Advisory Briefing for the Office of Water Leadership
(Prepared: May 20, 2020)

Topic:
"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," dated January 16, 2020.

Background:
Nine entities jointly petitioned the EPA to exercise emergency powers established in Section 1431 of the Safe Drinking Water Act "to address groundwater contamination that has presented, and continues to present at ever-increasing levels, an imminent and substantial endangerment to the health of the residents of the Lower Umatilla Basin ('LUB') in Oregon." The petition is substantiated with over 1,500 pages of appendix material, primarily consisting of publicly available reference documents and reports related to the Lower Umatilla Basin Groundwater Management Area (LUBGWMA).

The petitioners ask EPA to:

- provide alternative drinking water to the residents of the Umatilla and Morrow Counties;
- conduct further monitoring of water quality and to investigate sources of nitrate-nitrogen;
- issue orders requiring CAFOs and irrigated agriculture to modify their practices;
- issue an order prohibiting any CAFO operation on the former site of Lost Valley Farm;
- investigate Oregon's BMPs for CAFO nutrient management to determine why they have been unsuccessful at protecting groundwater in the LUBGWMA;
- determine what enforcement measures should be implemented to effectively reduce nitrogen pollution from CAFO and agricultural sources and initiate those enforcement actions.

The EPA Region 10 Administrator provided an initial written response on January 29, 2020, which acknowledged receipt and indicated that EPA was reviewing the petition. The EPA Region 10 managers and staff from Enforcement and Compliance Assurance Division (ECAD), Water Division (WD), and the agriculture sector leads jointly reviewed the petition and conducted follow-up discussions with the State. Additionally, the efforts were supported by the Oregon Operations Office (OOO), the Office of Regional Counsel (ORC), and Office of Enforcement and Compliance Assurance (OECA).

EPA R10 met jointly with Oregon Health Authority (OHA), Oregon Department of Environmental Quality (ODEQ) and Oregon Department of Agriculture (ODA) on March 18, 2020, and then met individually through teleconference with the agencies on April 14 and 15, 2020. The attached letter is anticipated by the agencies.

Authority:
Under 1431, EPA has the authority to act on imminent and substantial endangerment of drinking water, including Underground Sources of Drinking Water (USDW) and public water systems. There is no legal procedural requirement or timeline to provide a written response to the petition under the Safe Drinking Water Act (SDWA). However, ORC and OECA has counseled, Ex. 5 AC / Ex. 7(A)

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Discussion:
Public Water Systems (regulated by Oregon Health Authority as the SDWA primacy agency) are not a major concern, as the State seems to be appropriately addressing the nitrate-affected public water systems through the compliance and enforcement tools available to them. The primary concern that has emerged is the impact of nitrate on USDW used by individual (private) well owners.
From the publicly available reports and information provided by the State Agencies, the following information provides a summary of what is known about individual (private) domestic drinking water wells:

- The LUBGWMA Second Local Action Plan (2019) indicates 72 private wells with nitrates over the national primary drinking water standard. This report estimates that "30 – 40%" are contaminated.
- Four synoptic events covering 255 wells (including 56 private wells from the State's Real Estate Transaction database) show 48% of wells in LUBGWMA exceed the nitrate standard.
- According to OHA data collected through the real estate transaction database, 10 of 55 wells tested through real estate transactions have exceeded the nitrate primary drinking water standard at some point in the past 10 years.

The actions requested by the petitioner that are broadly directed at the agricultural and CAFO activities, are long-term efforts aimed at long-term (i.e. lagging) results. The State Ex. 5 AC/DP/7(A) Ex. 5 AC/DP/7(A)

However, based on the petition, the publicly available information and the information exchanges with Oregon Health Authority, Oregon Department of Agriculture and Oregon Department of Environmental Quality, the evidence suggests that Ex. 5 AC / Ex. 7(A) Ex. 5 AC / Ex. 7(A) There is a gap in the understanding of the extent to which individual wells are contaminated in this zone of known contamination. The State is unable to provide a count of the number of private wells in use for domestic water supply, and does not know the number or percentage of the domestic wells contaminated with nitrates over 10 mg/L. Ex. 5 DP / Ex. 7(A) Ex. 5 DP / Ex. 7(A)

OGC's Recommended Addition (Incorporated into the Letter):
Upon review of the draft letter from Region 10 to the State, Office of General Counsel recommended the following additional language: "This letter does not require the State to collect additional data or information. Rather, EPA requests that the State confirm the correctness of the information EPA has received in Food and Water Watch's January 2020 letter seeking EPA action under SDWA section 1431 and to provide information about any actions which the State is taking or will take. If the State chooses to provide additional data or information voluntarily to address the data gaps identified in this letter, such data and information would be helpful to EPA in determining whether to take action necessary to protect the health of persons under SDWA section 1431."

Proposed Action:
EPA Region 10 proposes to send the attached draft letter under the signature of the Acting Director, Enforcement and Compliance Assurance Division (ECAD).