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14
15 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 COW PALACE, LLC, *et al.*,

20 Defendants.

Civil No. 24-cv-03092-TOR

UNITED STATES' MOTION FOR
PRELIMINARY INJUNCTION

August 14, 2024
With Oral Argument: 1:30 p.m.
Spokane Courtroom 902

1 **I. INTRODUCTION**

2 This case arises out of Defendants’ poor manure management practices at
3 dairy operations in the Lower Yakima Valley that are contaminating downgradient
4 residents’ drinking water. As a result, the United States, on behalf of the U.S.
5 Environmental Protection Agency (“EPA”) seeks a preliminary injunction under
6 Section 1431 of the Safe Drinking Water Act (“SDWA”) requiring Defendants to
7 immediately provide alternative water to impacted residents; resume appropriate
8 monitoring of nitrate in groundwater; and address potential leakage from a manure
9 storage lagoon. These immediate measures are necessary to abate the public health
10 threat to affected residents until nitrate levels in groundwater are substantially
11 reduced and residents have access to safe drinking water.

12 **II. BACKGROUND**

13 **A. Past Efforts to Address Nitrate Contamination from Defendants’**
14 **Operations and Properties.**

15 Defendants Cow Palace, LLC; the Dolsen Companies; Three D Properties,
16 LLC; George & Margaret, L.L.C.; George DeRuyter and Son Dairy, L.L.C.; D and
17 J Dairy, L.L.C. (f/k/a D and A Dairy, L.L.C.); Liberty Dairy, LLC; Arizona Acres
18 Limited Partnership; Liberty Acres LLC; Bosma Dairy Partners, LLC; Bosma
19 Enterprises, Inc.; Mr. Henry Bosma; Ms. Henrietta Bosma; and Ms. Kathleen
20 Nicolaus own or operate three large, concentrated animal feeding operations that
collectively generate tens of millions of gallons of liquid manure and hundreds of

1 thousands of tons of solid manure each year, or own land where manure is applied
2 as fertilizer. Defendants store solid manure in giant compost piles and liquid
3 manure in large lagoons before applying it on agricultural fields. Declaration of
4 Eric Winiecki, EPA Compliance Officer (“Winiecki Decl.”) at ¶ 20, Ex. F at
5 EPA_0001486–87.

6 Manure contains nitrogen that converts to nitrate as it moves through air,
7 surface runoff, and groundwater. Declaration of Dr. Greg Schnaar, hydrogeologist
8 (“Schnaar Decl.”) at ¶¶ 21-22. Nitrate is highly mobile and easily moves through
9 soil into groundwater, where it forms plumes. *Id.* A brief exposure to nitrate in
10 drinking water can cause serious or fatal disease, including methemoglobinemia,
11 i.e. “Blue Baby Syndrome,” in infants. Declaration of Dr. Christopher Teaf,
12 toxicologist (“Teaf Decl.”) at ¶¶ 16-17. Blue Baby Syndrome can lead to death
13 within days if not promptly treated. *Id.* at ¶ 16. In 1991, based on the acute risk of
14 Blue Baby Syndrome to infants, EPA set the MCL for nitrate in public water
15 systems at 10 mg/L. *Id.* at ¶¶ 16-17; 40 C.F.R. § 141.62(b)(7). Recent studies
16 indicate an association between increased nitrate intake and reproductive problems,
17 such as spontaneous abortion, intrauterine growth restriction, birth defects, and
18 certain cancers. *See* Teaf Decl. at ¶¶ 18-23.

19 An alluvial aquifer underlying the Lower Yakima Valley (the “Aquifer”)
20 supplies drinking water to approximately 56,000 people, with approximately one

1 third of those residents relying on private wells for drinking water. Winiecki Decl.
2 at ¶ 6; Teaf Decl. at ¶ 27. Nitrate from Defendants’ properties migrates down from
3 the surface until it reaches the Aquifer. Schnaar Decl. at ¶ 21. While crops uptake
4 some nitrate through their roots, any remaining nitrate travels past the crop root
5 zone to groundwater. *Id.* at ¶¶ 21-22. Once in groundwater, nitrate travels through
6 the Aquifer to hydrologically downgradient residential drinking water wells (the
7 “Residential Wells”). *Id.* at ¶ 22.

8 In March 2013, EPA exercised its emergency authority under SDWA and
9 entered a Consent Order with a subset of Defendants: Cow Palace, LLC (“Cow
10 Palace Dairy”); D and J Dairy, L.L.C. (f/k/a D and A Dairy, L.L.C.), George
11 DeRuyter and Son Dairy, L.L.C., and George & Margaret, L.L.C. (“DeRuyter
12 Dairy”); Liberty Dairy, LLC and its associated Dairy Facility H&S Bosma Dairy
13 (“Bosma Dairy”) (collectively, “the Dairies”). Winiecki Decl., Ex. A (“Consent
14 Order”). The Consent Order directed the Dairies to take immediate action to
15 address the imminent and substantial endangerment presented by nitrate
16 contamination in drinking water from their operations, including: (a) offering
17 alternative water to homes on the Dairies’ properties and within one mile
18 downgradient of the Dairies where Residential Wells exceeded 10 mg/L for nitrate;
19 (b) taking specific actions to control potential sources of nitrogen from the Dairies,
20 including storage lagoons and application fields; (c) establishing a network of

1 groundwater monitoring wells (the “Monitoring Wells”) and conducting quarterly
2 groundwater monitoring; and (d) improving nutrient management at the Dairies,
3 such as limiting the amount of manure applied to fields. Winiecki Decl. at ¶¶ 13-
4 14; Ex. A at EPA_0000026. The Dairies repeatedly missed deadlines to complete
5 these actions under the Consent Order and have yet to complete all required source
6 control actions. *See id.* at ¶¶ 23, 25, 51; *see also* Ex. H.

7 In May 2015, this Court entered consent decrees in suits brought by citizen
8 groups against each of the Dairies under the Resource Conservation and Recovery
9 Act (“RCRA”). *Cnty. Ass’n for Restoration of the Env’t, Inc. (“CARE”), et al. v.*
10 *Cow Palace, LLC*, No. 13-cv-03016 (E.D. Wash. May 19, 2015) (ECF No. 396);
11 *CARE, et al. v. George & Margaret LLC*, No. 13-cv-03017 (E.D. Wash. May 19,
12 2015) (ECF No. 169); *CARE, et al., v. Henry Bosma Dairy*, No. 13-cv-03019 (E.D.
13 Wash. May 19, 2015) (ECF No. 246) (collectively, “RCRA Consent Decrees”).
14 Under these Decrees, the Dairies were required to install 14 additional Monitoring
15 Wells and perform quarterly monitoring, among other actions. *See id.*

16 **B. Present-Day Imminent and Substantial Endangerment posed by Nitrate**
17 **Contamination from Defendants’ Operations and Properties.**

18 Notwithstanding the 2013 Consent Order and the subsequent RCRA
19 Consent Decrees, Defendants’ operations continue to contaminate the drinking
20 water of residents who live downgradient from the Dairies and source their
drinking water from private wells (the “Residents”). As of the date of this Motion,

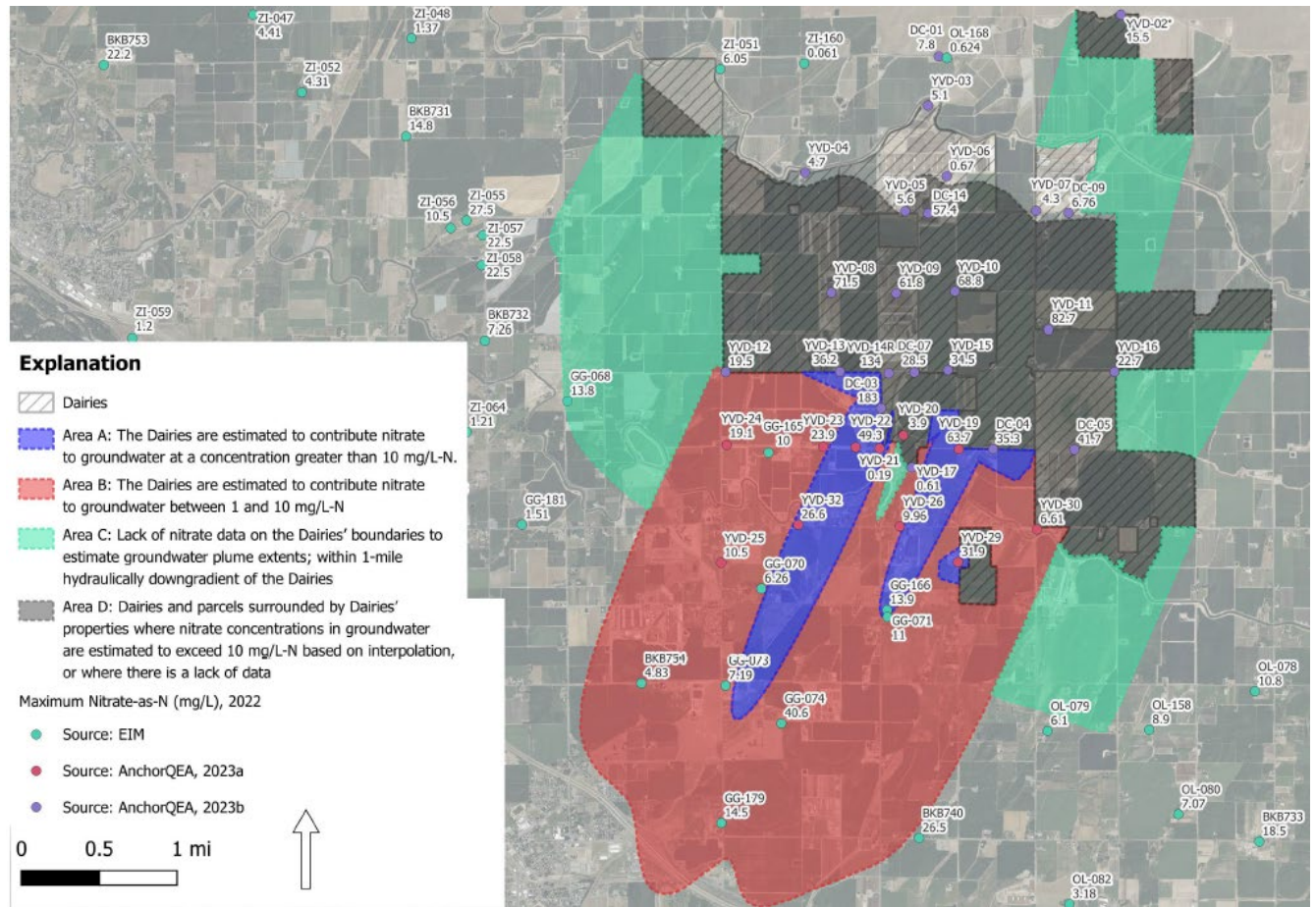
1 the imminent and substantial endangerment to Residents posed by nitrate-
2 contaminated drinking water persists. Current Monitoring Well data shows several
3 “hot spots” at the Defendants’ properties where nitrate levels in groundwater
4 remain above 50 mg/L. Schnaar Decl. at ¶ 52. Data from Monitoring Wells
5 downgradient of the Dairies also show consistently high and increasing levels of
6 nitrate. *Id.* at ¶¶ 42-50. Thus, source control measures taken by the Dairies to date
7 have not decreased nitrate levels in downgradient wells to within safe limits.

8 Dr. Schnaar—a hydrogeologist specializing in contaminant transport—has
9 modeled the areal extent of Defendants’ nitrate plumes. *See* Appendix A (Schnaar
10 Decl., Ex. 19(a)). Dr. Schnaar’s modeling identifies areas where Defendants are
11 estimated to contribute at least 1 mg/L of nitrate to groundwater (the “Affected
12 Area”).¹ And in some areas, Dr. Schnaar’s modeling shows that Defendants are
13 estimated to contribute nitrate in concentrations greater than the MCL. *Id.* at ¶¶ 37-
14 38. Residential wells throughout the Affected Area have recently exceeded 10 mg/L,
15

16 ¹ While testing can detect nitrate at levels below 1 mg/L, nitrate naturally occurs in
17 groundwater in the Lower Yakima Valley at concentrations ranging from less than
18 0.3 to 1.1 mg/L. *See* Schnaar Decl. at ¶ 38. The United States used 1 mg/L as a
19 conservative threshold to estimate where the Dairies are contributing nitrate above
20 background levels.

1 including: GG-074 (45.9 mg/L); GG-179 (14 mg/L); GG-166 (12 mg/L); GG-071
2 (11.4 mg/L); and GG-165 (10.4 mg/l). Teaf Decl. at ¶ 35. The Affected Area extends
3 approximately 3.5 miles downgradient of Defendants’ properties. Schnaar Decl. at ¶
4 41.

5 Dr. Schnaar also modeled a “Potentially Affected Area”: an area within one
6 mile hydraulically downgradient from Defendants’ properties where the lack of
7 Monitoring Well data prevents estimation of Defendants’ nitrate plumes. *Id.* at
8 ¶ 39. The Dairies do not monitor groundwater at certain locations along their
9 western and southern property boundaries and at two non-contiguous parcels to the
10 northeast. *Id.* at ¶¶ 33, 39-40. However, data reflecting Defendants’ nitrate
11 contamination of Residential Wells more than one mile downgradient from the
12 Dairies indicates that the Defendants likely contribute nitrate to groundwater in
13 these data-scarce areas. *Id.* at ¶ 39. Consequently, homes in the Potentially
14 Affected Area are at risk of drinking water exceeding the nitrate MCL due to
15 contamination from Defendants’ properties. Indeed, while the Potentially Affected
16 Area lacks Monitoring Well data, at least one Residential Well in this area recently
17 exceeded the MCL: GG-068 tested at 13.3 mg/L in May 2022. Teaf Decl. at ¶ 35.
18 The following diagram from Dr. Schnaar’s declaration, also attached as Appendix A,
19 depicts the Affected Area (comprised of Areas A, B, and D) and the Potentially
20 Affected Area (Area C).



C. Immediate Action Must be Taken to Abate Risk to Residents in the Affected and Potentially Affected Areas.

i. Groundwater Monitoring

Current and accurate groundwater monitoring data is necessary to assess the areal extent of nitrate contamination emanating from the Dairies. Schnaar Decl. at ¶ 51. The groundwater monitoring provision of the Consent Order expired in July 2021. Winiecki Decl. at ¶ 21. While the Dairies have conducted some voluntary groundwater monitoring since July 2021, the Dairies have refused to comply with the Consent Order’s Quality Assurance Project Plan. *Id.* at ¶¶ 26-37. As a result,

1 the laboratory analyzing recent Monitoring Well Data on behalf of the Dairies has
2 flagged the data as unreliable. Winiecki Decl. at ¶ 31-36. The lack of accurate data
3 endangers Residents by obfuscating the extent of Defendants’ nitrate plume, such
4 that collection of valid, reliable monitoring data is necessary.

5 ii. Outreach and Testing for Provision of Alternative Water

6 Similarly, the Consent Order’s requirements for testing and provision of
7 alternative water do not adequately address the present-day imminent and
8 substantial endangerment. The Consent Order required the Dairies to test homes
9 located on the Dairies’ properties and within a one-mile downgradient radius, to
10 provide reverse osmosis water filters (“RO filters”) based on the results, to offer
11 professional maintenance service for RO filters, and to test wells thereafter upon
12 Residents’ request. Ex. A at EPA_0000029–30. But the Dairies’ 2013 sampling
13 and provision of water was incomplete: it failed to reach all homes within the one-
14 mile radius and failed to provide alternative water to all homes exceeding the
15 nitrate MCL. Of 224 homes identified within the one-mile radius in 2013,
16 approximately 31 homes were never sampled due to vacancy, denial of access, or
17 the Dairies’ inability to contact the owner or tenant. Winiecki Decl. at ¶ 40. Of
18 approximately 67 homes found to exceed the MCL in 2013, only 36 accepted the
19 Dairies’ offer for RO filters. *Id.* at ¶ 39. While the Dairies have provided additional
20 homes with well testing and alternative water since 2013, approximately 25

1 residences that exceeded the MCL in 2013 had not received RO filter maintenance
2 or bottled water from the Dairies as of 2023. *Id.* at ¶ 42.

3 Additionally, homes that tested below 10 mg/L in 2013 may now exceed the
4 MCL but are not subject to retesting unless the resident makes a request. *Id.* at
5 ¶ 43. New homes likewise will only receive well testing by the Dairies upon
6 request. *Id.* The Consent Order also did not require the Dairies to sample 50
7 residences with an existing RO filter, and only 15 of these residences accepted the
8 Dairies' offer for professional RO filter maintenance, such that the drinking water
9 status at the remaining 35 residences is unknown. *Id.* at ¶ 41.

10 Finally, the Affected Area extends past the negotiated, one-mile radius in the
11 Consent Order. *See Schnaar Decl.* at ¶ 41. Accordingly, homes beyond the Consent
12 Order's one-mile radius are excluded from the Dairies' provision of alternative
13 water under the Consent Order but are at risk of drinking water exceeding the
14 nitrate MCL. While the community group the Clean Drinking Water Project has
15 conducted some outreach and testing within a three-mile radius under the RCRA
16 Consent Decrees, *Winiecki Decl.* at ¶ 44, that outreach is incomplete and does not
17 cover the entire Affected and Potentially Affected Areas. *Id.* at ¶ 45; *see also*
18 Appendix A. Because past efforts have not protected all Residents at risk of
19 drinking water exceeding the nitrate MCL, renewed testing and alternative water is
20 necessary to immediately abate the public health threat.

1 iii. Immediate Action to Address Likely Leakage from
2 Cow Palace Lagoon 1.

3 Recent data shows a spike at monitoring well DC-14, located 50 yards
4 downgradient from Cow Palace Lagoon 1, that warrants immediate action. Schnaar
5 Decl. at ¶ 46; Winiecki Decl. at ¶ 60. In November 2019, during liner installation
6 at Lagoon 1, high winds ripped a 350-foot tear in the secondary liner, along with
7 several smaller tears. Winiecki Decl. at ¶ 55. Cow Palace tried to repair rather than
8 replace the damaged secondary liner and did not inform EPA of the liner damage
9 until March 2020. *Id.* at ¶¶ 56-57. A large leak was also discovered at Lagoon 1 in
10 February 2020. *Id.* at ¶ 58. The leak required repairs to three failed seams in the
11 upper liner, which Cow Palace failed to report to EPA until November 2021. *Id.* at
12 ¶ 59. In or around June 2020, after six years of consistently testing below 10 mg/L,
13 nitrate levels at DC-14 exceeded the MCL at 11.5 mg/L. *Id.* at ¶ 60.

14 Since the second quarter of 2020, nitrate levels at DC-14 have exceeded the
15 MCL in every quarter, spiking as high as 57.4 mg/L in June 2022 and 55.7 mg/l in
16 December 2022. *Id.* at ¶ 60. A nitrate trend analysis of DC-14 shows that the area
17 is now a nitrate hot spot. Schnaar Decl. at ¶¶ 46, 52. In January 2022, EPA
18 expressed concern to Cow Palace that Lagoon 1 was leaking, and asked Cow
19 Palace to propose a schedule to immediately test the liner. Winiecki Decl. at ¶¶ 61-
20 62. Cow Palace responded that Lagoon 1 was not leaking. *Id.* at ¶ 63, Ex. V at
EPA_0009117. Immediate testing of the liner system to determine whether a leak

1 is causing the nitrate hot spot, and immediate action to resolve any discovered
2 leak(s), are necessary to protect public health.

3 iv. Requested Relief

4 To address the ongoing imminent and substantial endangerment, the United
5 States requests that the Court order Defendants to immediately: (1) resume
6 collection of groundwater monitoring data consistent with EPA-approved
7 procedures; (2) test nitrate levels in Residential Wells in the Affected and
8 Potentially Affected Areas and provide alternative water where test results exceed
9 the MCL; and (3) immediately investigate and address a possible leak from Cow
10 Palace Lagoon 1. *See* Appendix B (Proposed Preliminary Injunction).

11 **III. ARGUMENT**

12 Without the requested preliminary injunction, Defendants' nitrate
13 contamination in drinking water will continue to endanger the health of infants,
14 children, and adults living downgradient of the Dairies. Monitoring and Residential
15 Well data indicate that measures taken to date under the Consent Order and RCRA
16 Consent Decrees have not abated the imminent and substantial endangerment. The
17 public health crisis need not continue for another decade. There are reasonable
18 actions that Defendants can immediately take to reduce the public health risks
19 resulting from their nitrate contamination.

1 **A. Emergency Relief under the Safe Drinking Water Act and Standard for**
2 **Preliminary Injunction in Statutory Enforcement Cases**

3 Section 1431 of SDWA empowers this Court to grant a preliminary
4 injunction when presented with compelling evidence that a contaminant “present in
5 or likely to enter” drinking water “may present an imminent and substantial
6 endangerment” to public health. 42 U.S.C. § 300i(a); *see also United States v.*
7 *Midway Heights Cnty. Water Dist.*, 695 F. Supp. 1072, 1076 (E.D. Cal. 1988)
8 (contaminant in public water system warranted preliminary injunction); *United*
9 *States v. Price*, 688 F.2d 204, 213–214 (3d Cir. 1982) (affirming preliminary
10 injunction where landfill chemicals were leaching into groundwater); *Concerned*
11 *Pastors for Soc. Action v. Khouri*, 217 F. Supp. 3d 960, 980–81 (E.D. Mich. 2016)
12 (lead contamination in drinking water warranted preliminary injunction).

13 When the United States acts in its capacity as protector of the public interest,
14 traditional equitable principles allow a court to order injunctive relief based
15 “entirely upon a determination that the activity at issue constitutes a risk of danger
16 to the public.” *United States v. Oliver*, No. 3:06-CV-196, 2009 WL 10671371, at
17 *12 (D. Alaska June 25, 2009), *aff’d*, 394 F. App’x 376 (9th Cir. 2010) (citing
18 *United States v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996)
19 (internal quotations omitted)). Here, EPA is acting as protector of the public
20 interest and has determined that Defendants’ contamination of the Aquifer

1 constitutes an imminent and substantial endangerment to the public health that is
2 not being addressed by state and local authorities. This alone is a sufficient basis
3 for the Court to grant the United States’ request for a preliminary injunction.

4 However, the United States also meets all four prongs of the traditional
5 *Winter* test for granting a preliminary injunction: (1) it is likely to succeed on the
6 merits; (2) it is likely to suffer irreparable harm in the absence of preliminary
7 relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the
8 public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under
9 *Winter*, a preliminary injunction may be appropriate if the movant raises “serious
10 questions going to the merits” and the “balance of hardships . . . tips sharply
11 towards” it, as long as the second and fourth *Winter* factors are satisfied. *All. for*
12 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

13 **B. The United States Will Prevail on the Merits Under Section 1431 of the**
14 **Safe Drinking Water Act.**

15 To prevail on a claim under Section 1431(a), the United States must show
16 (i) that a contaminant is present in or is likely to enter; (ii) an underground source
17 of drinking water; (iii) which may present an imminent and substantial
18 endangerment to the health of persons; and (iv) that appropriate State and local
19 authorities have not acted to protect the health of such persons. 42 U.S.C.
20 § 300(i)(a). All four elements are easily satisfied here.

1 i. Contaminants are present in or likely to enter the Aquifer.

2 There is no dispute that nitrate from Defendants’ properties is already in the
3 Aquifer. Samples from Monitoring and Residential Wells show that the Aquifer is
4 contaminated at levels above the MCL for nitrate. Schnaar Decl. at ¶¶ 44-50; Teaf
5 Decl. at ¶¶ 35; 37-40. Dr. Schnaar’s modeling based on this data demonstrates that
6 Defendants continue to cause or contribute to the nitrate contamination. Schnaar
7 Decl. at ¶¶ 21-26; *see also Cmty. Ass’n for Restoration of the Env’t, Inc. v. Cow*
8 *Palace, LLC*, 80 F. Supp. 3d 1180, 1225 (E.D. Wash. 2015) (“[T]here can be no
9 genuine dispute that the nitrates beneath the crop root zones at the Dairy will
10 continue to migrate through the vadose zone to the underlying aquifer.”).

11 ii. The Aquifer is an underground source of drinking water.

12 “Underground source of drinking water” is not expressly defined under
13 SDWA’s emergency powers provision, *see* 42 U.S.C. § 300i, but the fact that
14 Residents consume water from the Aquifer satisfies the plain meaning of this
15 phrase. Additionally, EPA regulations implementing Part C of the Act, the
16 Underground Injection Control program, define “underground source of drinking
17 water” as “an aquifer or its portion . . . which contains a sufficient quantity of
18 ground water to supply a public water system; and (i) currently supplies drinking
19 water for human consumption; or (ii) contains fewer than 10,000 [milligrams per
20 liter] total dissolved solids.” 40 C.F.R. § 144.3. The Aquifer supplies an estimated

1 56,000 residents across the Lower Yakima Valley, including both private wells and
2 public water systems, and therefore comprises an underground source of drinking
3 water under 40 C.F.R. § 144.3. Winiecki Decl. at ¶ 6-9; Teaf Decl. at ¶ 27.

4 iii. Nitrate Contamination May Present an Imminent and
5 Substantial Endangerment to Lower Yakima Valley Residents.

6 This Court previously concluded that nitrate contamination from Cow Palace
7 Dairy's operations "may present an imminent and substantial endangerment to the
8 public who is consuming the contaminated water." *Cow Palace, LLC*, 80 F. Supp.
9 3d at 1228. The Court construed RCRA's analogous endangerment provision
10 broadly and explained that "[t]he term imminent 'does not require a showing that
11 actual harm will occur immediately so long as the risk of threatened harm is
12 present.'" *See id.* at 1227 (quoting *Price v. U.S. Navy*, 39 F.3d 1011, 1019 (9th Cir.
13 1994)). Because Congress enacted SDWA "to give paramount importance to the
14 objective of protection of the public health," H.R. Rep. No. 93-1185 (1974),
15 *reprinted in* 1974 U.S.C.C.A.N. 6454, 6488, courts interpreting "imminence"
16 under SDWA have similarly concluded that "what must be imminent is not the
17 actual harm itself but the risk of harm if remedial action is not taken." *United*
18 *States v. City of North Adams*, 777 F. Supp. 61, 84 (D. Mass. 1991) (citing *Price*,
19 688 F.2d at 213–214). Preventative action is warranted when a contaminant is
20 "present in or likely to enter" drinking water supplies—there need not be evidence
that people "have actually fallen ill" from drinking contaminated water. *Midway*

1 *Heights Cnty. Water Dist.*, 695 F. Supp. at 1076; *see also Trinity American Corp.*
2 *v. EPA*, 150 F.3d 389, 399 (4th Cir. 1998) (same); *United States v. Reilly Tar &*
3 *Chem. Corp.*, 546 F. Supp. 1100, 1110 (D. Minn. 1982) (a contaminant presents a
4 “substantial endangerment” where there is “a substantial likelihood that
5 contaminants capable of causing adverse health effects will be ingested by
6 consumers if preventive action is not taken”).

7 Here, the risk of harm is “imminent and substantial” because Dr. Schnaar’s
8 modeling based on Monitoring and Residential Well data shows that Defendants
9 continue to contribute nitrate to groundwater in amounts vastly exceeding the
10 10 mg/L MCL. Schnaar Decl. at ¶¶ 27-41. While injunctive relief is warranted on
11 that basis alone, *Midway Heights County Water Dist.*, 695 F. Supp. at 1076, the
12 Residential Well data confirms that Residents are currently exposed to dangerous
13 levels of nitrate well above the MCL. Teaf Decl. at ¶¶ 35-36. And Dr. Schnaar’s
14 modeling further demonstrates that nitrate concentrations in groundwater are
15 increasing in several parts of the Affected Area that already exceed the MCL.
16 Schnaar Decl. at ¶¶ 42-50.

17 Consistent with this Court’s 2015 endangerment finding under RCRA, *see*
18 *Cow Palace, LLC*, 80 F. Supp. 3d at 1227-1228, it is well-established that nitrate in
19 drinking water poses serious health risks, including Blue Baby Syndrome in
20 infants, when nitrate levels are at or above the 10 mg/L MCL. Teaf Decl. at ¶¶ 16-

1 19. In 2022, the Washington Department of Health reported 3,449 births in Yakima
2 County—the county where the Affected and Potentially Affected Areas are
3 located—underscoring that the imminent and substantial endangerment posed by
4 Blue Baby Syndrome persists. *Id.* at ¶¶ 15-16. While the acute risk of nitrate to
5 infants is sufficient to warrant preventative action, recent studies also indicate a
6 correlation between increased nitrate intake in adults and certain reproductive
7 problems, birth defects, and cancers. *Id.* at ¶¶ 18-23.

8 In sum, nitrate contamination from the Dairies and Defendants’ properties
9 currently presents an imminent and substantial endangerment to Residents that
10 warrants immediate relief.

11 iv. State and Local Authorities Have Not Acted to Protect the
12 Health of Residents.

13 EPA meets regularly with the State of Washington and Yakima County
14 regarding efforts to address the public health threat posed by nitrate contamination
15 in drinking water in the Lower Yakima Valley. Winiecki Decl. at ¶ 65. The
16 Washington Departments of Ecology and Health have deferred to EPA to abate the
17 imminent and substantial endangerment posed by nitrate contamination from the
18 Dairies and agree that ongoing coordination with EPA is necessary to avoid
19 duplication of efforts downgradient of Defendants’ properties. *Id.* Yakima County
20 has also started to contact and offer well testing and alternative water to some
residents in the Lower Yakima Valley, but the County’s efforts will not address

1 source control measures at the Dairies and do not include residents who live within
2 one mile downgradient from Defendants' properties. *Id.* Thus, the State and local
3 authorities have not acted to adequately protect the health of all residents who live
4 within Affected and Potentially Affected Areas.

5 **C. The Yakima Valley Residents and the United States Will Suffer**
6 **Irreparable Harm If This Preliminary Injunction is Not Issued.**

7 The Court need not find irreparable harm if the statutory criteria under
8 SDWA Section 1431 are satisfied, including that nitrate contamination in the
9 Aquifer may present an imminent and substantial endangerment to residents. When
10 an injunction is authorized by statute and the statutory conditions are satisfied, "the
11 agency to whom the enforcement of the right has been entrusted is not required to
12 show irreparable injury." *Oliver*, 2009 WL 10671371, at *12 (quoting *United*
13 *States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987)).
14 Nevertheless, the irreparable injury element is satisfied here.

15 Absent preliminary injunctive relief, Residents in the Affected and
16 Potentially Affected Areas will face a continued risk of drinking contaminated
17 water. The immediate relief requested by this motion seeks to abate the imminent
18 and substantial endangerment to Residents through resumed collection of reliable
19 groundwater monitoring data; renewed testing for provision of alternative water at
20 impacted homes; and prompt action to address the hot spot at Cow Palace Lagoon

1. *See* Appendix B (Proposed Preliminary Injunction). Each of these elements of

1 relief will help ensure that Residents do not drink contaminated water during the
2 pendency of this action and thereby prevent irreparable harm.

3 **D. The Balance of Hardships Favors the United States.**

4 When drinking water contamination jeopardizes the health and welfare of
5 hundreds of individuals, private interests are “substantially outweighed by the
6 profound public interest at stake.” *United States v. Alisal Water Corp.*, 431 F.3d
7 643, 656 (9th Cir. 2005) (upholding injunctive relief in SDWA case under 42
8 U.S.C. § 300g-3(b)(2)). Here, the presence of nitrate in the Aquifer has persisted
9 for many years and must be addressed immediately. Denying the preliminary
10 injunction unquestionably will result in hardship: continued contamination of the
11 Aquifer by Defendants; inadequate sampling data to map the areal extent of
12 contamination and efficacy of source control measures; and the ongoing
13 endangerment to downgradient Residents. The current and potential risk to
14 Residents outweighs the potential harms to Defendants, which are the costs of
15 conducting outreach and testing for provision of alternative water, resuming
16 groundwater monitoring with appropriate quality controls, and taking immediate
17 action to address the potential leakage at Cow Palace Lagoon 1.

18 **E. The Public Interest Favors Issuance of a Preliminary Injunction.**

19 Protecting the public from contaminated drinking water is precisely what
20 Congress intended when it enacted SDWA Section 1431. *See Price*, 688 F.2d at

1 214 (“Congress, in the endangerment provisions of RCRA and SDWA sought to
2 invoke nothing less than the full equity powers of the federal courts in the effort to
3 protect public health, the environment, and public water supplies Courts
4 should not undermine the will of Congress by either withholding relief or granting
5 it grudgingly.”). Accordingly, injunctive relief weighs heavily in the public
6 interest. *See Wyckoff Co. v. EPA*, 796 F.2d 1197, 1198 (9th Cir. 1986) (“A
7 weighing of the public interest is particularly important in cases . . . where the
8 public health and welfare may depend on unhindered enforcement of a federal
9 environmental statute.”). Given the imminent and substantial danger posed to
10 hundreds of individuals in the Lower Yakima Valley, the public interest at stake
11 here is “profound.” *See Alisal Water Corp.*, 431 F.3d at 656.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Plaintiff United States respectfully requests that
14 this Court require Defendants to immediately take the actions in the attached
15 Proposed Preliminary Injunction. These measures are necessary to abate the public
16 health threat to Residents until nitrate levels in groundwater are substantially
17 reduced and Residential Well users have access to safe drinking water.

18 Respectfully submitted this 2nd day of July, 2024.

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20 Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (“NEF”) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I hereby certify that on July 2, 2024, I will email the document to counsel for the following non-CM/ECF participants:

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1 I hereby certify that on July 3, 2024, I will mail by Federal Express the
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