

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

COW PALACE, LLC; THE
DOLSEN COMPANIES; THREE D
PROPERTIES, LLC; GEORGE &
MARGARET, L.L.C.; GEORGE
DERUYTER AND SON DAIRY,
L.L.C.; D AND J DAIRY, L.L.C.
(f/k/a D AND A DAIRY, L.L.C.);
LIBERTY DAIRY, LLC; ARIZONA
ACRES LIMITED PARTNERSHIP;
LIBERTY ACRES LLC; BOSMA
DAIRY PARTNERS, LLC; BOSMA
ENTERPRISES, INC.; HENRY
BOSMA; HENRIETTA BOSMA;
and
KATHLEEN NICOLAUS,

Defendants.

NO. 1:24-CV-3092-TOR

ORDER DENYING MOTION TO
STAY PENDING APPEAL

1 BEFORE THE COURT are Defendant Dairies' Motion for Stay of
2 Preliminary Injunction Pending Appeal (ECF No. 85) and Motion to Expedite
3 (ECF No. 86). This matter was heard without oral argument. The Court has
4 reviewed the record and files herein and is fully informed. For the reasons
5 discussed below, Defendant Dairies' Motion for Stay of Preliminary Injunction
6 Pending Appeal, ECF No. 85, is DENIED.

7 **BACKGROUND**

8 This case concerns Defendants' manure management practices at dairy
9 operations in the Lower Yakima Valley that are contaminating downgradient
10 residents' drinking water. As a result, the United States, on behalf of the U.S.
11 Environmental Protection Agency ("EPA") seeks a preliminary injunction under
12 Section 1431 of the Safe Drinking Water Act ("SDWA") requiring Defendants to
13 immediately provide alternative water to impacted residents; resume appropriate
14 monitoring of nitrate in groundwater; and address potential leakage from a manure
15 storage lagoon. The high nitrate levels in the groundwater are an extreme danger
16 to the public's health.

17 **DISCUSSION**

18 A party seeking a preliminary injunction before a district court bears the burden
19 of establishing:
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1 (1) that he is likely to succeed on the merits, (2) that he is likely to suffer
2 irreparable harm in the absence of preliminary relief, (3) that the balance of
3 equities tips in his favor, and (4) that an injunction is in the public interest.
4 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). By comparison, after
5 a district court issues a preliminary injunction, the losing party seeking a stay of
6 that injunction bears the considerably heavier burden of establishing:

7 (1) [that] the stay applicant has made a strong showing that he is likely to
8 succeed on the merits; (2) [that] the applicant will be irreparably injured
9 absent a stay; (3) [that] issuance of the stay will [not] substantially injure
10 the other parties interested in the proceeding; and (4) [that] the public
11 interest lies [with the issuance of a stay].

12 *Nken v. Holder*, 556 U.S. 418, 426 (2009) (emphases added) (citation omitted).

13 The stay applicant bears the substantial burden of strongly showing that it is the
14 party who is likely to succeed on the merits. The applicant must establish it “will
15 be irreparably injured absent a stay.” *Nken*, 556 U.S. at 434 (emphasis changed).

16 Given the higher standards and inverted burdens, it is no surprise that stay
17 applications are (and should be) denied most of the time; they are granted even
18 more infrequently than are preliminary injunctions, which are themselves an
19 “extraordinary remedy.” *Winter*, 555 U.S. at 22.

1 To obtain a stay, Defendants must make a strong showing that they have a
2 likelihood of success on the merits. This they have not done. Defendants have not
3 and cannot make a strong showing that the nitrate from their properties does not
4 present an imminent and substantial endangerment to the down gradient public that
5 are drawing drinking water from the ground.

6 Defendants have not shown that their work so far has abated the imminent
7 and substantial threat to the public health posed by Defendants' operations.
8 Further, actions by state and local authorities have not abated this threat to the
9 public.

10 Defendants alleged financial harm is insufficient to warrant a stay when the
11 public's health is at issue. Many residents are not provided with safe drinking
12 water, their wells are not being regularly tested, and their reverse osmosis water
13 treatment systems are not being maintained.

14 Because of the severe and imminent endangerment to downgradient
15 residents, a stay is not warranted in this case. The high nitrate levels in the
16 groundwater are an extreme danger to the public's health and a stay would cause
17 more danger. The public interest weighs heavily in favor of granting preliminary
18 injunctive relief without a stay.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Defendant Dairies' Motion to Expedite, ECF No. 86, is **GRANTED**.

3 2. Defendant Dairies' Motion for Stay of Preliminary Injunction Pending
4 Appeal, ECF No. 85, is **DENIED**.

5 The District Court Executive is directed to enter this Order and furnish
6 copies to counsel.

7 **DATED** December 27, 2024.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge