MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is voluntarily entered by and among the Wisconsin Department of Natural Resources (WDNR), Juneau County, Wood County and the Armenia Growers Coalition, LLC, and is effective as of the date of the final party executes the MOU.

A. Background

WHEREAS Juneau County and Wood County (the "Counties) have tested more than 100 private residential wells in the Counties and found many of the wells produced water in exceedance of the state drinking water standard of 10 mg/L for nitrate;

WHEREAS the United States Environmental Protection Agency (EPA) conducted testing at 5 private residential wells west of Petenwell Lake in northeast Juneau County and found elevated levels of nitrates in samples taken from those wells;

WHEREAS a 1995 groundwater resource and agricultural practice evaluation that was published by the Central Wisconsin Groundwater Center and titled "Port Edwards Groundwater Priority Watershed" documented the presence of nitrate in groundwater exceeding the state enforcement standard in the agricultural corridor in southern Wood County west of the Wisconsin River

WHEREAS, the WDNR and Department of Health Services (DHS) have each issued fact sheets on nitrate in drinking water: https://dnr.wi.gov/files/PDF/pubs/DG/DG0001.pdf; and, https://www.dhs.wisconsin.gov/publications/p02128.pdf;

WHEREAS the Armenia Growers Coalition, LLC (AGC) represents three of the many farmers in the agricultural corridor that is west of the Wisconsin River, south of Port Edwards, north of Necedah, and east of several state natural and wildlife areas;

WHEREAS AGC, in receipt of the aforementioned testing results, has voluntarily coordinated and collaborated with the Counties on a response effort to offer residents bottled water and an in- home point-of-use water treatment system if wells in the agricultural corridor study area defined in this MOU test above 10 mg/L for nitrate (the Clean Drinking Water Plan); and,

WHEREAS the Counties and WDNR have agreed to collaborate with AGC on further investigation in the agricultural corridor and implementation of the Clean Drinking Water Plan;

NOW, THEREFORE, the process the Parties agree to follow and to implement the Clean Drinking Water Plan and the Groundwater Hydrogeology, Agricultural Practices and Monitoring Plans is as follows:

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B. Definitions

Agricultural corridor study area is the area with the boundaries depicted on the attached map, marked as Exhibit A. The Parties may agree to adjust the boundaries of the area to reflect further investigation and sampling results.

Clean Drinking Water Plan is the plan to provide bottled drinking water and an in-home point- of-use water treatment system, as further detailed in this MOU.

Counties means Juneau and Wood Counties.

Groundwater Hydrogeology, Agricultural Practices and Monitoring Plans are the plans to (1) further investigate the hydrogeology of the agricultural corridor study area to determine the depth at which potable water can potentially be obtained for well owners, (2) evaluate the impact of current and potential changes to agricultural practices conducted in the agricultural corridor study area, and (3) monitor the concentrations of nitrate in groundwater in the agricultural corridor study area.

Nitrate-impaired means well water used for human consumption having nitrate concentrations above 10.0 mg/L at any time during the duration of this MOU that is properly verified by test results from a Wisconsin-certified laboratory from samples collected by a third-party testing service retained by AGC or by the Counties, WDNR or EPA.

Parties means AGC, the Counties and WDNR.

Simple access agreement means the agreement attached as Exhibit B.

Water Treatment System means a reverse osmosis or a similar treatment system certified by the Wisconsin Department of Safety and Professional Services (DSPS) for the reduction of nitrate at the highest level found in a water test from a nitrate-impaired well to 10 mg/L or below.

C. Clean Drinking Water Plan

1. The Parties agree to make reasonable attempts to test all private residential wells in the agricultural corridor study area. There are 1209 known addresses located in the agricultural corridor study area (823 in Juneau County and 386 in Wood County). Not all addresses have private wells. For the purpose of this MOU, it is assumed there are approximately 700 private residential wells in the agricultural corridor study area, 576 of which have not yet had a County-verified water test completed.

   The Counties will coordinate with AGC to conduct outreach to private residential well owners whose wells have not yet been tested by the Counties, WDNR or EPA with an offer for a third-party retained by AGC to test their well for nitrate and to send the sample to a WDNR-certified laboratory for analysis. This outreach will include, at a minimum:

   a. A letter, which shall include the following content or attachments:

      (1) Notification of the groundwater nitrate concerns identified in the agricultural corridor study area;

      (2) public health information relating to nitrate in drinking water;

(3) survey and consent form authorizing a third-party contractor retained by AGC to take a sample of water from the well;

(4) data release form specifying that the sample results and locations of the wells are to be provided to the Counties and therefore shall be a public record; and

(5) a request for confirmation of receipt.

b. A follow up phone call for homeowners/residents not responding to the letter within two weeks.

c. A personal visit to the residence for those homeowners/residents that are unable to be reached via letter or phone call to ensure all homeowners/residents whose wells have not yet been tested are informed and are provided the opportunity to have their well tested as soon as practicable.

Once a homeowner/resident returns a completed survey and consent form and release form, AGC will arrange for testing of the well water by a third-party testing service. The testing will occur as soon as practicable after the forms are received by AGC.

If a well sample test result is above 10 mg/L, the Counties will advise the homeowner/resident not to drink the water and will inform the homeowner of the Clean Drinking Water Plan. If a well sample test result is between 8 to 10 mg/L, the homeowner/resident will be offered two additional samples collected over the course of a year to verify that the well water is not nitrate impacted beyond the drinking water standard. AGC will retain a third party to conduct the sampling and will pay for the certified lab testing costs under this paragraph.

2. For private residential wells located in the agricultural corridor study area that are nitrate-impaired, all the following apply:

a. The Counties and AGC will develop and maintain a list of addresses for each of the wells that have been tested and each of the nitrate-impaired wells identified pursuant to this MOU.

b. AGC will send a letter to each identified nitrate-impacted well owner, offering to provide bottled water and a Water Treatment System, as outlined in this MOU.

c. If AGC does not hear from a homeowner letter recipient within one week, it will send a follow up correspondence.

d. If AGC does not hear from the homeowner within a week of sending the second communication, it will notify the Counties. The Counties will then assume primary responsibility for contacting the homeowner to inform them of the Clean Drinking Water Plan. The Counties will keep AGC reasonably apprised of the status of these follow up contacts such that accurate records of the Clean Drinking Water Plan can be maintained.

e. A homeowner will have up to six (6) months following the letter sent pursuant to subsection (b), above, to accept AGC's offer to provide bottled water and the installation and maintenance of a Water Treatment System pursuant to this MOU.

3. Once AGC receives notice of a nitrate-impaired well within the agricultural corridor study area, all the following will apply:

   a. AGC will offer to immediately provide the homeowner/resident a two-week supply of drinking water and will offer to arrange, at no cost to the homeowner/resident, to install a Water Treatment System.

   b. If the homeowner/resident accepts AGC's offer of a Water Treatment System within two weeks of the offer, AGC will continue to supply the homeowner/resident with bottled drinking water until the Water Treatment System is installed and verified to produce drinking water equal to or less than the 10 mg/L standard for nitrate. AGC will be invoiced directly for the Water Treatment System and bottled drinking water deliveries.

   c. If the homeowner/resident does not accept AGC's offer to install a Water Treatment System within two weeks after the offer, AGC will notify the Counties of the homeowner's/resident's decision to decline the offer. In this case, AGC would discontinue providing any further bottled water to the homeowner/resident. A short extension of the two-week deadline may be granted, if there is good cause shown.

   d. For homeowners/residents with nitrate-impaired wells who accept the offer of a Water Treatment System pursuant to this MOU, AGC will arrange for a licensed installer to be dispatched to the home as soon as practicable to conduct an inspection of the plumbing system to determine reasonable compatibility (e.g. piping, water pressure, under sink cabinet space) with the Water Treatment System. The licensed installer will enter the home only after the homeowner/resident has signed a simple access agreement. Upon completion of the inspection, the licensed installer will send a report of the inspection to the homeowner/resident, the WDNR, the Counties, and AGC. The licensed installer's report will indicate if the plumbing is reasonably compatible with the Water Treatment System and if not, the report will identify any necessary plumbing repairs or adjustments necessary to install the Water Treatment System.

   e. If the licensed installer hired by AGC determines that the plumbing is not reasonably compatible with the Water Treatment System selected, the licensed installer may recommend other options for alternative water, such as another point-of-use or point- of-entry treatment system approved by DSPS. AGC will continue to provide bottled water to the homeowner/resident for a period of up to three (3) months, or such longer time as is reasonably necessary to make needed repairs, as agreed upon by the parties, after an inspection to allow the homeowner/resident time to make any needed repairs or for AGC and the homeowner/resident to select another treatment option from devices approved by DSPS. It will be expected the homeowner/resident will contact AGC when the repairs are completed or when they reach agreement on an alternative treatment option. As soon as practicable upon completion of the repairs as the case may be, AGC will install the recommended option in accordance with paragraph 4.f.

   f. If the licensed installer hired by AGC determines that a homeowner's/resident's plumbing is reasonably compatible with the requirements for a Water Treatment

System, the Water Treatment System will be installed by a professional installer as soon as practicable. The Water Treatment System will be installed to provide drinking water to a spigot located at the kitchen sink or at the refrigerator, depending on water pressure requirements, appliance compatibility, and the treatment manufacturer specifications and stipulations of the DSPS approval.

g. No later than 48 hours after the installation of the Water Treatment System, the professional installer and the homeowner/resident will together take a sample of the drinking water and provide their initials on the sample. The sample will then be tested for nitrate concentration by a WDNR-certified laboratory that will directly bill AGC. The results of the test will be shared with the homeowner/resident, professional installer, the Counties, and WDNR. If the test indicates a nitrate concentration at or below 10 mg/L, AGC will no longer continue to provide bottled drinking water to the homeowner/resident. If the test indicates a nitrate concentration above 10 mg/L, AGC will continue to provide bottled drinking water and will work with the homeowner/resident to ensure a Water Treatment System is installed and the resulting treated water tests at or below 10 mg/L for nitrates.

h. AGC will provide homeowners/residents with a pre-paid 2-year maintenance agreement from the date of installation of the Water Treatment System, including treated water testing and replacement of filters in accordance with the manufacturer's recommendations and DSPS approval.

i. AGC will reimburse the Counties for their actual costs and expenses in fulfilling their duties under this MOU, within the limits of the following:

-- AGC shall pay the Counties the aggregate sum of $25,000 within thirty (30) days of the last party to execute the MOU, as an advance against the first $25,000 of actual costs and expenses, which shall be supported by detailed documentation supplied to AGC by the Counties on a semi-annual basis.
-- If the advance of $25,000 has been fully depleted in the manner indicated, then in that event AGC will continue to reimburse the Counties for additional actual costs and expenses supported by documentation on a semi-annual basis, up to a cap of an additional $25,000 for a total expenditure by AGC of up to $50,000 in all.
-- If the initial advance of $25,000 is not depleted by reimbursable expenditures, the balance remaining shall be repaid to AGC by the Counties.
- In the event that unexpected and extraordinary expenses greater than the $50,000 cap arise for the Counties in fulfilling this agreement, then in that event the parties shall engage in good faith negotiations to determine reasonably how those expenses will be covered and paid for by the parties.

D. <u>Groundwater Hydrogeology, Agricultural Practices, and Monitoring Plans</u>

1. The Parties will support a two-year groundwater study organized and approved by WDNR starting in the calendar year 2019 to be conducted in the agricultural corridor study area. The goals of the study will include: a) Identifying the 3-dimensional distribution of water containing less than 10 mg/L nitrate accessible in sufficient quantity to supply private well owners in the agricultural corridor study area; b) Identifying the 3-dimensional distribution of water in the agricultural corridor study area that could be

expected to supply water for at least 25 years under present land use; and c) Confirmation or recommendations to revise/refine the existing WDNR potable well casing recommendations for the agricultural corridor study area; d) Identifying modeled scenarios that would define land use changes that may be helpful to achieve groundwater quality goals. The WDNR and AGC agree to work together to secure funds to cover the cost of the study estimated at $225,000, and, if necessary, the Counties may be asked to contribute toward those costs. The groundwater study results will be made available to the public.

The Parties will support a farmer-led, two-year program starting in the calendar year 2019 to evaluate agricultural impacts on groundwater in the agricultural corridor study area. AGC and any other interested growers or associations will work with the WDNR and Counties to evaluate the impacts, if any, of current agricultural practices in the agricultural corridor study area on concentrations of nitrate in groundwater. This may involve groundwater monitoring networks installed upgradient and downgradient of row-crop fields to determine the impact of changes that may reduce the nitrogen loading to groundwater. Practice changes may include but are not limited to changes in crop rotations, reductions of total nitrogen applicated (accounting for all sources of nitrate), changes in the timing of applications, changes in irrigation scheduling, and the use of cover crops. Data from the program will be shared with the Counties and WDNR. Educational programs will be developed by the Counties and WDNR for residents in the agricultural corridor study area to describe the changes that are being made and the goal of the program. The producer-led groundwater program results will be made available to the public.

2. The Parties agree to develop and implement a long-term groundwater monitoring plan to investigate the status of groundwater beneath the agricultural corridor study area. The study design will be led by WDNR in consultation with the Counties and other state and federal agencies. The Parties agree to work together to secure funds to cover the cost of the long-term groundwater monitoring plan.

E. <u>General Conditions</u>

1. The Parties will each designate a representative to lead and coordinate implementation of this MOU, including communication, representation and participation.

2. WDNR will serve as a communication liaison to update the EPA as to the status of the Clean Drinking Water Plan. Monthly reports will be generated by AGC and sent to WDNR and the Counties for the first six (6) months of the program. The Parties will meet at least every month and will evaluate further reporting at the end of the first six (6) months. Such meetings may occur telephonically.

3. No Admission of Liability.

   a. The Parties acknowledge that this executed MOU presents a reasonable and voluntary approach to providing clean drinking water for residents of the agricultural corridor study area.

   b. All Parties understand, acknowledge and agree that this MOU is voluntarily entered and is not to be construed as an admission of any liability, responsibility or

wrongdoing whatsoever on the part of any party or its owners, members, participants or employees, collectively or individually, and any and all such alleged liability is expressly denied and defenses expressly reserved.

4. Notice under this MOU shall be as follows:

   a. AGC: David A. Crass, Esq.
   Michael Best & Friedrich LLP
   P.O. Box 1806
   Madison, WI 53701-1806
   Phone: (608) 283-2267
   Email: dacrass@michaelbest.com

   b. Juneau County: David E. Lasker
   Juneau County Corporation Counsel
   200 Hickory Street
   Mauston, WI 53948
   Phone: (608) 847-9321
   Email: dlasker@co.juneau.wi.us

   c. Wood County: Sue Kunferman, Director
   Wood County Health Department
   Wood County River Block Building, 3rd Floor
   111 W. Jackson Street
   Wisconsin Rapids, WI 54495
   Phone: (715) 421-8911
   Email: skunferman@co.wood.wi.us

   d. WDNR: Bruce Rheineck
   Groundwater Section Chief
   Wisconsin Department of Natural Resources
   P.O. Box 7921
   Madison, WI 53707-7921
   Phone: (608) 266-2104
   Email: bruced.rheineck@wisconsin.gov

5. This MOU is voluntary in nature and any party may withdraw from participation herein in the party's sole discretion and such withdrawal shall not affect the remaining parties' agreement to continue to perform hereunder or to terminate this MOU. All Parties understand, acknowledge and agree, that by entering into this MOU, WDNR does not waive its right to take any action authorized by law if WDNR determines such action is warranted with respect to groundwater or wells in the agricultural corridor. The Parties further agree that this MOU may be amended in the future as necessary to implement the Clean Water Plan, but such amendment shall only be effective in a writing signed by all parties then participating and agreeing to be so bound. WDNR will notify EPA of any amendment.

6. This MOU is effective as of the date of the final party to execute the MOU. The MOU will terminate on December 31, 2022.

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7. The Parties agree to meet monthly for the first six months following the effective date of this MOU to assess the implementation actions that have been completed and the actions that remain to be performed. The Parties will continue to meet on a routine basis after the first six-month period, but no less frequently than once every three months while this MOU is in effect. Such meetings can occur telephonically. Approximately six months prior to the expiration of the MOU, the Parties agree to reconsider whether the MOU should be continued or whether a revised MOU is advisable.

8. By signing below, each signatory represents and warrants that he or she has the authority to enter into this MOU and to so bind the respective party. This may be executed in counterparts and as so executed shall constitute one agreement binding on the Parties. Delivery of an executed counterpart of this MOU by email or other electronic means will be equally as effective as delivery of a manually executed counterpart of this MOU.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS THEREOF and intending to be legally bound, the Parties have caused this MOU to be executed by signature of their duly authorized respective representatives. The Effective Date is the date the final party executes the MOU.

JUNEAU COUNTY, WISCONSIN

By:_____ Date:_____
Alan K. Peterson
Juneau County Board Chairman

WOOD COUNTY, WISCONSIN

By:_____ Date:_____
Sue Kunferman
Director of Wood County Health Department

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By:_____ Date:_____
Daniel L. Meyer, Secretary
Department of Natural Resources

ARMENIA GROWERS COALITON, LLC

By:_____ Date:_____
James Wysocki, Armenia Growers Coalition, LLC
Manager

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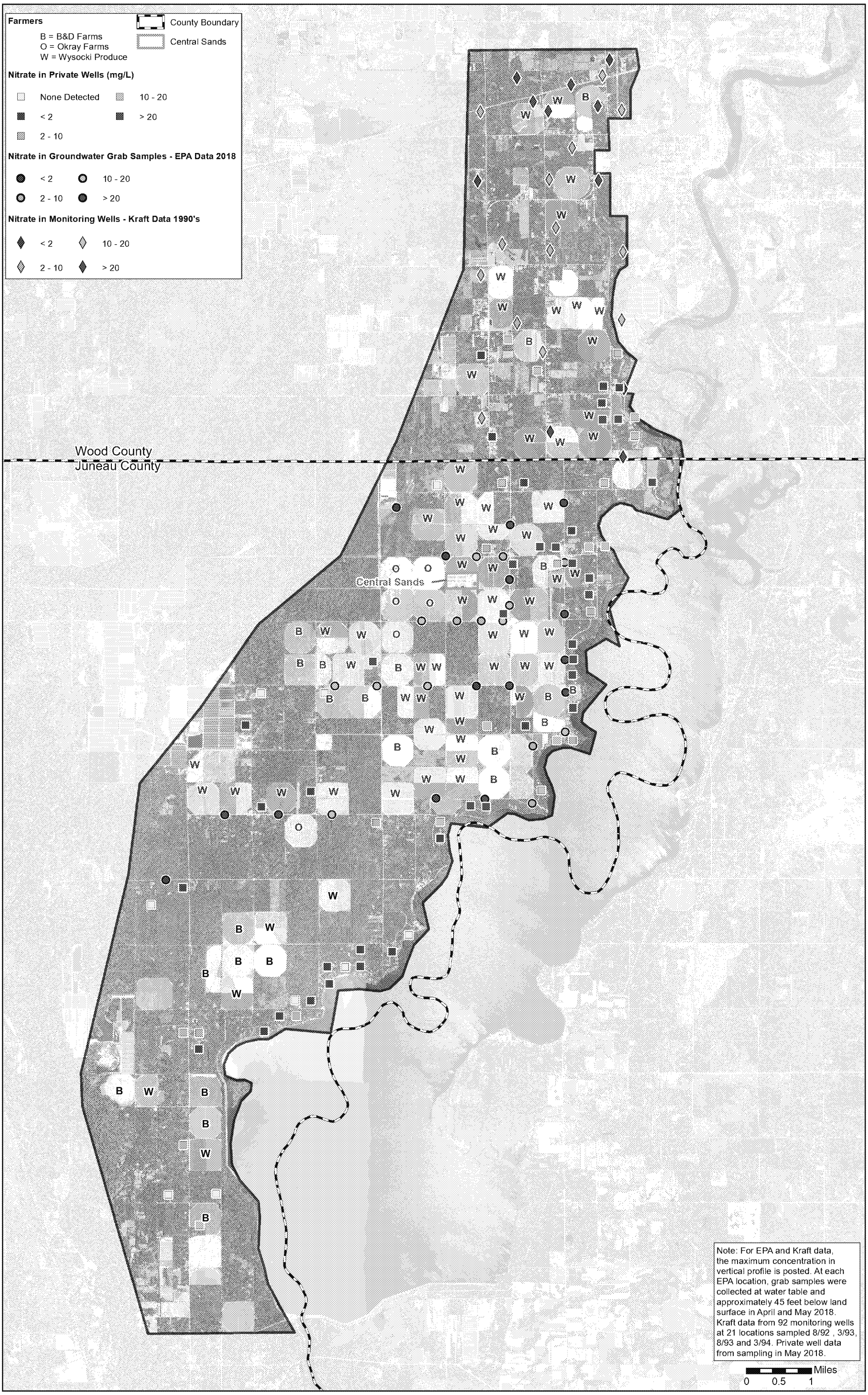
EXHIBIT A



August 22, 2018. Aerial imagery, NAIP 2015

Nitrate Concentrations (mg/L)

EXHIBIT B

ARMENIA GROWERS COALITION

GRANT OF ACCESS/
LICENSE AGREEMENT

[PROPERTY OWNER] his/hers/their heirs, successors, and assigns (the "Owner(s)"), hereby grants to ARMENIA GROWERS COALITION, LLC, its agents, contractors and plumbers, a right of reasonable access to enter upon the property located at _____, Wisconsin (the "Property"), for the purpose of inspecting the homeowner's well and associated plumbing to determine whether the infrastructure is sufficient for installation of a reverse osmosis or similar water treatment system, and, if so, for the installation of a water treatment system. The Owner(s) also consents to the performance of all activities reasonably related to the above-listed activities.

This Grant of Access and License Agreement and its conditions shall run with the property and bind current and subsequent owners and lessees of the Property until expiration. This Grant of Access and License Agreement, its terms and conditions, shall be effective from the date of signature, and shall continue for twelve months after the installation of the water treatment system. Armenia Growers Coalition shall provide Owner with at least 24 hours' advance notice prior to access. This notice can be via telephone.

In return for this license, Armenia Growers Coalition, LLC agrees to promptly provide Owner with the results of all testing completed, conduct itself in a professional and skillful manner, and to repair any damage to the residence and otherwise reasonably restore the Property to its condition prior to access by the Coalition or its agents, contractors and plumbers.

Dated this _____ day of _____, 2018.

PROPERTY OWNER

Printed Name: _____

Signature:_____

Address where
access is granted:_____

_____

ARMENIA GROWERS COALITION, LLC

By:_____

Name:_____

Title:_____

P.O. Box 330 Bancroft, WI 54921-0330 Phone: 715-335-8486