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May 23, 2019

Associate Administrator Tate Bennett
Environmental Protection Agency
Office of Public Engagement and Environmental Education

Cc: Representative Dan Newhouse
Representative Cathy McMorris Rodgers
Administrator Christopher Hladick
Dan Wood, Washington State Dairy Federation

Via email: Bennett.Tate@epa.gov

Dear Ms. Bennett:

Dairy farmers across the Pacific Northwest greatly appreciate the opportunity to share with you our serious concerns about EPA Region 10's actions toward dairy farmers on our May 13 conference call. There were three issues raised during that call that merit further explanation and discussion. We believe some of these issues were raised by Region 10 staff who, as expected, are doing all they can to prevent the EPA leadership from taking action on the faulty Nitrate Report and enforcement.

First, regarding state legislation or regulation. The question raised suggested that perhaps Washington state has used the EPA Nitrate Report as a basis for legislation or the new CAFO permit. The new permit including the NPDES permit issued in early 2017 did not reflect EPA's study or findings. To the contrary, during the two week Pollution Control Hearings Board hearing in May-June 2018 where the permit was challenged by Mr. Tebbutt, Ecology staff distanced themselves from the study. We can provide the specific reference in the transcript, but in brief the Ecology staff person responded to a question by Mr. Tebbutt about the study by stating that Ecology did not agree with the findings. It is also significant that the Hearings Board did not allow the study to be entered into evidence and that the Board fully and completely rejected all the arguments of Mr. Tebbutt who based most of his positions on the study.

A potentially more significant issue was raised regarding “2021”, or the eight year assessment of the Administrative Order on Consent. From discussions with farmers involved, it now appears that the approach Region 10 staff is taking to the damaging study and enforcement is to declare a great win for the environment. The narrative appears to be evolving that the EPA found a significant problem, enforced the law and the enforcement is shown to be a great success. It is our understanding that as part of this they plan on claiming that the installation of a bio-gas digester at the DeRuyter dairy is part of this success. The reality is that the multiple millions spent by these farmers, and much more by all dairy farmers affected by the study-based litigation, has and is preventing farmers from investing in this and other environmental improvement technologies.

The effort to claim a great environmental victory is wrong because the accusation of dairy guilt was and is wrong. The data used to document the dairies’ contribution to nitrate contamination in the groundwater was false or, as we believe, falsified. The details of the numerous ways the study and conclusions failed to prove dairy guilt are in Richard Fasching’s detailed analysis as well as most of the other [fifteen experts who reviewed the study](#). The [USGS map of nitrate contamination](#) above the EPA limit shows that it affects about 24 per cent of wells in traditional farming areas with aquifer vulnerability such as found in the Yakima Valley. That map also shows that Southeast Washington is one area of significant nitrate contamination despite the fact that very few dairies exist in nearly the entire area. There is no question that legacy nitrate, from previous farming practices dating to the post World War II era, is the primary source of contamination as [we validate in this document on our website](#). This is even borne out in the EPA nitrate study where age dating shows that most of the water pre-dates the arrival of the dairies under the AOC. EPA staff reported that the age dating protocol they used did not include water older than the 1970s but much of the water they tested went back to the limits of their test (page 42 and Appendix C). At the same time, the EPA report admits staff did not determine when the contaminants entered the water (page 80). In short, EPA staff used nitrate in water that their study shows is mostly older than the dairies to convict these farms of pollution.

Is the AOC enforcement an EPA success story? It’s true that the AOC resulted in one dairy farm improving nutrient management, installing synthetic lagoon liners, testing underground manure lines and providing stacks of very expensive consultant reports. This dairy expended nearly \$11 million on this “success.” These coerced payments were made possible only by the other family business operations. Despite this investment, groundwater testing has not shown improvement. That does not surprise given the fact of legacy nitrate documented throughout the area even in locations with no dairy farms. But this fact will be ignored by EPA as they construct their “success story.”

EPA staff uses the water quality tests in varying and contradictory ways depending on their needs at the time. For example, the deterioration of water quality near dairies was used to “prove” to farmers in the February 27, 2018 meeting that the EPA study was too conservative. Yet, in that same meeting, staff told us of improvements made in nutrient management on farms. When asked why that wasn’t showing up in groundwater testing staff explained that it takes a while for improvements to show up in the water testing. That answer was correct as research has demonstrated that it takes 30 to 50 years of improved practices to reduce legacy

nitrate levels. EPA Region 10 staff tries to have it both ways. They claim that current nitrate levels in groundwater prove dairy guilt despite acknowledging the age of the water pre-dates most dairies and they do not know when contaminants entered the water. But, then they claim current testing can't show progress related to their enforcement because of the time lag in nitrate reduction. In trying to claim "success" of their enforcement, will they now re-interpret test results or will they ignore this measurement and focus on other "successes" such as the installation of the unnecessary synthetic lagoon liners or the bio-gas digester?

EPA Region 10 clearly set out to use their "science" to accuse farmers of pollution. Their numerous failings in collecting the data and drawing conclusions from it have been fully documented. Their accusation is false. Falsely accusing someone of a crime then claiming the punishment was a success is not the American idea of justice.

We were pleased to hear you mention the issue of transparency in our discussion. We have been encouraged with this administration's efforts to improve transparency around science. This very damaging science report was not peer reviewed as required by EPA and federal policy. Then, when staff was called out for misrepresenting the peer review to the new administrator, they changed the categorization of the study from "influential" to "other." This not only fails the transparency test, it demonstrates recognition of their initial failure. It may not violate the law to fail to follow EPA policy, but it most certainly violates the law to lie about it and cover it up by attempting to change the record.

Farmers are very disappointed with the refusal of Administrator Hladick to request the USDA's Agricultural Research Service review of the study we requested. Why is the Administrator unwilling to have this critically important study reviewed? Especially since he is now aware that this study is threatening the very future of our dairy community. Why was the Region 10 staff so resistant to have this study reviewed when completed and why do they continue to so vigorously oppose this review if they are convinced in the validity of their science? Continuing to refuse appropriate review is not consistent with the current EPA administration's commitment to transparency. Administrator Hladick's unwillingness to take action on removing the study from further enforcement and litigation pending the completion of a long overdue peer review and to provide us with documentation on who changed the science designation and when that change occurred has contributed to a growing concern among farmers that long time staff in Region 10 are in command and that they are committed to continuing their unjustified harmful actions toward farmers. Farmers have not forgotten that it was this staff who long supported the very harmful and illegal What's Upstream lobbying campaign.

The EPA leadership in this administration has been a great encouragement to farmers even as questions rise about damaging tariffs. But the lack of response by Region 10 is raising serious doubts among the farming community in Washington state and beyond. No doubt many media outlets would enjoy hearing that farmers are losing confidence in this administration in undoing the wrongs of the previous one and that. A refusal by EPA to allow an extremely damaging science report to see the light of day and be carefully reviewed by experts will further undermine farmer trust and raise questions about the stated commitment to transparency.

Again, we greatly appreciate your interest. As we have conveyed to Administrator Hladick, this issue is of supreme importance to our farmers at a time when many are working desperately to maintain a multi-generation family farm. We trust that you understand the depth of concern and will take appropriate action to see that justice is done.

Sincerely,

A handwritten signature in black ink, appearing to read 'Larry Stap', with a large loop at the end.

Larry Stap
President, Save Family Farming

A handwritten signature in black ink, appearing to read 'Gerald Baron', with a long horizontal line extending to the right.

Gerald Baron
Executive Director, Save Family Farming