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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 COMMUNITY ASSOCIATION FOR
9 RESTORATION OF THE
10 ENVIRONMENT, INC., a Washington
11 non-profit corporation and CENTER
12 FOR FOOD SAFETY, INC., a
13 Washington, D.C. non-profit
14 corporation,

15 Plaintiffs,

16 v.

17 HENRY BOSMA DAIRY, a
18 Washington proprietorship, aka HANK
19 BOSMA DAIRY, aka BOSMA
20 DAIRY, LIBERTY DAIRY, LLC, a
21 Washington limited liability company;
ARIZONA ACRES LIMITED
PARTNERSHIP, a Washington limited
partnership; LIBERTY ACRES, LLC, a
Washington limited liability company;
and HENRY BOSMA, an individual,

Defendants.

Case No.: 2:13-CV-3019-TOR
JOINT STATUS REPORT

1 Pursuant to this Court’s Order Granting Stipulated Motion to Stay and Motion
2 to Expedite (*ECF No. 324*), the Parties submit this Joint Status Report. The parties
3 have met and conferred and exchanged information and ideas with respect to their
4 respective proposals regarding abandonment of lagoons 1, 2 and 3. As discussed
5 below, the parties have also had uneven success involving the United States
6 Environmental Protection Agency (EPA) in their discussions.

7 The Parties have at this juncture been unable to find common ground. While
8 they generally agree that, in the absence of resolution or continuing stay, the
9 appropriate next steps would include a briefing schedule and an evidentiary hearing,
10 the Parties have different perspectives on how and when that process might unfold.
11 Those perspectives are set forth below, and the Parties jointly seek the Court’s
12 guidance and direction as to next steps.

13 **I. PROCEDURAL BACKGROUND AND RELATED MATTER**

14 This Court has granted Plaintiffs’ Motion for an Order to Show Cause (*ECF*
15 *No. 321*) ordering Defendants to “show cause, on or before January 13, 2025, why
16 this Court should not impose sanctions upon Defendants for not complying with the
17 Consent Decree, *ECF No. 246*”. *Id.* This Court subsequently granted the Parties’
18 Stipulated Motion to Stay (*ECF No. 322*), and pursuant to this Court’s Order
19 Granting Stipulated Motion to Stay and Motion to Expedite (*ECF No. 324*), the
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1 matter was stayed, and the Parties were ordered to follow up with the Court by March
2 14, 2025.

3 As the Court is aware, Defendants in this matter are also Defendants in a
4 matter pending under Docket No. 1:24-CV-3092-TOR, in which the United States
5 of America is the plaintiff. That court has granted a preliminary injunction in that
6 matter. (Docket No. 1:24-CV-3092-TOR; *ECF No. 83*). The matter is currently on
7 appeal, and the parties have agreed to a stay of proceedings. (Docket No. 1:24-CV-
8 3092-TOR, *ECF Nos. 94, 95*). CARE and CFS are not parties to that proceeding.

9 Both cases involve questions relating to the abandonment of lagoons 1, 2, and
10 3, including the questions of whether and how Defendants must address any
11 accumulated nitrogen beneath the historical floors of such lagoons.

12 **II. JOINT EFFORTS OF THE PARTIES**

13 Counsel for the Parties in this matter have met and conferred regarding the
14 lagoon abandonment issues. In addition to multiple phone calls and emails, counsel
15 and the Parties' respective expert consultants met in person for approximately three
16 hours on February 4, 2025.

17 Counsel for the Parties have each also independently consulted with
18 Genevieve Parshalle, lead Trial Attorney for the United States Department of Justice
19 (DOJ) in the related case brought against Defendants by the United States of
20 America, regarding these same issues. Ms. Parshalle is, when and if permitted due
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1 to changing directions from the executive branch, leading the efforts on behalf of
2 DOJ and EPA to address the question of how to effectively abandon the lagoons in
3 a manner that responsibly addresses the in situ nitrogen beneath the floors and walls
4 of lagoons 1, 2, and 3. Ms. Parshalle and her team of lawyers and experts have met
5 with Defendants' expert, as well as with Defendants' lawyer in that matter (Meredith
6 Weinberg of Perkins Coie), and have continued to exchange ideas and proposals. As
7 set forth below, the Parties have different views with respect to the value and
8 possibility of any ongoing role or participation in this matter by EPA.

9 **III. PLAINTIFFS' POSITION**

10 The Parties to this action met on February 4, 2025, in Seattle to discuss
11 resolution of the Order to Show Cause, and particularly the issue of abandonment of
12 Bosma lagoons 1-3. The DOJ was supposed to be present, but the week before the
13 meeting, the DOJ was instructed by someone in the executive branch that it would
14 not be allowed to participate at that time. Apparently, temporary authorization was
15 given after that date and the Cluster Dairies met with EPA/DOJ without CARE's
16 presence. Present authorization to proceed from the federal government is not clear.

17 At the February 4th meeting, the Parties reached a tentative compromise to
18 move forward, contingent upon approval by Henry Bosma, who was not present.
19 Mr. Bosma did not approve the tentative compromise. As Defendants have done
20 nothing during the stay to move the ball forward from Plaintiffs' perspective and the
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1 federal government's continued participation is in question, it is Plaintiffs' position
2 that the Court should order Defendants to respond to the Order to Show Cause, *ECF*
3 *No. 321*, either by April 17th, or 30 days from this Court's further Order.

4 No further stays should be granted. Whether DOJ, and its client EPA, will
5 participate in the future is entirely unclear in these strange and unprecedented times.
6 Both the EPA and DOJ are under attack by the chief executive and his, at best,
7 questionably constitutional minions. Accordingly, Plaintiffs are once again left in
8 the position of taking the lead to protect their members and the community from the
9 massive, ongoing pollution caused by Defendants. While Defendants have
10 apparently sold their herd (Plaintiffs have never received documentation to that
11 effect), the contamination remains unabated.

12 The Parties have shared the contents of their respective positions in this joint
13 statement in full. Defendants have provided a rash of excuses for taking no action.
14 Plaintiffs believe that Defendants' arguments should not be considered in deciding
15 whether to further stay this matter. Any such arguments should be raised in their
16 response to the Order to Show Cause and Plaintiffs should be given the opportunity
17 to respond. A joint status report is not the appropriate place to argue what amounts
18 to the merits of the case. Evapotranspiration caps, excavation, oxygenation
19 remediation, or some combination thereof constitute fact questions. EPA's
20 responsibility under the Consent Decree in this case is also a legal question as EPA
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1 never became a party to these proceedings and expressly declined to participate in
2 implementation or oversight of the Consent Decree. These issues require further
3 briefing.

4 If EPA or DOJ continue to exist in some workable form and have the capacity
5 to move forward upon conclusion of briefing, there may be an opportunity for an
6 agreed upon process to find a resolution through a hearing before this Court with all
7 parties or just the parties in this proceeding. Given the present state of uncertainty of
8 participation by the executive branch (chaos may be a more apt description), we may
9 know more upon completion of briefing. Right now, the federal government cannot,
10 or chooses not to, speak. Further speculative delay does the community further
11 injustice.

12 **IV. DEFENDANTS' POSITION**

13 Defendants believe the stay should remain in place for up to 90 days. This
14 extended stay will allow EPA and Defendants to continue their negotiations
15 regarding abandonment of lagoons 1, 2, and 3. Such an extension will also allow
16 time for Plaintiffs to seek EPA's support for their forced leaching/oxygenation
17 proposal, which EPA has yet to offer. Absent such a stay, Defendants request a
18 briefing schedule that includes an invited submission from EPA, with opening briefs
19 due no sooner than 45 days from this joint status report. At the conclusion of the
20 briefing period, it may be appropriate for there to be an evidentiary hearing where
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1 the respective proposals of Plaintiffs, Defendants, and/or EPA, are submitted for the
2 Court's analysis and consideration.

3 The Parties in this case agreed to the entry of a Consent Decree. (*ECF No.*
4 *246*). The Consent Decree gave Defendants the option to either line their lagoons, or
5 to "significantly reduce the number of lagoons and change the configuration of the
6 remaining lagoons". All decisions regarding lining or reconfiguration were expressly
7 required to involve discussions with EPA. (*ECF No. 246*, paragraph 18). The Parties
8 never discussed or agreed, however, to a process by which lagoons might be
9 eliminated from operations, or the technical specifications relating to any such
10 abandonment. So here we are.

11 Defendants' perspective is that Plaintiffs are pursuing a radical departure from
12 their contract. The Consent Decree was a compromise, approved by this Court, that
13 included express waivers and releases of claims and demands. (*ECF No. 246*,
14 paragraph 6). Substantively, the Consent Decree required a very specific course of
15 containment measures. What it did not envision was full-on soil remediation, which
16 is what Plaintiffs now seek to opportunistically impose. Put another way: Liberty
17 Dairy had the option of lining or abandoning lagoons 1, 2, and 3. Plaintiffs now seek
18 to exploit the choice of abandonment by seeking remedial measures far outside the
19 scope of anything contemplated by the Consent Decree, and requiring a commitment
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1 of time and money well beyond what it would have taken to simply line those same
2 lagoons.

3 That dispute aside: Defendants are still open to resolution. They met with
4 Plaintiffs in good faith and listened to their proposals. Defendants have also been in
5 regular contact with EPA. As set forth in the Declaration of Mark Larsen (*ECF No.*
6 *326*), EPA has requested, and Defendants have provided, an updated soil sampling
7 plan. Soil sampling begins next week. The data collected and analyzed pursuant to
8 the plan will be used to support vadose zone transport modeling used the HYDRUS-
9 1D modeling software requested by EPA. Those discussions continue.

10 The big disconnect in this case is that EPA has shown zero interest in or
11 support for Plaintiff's forced leaching/oxygenation model. Plaintiffs on the other
12 hand are unimpressed with both the pace and substance of Defendants' negotiations
13 with EPA. Which leaves Defendants stuck in the middle. Defendants' view is that
14 Plaintiffs are insisting on a novel and untested (and we believe flawed) remediation
15 program that is not only far outside the scope of the Consent Decree, but also that
16 EPA appears to have no interest in approving and could potentially even oppose.
17 Meanwhile, EPA is pushing Defendants to expand upon the Evapotranspiration cap
18 proposal that was first submitted in 2022, that it inexplicably did not respond to for
19 two years, and it appears to be envisioning a cure that involves some iteration of the
20 Evapotranspiration cap with possibly some corresponding excavation. (*ECF No.*

326). And, as is clear from the preceding section, Plaintiffs find EPA's approach unsatisfactory.

Given the evolving, but rapidly progressing, dynamics, Defendants believe a continued stay of up to 90 days is in order, or, alternatively, a measured and methodical briefing process that includes the invited participation of EPA. As Defendants' expert confirms, there are interim containment measures currently in place that will continue to be monitored, and such monitoring confirms that the lagoons pose no risk that nitrogen will leach to groundwater.

V. CONCLUSION

The Parties have reached what appears to be at least a temporary impasse. They respectfully seek the Court's guidance and judgment with respect to the most efficient and appropriate path forward and offer the foregoing alternate requests for relief.

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1 DATED this 14th day of March, 2025.

2 STOKES LAWRENCE
3 VELIKANJE MOORE & SHORE

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