UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

MEMORANDUM

TO: Lower Umatilla Basin – Phase I Task Force

FROM: Ed Kowalski, Daniel Opalski, Tony Barber, Lucy Edmondson

SUBJECT: Lower Umatilla Basin Petition Phase I Task Force Charter

Purpose:

The purpose of the Phase I Task Force is to assess the content of the petition submitted by nine parties through a package dated January 16, 2020 regarding nitrate contamination of groundwater in the Lower Umatilla Basin, located in northeastern Oregon. The petition requests that EPA exercise its emergency authorities under the Safe Drinking Water Act (i.e. Section 1431).

Scope:

The Phase I Task Force's scope involves two tasks.

TASK 1: Assessment of the Petition and Appendices: The Phase I Task Force shall make specific team assignments to assess and answer these governing questions:

(1) Is the data on which the claims are based verifiable, has the data been presented accurately in the petition, and does the data available from State agencies confirm the representations made in the petition?

(2) Is the petition package so compelling and so well substantiated that EPA should issue an immediate 1431 order?

(3) If question 2 is "no", is the substantiation behind the claims of imminent and substantial endangerment of drinking water substantial enough to warrant further inquiry with State agencies?

(4) Does the petition package result in a substantial question about the adequacy of the State's actions to date, thereby warranting further inquiry with the State agencies?

(5) Does the petition package result in a substantial question about the effectiveness of the LUB GWMA and more specifically, the effectiveness of voluntary approaches?

TASK 2: Action Planning:

If the answer to all five governing questions is "no" and moreover, if the petition package - as submitted - is found to be dubious or without merit, a written response informing the petitioner of EPA's

findings will be developed, and a summary of the Task Force basis of decision shall be entered into the record.

If the answer to any of the above questions is "yes", an appropriate action plan for initiating oversight activities, necessarily involving external interactions with the State of Oregon and stakeholders, will be developed. Task 2, under this task force assignment shall include developing the scope, staff assignments and the associated task force charter for the follow-on inquiry.

Restrictions and Parameters:

The scope of this Phase I Task Force is limited to the Task 1 and 2, described above. The Task Force activities will primarily involve internal activities and minimal (i.e. informal) interaction with the State of Oregon. The informal interaction with the State will be limited to confirmation that EPA is utilizing accurate data for assessment, and to determine what enforcement or compliance assistance steps the State has taken related to public water systems affected by nitrates in eastern/central Oregon.

The execution of an inquiry activity, if it were to occur, would follow from the approval of the action plan resulting from this Task Force.

Communication Plan:

At the initiation, the Task Force will work with the Office of Public Affairs to prepare a general statement of initial response based on the scope and approach described in this charter.

Charge:

The individuals assigned to this Task Force are expected to treat the work as an urgent and high priority, and for the purposes of the effort, be responsive contributors to investigating the governing questions in Task 1.

Timeframe:

The results of this Task Force shall be complete and recommendation(s) presented to the executive sponsors by February 26, 2020, so that an interim or final response may be sent to the petitioner in early March 2020.

Executive Leadership (Sponsors):

Edward Kowalski (Director, Enforcement and Compliance Division), Daniel Opalski (Director, Water Division), Lucy Edmondson (Agriculture Sector Executive), Tony Barber (Director, Oregon Operations Office)

Executive Team Representative:

Lucy Edmonson. The purpose of this role will be to liaise between the Task Force and the Region 10 Executive Leadership. Where appropriate, offer guidance to the Task Force should additional questions of scope and intent arise during the activities.

Operational Leadership of the Task Force:

Jointly by Jeff Kenknight (Chief, Water Enforcement and Field Branch) and Mat Martinson (Chief, Permitting, Drinking Water and Infrastructure). These individuals shall have authority to make assignments, set intermediate deadlines and generally, manage the implementation of the Phase I Task Force on behalf of Region 10 EPA.

Staff Participation and Role:

In all roles, the staff will be reviewing information with a focus on the governing questions above, and the development of an action plan (Task 2), if determined appropriate.

Staff, Title:	Role:
Nick Peak, Agriculture Sector Lead	Review information related to agricultural practices and contributions to nitrate pollution. Review the second LUB GWMA plan. Contribute to the administrative record, and if pursued, the scoping and planning of Phase II of the Task Force.
Peter Contreras, Section Chief Drinking Water Enforcement	Evaluate public water system compliance. Contribute to the administrative record, and if pursued, the scoping and planning of Phase II of the Task Force.
Karen Burgess, Section Chief Groundwater and Drinking Water	Evaluate public water system compliance. Contribute to the administrative record, and if pursued, the scoping and planning of Phase II of the Task Force.
Eric Winiecki, Compliance Officer	Review data related to nitrate contamination of individual wells in the petition. Review publicly-available data relating to the same. Contribute to the administrative record, and if pursued, the scoping and planning of Phase II of the Task Force.
Adam Baron, Enforcement Specialist	Review Oregon OHA public water system data regarding nitrates, enforcement actions, and violations in readily available data. Contribute to the administrative record, and if pursued, the scoping and planning of Phase II of the Task Force.
Jennifer MacDonald, Attorney Advisor	Review the legal merits and rationale applied in the petition. If pursued, provide advice and counsel related to the scope and limitations of Phase II of the Task Force.
Clarke Thurmon, Attorney Advisor	Review the legal precedent and specific the use of section 1431 as it relates to nitrate contamination attributed to agricultural practices. If pursued, provide advice and counsel related to the scope and limitations of Phase II of the Task Force.

cc:

Regional Administrator, EPA Region 10

Deputy Regional Administrator, EPA Region 10