animal manures" from the definition of "hazardous substances" under Section 101(14) and exclude the term "manure" from the definition of "pollutant or contaminant" under Section 101(33) of CERCLA.

I am writing you to urge that you oppose this amendment because of the serious impact this action will have on the State's ability to protect its citizens and natural resources from the effects of hazardous substances released into the environment by large-scale, corporate agriculture operations. It is of great concern that this language is being considered as a rider to an appropriations bill given the significant ramifications of making this substantive amendment to a longstanding environmental law.

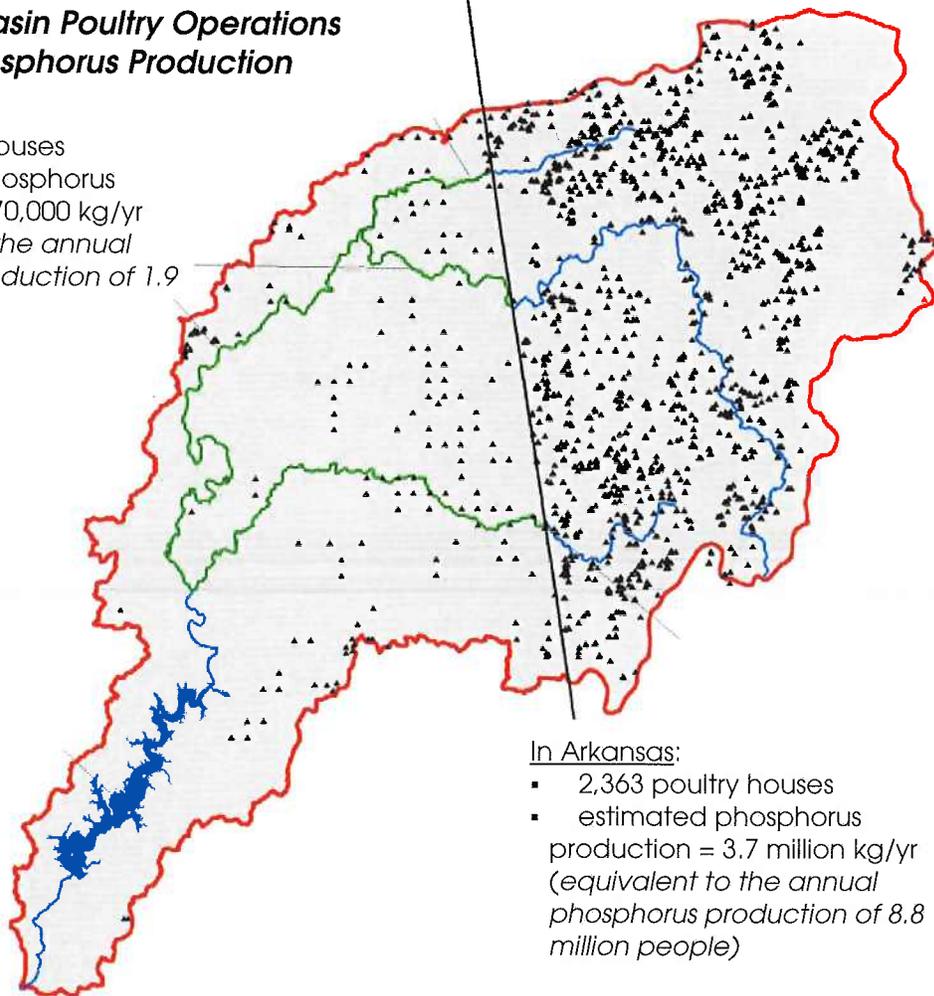
One of the most important issues facing the State of Oklahoma is the continuing degradation and pollution of Oklahoma's lakes, rivers and streams by non-point source pollution. According to the Environmental Protection Agency ("EPA"), the States report that non-point source pollution is the leading remaining cause of water quality problems in the United States. Releases of hazardous substances and pollutants from agricultural operations can seriously impact human health, drinking water supplies, and aquatic life.

In Oklahoma, we are currently trying to remedy the pollution caused by the disposal of enormous volumes of poultry waste in the watersheds of our most important natural resources, including our state Scenic Rivers. Poultry waste can contain many pollutants including phosphorus, nitrogen, arsenic, zinc, copper, hormones, antibiotics,

Illinois River Basin Poultry Operations Estimated Phosphorus Production

In Oklahoma:

- 508 poultry houses
- estimated phosphorus production = 770,000 kg/yr
(equivalent to the annual phosphorus production of 1.9 million people)



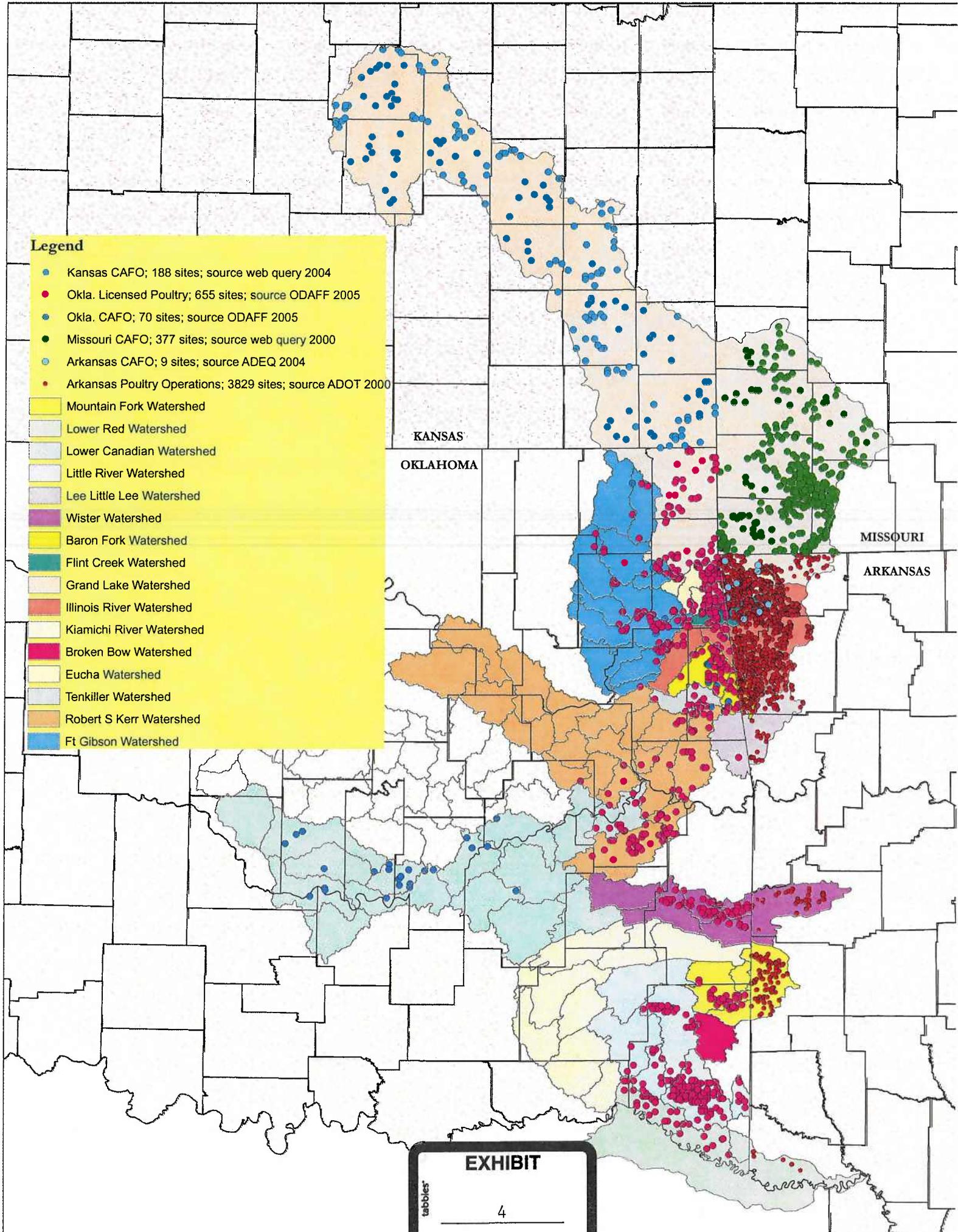
In Arkansas:

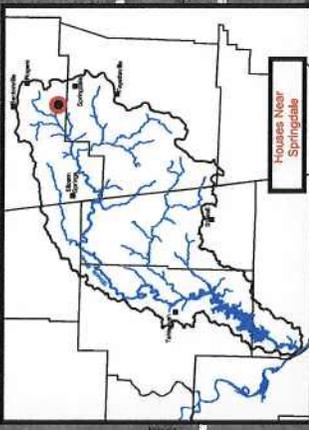
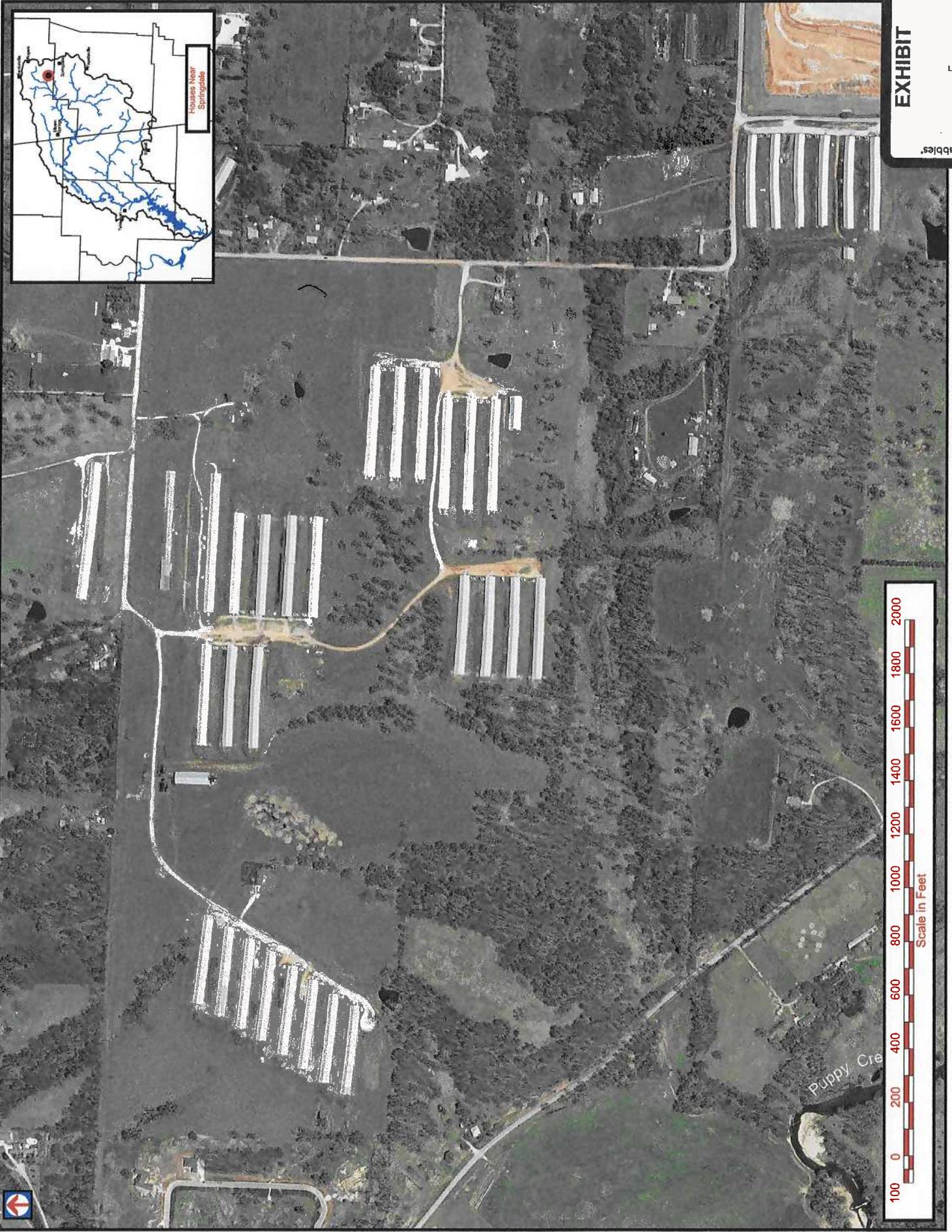
- 2,363 poultry houses
- estimated phosphorus production = 3.7 million kg/yr
(equivalent to the annual phosphorus production of 8.8 million people)

From "Illinois River Basin Tour" guide (Oklahoma Water Resources Board; August 12, 2002)

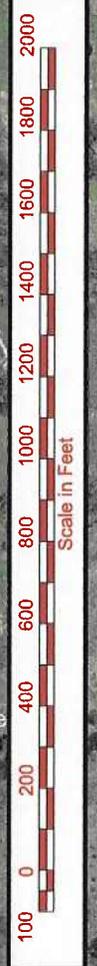
Legend

- Kansas CAFO; 188 sites; source web query 2004
 - Okla. Licensed Poultry; 655 sites; source ODAFF 2005
 - Okla. CAFO; 70 sites; source ODAFF 2005
 - Missouri CAFO; 377 sites; source web query 2000
 - Arkansas CAFO; 9 sites; source ADEQ 2004
 - Arkansas Poultry Operations; 3829 sites; source ADOT 2000
- Mountain Fork Watershed
 - Lower Red Watershed
 - Lower Canadian Watershed
 - Little River Watershed
 - Lee Little Lee Watershed
 - Wister Watershed
 - Baron Fork Watershed
 - Flint Creek Watershed
 - Grand Lake Watershed
 - Illinois River Watershed
 - Kiamichi River Watershed
 - Broken Bow Watershed
 - Eucha Watershed
 - Tenkiller Watershed
 - Robert S Kerr Watershed
 - Ft Gibson Watershed





Routes Near
Springdale



EXHIBIT

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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

October 26, 2005

The Honorable Henry Bonilla
Chairman
SubCommittee on Agriculture, Rural
Development, Food and Drug Administration
and Related Agencies
United States House of Representatives
2458 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bonilla:

It has come to my attention that the Senate Conferees yesterday approved a rider proposed by Senators Larry Craig and Sam Brownback to the fiscal year 2006 agricultural appropriations bill that would exempt agricultural operations from the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Specifically, the language would exempt "animal manures" from the definition of "hazardous substances" under Section 101(14) and exclude the term "manure" from the definition of "pollutant or contaminant" under Section 101(33) of CERCLA.

I am writing you to urge that you oppose this amendment because of the serious impact this action will have on the State's ability to protect its citizens and natural resources from the effects of hazardous substances released into the environment by large-scale, corporate agriculture operations. It is of great concern that this language is being considered as a rider to an appropriations bill given the significant ramifications of making this substantive amendment to a longstanding environmental law.

One of the most important issues facing the State of Oklahoma is the continuing degradation and pollution of Oklahoma's lakes, rivers and streams by non-point source pollution. According to the Environmental Protection Agency ("EPA"), the States report that non-point source pollution is the leading remaining cause of water quality problems in the United States. Releases of hazardous substances and pollutants from agricultural operations can seriously impact human health, drinking water supplies, and aquatic life.

In Oklahoma, we are currently trying to remedy the pollution caused by the disposal of enormous volumes of poultry waste in the watersheds of our most important natural resources, including our state Scenic Rivers. Poultry waste can contain many pollutants including phosphorus, nitrogen, arsenic, zinc, copper, hormones, antibiotics,

and pathogens which may be released from the disposal areas causing pollution of natural resources.

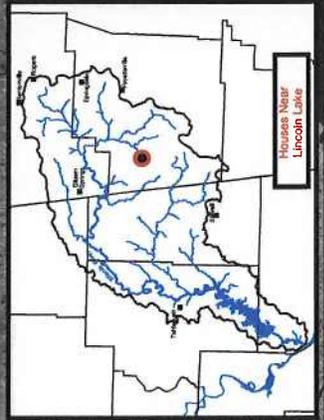
CERCLA is of extreme importance to the State in remedying pollution and protecting the health of its citizens from releases of hazardous substances from all industries, including the agriculture industry. Exempting the agriculture industry from CERCLA will seriously limit the State's ability to appropriately respond to the human health and environmental problems caused by such releases.

Accordingly, I urge you to vote against amending CERCLA to exempt agricultural operations from the provisions of CERCLA. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Edmondson", with a long horizontal flourish extending to the right.

W.A. Drew Edmondson
Oklahoma Attorney General



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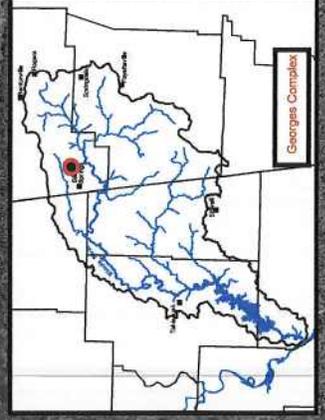
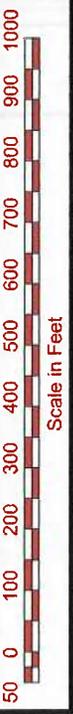
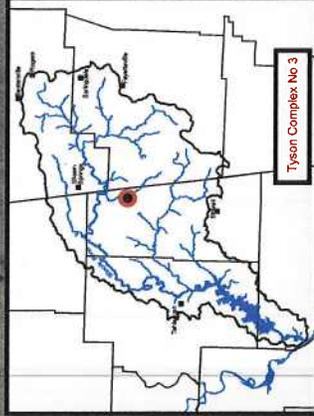


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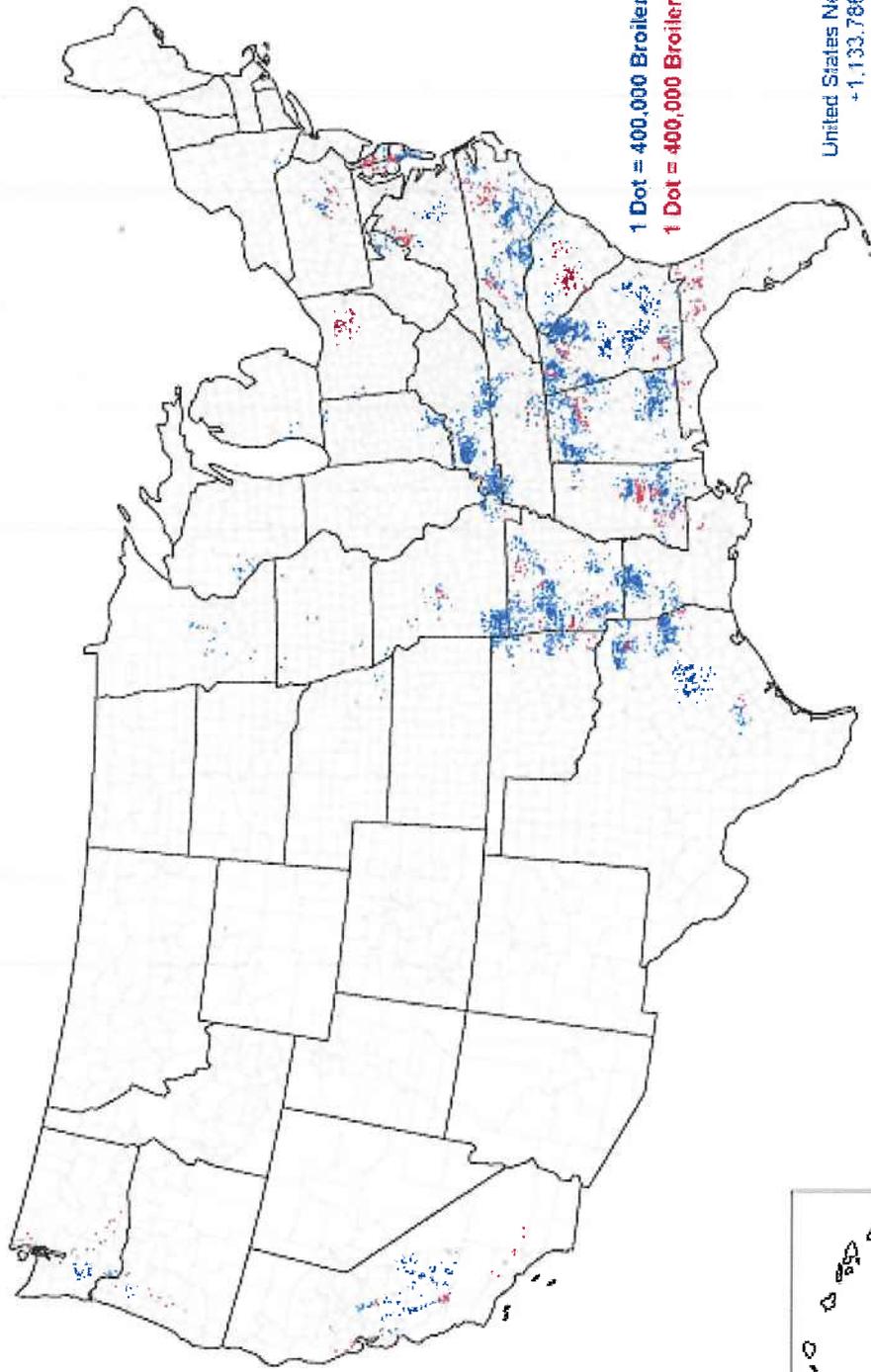
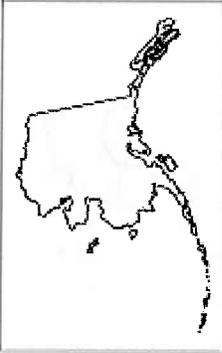
EXHIBIT

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**Broilers and Other Meat-Type Chickens Sold -
Change in Number: 1997 to 2002**



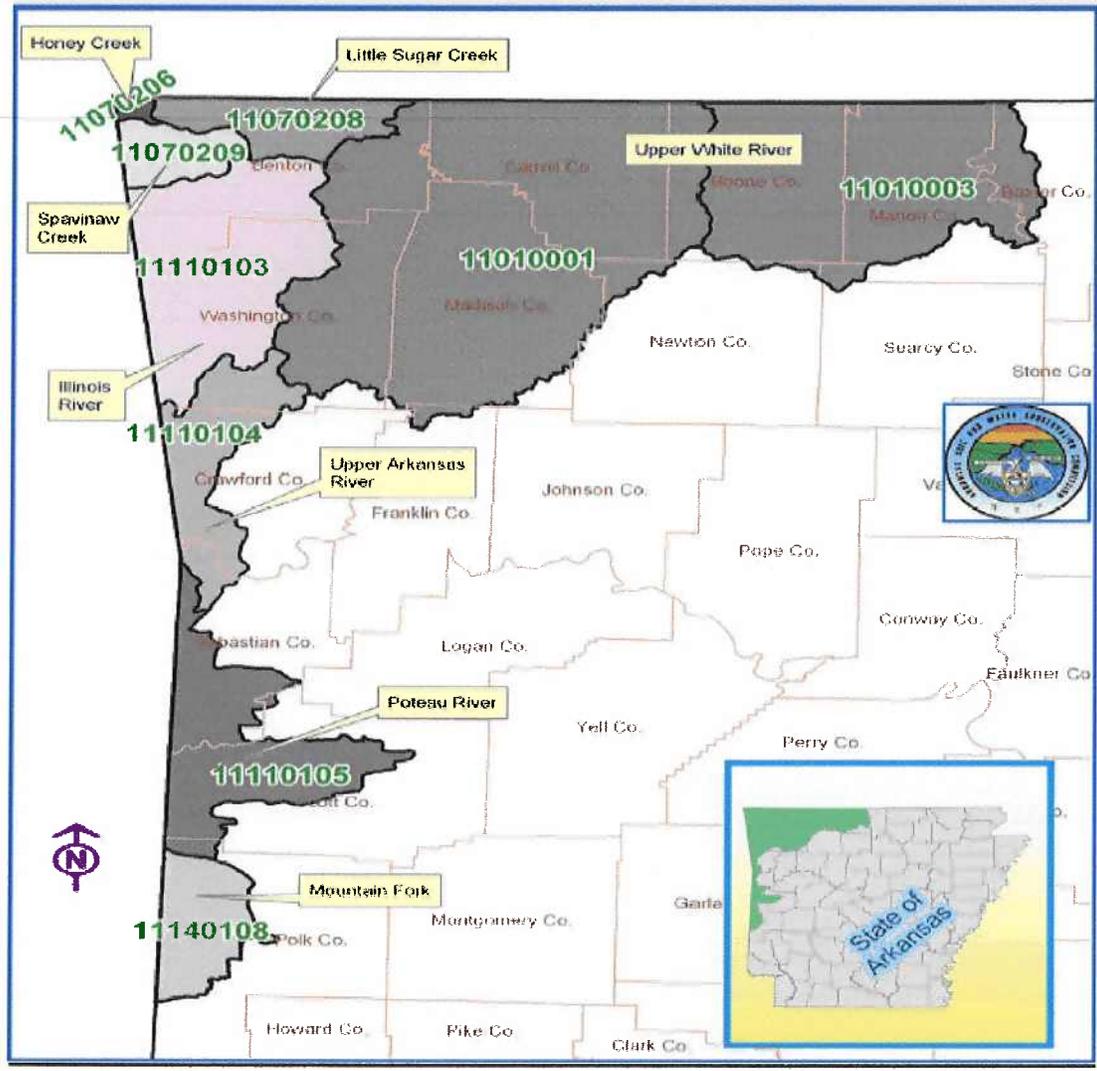
1 Dot = 400,000 Broilers Increase
1 Dot = 400,000 Broilers Decrease

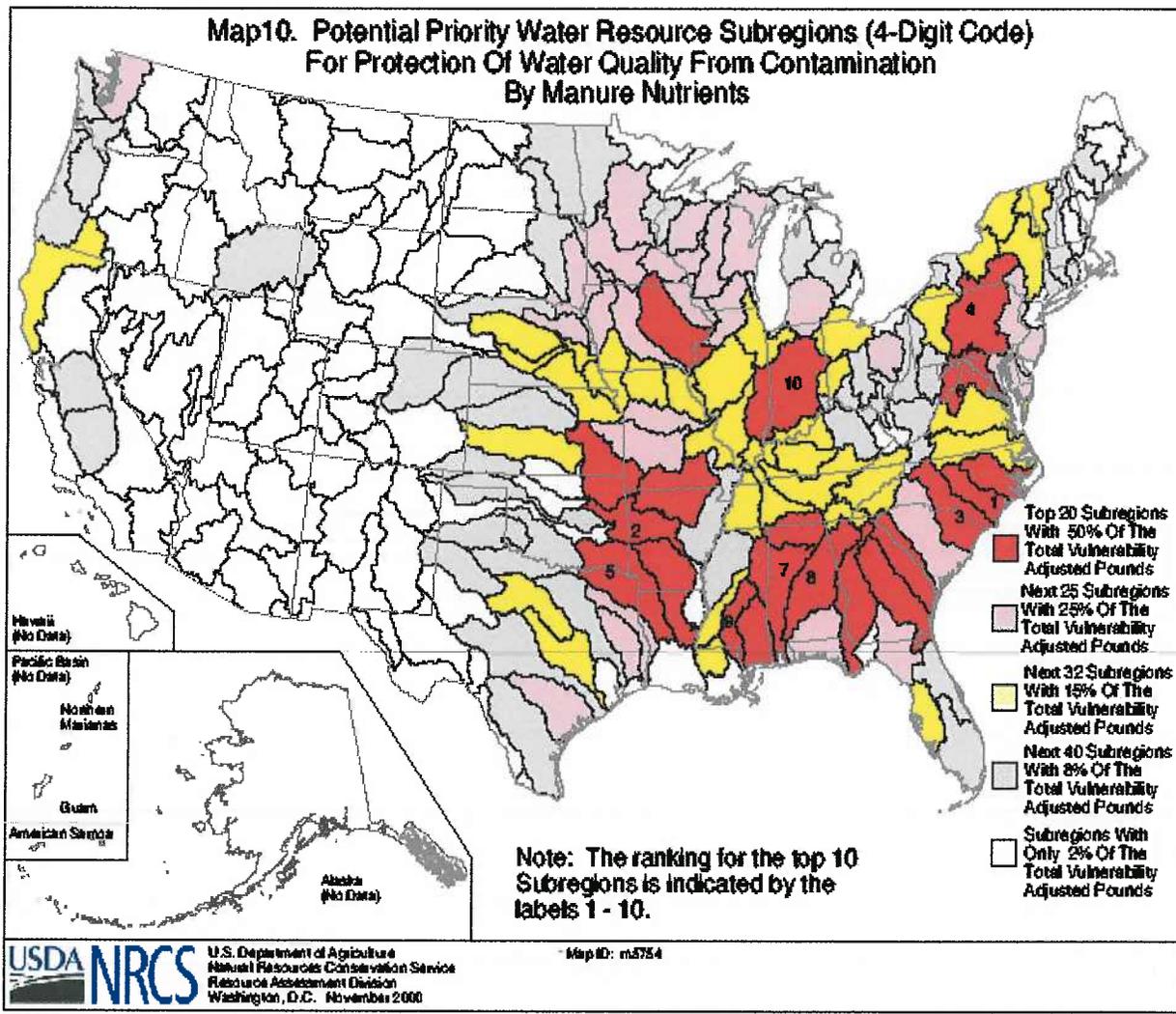
United States Net Increase
+1,133,786,901



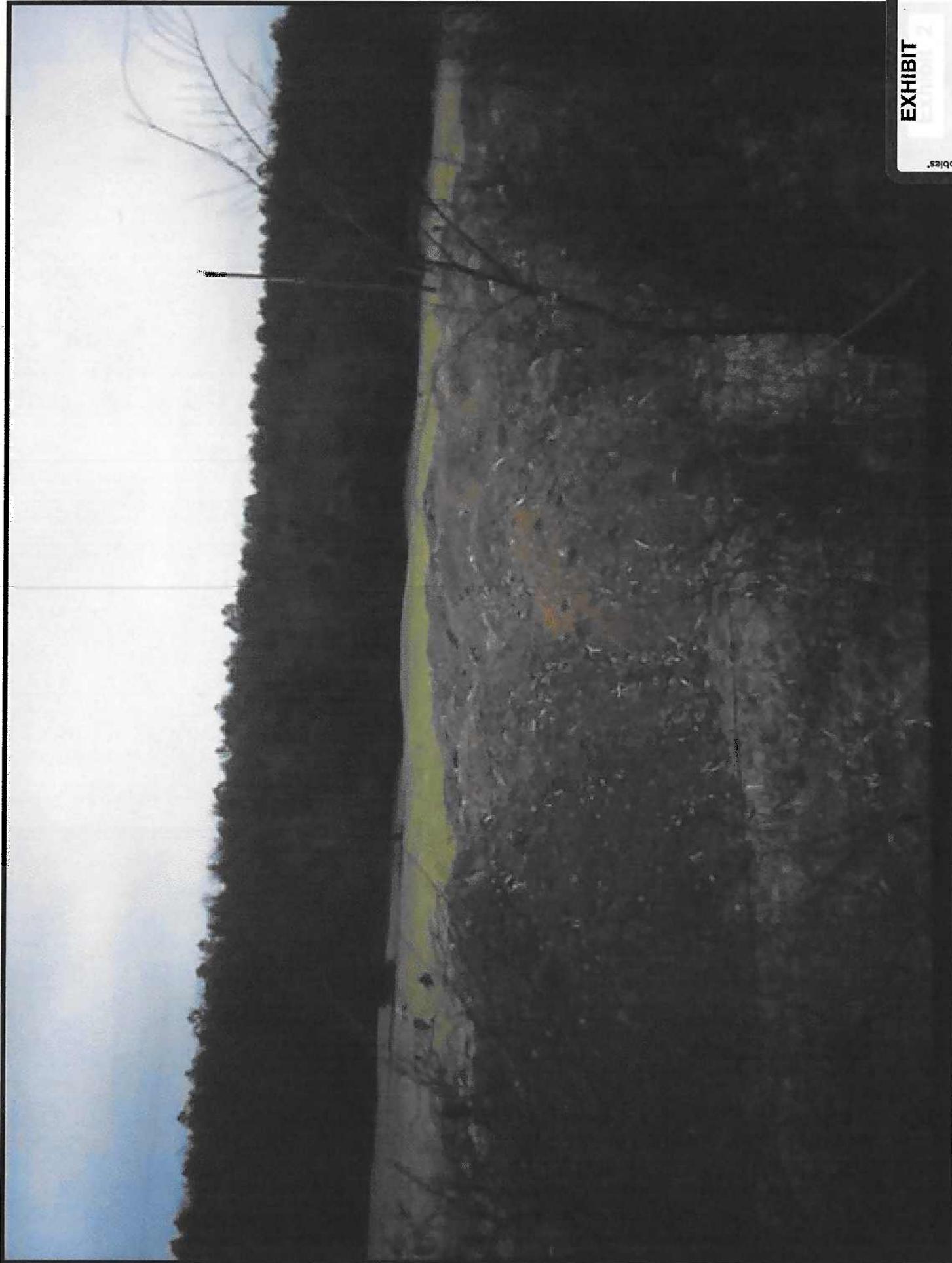
02-M172
U.S. Department of Agriculture, National Agricultural Statistics Service

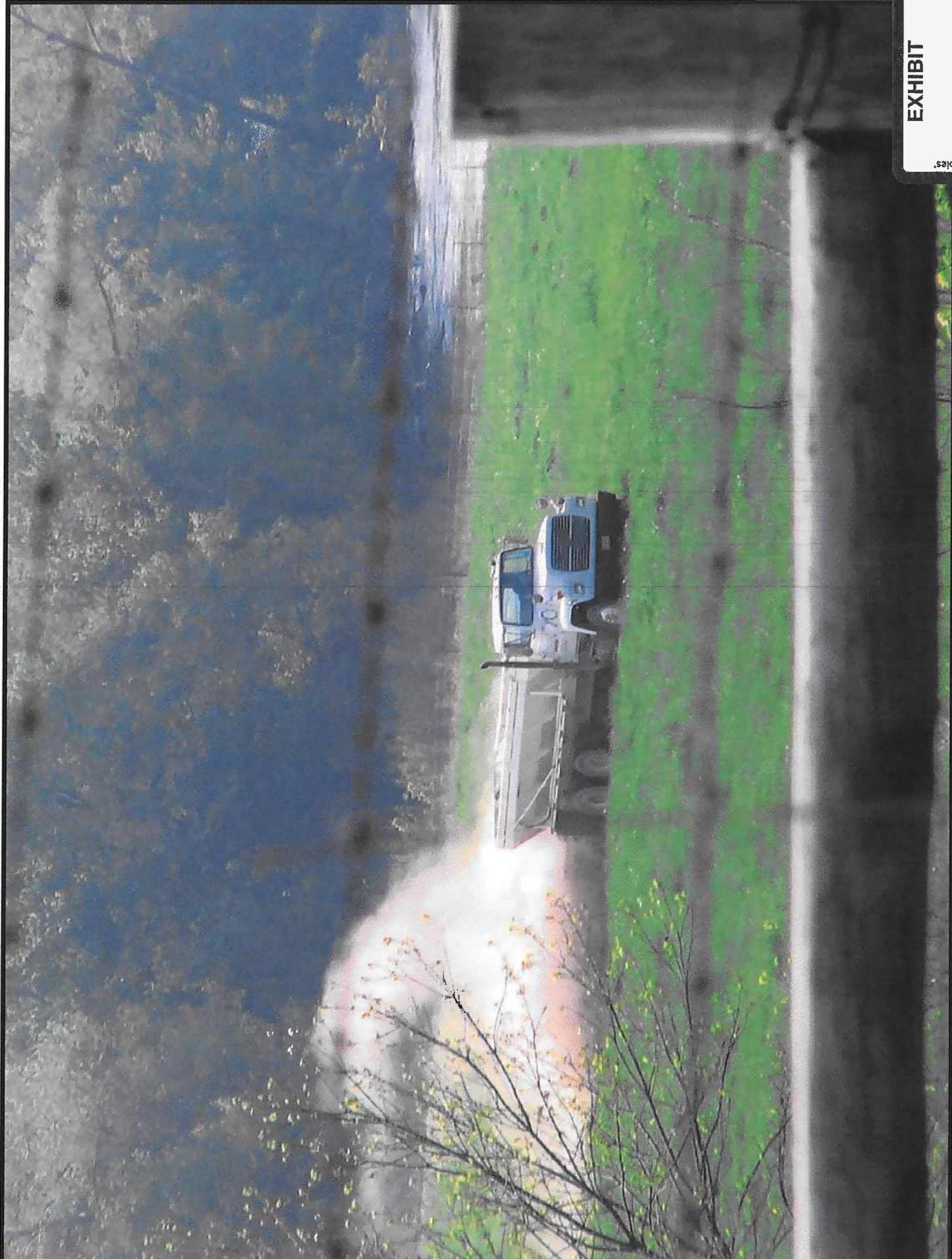
**Appendix A: Nutrient Surplus Areas,
Numbers Indicate Hydrologic Unit Codes.**





Source: Potential Priority Watersheds for Protection of Water Quality from Contamination by Manure Nutrients, http://www.nrcs.usda.gov/technical/land/pubs/wshedpap_w.html
November 2000





EXHIBIT

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