



May 08, 2020

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Submitted via email to lubgwma@gmail.com

Re: Second Lower Umatilla Basin Groundwater Management Area Local Action Plan

Dear LUBGWMA Committee and Morrow SWCD,

Thank you for the opportunity to provide comments on the Second Lower Umatilla Basin Groundwater Management Area Local Action Plan (the “Second Action Plan”). We respectfully submit these comments on behalf of the Stand Up to Factory Farms Coalition in the hope that the Morrow SWCD, the LUBGWMA Committee (the “Committee”), the Oregon Department of Environmental Quality (“DEQ”), and the Oregon Department of Agriculture (“ODA”) will strengthen the Second Action Plan to put the health and welfare of local communities and the environment first with mandatory, rigorously implemented and enforced changes that will yield the nitrate reductions we all seek.

As recognized by the Committee, thirty years after designation of the LUBGWMA nitrate contamination of the region’s aquifers is ongoing, and in some places continues to increase.¹ The Committee’s work has contributed to especially laudable successes at containing and remediating certain sources of this contamination, such as the U.S. Army Umatilla Chemical Depot’s washout lagoons, but other sources have been left inadequately controlled. And while we support and applaud the Commission for certain provisions in the draft Second Action Plan,

¹ Final Draft Second Lower Umatilla Basin Groundwater Management Area Local Action Plan (Jan. 09, 2019), at 27-28, 31 (hereafter “Second Action Plan”), <https://lubgwma.org/second-local-action-plan/>.

decades of experience show that voluntary-only efforts are not working to deliver the changes needed to stop the region’s persistent and increasing groundwater contamination, much less the reductions needed to bring groundwater back within federal and state health-based safety standards.

The Stand Up to Factory Farms Coalition calls on the Committee to revise the Second Action Plan to include mandatory measures to rein in large concentrated animal feeding operations’ (“CAFOs”)² and irrigated agriculture’s nitrogen-intensive land use practices, and to work with state officials to rigorously implement these mandatory measures. Only with mandatory, enforced changes to current practices and a stop to the introduction of new sources of pollution, such as the proposed Easterday Farms mega-dairy, can the Committee achieve its ultimate goal to “improve the overall groundwater quality by obtaining declining nitrate concentrations of less than 7 mg/L throughout the region.”³

Interests of the Commenters

The Stand Up to Factory Farms Coalition is a group of family farm, environmental, and animal welfare organizations working to enact a moratorium on new and expanded mega-dairies in Oregon. The Coalition includes a wide range of organizations, from local to national, with expertise in organizing, legal advocacy, agricultural policy, human health, environmental and wildlife protection, sustainable food systems, environmental and social justice, and animal welfare.

Food & Water Watch (“FWW”) is a national, nonprofit membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people’s health, communities, and democracy from the growing destructive power of the most powerful economic interests.

Oregon Rural Action is a 501(c)(3) nonprofit membership-based organization working to promote social justice, agricultural and economic sustainability, and stewardship of the region’s land, air, and water in Eastern Oregon. Our core value is bringing people who are impacted by a problem to the table, and we believe in the power of people and the promise of democracy. Utilizing the tools of community organizing, public conversations, and collective action, we seek to harness the strengths of the diverse people and communities in rural Oregon to drive systems change. Our work targets an ethnically, economically, and socio-culturally diverse group of stakeholders in the six Eastern Oregon counties in which ORA primarily works (Union, Umatilla, Morrow, Baker, Wallowa, Malheur).

Columbia Riverkeeper’s (“Riverkeeper”) mission is to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Riverkeeper works with people in dozens of communities—rural and urban—with the

² Throughout these comments, the term “CAFO” is used to refer to large CAFOs as defined by the U.S. Environmental Protection Agency, 40 C.F.R. § 122.23(b)(4). Though the Second Action Plan uses the term “confined animal feeding operations,” the relevant facilities in the LUBGWMA are also large federally-defined CAFOs.

³ Second Action Plan, at 83.

same goals: protecting the health of their families and the places they love. Riverkeeper enforces environmental laws to stop illegal pollution, protect salmon habitat, and challenge harmful fossil fuel terminals. Riverkeeper uses policy advocacy, litigation, and community organizing, partnering with Columbia River communities to protect clean water.

Friends of Family Farmers (“FoFF”) is an Oregon based nonprofit organization that serves as the voice for family farmers who responsibly steward their land and feed Oregon communities. FoFF promotes sensible policies, programs, and regulations that protect and expand the ability of family farmers and ranchers to run successful land-based enterprises while providing safe and nutritious food for all Oregonians.

Humane Voters Oregon (“HVO”) is an Oregon non-profit organization advocating in Oregon’s political process and elections for improved animal welfare. HVO also participates in selected administrative and legal proceedings and promotes policies that improve human health and the environment while also improving animal welfare.

WaterWatch of Oregon protects and restores natural flows in Oregon rivers and advocates for wise and equitable management of all Oregon water resources, including groundwater.

Center for Food Safety (“CFS”) is a national non-profit public interest organization with a mission to empower people, support farmers, and protect the environment from harmful industrial agriculture. CFS’s Pacific Northwest work focuses on protecting what is special about the region, including a resilient and regenerative food system, special places, and diverse wildlife. CFS uses public education, local, state, and federal action, and legal strategies to achieve its mission on behalf of its over 950,000 members nationwide, with thousands in Oregon. CFS has long fought animal factories as environmentally destructive, bad for small and mid-size farmers who use responsible practices, and harmful to animal welfare.

The Animal Legal Defense Fund (“ALDF”) is a national nonprofit organization founded in 1979 in Cotati, California. ALDF’s mission is to protect the lives and advance the interests of animals through the legal system. Advocating for effective oversight and regulation of CAFO development, expansion, and pollution across the United States is one of ALDF’s central goals, which it achieves by filing lawsuits, administrative comments, and rulemaking petitions to increase legal protections for animals and communities affected by CAFOs. ALDF conducts this work on behalf of itself and more than 235,000 members and supporters throughout the United States, including over 50 in Eastern Oregon. Through these efforts, ALDF seeks to ensure transparency in the CAFO system, which is paramount to its ability to protect farmed animals and ALDF members from CAFOs’ immensely harmful effects.

The Center for Biological Diversity (“the Center”) is a non-profit, public interest environmental organization with more than 1.7 million members and supporters that is dedicated to the protection of native species and their habitats through science, policy, and environmental law. For decades the Center has worked to protect imperiled plants and wildlife, open spaces, and air and water quality, as well as to preserve the overall quality of life for people and animals. The Center and its members and supporters are concerned about the fate of imperiled species, including water-dependent species and their habitats, and alarmed by the increasing rate of extinction and loss of biological diversity across the United States.

Farm Forward is a team of strategists, educators, campaigners, and thought leaders guiding the movement to change the way our world eats and farms. They implement innovative strategies to promote conscientious food choices, reduce farmed animal suffering, and advance sustainable agriculture. Farm Forward is pushing the ceiling of animal welfare by looking beyond incremental suffering reduction on factory farms, towards the institutional and cultural change that will end factory farming.

Safe Drinking Water Act Petition to the U.S. Environmental Protection Agency

In January of this year, several members of the Stand Up to Factory Farms Coalition submitted a petition to the U.S. Environmental Protection Agency (“EPA”) calling for emergency action to deal with nitrate contamination in the LUBGWMA, pursuant to the federal Safe Drinking Water Act (“Petition” or “EPA Petition”).⁴ That Petition is included here as Appendix A, and we incorporate it generally into these comments and with specific citations where appropriate. EPA is currently reviewing the Petition.⁵

The primary thrust of the petition is that without mandatory, enforceable measures to limit CAFOs’ introduction of nitrogen to the LUBGWMA, and adequate funding to implement such measures and strategies, the imminent threat to human health will persist and continue to worsen. As explained in the petition, EPA has a responsibility and mandate to step in when state and local efforts are not timely or effective at addressing the imminent and substantial endangerment to human health.⁶

Notwithstanding the EPA Petition, the Committee and its agency partners *have the authority and obligation to do what is needed now*. Now is the time for decisive action by revising the Second Action Plan to include mandatory, rigorous controls on CAFOs and other land use practices that introduce excessive amounts of nitrogen into the GWMA. Only by strengthening the Second Action Plan can the Commission avoid another decade of increasing groundwater contamination.

As explained in detail in the EPA Petition, the LUBGWMA sits atop particularly vulnerable aquifers with a well-documented history of nitrate contamination. In addition, it is clear that CAFOs and land application of CAFO waste in the region are dominant sources of ongoing and increasing nitrate contamination.⁸ While we recognize that CAFOs are not the only source of this pollution, other historic contributors have since been remedied in large part while the role played by CAFOs has grown. Data trends clearly indicate that areas dominated by

⁴ Petition for Emergency Action Pursuant to the Safe Drinking Water Act § 1431, 42 U.S.C. § 300i, to Protect Citizens of the Lower Umatilla Basin in Oregon from Imminent and Substantial Endangerment to Public Health Caused by Nitrate Contamination of Public Water Systems and Underground Sources of Drinking Water (Jan. 16, 2020) (hereafter “Appendix A: EPA Emergency Petition”), https://www.foodandwaterwatch.org/sites/default/files/2020.01.16_final_petition_for_emergency_action_pursuant_to_the_safe_drinking_water_act1.pdf; EPA Emergency Petition appendices available at: https://drive.google.com/file/d/1-4Qp4YqOz-wmGp_lbasbNmcPGUBg104x/view.

⁵ Letter from Chris Hladick, Administrator for EPA Region 10, to Tarah Heinzen, Senior Staff Attorney at Food & Water Watch (Jan. 29, 2020).

⁶ Second Action Plan, at 6, 23-27.

⁷ Appendix A: EPA Emergency Petition, at Section IV.A & B.

⁸ *Id.* at Section IV.C.

CAFO activities are “hotspots” of nitrate contamination, and therefore the Commission cannot effectively address the contamination by continuing to treat CAFOs as just one of many contributors.⁹

The Committee Must Adopt Stronger, Mandatory Measures in the Second Action Plan to Reduce CAFO Pollution and Achieve Its Goals

The final draft of the Second Action Plan acknowledges the substantial and detrimental role CAFOs and CAFO waste play in the ongoing nitrate emergency in the region, but proposes to simply continue the same – unsuccessful – voluntary-only approach. It does not halt or modify practices that are demonstrably contributing to the ongoing and increasing nitrate contamination in the region. As the Committee recognized in developing its implied trends for future nitrate increases, “the single largest increase [of nitrates at testing wells] was at a CAFO monitoring well.”¹⁰ Areas dominated by CAFOs and agricultural fields receiving CAFO waste are nitrate hot spots, therefore the Second Action Plan must do more to control facilities’ ongoing contamination and prevent new sources of contamination.

While we appreciate that the Commission intends to conduct annual assessments of the voluntary-only approach,¹¹ we also recognize that this is not meaningfully different than what the Commission committed to in the First Action Plan, over 20 years ago. That Plan stated: “If the voluntary approach does not result in satisfactory progress towards reducing nitrate contamination in the groundwater, mandatory requirements will be considered as part of the action plan.”¹² Yet today, with nitrate levels increasing over the span of two decades, and certain CAFO-dominated hotspots allowed to reach dangerous nitrate levels, no such mandatory requirements are in place and the Commission again proposes to continue kicking the can down the road. Given this history, we must conclude that the Commission’s claimed commitment to pursue “amendments to the Local Action Plan...[to] include mandatory actions or regulatory changes” if the Second Action Plan fails to bring groundwater back within Oregon’s and EPA’s nitrate limits is not a meaningful backstop.¹³ The First Action Plan incorrectly “assume[d] additional regulatory requirements will not be necessary to achieve the plan’s goal”¹⁴—the Second Action Plan cannot make the same mistake. The Commission needs to adopt at least the changes outlined below, and make them mandatory for CAFO activities within the LUBGWMA.

A. Nitrate Contamination Traceable to CAFOs in the LUBGWMA Is a Persistent and Increasing Threat to Public Health and the Environment

As the Commission and its agency partners acknowledge, CAFOs in the region are responsible for a large proportion of the pollution leading to ongoing and increased groundwater

⁹ See Second Action Plan, at 34-35 (recognizing that the largest increase of nitrate contamination identified was at a CAFO monitoring well, in a place that was previously traditional irrigated farm land but has since become a disposal area for CAFO waste, and presenting a map with several extreme nitrate readings within CAFO land application areas).

¹⁰ Second Action Plan, at 34.

¹¹ Second Action Plan, at 7.

¹² Lower Umatilla Basin Groundwater Management Area Action Plan (Dec. 8, 1997), at 8 (hereinafter “First Action Plan”), <https://lubgwma.org/wp-content/uploads/2018/11/LUB-action-plan.pdf>.

¹³ See Second Action Plan, at 7.

¹⁴ First Action Plan, at 7. As the Second Action Plan acknowledges, the most important of the First Action Plan’s goals remain unmet. EPA Emergency Petition, at 25-26 Tbl. 4.

nitrate contamination.¹⁵ There are currently ten permitted and active CAFOs within the LUBGWMA, including one of the nation’s largest dairy operations.¹⁶ The approximately 150,000 animals housed on these CAFOs introduce enormous amounts of nitrogen to the region in the form of animal waste—approximately 4.3 billion pounds annually.¹⁷ Nearly all of this waste is land applied to agricultural lands, contributing significantly to the “irrigated agriculture” component of the GWMA’s overall contamination.¹⁸ But first these enormous quantities of waste are collected and stored in “lagoons” that are known to leak and leach nitrogen-heavy waste into the underlying soil, and eventually into the region’s particularly vulnerable and shallow aquifers, even when constructed according to current technical standards.¹⁹

These documented sources of nitrogen from CAFOs are not the full picture though, and the state and Commission recognize that other sources of nitrate pollution have not been adequately studied or accounted for. CAFOs also contribute through re-deposition of nitrogen emitted by CAFO waste during handling and storage (approximately 50% of total CAFO-generated nitrogen), as well as spills and leaks of animal waste.²⁰ The debacle at the Lost Valley Farm mega-dairy is one well-documented example of improper CAFO waste management leading to this kind of additional and apparently unaccounted for nitrogen pollution.²¹ But it is hardly the only example; CAFOs and their waste management practices have a history of contaminating the environment.²² CAFOs are inherently risky operations that will continue to threaten more manure spills and other waste management failures that could introduce enormous quantities of nitrogen-laden waste into the LUBGWMA’s environment, especially as climate change fuels ever more extreme weather events.²³

¹⁵ Appendix A: EPA Emergency Petition, at Section IV.C.

¹⁶ Appendix A: EPA Emergency Petition, at 15; Second Action Plan, at 63.

¹⁷ Appendix A: EPA Emergency Petition, at 15-17.

¹⁸ *Id.* at 16; DEQ Water Quality Division, Estimation of Nitrogen Sources, Nitrogen Applied, and Nitrogen Leached to Groundwater in the Lower Umatilla Basin Groundwater Management Area, at 6, 11-12 (Jun. 13, 2011) (hereafter “Estimation of N Sources”) (available as Appendix I of the EPA Emergency Petition) (categorizing 90% of CAFO waste available for crops under “irrigated agriculture”).

¹⁹ Appendix A: EPA Emergency Petition, at 18-19 (discussing CAFO waste storage lagoons); Estimation of N Sources, at 10-11 (discussing the region’s particularly vulnerable and shallow aquifers).

²⁰ Appendix A: EPA Emergency Petition, at 19.

²¹ *Id.* at 18.

²² *E.g.*, Shane Dixon Kavanaugh, *Manure Spill Splashes 300,000 Gallons Near Tillamook Bay*, *Oregonian* (July 23, 2019), <https://www.oregonlive.com/news/2019/07/manure-spill-splashes-300000-gallons-near-tillamook-bay.html> (spill from anaerobic digester, anaerobic digesters are used by at least one CAFO in the LUBGWMA); *Washington State Dairies Agree to Implement Sweeping Changes Following Landmark Lawsuit over Water Supply Contamination*, Center for Food Safety (May 11, 2015), <https://www.centerforfoodsafety.org/press-releases/3913/washington-state-dairies-agree-to-implement-sweeping-changes-following-landmark-lawsuit-over-water-supply-contamination> (Lower Yakima Valley dairies’ manure management contaminated drinking water with nitrates and agreed to undertake major changes to inadequate BMPs).

²³ *See, e.g.*, Wynne Davis, *Overflowing Hog Lagoons Raise Environmental Concerns in North Carolina*, NPR (Sept. 22, 2018), <https://www.npr.org/2018/09/22/650698240/hurricane-s-aftermath-floods-hog-lagoons-in-north-carolina>; Jade McDowell & Jessica Pollard, *The Flood of 2020*, *Hermiston Herald* (Feb. 11, 2020), https://www.hermistonherald.com/news/local/the-flood-of/article_f98d5ce6-4cfc-11ea-b392-4f44905cb031.html (the GWMA’s most recent serious flood event—the undersigned commenters are unaware if any CAFO waste management facilities were adversely impacted by this event, but the flooding underscores potential vulnerabilities).

Yet, even without fully accounting for CAFOs' role in the region's nitrate emergency, in 2011 DEQ estimated CAFOs were the largest single source of nitrogen imported to or produced in the region.²⁴ As DEQ found, the largest source of nitrogen applied in the region was from irrigated agriculture (74% of total nitrogen introduced into the environment), and that "high percentage is, in part, due to Oregon Department of Agriculture's estimate that 90% of CAFO waste is used by the irrigated agriculture community...."²⁵

The Commission, Morrow SWCD, and state agencies cannot honestly deny that CAFOs are a leading, if not *the* leading, source of ongoing nitrate contamination in the LUBGWMA. Therefore, much more is needed from the Second Action Plan to bring this dominant source under control.

B. The Second Action Plan Must Include Additional, Mandatory Provisions to Bring CAFOs' and Irrigated Agriculture's Nitrogen-Intensive Land Use Practices under Control

Maintaining a voluntary-only, business-as-usual approach for CAFOs and CAFO waste management in the region is a recipe for disaster, and will preclude the Commission from achieving its ultimate goal. We ask the Commission to adopt at least four necessary changes to the Second Action Plan to avoid this result and protect the citizens and environment of the Lower Umatilla Basin. We also call on the Commission and its local experts to expand on this list to identify any additional measures that it believes will curtail CAFOs' ongoing propensity to contaminate groundwater, and include those as mandatory actions.

- 1) The Second Action Plan must include provisions that direct the Commission and its agency partners, especially ODA, to review and revise CAFO best management practices ("BMPs"), and mandate new and improved ones as necessary.
- 2) The Second Action Plan must establish a more rigorous CAFO monitoring program that includes public access to all CAFO groundwater monitoring data and enables the identification of where and to what extent specific CAFOs are causing nitrate contamination, and establish procedures for holding bad actors accountable.
- 3) The Second Action Plan must make clear that adequate and dedicated funding for the Commission and its agency partners to implement the Second Action Plan is a prerequisite to successfully lowering nitrate contamination in the region.
- 4) The Second Action Plan must call for a moratorium on any new or expanded CAFOs in the LUBGWMA unless and until the Commission achieves its ultimate goal of lowering nitrate contamination consistently below 7 mg/L throughout the region.

Each of these necessary changes are discussed in greater detail below.

1. Reassess CAFO-related BMPs, and mandate improvements

²⁴ Estimation of N Sources, at ii, 15, Fig. 1.

²⁵ *Id.*

The draft Second Action Plan places near total reliance on BMPs already required by ODA and through CAFOs' Animal Waste Management Plans ("AWMPs"), and CAFO operators' willingness to take voluntary actions, to mitigate CAFOs' contribution to the region's ongoing nitrate emergency.²⁶ This reliance is not rational given that these BMPs have been in place for years, and yet data shows that CAFOs and CAFO waste land application sites continue to have elevated nitrate concentrations, and in some cases severe increases.²⁷ The Second Action Plan must put in place a process that will identify improvements to CAFO waste management BMPs, and mandate those improvements, while also calling on ODA to mandate the same through permits and the Umatilla and Willow Creek Water Quality Management Area Rules.²⁸

The strategies and actions for CAFOs as currently written are, in large part, business as usual.²⁹ In most respects they are no different than what the First Action Plan put forward.³⁰ We appreciate the Commission's recognition of the need to revisit and improve "irrigation management" by CAFOs and its support for conversion to more efficient systems, but even this strategy section remains largely dependent on what AWMPs already require—and nothing is mandated.³¹ The underlying assumption that the Second Action Plan adopts – that existing CAFO permits and AWMPs are sufficient – simply does not match the reality of continued nitrate contamination and data trends showing that the problem is getting worse in areas used by CAFOs.

And continuing to engage in "CAFO education outreach" alone is patently inadequate and not commensurate with the public health emergency currently affecting the region. This strategy is an important and valuable piece of what must be a larger effort, but the failures of the First Action Plan show that without mandating improved BMPs, the Committee cannot reasonably expect nitrate levels to decline.

Instead of misplacing reliance on existing (and failing) BMPs, the Commission must revise the Second Action Plan's CAFO strategies and actions to recognize that CAFO practices need improvement and those improvements must be required as soon as possible. The Commission and its agency partners may be able to identify additional ways to accomplish these improvements, but as a starting point we request the following changes:

- With the benefit of expanded monitoring data (as discussed below), establish a process to determine new agronomic rate calculations that better account for local soil characteristics and aquifer vulnerability to prevent overapplication resulting in nitrate leaching to groundwater.³² Until this assessment is completed and new

²⁶ Second Action Plan, at 63-66.

²⁷ Despite meeting the First Action Plan's goal that "90% of CAFOs are implementing an accepted system of BMPs or are covered by an implementation plan," the most current data shows that CAFO-dominated areas have some of the highest nitrate concentrations in the region. EPA Emergency Petition, at 26; Second Action Plan, at 35 Fig. 2-12.

²⁸ See Appendix A: EPA Emergency Petition, at 24-25.

²⁹ Second Action Plan, at 63-65 (acknowledging that "these actions are already required and being implemented" for most of the specific strategies contemplated by the Plan).

³⁰ First Action Plan, at 23-26.

³¹ Second Action Plan, at 65-66.

³² Additionally, land application of digestate from anaerobic manure digesters – the solid and liquid waste that must still be disposed of after methane capture – must be assessed independently given its unique potential to cause nitrate contamination. See NRCS, 366-CPS-1, Conservation Practice Standard No. 366: Anaerobic Digester, at 6 ("Land application of digester effluent, compared with fresh manure, may have a higher risk for both ground and

standards are ready for implementation, immediately impose more protective limitations to reduce the amount of waste that CAFOs can apply to fields in the LUBGWMA.

- Recognize that current animal units on CAFOs in the region are producing more waste than crops on the available land area are capable of utilizing. Animal unit caps must be imposed to balance the equation—otherwise CAFOs will continue to dispose of too much waste for the land to handle.³³
- Impose stricter standards for CAFO waste storage facilities to reduce leaks and leaching. At a minimum, every CAFO lagoon should be required to phase in double synthetic liners with leak detection systems as soon as possible.
- Encourage CAFOs to transition their production areas and irrigated fields to smaller-scale livestock systems that do not produce more manure than can be sustainably incorporated onsite, such as pasture-based operations with strong guidelines for water quality, soil health, and protecting biodiversity.³⁴ As DEQ’s Water Quality Division has correctly assumed, well-managed pasture is more efficient at utilizing nitrogen than the irrigated agriculture currently used by CAFOs to dispose of their waste.³⁵ The Commission should amend its education and outreach actions to include this training and messaging as the best way to achieve the Committee’s nitrate reduction goals.

2. Monitoring of CAFO waste management must include all available data, and there must be rigorous enforcement against bad actors

The Second Action Plan must ensure meaningful and robust monitoring data of CAFOs and CAFO waste management, as well as access to these data. Currently the Commission proposes to continue to base its trend analyses and actions on a relatively limited data set acquired through its partner agencies: the DEQ-monitored well network, DEQ’s intermittent synoptic sampling events, and ODA-mandated monitoring wells in and around three CAFO facilities.³⁶ The Second Action Plan states that each CAFO is “required to operate a groundwater monitoring well network that is capable of determining rate and direction of groundwater movement, and monitoring the groundwater quality immediately upgradient and downgradient from the waste management area,”³⁷ but this appears to overstate the available data. Since there

surface water quality problems. Compounds such as nitrogen, phosphorus, and other elements become more soluble due to anaerobic digestion and therefore have higher potential to move with water.”).

³³ CAFOs are currently allowed to house nearly 180,000 animals within the LUBGWMA, with potentially more on the way if the Easterday mega-dairy is allowed to open on the failed Lost Valley site. EPA Emergency Petition, at 17, 19-20. As the Commission knows, this waste is disposed of through application to fields on top of the region’s vulnerable aquifers. As past monitoring shows, “[n]itrate concentrations are higher in monitoring wells located where nitrogen-rich waste is land applied....” Second Action Plan, at 35-36 and Fig. 2-12.

³⁴ See, e.g., Kathleen Bauer, *How an Oregon Rancher Is Building Soil Health—and a Robust Regional Food System*, Civil Eats (Jan. 31, 2019),

<https://civileats.com/2019/01/31/how-an-oregon-rancher-is-building-soil-health-and-a-robust-regional-food-system/>; Claire E. LaCanne & Jonathan G. Lundgren, *Regenerative Agriculture: Merging Farming and Natural Resource Conservation Profitably*, PeerJ (Feb. 26, 2018), https://peerj.com/articles/4428/?utm_source=TrendMD&utm_campaign=PeerJ_TrendMD_1&utm_medium=TrendMD.

³⁵ Estimation of N Sources, at 9.

³⁶ Second Action Plan, at 84-85.

³⁷ Second Action Plan, at 19-20. See also ODA & DEQ, State of Oregon Confined Animal Feeding Operation Permit Program (Mar. 31, 2016), at 22 (noting that CAFOs within GWMA will typically be required to conduct

are 10 CAFOs in the LUBGWMA, but the Commission only identifies monitoring wells at three CAFO facilities as a source of monitoring data, it appears that there is either a significant data set presently unavailable to the Commission or the majority of CAFOs in the LUBGWMA do not conduct monitoring. The Second Action Plan should ensure that all CAFOs in the GWMA conduct rigorous groundwater monitoring, and make the data available to the Commission and the general public on a regular basis. These data should be incorporated into the Commission's ongoing assessment of Plan implementation.

Additionally, any downgradient nitrate health standard exceedances identified, either as persistent levels or increasing trends, should trigger immediate investigation and, where appropriate, remedial actions and protective measures to hold specific CAFOs accountable. The Commission needs to work in close cooperation with DEQ and ODA to stop specific CAFO practices contributing to nitrate contamination as soon as possible, and not wait for often dated, region-wide trend analyses that will not identify localized and timely actions to stop further contamination before it is too late. Since several of the LUBGWMA's CAFOs are in close proximity to each other and land apply their waste locally, it is critical for the Second Action Plan to establish a monitoring and accountability program that is capable of holding specific operators accountable when they contribute to the nitrate emergency. When a CAFO is found to cause or contribute to persistent or increased groundwater nitrate concentrations, that likely indicates a permit violation through above-agronomic rate land applications or some other illegal conduct—or at the very least a need for revised, strengthened mandatory BMPs. The Second Action Plan should call on DEQ to immediately address CAFOs that contribute to elevated nitrate levels, either by mandating improved BMPs calculated to stop the specific contamination pathway or through strong enforcement action against any violations.

3. Funding

The Commission must call upon the state and all authorized agencies to dedicate LUBGWMA-specific funds to support implementation of the Second Action Plan. Implementation of the First Action Plan has been plagued by resource constraints, and the Second Action Plan is set to suffer the same. The Second Action Plan does identify a variety of potential funding sources that local and state agencies may seek out to help implement the Plan, but this uncertain and scattershot approach is not enough given the public health and environmental emergency facing the region.

The Commission must make clear in the Second Action Plan that success depends on dedicated funding from the state legislature, both to empower the Commission and local officials closest to the problem as well as to bolster DEQ and ODA enforcement against any entities that contribute to the nitrate emergency, and it must articulate a clear plan for seeking and obtaining the necessary funding.

4. Moratorium

Finally, the Second Action Plan must call for a moratorium on any new or expanded CAFOs in the LUBGWMA until nitrate concentrations consistently fall below the 7mg/L

groundwater monitoring),

<https://www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/CAFONPDESPermitAndEvalFactSheet.pdf>.

threshold region wide. As discussed in the EPA Emergency Petition, state agencies are working in the opposite direction and move ever closer to approving the massive Easterday Farms mega-dairy.³⁸ Most recently, ODA has approved the transfer of the failed Lost Valley's cleanup permit to Easterday Farms.³⁹ Opening this facility would introduce up to 28,300 more cows to the region along with hundreds of millions of pounds of additional nitrogen-laden waste, and would almost certainly place the Second Action Plan's ultimate goal of "improv[ing] the overall groundwater quality by obtaining declining nitrate concentrations of less than 7 mg/L throughout the region" out of reach for the foreseeable future.

Given the LUBGWMA's especially vulnerable aquifers, already excessive number of animals housed on CAFOs, and decades of cumulative nitrate contamination from a variety of sources, a moratorium is the only sensible way to safeguard the region's groundwater and the communities that rely on it.

Conclusion

The Stand Up to Factory Farms Coalition respects and appreciates the Commission's efforts and the positive aspects of the draft Second Action Plan, but much more is needed to achieve its ultimate goal. We respectfully ask that the Commission adopt the improvements outlined here to strengthen the Second Action Plan and put the region's groundwater on a path to recovery. The wellbeing of local communities, the environment, and farmers themselves depends on decisive action by the Commission now. The lessons learned from the First Action Plan must define the path forward, and that means abandoning the voluntary-only approach, establishing accountability for specific CAFOs, calling for dedicated funding, and demanding a moratorium on any new or expanded CAFOs until nitrates fall within safe limits across the region.

Respectfully Submitted May 8, 2020



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³⁸ Appendix A: EPA Emergency Petition, at 19-20.

³⁹ George Plaven, *Cleanup Permit Transferred to New Owners of Controversial Dairy*, Capital Press (Apr. 6, 2020), https://www.capitalpress.com/ag_sectors/dairy/permit-transfer-approved-for-controversial-dairy/article_1eb2cf8c-7855-11ea-8ef5-3fb85cfa7469.html?fbclid=IwAR1_wzNIDuGkQONyHjcQIbeG9Az_hv5unhhwMO2OaBfQV2dGpLS-DM-YJ9xK8.

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Appendix A