IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:23-CV-897

IN RE:	**UNITED STATES' MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY RELATED TO USE OF ATSDR'S CAMP LEJEUNE WATER MODELS TO DETERMINE PLAINTIFF'S INDIVIDUAL EXPOSURE LEVELS**
CAMP LEJEUNE WATER LITIGATION	
This Document Relates To:	
***Mousser v. United States*, No. 7:23-cv-00667**	

Pursuant to Fed. R. Evid. 702, the United States renews its motion to exclude PLG's expert testimony related to use of the Agency for Toxic Substances and Disease Registry's Camp Lejeune water models to determine exposure levels of individual plaintiffs to the contaminants at issue in Camp Lejeune water.[1, 2, 3] The Court previously denied that motion without prejudice, finding the United States' contention that ATSDR's water models could not reliably estimate individual plaintiffs' exposure to be premature where no plaintiff had yet asked the Court to use the water models "as the baseline, as the cornerstone and foundation, to resolve these cases." *In re Camp Lejune Water Litigation* [hereinafter "*In re CLWL*"], No. 7:23-cv-897, D.E. 777 at 52-53.

Plaintiff Frank Mousser now asks the Court to use ATSDR's Hadnot Point water model as the foundation for his claim that exposure to Camp Lejeune water caused him to suffer health effects. Mr. Mousser worked and resided at Camp Lejeune for periods between October 1982 and

[1] The contaminants at issue are perchloroethylene (PCE), trichloroethylene (TCE), 1-2-trans dichloroethylene (1,2-t DCE), vinyl chloride, and benzene. *In re CLWL*, Phase I Order on Fed. R. Evid. 702 Motions, D.E. 777 at 2.

[2] The United States incorporates by reference its prior motion and briefing as if fully set forth herein. *See In re CLWL*, D.E. 367, 368, 425.

[3] Because the United States previously briefed these issues, the United States does not submit a Memorandum of Law in Support of this Motion, but stands ready to provide further briefing at the Court's request and as necessary during trial of this action.

September 1986 in areas served by the Hadnot Point water distribution system. Mousser Pretrial Order, D.E. 99 at 5, ¶ II.A.1.(b). He seeks to use the Hadnot Point water model to establish his level of exposure to the contaminants in Camp Lejeune water and that exposure caused him to suffer health effects, specifically upper tract urothelial carcinoma. However, ATSDR's Camp Lejeune water models were not developed to accurately determine contaminant concentration levels for an individual's exposure and are not reliable for that purpose.

Rather, ATSDR developed its Camp Lejeune water models to provide relative exposure levels for population-level epidemiological studies that informed policy decisions about VA-benefits presumptions; such studies did not require the water models to reliably or accurately simulate an individual's exposure.[4] To support the studies, ATSDR's Camp Lejeune water models simulated monthly contaminant concentrations over three decades into the past based on extremely limited well operation or pumping data and extremely limited observed contaminant concentration data.[5] To fill the enormous data gaps, ATSDR relied on conservative, health-protective assumptions that biased high the water models' monthly contaminant concentrations over a longer period of time. The resulting monthly contaminant concentrations simulated by ATSDR's Camp Lejeune water models do not reflect real world conditions and suffer from enormous uncertainty. The ATSDR, Plaintiffs' own experts, and contemporary outside reviewers have repeatedly recognized the uncertainty inherent in the model. The ATSDR even acknowledged at the time that the model results cannot be used to determine individual exposure or individual health effects.

[4] *See In re CLWL*, March 25, 2025, Phase I Hearing. Mar. 25, 2025, Hr'g Tr., D.E. 343 at 16:6-12; Jan. 16, 2013 Letter from ATSDR to Veteran Affairs, *In re CLWL* D.E. 368-4; Aug. 3, 2015, Veterans Affairs Press Release, *In re CLWL* D.E. 368-5 at 1.

[5] ATSDR's Camp Lejeune water models comprise a series of conceptualizations and computerized tools that represent different physical conditions and processes. HP/HB Ch. A Table A9, *In re CLWL* D.E. 371-3, at A31. Their collective output is simulated monthly-mean contaminant concentrations expressed as micrograms per liter. *Id.* at A29-33.

Nevertheless, Mr. Mousser intends to call multiple experts to support his improper reliance on ATSDR's Hadnot Point water model to determine his actual exposure. Mousser Pretrial Order, D.E. 99 at 6, ¶ II.A.1.(k); *In re CLWL*, Mar. 25, 2025, Hr'g Tr., D.E. 343 at 16:13-20. Of the five litigation experts disclosed by PLG to vouch for the reliability of ATSDR's Camp Lejeune water models for individual exposure determinations, the only one identified on Mr. Mousser's trial witness list is the retired ATSDR employee who led ATSDR's water modeling efforts for Camp Lejeune, Morris Maslia. Mousser Pretrial Order, D.E. 99 at 119-20. Relying on Mr. Maslia's vouching, Mr. Mousser's exposure expert, Dr. Kelly Reynolds, uses the Hadnot Point water model's monthly contaminant values to perform an exposure assessment calculating Mr. Mousser's daily and cumulative ingestion exposure to the contaminants under a variety of water ingestion scenarios. *Id*. at 120. In turn, Mr. Mousser's specific causation expert, Dr. Armine Smith, relies on Dr. Reynold's exposure assessment to opine that Mr. Mousser's exposure to contaminated Camp Lejeune water caused him to suffer upper tract urothelial carcinoma. *Id*.

However, admissible expert testimony must be reliable, which requires a sufficient factual basis and "reasoning or methodology underlying the expert's testimony . . . [that] properly can be applied to the facts in issue." *Belville v. Ford Motor Co.,* 919 F.3d 224, 232 (4th Cir. 2019) (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592–93 (1993)). The Hadnot Point water model's limited factual basis and resulting uncertainty is fatal to its reliable use to determine Mr. Mousser's exposure level to the contaminants at issue or whether that exposure level caused him to suffer upper tract urothelial cancer. Moreover, because the Hadnot Point water model was not developed for the purpose of determining an individual's level of contaminant exposure from contaminated water at Camp Lejeune, the water model is unhelpful to the trier of fact apart from the question of reliability. *See* Fed. R. Evid 702(a); *Coleman v. Union Carbide Corp.*, No. CIV.A.

2:11-0366, 2013 WL 5461855, at *24 (S.D.W.Va. Sept. 30, 2013) (finding expert's exposure analysis was irrelevant because it "did not intend to prove a specific level of harm.").

Accordingly, the Court should exclude expert testimony that Mr. Mousser intends to offer related to use of ATSDR's Camp Lejeune water models to establish exposure and specific causation.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2026, I electronically filed the foregoing using the Court's Electronic Case Filing system, which will send notice to all counsel of record.

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