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DIVISION II  
OF THE STATE OF WASHINGTON

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PUGET SOUNDKEEPER ALLIANCE, COMMUNITY ASSOCIATION  
FOR RESTORATION OF THE ENVIRONMENT (CARE), FRIENDS  
OF TOPPENISH CREEK, SIERRA CLUB, WATERKEEPER  
ALLIANCE, CENTER FOR FOOD SAFETY, and RE SOURCES FOR  
SUSTAINABLE COMMUNITIES, and WASHINGTON STATE DAIRY  
FEDERATION and WASHINGTON FARM BUREAU,

Petitioners,

vs.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, and  
STATE OF WASHINGTON POLLUTION CONTROL HEARINGS  
BOARD,

Respondents.

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**WASHINGTON STATE DAIRY FEDERATION AND  
WASHINGTON FARM BUREAU'S OPENING BRIEF**

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## I. INTRODUCTION

The Washington Dairy Federation and the Washington Farm Bureau (collectively hereafter “WSDF”) members are dairy farmers and farmers. AR 000124–25. These farmers, like many other people living and working in Washington, seek to protect ground and surface water. AR 005084:1–11. To that end, WSDF members sought a Concentrated Animal Feeding Operation (“CAFO”) permit that is reasonable, attainable, and protective of Washington ground and surface water. *Id.*

The Washington State Department of Ecology (“Ecology”) issued a CAFO Permit, which is a combined National Pollutant Discharge Elimination System (“NPDES”) and State Waste Discharge General Permit (“Combined NPDES Permit”), and a CAFO State Discharge General Permit (“State Only Permit”) (collectively, “the CAFO Permits”), both of which imposed a restriction that prevented the land application of nutrients “[a]fter October 1 and prior to T-SUM 200 unless ... applied in accordance with special condition S4.J.4.” Petition for Review (“Petition”), Ex. B at 21.<sup>1</sup>

Following a hearing on appeal, the Pollution Control Hearings Board (“PCHB” or the “Board”) issued its Findings of Fact, Conclusions of

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<sup>1</sup> “T-SUM 200” is the accumulated mean daily temperatures above zero degrees Celsius, and is used to pinpoint the start date for when nutrients can be applied to a growing crop under Section S4.J.3.d of the CAFO Permits (restricting application of nutrients). CP000129 fn. 1; CP000175.

Law, and Order (“the Order”), reversing one issue in favor of WSDF but otherwise affirming the CAFO Permits, including the T-SUM 200 provision. AR 003399–45.

There was no basis for imposing a T-SUM 200 restriction for Eastern Washington. Although restricting nutrient application by T-SUM 200 is workable in Western Washington, there is no evidence that it works in Eastern Washington, where temperature variation is more extreme. AR 005008. T-SUM 200 is unworkable in such climates and in fact serves to prevent farmers from applying nutrients (otherwise referred to as manure) to crops planted so that the crops can absorb the nutrients at the appropriate times. This restricts crop yield, resulting in a reduced uptake of nutrients by the crops, which in turn provides less protection to groundwater. AR 005008–09.

It was error for the PCHB to affirm the T-SUM 200 restriction for Eastern Washington because there was no evidence—let alone substantial evidence—that T-SUM 200 would be an appropriate requirement for Eastern Washington or any similar climate. It was also error for PCHB to find that WSDF requested that the T-SUM 200 standard be used in the CAFO Permits. PCHB’s Finding of Fact No. 51 regarding T-SUM 200 was reversible error. Further, to the extent that the PCHB’s Conclusion of Law No. 20 (stating, *inter alia*, that “[c]ondition S4.J.4 of the Permits addresses

double cropping, winter cover crops, and perennial crops”) relied upon the erroneous aspects of Finding of Fact No. 51, it was contrary to law and arbitrary and capricious. Accordingly, WSDF requests that this Court reverse in part and remand with instruction for the PCHB to conduct further proceedings.

## **II. ASSIGNMENTS OF ERROR**

The PCHB erred in affirming the portions of the CAFO Permits that imposed a T-SUM 200 requirement in Eastern Washington and in issuing Finding of Fact No. 51, Conclusions of Law 20 and 21, and the Order. The factual findings were not supported by substantial evidence, and the legal conclusions were contrary to law, arbitrary and capricious.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. There was no evidence, let alone substantial evidence, to find that T-SUM 200 was an appropriate limitation for Eastern Washington. Therefore, PCHB’s Finding of Fact No. 51 constitutes reversible error.

2. There was no evidence, let alone substantial evidence, to find that WSDF requested that T-SUM 200 be applied to land in Eastern Washington. Therefore, PCHB’s Finding of Fact No. 51 constitutes reversible error.

3. It was contrary to law to affirm the requirement of T-SUM 200 in Eastern Washington in the CAFO Permits because doing so violated

the all known, available, and reasonable methods of prevention, treatment, and control or “AKART” standard applicable to the CAFO Permits. Therefore, reversal on this limited issue is warranted.

4. There was no evidentiary or legal basis upon which to affirm the requirement of T-SUM 200 in Eastern Washington in the CAFO Permits. Therefore, the PCHB’s affirmance was arbitrary and capricious, warranting reversal on this limited issue.

#### **IV. STATEMENT OF THE CASE**

##### **A. T-SUM 200 and its state-wide application in the CAFO Permits**

The CAFO Permits contain land application restrictions for manure and other sources of nutrients. AR 003811:7–13:21. Under Section S4.J.3.d of the CAFO Permits, farmers are not permitted to apply manure or other organic nutrients to land where there is a high risk of discharge of pollutants into waters of the state. Section S4.J.3.d of the CAFO Permits lists the following restrictions to land application of nutrients:

- (i) To fields with a frozen surface crust (2 inches) or deeper, or if the soil is at or below zero degrees Celsius (32 degrees Fahrenheit).
- (ii) To fields that are snow covered.
- (iii) To fields with saturated soil.
- (iv) If the water table is within 12 inches or less of the surface.

- (v) If precipitation is forecast in the next 24 hours for the facility location that will cause a discharge from the Permittee's land application fields.
- (vi) After October 1 *and prior to T-SUM 200* unless the manure, litter, process wastewater, or other organic by-products are applied in accordance with special conditions S4.J.4.
- (vii) To fields that are bare (no perennial crop) unless the Permittee is preparing the bare field for the current year's annual crop (planting within 30 days of land application). Special condition S4.M applies to fields that are being prepared for a crop.

AR 000150–51 (emphasis added). Subsection vi prohibits application of nutrients prior to T-SUM 200.

WSDF expert witness Mr. Haggith testified that T-SUM 200 was developed in the 1980s by fertilizer companies looking for the most beneficial timing to start applying nitrogen to grass crops. AR 005001:17–5002:10. He further explained that it is a standard used to apply commercial fertilizer, which has a far more dense nitrogen content than manure. *Id.* Ecology's literature review states it was developed for Western Oregon; it does not mention use in Eastern Oregon or Eastern Washington. AR 007185.

The Farmwest website, which is a farm resource from British Columbia, Canada, has the following easy-to-follow example of T-SUM 200 and is an indication of its use in temperate, rainy climates:

T-Sum 200 is a method to determine when to

make the first application of nitrogen fertilizer in spring. The T-SUM value is the accumulated mean daily temperatures (in °C) above zero, starting on January 1 (below-zero temperatures are ignored). For example, if the mean daily temperatures for a 5-day period were 6, 3, 0, 1, and -4°C, the T-SUM total is 10. The “T-Sum” concept assumes that rate of spring growth is related to accumulated mean temperature.

Research carried out first in the Netherlands and the UK, then confirmed in coastal BC, demonstrated that grass crops respond well to spring fertilizer that is applied when T-SUM is between 200 and 300. New manure management guidelines in BC recommend that early-spring manure application on grass be delayed until T-Sum reaches 200. In coastal BC, T-SUM 200 is generally reached between mid-Feb and mid-March.<sup>2</sup>

Similarly, Mr. Haggith testified that T-SUM 200 is reached in Whatcom County around the same time—the first half of February. AR 005001:11–15. This is no surprise, as the climates in Western Washington, Western Oregon, British Columbia, and the United Kingdom are similarly temperate and rainy in the springtime, unlike the climate in Eastern Washington. AR 007185.

#### **B. Eastern Washington climate**

The Western Regional Climate Center sums it up thusly: “East of

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<sup>2</sup> Pacific Field Corn Association, What Is T-Sum?, FARMWEST, <https://farmwest.com/node/937> (last visited Aug. 15, 2019).

the Cascades, summers are warmer, winters are colder and precipitation is less than in western Washington.”<sup>3</sup> It is common for Eastern Washington to experience wide fluctuations in daily temperature in the winter/early spring. *Id.* (“During the coldest months, a loss of heat by radiation at night and moist air crossing the Cascades and mixing with the colder air in the inland basin results in cloudiness, fog and occasional freezing drizzle. A ‘chinook’ wind which produces a rapid rise in temperature occurs a few times each winter.”).

Crops that grow well in the Eastern Washington climate are not the same crops grown in Western Washington. WSDF expert witnesses testified that crops that grow best in Western Washington, like grasses, are not commonly grown in Eastern Washington. AR 004896:24–97:19; AR 004982:2–83:15. In Eastern Washington, they more often grow alfalfa and double crop with triticale. *Id.*

**C. Application of T-SUM 200 in Eastern Washington is untested, counterproductive, and unnecessary.**

T-SUM 200 was not developed to be used in climates like that in Eastern Washington. It was developed, tested, and approved in mild and wet climates such as Western Washington and Oregon; B.C., Canada; and

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<sup>3</sup> Western Regional Climate Center, Climate of Washington, WRCC, <https://wrcc.dri.edu/narratives/WASHINGTON.htm/>, (last visited Aug. 15, 2019).

the U.K. AR 005469. It is a cumulative measure. AR 000175. Temperatures under zero degrees Celsius are dropped and temperatures above zero degrees Celsius are added together until the count reaches 200 degrees. *Id.* The method is based on the relationship between the rate of spring growth and accumulated temperature in such moderate climates. AR 005469.

Due to the more extreme climate and weather conditions in Eastern Washington (e.g., wide fluctuations in daily temperature, etc.), the air temperature is not necessarily an accurate reflection of soil conditions or temperature. AR 005020. There is no studied or established relationship between spring growth and the accumulated mean temperature in Eastern Washington. Spring crop growth could be well underway prior to T-SUM 200 in the eastern part of our state. The CAFO Permit restriction will then prevent application of nutrients when crops could most use them (i.e., in the spring). T-SUM 200 is not a reasonable methodology for protecting groundwater in Eastern Washington.

Application of T-SUM 200 in Eastern Washington is counterproductive and harmful to dairy operations. As Mr. Haggith testified at hearing, an efficient dairy farm epitomizes the ultimate recycling model. AR 004978:19–79:11. Dairy farms recycle their nutrients. *Id.* They use them to grow crops to feed their herds, which in turn produce nutrients that fertilize the next season of feed crops. *Id.* Agronomic application of

nutrients is integral to efficient dairy operations. AR 004985–86. In this cycle, the quality of the feed crop matters for the production of milk, which, when it is at its best, results in higher quality manure that is in turn used as fertilizer to grow crops. And the cycle begins again. *Id.*

But when a farmer is prevented from applying nutrients when needed, this results in poor crop yield and production, which when fed to the cows, results in lower quality milk and thus lower quality manure and nutrients for the crops. The CAFO Permits, as currently drafted, require Eastern Washington farmers to apply a method developed for a different climate than theirs to determine the start date of nutrient application. Their dairy operations and economic viability depend on fertilizing correctly so as to grow the necessary productive crops to feed their herd. Their ability to protect groundwater also depends, in large part, on their ability to grow the most productive crops so as to maximize the uptake of nutrients and prevent groundwater impacts. Where Ecology’s approach prevents them from correctly applying fertilizer to grow the type of crops that will adequately feed their herds and prevent groundwater impacts, the CAFO Permits become counterproductive and harmful both to the regulated community and the groundwater they are meant to protect. AR 000150–51; AR 004978:19–79:11; AR 004985–86.

T-SUM 200 is not needed in Eastern Washington. The purpose of

CAFO Permit section S4.J.D is to prohibit land application of manure or other organic nutrients where there is a high risk of discharge of pollutants into waters of the state. AR 000150–51. In Eastern Washington, where springtime does not necessarily mean rainy weather, the other restrictions in the permit already fully prevent discharges and are protective of groundwater, as Mr. Haggith testified at the hearing:

Q: And what are those conditions, if you would list them for me? What—when can you not apply under this permit?

A: Can't apply to fields that have got a frozen crust or if the soil is below zero degrees Celsius; to fields that are snow covered or to fields with saturated soil, or if the water table is within 12 inches or less of the surface; and then also if precipitation is forecast within the next 24 hours; and then to fields that are bare unless the permittee is preparing the field for the next year's crop.

Q: And the reason why that's protective is because of climate?

A: It's—yes. Because climate is just—you're not expecting the kind of rain events that we get in Western Washington with great regularity in the spring.

Q: So it's your opinion to use ARM on the western side of the state to make that determination; is that correct?

A: Yes.

Q: And on the eastern side of the state, you think you can rely on the permit terms as they stand without using the artificial date of T-sum 200; is that correct?

A: I do, yes.

AR 5008:13–09:22.

## V. STANDARDS OF REVIEW

This Court reviews PCHB’s decision by applying the standards of review in RCW 34.05.570 directly to the agency record. *Foster v. Dep’t of Ecology*, 184 Wn.2d 465, 471, 362 P.3d 959 (2015). Agency action may be reversed where, *inter alia*, the agency has erroneously interpreted or applied the law, the agency’s order is not supported by substantial evidence, or the agency’s decision is arbitrary and capricious. RCW 34.05.570(3)(d), (e), and (i). This Court reviews an interpretation of law de novo, and its goal is to effectuate legislative intent, giving effect to the plain meaning of ordinary statutory language and the technical meaning of technical terms and terms of art. *Postema v. Pollution Control Hr’gs Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000).

Findings of fact must be supported by substantial evidence, which is “evidence sufficient to persuade a fair-minded person of their truth.” *City of Vancouver v. Pub. Emp’t Relations Comm’n*, 107 Wn. App. 694, 703, 33 P.3d 74 (2001); *see also Terry v. Employment Sec. Dep’t*, 82 Wn. App. 745, 748–49, 919 P.2d 111 (1996). Conclusions of law are reviewed de novo. *Id.*

An agency’s action is arbitrary and capricious if it “is willful and unreasoning and taken without regard to the attending facts or

circumstances.” *Att’y Gen.’s Office v. Utils. & Transp. Comm’n*, 128 Wn. App. 818, 824, 116 P.3d 1064 (2005) (quoting *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997)).

## VI. ARGUMENT

The PCHB erred in upholding the CAFO Permits due to the application of T-SUM 200 in Eastern Washington. There was no evidence, let alone substantial evidence, to make findings of fact that it was appropriate to require T-SUM 200 in Eastern Washington. The decision is based on an erroneous application of law, is not supported by substantial evidence, and is arbitrary and capricious.

Where Ecology seeks to impose control methods, they must use known, available, and reasonable methods of prevention, treatment, and control or AKART standards. AKART standards must be reasonable, economically feasible, and technically feasible. *Weyerhaeuser Co. v. Sw. Air Pollution Control Auth.*, 91 Wn.2d 77, 82, 586 P.2d 1163, 1166 (1978); *Puget Soundkeeper v. State*, 102 Wn. App. 783, 793, 9 P.3d 892 (2000); AR 003875:24–77:19; AR 003880:15–18.

### A. Laws applicable to CAFO Permit drafting

Both state and federal law apply to Ecology’s issuance of the CAFO Permits. The federal Clean Water Act (“CWA”) and the state Water Pollution Control Act (“WPCA”), RCW 90.48, govern the Combined

NPDES Permit. The State Only Permit is governed only by the WPCA. The legal framework imposed by both the CWA and the WPCA requires the regulating entity—in this case, Ecology—to develop and implement standards that are both protective of the environment and reasonable, considering the efficacy of the measures and the burden imposed on regulated industries.

Ecology is authorized to issue general permits to groups of similar operations or organizations with similar types of discharge. WAC 173-226-050(3)(b). WAC chapter 173-226 establishes Washington’s state general permit program and applies to both state and combined NPDES discharge general permits. Permits issued under this chapter must insure compliance, “whenever applicable,” with technology-based treatment requirements reflecting “all known, available, and reasonable methods of prevention, treatment, and control” (“AKART”) through various methods. WAC 173-226-070(1)(d). Under this framework, AKART is the prevailing standard when it comes to Ecology’s implementation of technology-based permit conditions. The words “known, reasonable, and available” serve as limitations on Ecology’s discretion to impose overly burdensome conditions on the regulated community. *See Weyerhaeuser Co.*, 91 Wn.2d at 82; *Puget Soundkeeper*, 102 Wn. App. at 793. The reasonableness element of the AKART standard requires that Ecology-imposed standards

be “both economically and technically feasible.” *Id.*

**B. The PCHB lacked evidence to find that T-SUM 200 is an appropriate standard in Eastern Washington and that the Dairy Federation requested Ecology to use T-SUM 200.**

Ecology had no particular reason to select T-SUM 200 for Eastern Washington, and no scientific basis for it, as established by testimony from Jon Jennings and Melanie Redding of Ecology. Ecology received comments to the draft CAFO Permits objecting to “spring green up” as too vague of a descriptor of when land application of manure could commence, and as T-SUM 200 was mentioned by the commenters, it was chosen as the timing tool for application of nutrients in the spring across the state. AR 003834:3–16; AR 004003:1–17.

Ecology did not look at any other models: “[W]e looked at the comments and said, ‘Well, there’s a tool there that’s available. Generally folks accept T-SUM 200 as a good place to start.’” AR 003834:17–24.

Ecology specifically noted that WSDF submitted comments advising the use of T-SUM 200, and the PCHB based its finding on Ecology’s assertion. AR 003532 at Finding of Fact No. 51 (stating, “In its comments on the draft permits, the Dairy Federation stated that it did not understand the term ‘spring green up’ and requested that Ecology replace spring green up with T-SUM 200 as it is a standard timing guideline.”).

Indeed, WSDF Executive Director Dan Wood submitted the following comment on the draft CAFO Permits regarding T-SUM 200:

“Spring green up” is not a term we understand. T-Sum 200 is one standard timing guideline. Please revise this language to include understandable terms that are consistent with the guidelines of NRCS, WSDA, CDs, and other recently developed guidelines. For additional information see: <https://catalog.extension.oregonstate.edu/sites/catalog/files/project/pdf/em8852.pdf>.

AR 007874.

This was not a request to apply T-SUM 200 statewide. Mr. Wood was simply providing an example of standards that were relatively easy to understand. Indeed, Mr. Wood clarified in his testimony that he simply was pointing out different tools that he was aware had been used. AR 005127:12–20 (stating that “[t]he concern was that was a very fuzzy phrase and that there are other options out there that are more specific, and T-Sum was an example of that, but it is certainly not the only example”). This reference to a timing tool example that works in Western Washington was not meant to impose a statewide standard that is untested, untried, and unproven in the Eastern side of the state. In fact, Mr. Wood notably referenced article EM8852 for more information in his comments; this article disclaims any benefit from T-SUM 200’s application to colder, drier climates. *See* AR 005469; *see* discussion *supra*.

In Finding of Fact No. 51, the PCHB erred in finding that the Dairy Federation requested that Ecology replace spring green up with T-SUM 200. There was no evidence, much less substantial evidence, to support this fact, and all evidence presented at the hearing was to the contrary. In addition, there was no evidence suggesting a particular reason Ecology selected T-SUM 200 as a state-wide standard. Instead, the evidence presented at trial was that Ecology chose the standard out of convenience and did not look at other models. AR 003834:3–16; AR 004003:1–17; AR 003834:17–24. To the extent that Finding of Fact is based upon the idea that T-SUM 200 is appropriate state-wide simply because Western Washington farmers are familiar with it is erroneous and was not based on substantial evidence. The PCHB’s affirmation of the CAFO Permit’s use of T-SUM 200 in Eastern Washington was reversible error.

**C. As applied to Eastern Washington, T-SUM 200 is not an AKART standard, and its inclusion as a restrictive CAFO Permit term is an error of law.**

Affirmance of the T-SUM 200 requirement as applied to Eastern Washington, where it is untried and untested, was contrary to law, and specifically did not constitute an AKART standard, was unsupported by substantial evidence, and was arbitrary and capricious.

AKART is the prevailing standard when it comes to Ecology’s implementation of technology-based permit conditions, as required by the

Washington Administrative Code. WAC 173-226-070(1)(d). Application of T-SUM 200 in Eastern Washington violated the principles of AKART.

T-SUM 200 has not been tested for Eastern Washington climates. Ecology did not refer to any study or reference to demonstrate or confirm that T-SUM 200, designed for a Western Washington-type climate, would have the same effect in Eastern Washington, or whether the rate of spring crop growth is related to T-SUM 200's accumulated air temperature in the Eastern Washington climate. AR 004002:6–18; AR 004079:4–6; and AR 004269:13–70:9 (Ecology expert witness Ms. Redding testifying she had not reviewed information confirming that T-SUM 200 had been used before on the Eastern side of the state).

It is not economically feasible to require farmers in half of the state to adhere to an unreasonable, untested, and untried standard as applied to their dairy operations and farming methods. AR004804:21–05:7.

Ecology did not present any evidence that the imposition of T-SUM 200 in Eastern Washington was based on scientific principles, that it had been used in Eastern Washington, or that it had been tested and verified for the Eastern Washington climate (i.e., that it was a reasonable method to prevent or control pollution).

The only evidence presented at the hearing was that T-SUM 200 was inappropriate for Eastern Washington. WSDF presented evidence that T-

SUM 200 is not suited for the Eastern Washington climate via WSDF expert witness David Haggith:

Q: I want to return to T-sum 200 briefly. Just to be clear, does T-sum 200—was it designed to work in Eastern Washington?

A: No.

Q: And does it work in Eastern Washington?

A: Not that I've seen. The climate is just so different. I mean, talking about high desert versus a temperate coastal zone. And also the crops like alfalfa that are just—it was never designed for that sort of crop.

AR 005020:5–14. As support for his opinions, Mr. Haggith included an excerpt and a reference to the article EM8852-E, “*Early Spring Forage Production for Western Oregon Pastures*,” G. Pirelli et al., Oregon State University. Included in Mr. Haggith’s excerpt and the article is the following statement: “In western Oregon, application of N at T-Sum 200, 2 to 3 months before traditional N applications, produces feed 1 to 3 weeks earlier. In colder, drier climates such as eastern Oregon, a consistent economic increase in early forage production has not been realized from T Sum application.” AR 005469.

The climates for Eastern Oregon and Eastern Washington are similar, as are the climates for Western Oregon and Western Washington. The evidence at hearing established that T-SUM 200 is not suited for

Eastern Washington. This evidence was not countered, rebutted, or contradicted by any testimony or exhibit presented by Ecology.

The CAFO Permit use of T-SUM 200 as applied to Eastern Washington is not compliant with AKART. It is not reasonable to impose a standard that is untested; it is not technically feasible to impose a standard that is untried. AKART standards must also be economically feasible. *Weyerhaeuser Co.*, 91 Wn.2d at 81–82 (“The terms ‘known’ and ‘available’ indicate that SWAPCA may not require an applicant to develop new technology to advance the art of emission control. The ‘advance’ must be ‘known’ in the sense that it has been tested and found to control emissions effectively and efficiently.”)

The PCHB made an error of law in upholding the CAFO Permit requirement of the use of T-SUM 200 in Eastern Washington. In addition, there was no evidence or legal basis to affirm the PCHB’s Finding of Fact No. 51, and to the extent that the PCHB’s Conclusions of Law No. 20 and 21 relied upon the erroneous facts, the PCHB’s affirmation was also arbitrary and capricious.

## **VII. CONCLUSION**

Ecology’s selection of T-SUM 200 missed the mark. It is not a specific tool that can be used in Eastern Washington, and it is not a known, reasonable, or feasible technical solution to preventing groundwater

pollution in Eastern Washington.

The PCHB's affirmation of Ecology's application of T-SUM 200 in Eastern Washington was in error. There was no evidence that T-SUM 200 was appropriate for the Eastern Washington climate. All of the evidence at hearing was that T-SUM 200 was untested, unused, and, thus, inappropriate if applied to Eastern Washington. As a result, the PCHB's affirmance of that aspect of the CAFO Permits was contrary to law because it did not follow AKART. Moreover, it was unsupported by substantial evidence and, therefore, arbitrary and capricious.

This Court should, therefore, reverse and remand for further proceedings on the limited issue of requiring the use of T-SUM 200 in Eastern Washington.

Dated this 15<sup>th</sup> of August, 2019.

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**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 15<sup>th</sup> day of August, 2019, I arranged for service of the foregoing **WASHINGTON STATE DAIRY FEDERATION AND WASHINGTON FARM BUREAU'S OPENING BRIEF** on the following parties and/or counsel of record via *Electronic Court E-Service* as follows:

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**August 15, 2019 - 3:43 PM**

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