

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

HANFORD CHALLENGE, UNITED ASSOCIATION OF PLUMBERS AND STEAMFITTERS LOCAL UNION 598, and THE STATE OF WASHINGTON,

Plaintiffs,

v.

ERNEST MONIZ, in his official capacity as Secretary, UNITED STATES DEPARTMENT OF ENERGY, and WASHINGTON RIVER PROTECTIONS SOLUTIONS, LLC,

Defendants.

NO: 4:15-CV-5086-TOR

ORDER DENYING PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTIONS TO STRIKE

BEFORE THE COURT are the State of Washington's Motion for Preliminary Injunction (ECF No. 48), Citizen Plaintiffs' Motion for Preliminary Injunction (ECF Nos. 74, 75), United States' Motion to Strike or for Leave to File Supplemental Declaration (ECF No. 193) and Motion to Expedite (ECF No. 194), and Washington
ORDER DENYING PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTIONS TO STRIKE ~ 1

1 River Protection Solutions, LLC’s Objection to Plaintiffs’ Reply Memorandum and
2 Other Evidence (ECF No. 192) and Motion to Expedite (ECF No. 191). These
3 matters were heard with oral argument on October 12, 2016.

4 Meredith A. Crafton, Richard Webster, Richard A. Smith, and Blythe H.
5 Chandler appeared on behalf of Plaintiffs Hanford Challenge and United Association
6 of Plumbers and Steamfitters Local Union 598. John A. Level, Kelly T. Wood, and
7 William R. Sherman appeared on behalf of Plaintiff State of Washington. Elizabeth
8 B. Dawson, Mark A. Nitzczynski, and Sheila A. Baynes appeared on behalf of
9 Defendants United States Department of Energy and Secretary Ernest J. Moniz. J.
10 Chad Mitchell, Maureen L. Mitchell, and Stephen B. Cherry appeared on behalf of
11 Defendant Washington River Protection Solutions, LLC. The Court has reviewed
12 the briefing and the complete file, heard from counsel, and is fully informed.

13 **BACKGROUND**

14 Plaintiffs Hanford Challenge and United Association of Plumbers and
15 Steamfitters Local Union 598 (“Union 598”) (collectively, “Citizen Plaintiffs”) and
16 Plaintiff State of Washington (“State”) bring this action under the Resource
17 Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6972(a)(1)(B)
18 against Defendants United States Department of Energy and Secretary Ernest J.
19 Moniz (“United States”) and Washington River Protection Solutions, LLC
20 (“WRPS”) (collectively, “Defendants”).

1 Citizen Plaintiffs and the State (collectively, “Plaintiffs”) allege that
2 Defendants have engaged in conduct related to Defendants’ storage, handling, and
3 treatment of hazardous waste at Hanford Site resulting in an imminent and
4 substantial endangerment to human health and the environment. To assess the risks
5 posed by hazardous waste and vapors emanating therefrom, WRPS commissioned
6 an investigation in 2014, which resulted in a Tank Vapors Assessment Team Report
7 (“TVAT Report”). *See* ECF Nos. 48 at 12; 118 at 20. The TVAT Report
8 recommends 47 actions to mitigate various inadequacies at Hanford. *See* ECF No.
9 53-6 at 255-260.

10 Plaintiffs do not dispute that Defendants are undertaking remedial and
11 investigatory measures to address the recommendations. *See* ECF Nos. 48 at 17;
12 118 at 18-25. Rather, Plaintiffs assert that Defendants “do not have a handle on
13 how, where, and in what concentrations workers are being exposed to chemical
14 vapors,” have failed to set milestones for completion, and are simply not doing
15 enough. *See* ECF Nos. 48 at 32; 75 at 13-14. Plaintiffs allege that more than fifty
16 workers were exposed to toxic vapors between April and June 2016. *See* ECF Nos.
17 48 at 25, 30; 75 at 22-23. To prevent further harm, Plaintiffs seek an injunction
18 directing Defendants to further modify their practices and maintain certain protective
19 measures to avert endangerment to Hanford employees.

20 //

ORDER DENYING PLAINTIFFS’ MOTIONS FOR PRELIMINARY
INJUNCTION AND DEFENDANTS’ MOTIONS TO STRIKE ~ 3

DISCUSSION

1
2 Preliminary injunctions are an “extraordinary remedy never awarded as of
3 right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). To obtain a
4 preliminary injunction, a movant must demonstrate (1) a likelihood of success on the
5 merits, (2) a likelihood of irreparable injury if the injunction does not issue, (3) that
6 a balancing of the hardships weighs in the movant’s favor; and (4) that a preliminary
7 injunction will advance the public interest. *Winter*, 555 U.S. at 20 (citation omitted).
8 A movant bears the burden to establish all four factors by a clear showing. *See*
9 *Garcia v. Google, Inc.*, 786 F.3d 733, 40 (9th Cir. 2015); *Lopez v. Brewer*, 680 F.3d
10 1068, 1072 (9th Cir. 2012) (citation omitted).

11 Generally, a mandatory injunction orders a party to “take action,” while a
12 prohibitory injunction “restrains” a party from taking further action to preserve the
13 status quo. *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 484 (1996). Both
14 mandatory and prohibitory injunctions may be issued under the RCRA. *Id.* at 483-
15 84. However, mandatory injunctions are disfavored and “not granted unless extreme
16 or very serious damage will result and are not issued in doubtful cases” *Marlyn*
17 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir.
18 2009) (internal quotation marks and citation omitted). Courts should deny a
19 mandatory injunction unless the movant can “establish that the law and facts *clearly*

20 //

1 *favor* [its] position, not simply that [it] is likely to succeed.” *Garcia*, 786 F.3d at
2 740 (emphasis in original).

3 Here, the parties disagree as to whether Plaintiffs seek a mandatory or
4 prohibitory injunction. Plaintiffs request the Court to compel Defendants to expand
5 a vapor control zone and deploy various monitoring equipment, and enjoin
6 Defendants from withdrawing a supplied air mandate. Accordingly, the requested
7 relief is both mandatory and prohibitory.

8 **A. Likelihood of Success**

9 “The first factor under *Winter* is the most important—likely success on the
10 merits.” *Garcia*, 786 F.3d at 740. The primary purpose of the RCRA is “to reduce
11 the generation of hazardous waste and to ensure the proper treatment, storage, and
12 disposal of that waste which is nonetheless generated, ‘so as to minimize the present
13 and future threat to human health and the environment.’” *Meghrig*, 516 U.S. at 483
14 (quoting 42 U.S.C. § 6902(b)). Plaintiffs must prove that they are likely to succeed
15 in showing (1) the existence of a solid or hazardous waste; (2) that Defendants
16 handled, stored, treated, transported, or disposed of; and (3) that may present an
17 imminent and substantial endangerment. *See* 42 U.S.C. § 6972(a)(1)(B).

18 Defendants admit that Hanford tanks contain and store solid or hazardous
19 waste, and that vapors released from the tanks originate from the stored waste. *See*

20 ECF Nos. 23 at ¶¶ 44, 48; 24 at ¶¶ 44, 47; 118 at 50. Defendants also admit that

1 they are tasked with handling, transferring, and/or disposing of that waste. *See* ECF
2 Nos. 23 at ¶ 40; 118 at 11-13. However, WRPS argues that the RCRA does not
3 support Plaintiffs’ claim because tank vapors are “uncontained gaseous material” not
4 classified as a “solid or hazardous waste” under the RCRA. *See* ECF No. 118 at 44-
5 52.

6 Hazardous waste is characterized as “a solid waste, or combination of solid
7 wastes, which because of its quantity, concentration, or physical, chemical, or
8 infectious characteristics may” cause, contribute to, or “pose a substantial present or
9 potential hazard” to human health. 42 U.S.C. § 6903(5); *see also Ctr. for Cmty.*
10 *Action & Env’tl. Justice v. BNSF R. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014)
11 (“BNSF II”). In turn, “solid waste” is described in part as “. . . sludge from a waste
12 treatment plant . . . or other discarded material, including solid, liquid, semisolid, or
13 *contained gaseous material*” 42 U.S.C. § 6903(27).

14 Disposal of hazardous waste under the RCRA occurs “where the solid waste is
15 *first* placed into or on any land or water and is *thereafter* emitted into the air.” *BNSF*
16 *II*, 764 F.3d at 1024 (emphasis in original) (internal quotations omitted). In *BNSF II*,
17 the Ninth Circuit held that train emissions spewing diesel exhaust into the air do not
18 fall under the RCRA because it does not dispose of solid waste, nor originate from
19 solid waste before it is emitted. *Id.* at 1030. It follows that diesel exhaust is instead
20 simply an “uncontained gaseous material” falling outside the RCRA scope.

1 Conversely, unlike diesel train exhaust, vapors emitted in the air at Hanford
2 Site emanate from solid waste (or a combination of “solid, liquid, semisolid, or
3 contained gaseous material”) contained within and leaking from storage tanks. *See*
4 § 6903(27). The RCRA clearly governs disposal of that waste. *See BNSF II*, 764
5 F.3d at 1024 (“We therefore conclude that ‘disposal’ occurs where the solid waste is
6 first placed ‘into or on any land or water’ and is thereafter ‘emitted into the air.’”);
7 *Ctr. for Cmty. Action & Envtl. Justice v. Union Pac. Corp.*, No. CV 11-08608 SJO
8 SSX, 2012 WL 2086603, at *8 (C.D. Cal. May 29, 2012) (stating that the “RCRA
9 covers the vapors that emanate from solid waste and the air emissions that result”),
10 *aff’d sub nom. BNSF II*.¹ Accordingly, the Court rejects WRPS’s constrained
11 interpretation of the RCRA, and finds that vapors emitted from Hanford tank waste
12 fall within the RCRA.

13 The remaining issue is whether Defendants’ conduct “may present an
14 imminent and substantial endangerment.” *See* 42 U.S.C. § 6972(a)(1)(B). An

15
16 ¹ WRPS relies on *Northern Illinois Gas Co. v. City of Evanston, Ill.*, 162 F.
17 Supp. 3d 654, 663 (N.D. Ill. 2016). There, the court stated that methane gas released
18 from pipelines cannot ground a RCRA claim. However, the court also held that a
19 claim *is* permissible on the “discharge of a RCRA solid waste that breaks down into
20 methane gas” *Id.*

1 endangerment is “imminent” if it “threaten[s] to occur immediately.” *Meghrig*, 516
2 U.S. at 485. Actual harm is not required as long as there is “a threat which is present
3 now, although the impact of the threat may not be felt until later.” *Price v. United*
4 *States Navy*, 39 F.3d 1011, 1019 (9th Cir. 1994) (emphasis in original). Moreover,
5 the “endangerment must be substantial or serious, and there must be some necessity
6 for the [injunctive] action.” *Id.*

7 Here, Plaintiffs argue that Hanford employees have suffered from vapor
8 related incidents dating back to the late 1970s through July 2016, arguing that
9 significant harm will continue absent an injunction. *See* ECF No. 48 at 32.

10 Plaintiffs first ask the Court to prevent Defendants from eliminating the requirement
11 that all Hanford employees must use supplied air within the perimeter fence lines,
12 which includes the vapor control zone (“VCZ”). *See* ECF Nos. 48 at 7-8; 75 at 27-
13 28. Even prior to this lawsuit and the TVAT Report, however, WRPS has always
14 permitted and “actively promot[ed]” employees to voluntarily request supplied air
15 within the tank farms; or, if a respiratory upgrade was not appropriate, the
16 employees could choose to not perform that task. *See* ECF No. 118 at 22.

17 Nevertheless, WRPS began requiring employees to use supplied air at single-
18 shell tank farms as of December 2014, and at double-shell tank farms since July 11,
19 2016. *Id.* at 55. As of August 3, 2016, Defendants voluntarily agreed to implement
20 mandatory use of supplied air at all times within the perimeter fence lines of all tank

1 farms. *See* ECF Nos. 106 at 3-4; 181 at 21-22; 118 at 55. Defendants and the
2 Hanford Atomic Metal Trades Council (“HAMTC”) memorialized that agreement
3 on August 31, 2016, in a Memorandum of Agreement. *See* ECF No. 125-1 at 28-29.
4 Since that time, Hanford employees have been required to use self-contained
5 breathing apparatus (“SCBA”). Plaintiffs request a prohibitory injunction to prevent
6 Defendants from vacating the supplied air mandate prior to trial.

7 Plaintiffs also seek a mandatory injunction ordering Defendants to expand the
8 current VCZ by 200 feet during waste-disturbing activities, from the perimeter fence
9 line of the affected tank farms, and to barricade all roads and access points to
10 prevent entry into the expanded zone. *See* ECF Nos. 48 at 7-8; 75 at 27-28.

11 Plaintiffs argue that expansion is necessary because two individuals “reported an
12 odor several hundred yards away” from a tank farm on April 28, 2016,² and because
13 the models WRPS utilizes to establish its VCZ are not capable of accurately
14 representing short-term, near-field exposure concentrations, called bolus events. *See*
15 ECF Nos. 48 at 15-16; 50 at ¶¶ 24–27; 88 at 95:20-96:1. Defendants respond that
16 VCZ expansion is unsupported by scientific data, not recommended in the TVAT
17 Report, and contrary to public interest because it would grossly thwart ongoing

18
19 ² Plaintiffs’ expert opines that exposures could occur up to 3,300 feet beyond
20 the current VCZ. *See* ECF No. 50 at ¶ 37.

1 remediation efforts to remove and dispose of hazardous waste from leaking tanks.

2 *See* ECF No. 136 at 2.

3 Plaintiffs also seek a mandatory injunction requiring Defendants to install and
4 use additional monitoring and alarming equipment during waste-disturbing
5 activities, including optical gas imaging cameras, optical spectrometers, optical stack
6 monitors, and VMD (vapor monitoring and detection) integration software. *See*
7 ECF Nos. 48 at 7-8; 75 at 27-28. WRPS responds that in some locations it has
8 already deployed that equipment and additional equipment “more robust than what
9 Plaintiffs request.” *See* ECF No. 118 at 52-54. WRPS also argues that it is not
10 feasible to deploy the existing VMD software during waste-disturbing activities
11 because moving the equipment is impractical. *See* ECF Nos. 118 at 54; 130 at 21.
12 WRPS avers, however, that it has already bench-scale and pilot-scale tested the
13 VMD software, which took “thousands of hours” and cost \$20,000,000 to deploy.
14 Despite its efforts, WRPS contends that full implementation of the VMD software is
15 not possible to accomplish by the time of trial, nor is it feasible to move the
16 equipment. *Id.*; *see also* ECF No. 203 at 82-83.

17 At this stage, the Court finds that Plaintiffs have failed to make a clear
18 showing to meet their burden that an imminent and substantial endangerment to
19 health may presently exist. Adjudging all evidence before the Court, the Court finds
20 that harm is not imminent because there is no evidence that it is “threaten[ing] to

1 occur immediately” or that it is “present now.” *Meghrig*, 516 U.S. at 485; *Price*, 39
2 F.3d at 1019. As to the substantiality requirement, an endangerment is substantial
3 when it is “serious.” *Cnty. Ass’n for Restoration of the Env’t Inc. v. Cow Palace,*
4 *LLC*, 80 F. Supp.3d 1180, 1227 (E.D. Wash. 2015) (citing *Burlington N. & Santa Fe*
5 *Ry. Co. v. Grant*, 505 F.3d 1013, 1021 (10th Cir. 2007)).

6 Defendants continue to deploy significant protective measures to protect
7 Hanford employees in conjunction with the TVAT Report recommendations. ECF
8 No. 118 at 22-25. Defendants also voluntarily agreed to require supplied air within
9 the tank farm fence perimeter, and have already tested and begun implementing the
10 equipment that Plaintiffs request. In addition, and discussed with more particularity
11 below, the requested 200 foot VCZ expansion is arbitrarily defined, not
12 recommended by TVAT, and impractical. Plaintiffs concede that there have been no
13 vapor exposures since the supplied air mandate, yet argue that Hanford employees
14 will befall injury absent court intervention.

15 The Court does not deny that vapor exposures have occurred or that
16 employees have experienced serious vapor-related illnesses. Defendants’ arguments
17 debunking and minimizing Hanford employees’ health related claims are
18 unpersuasive and belied by the record. *See* ECF Nos. 48 at 20-21; 75 at 6-10.
19 Rather, the Court finds that given the preventative measures available and now
20 mandated by the agreement of the parties, there is little to no chance of an imminent

1 and substantial endangerment present, requiring prohibitory injunctive relief.
2 Defendants have amply demonstrated that they are vigorously refining safety
3 measures, and there is no evidence that the supplied air mandate will be lifted
4 without a substitute, agreed upon by the parties. Any threat that existed prior to
5 Defendants' remediation efforts and supplied air mandate no longer present an
6 imminent and substantial endangerment. In addition, the Court finds that Plaintiffs
7 have failed to establish that the law and facts clearly favor their position to support a
8 200 foot VCZ expansion. The Court concludes that Plaintiffs have not made a clear
9 showing that they are likely to prevail as to the relief sought under the RCRA at this
10 time given the record.

11 **B. Irreparable harm**

12 A violation of the RCRA does not automatically equate to a presumption of
13 irreparable harm, nor require the Court to grant an injunction. *See Amoco Prod. Co.*
14 *v. Village of Gambell*, 480 U.S. 531, 542 (1987). A party seeking preliminary
15 injunctive relief must "demonstrate that irreparable injury is *likely* in the absence of
16 an injunction." *Winters*, 555 U.S. at 22 (emphasis in original). "Issuing a
17 preliminary injunction based only on a possibility of irreparable harm is inconsistent
18 with [the Supreme Court's] characterization of injunctive relief as an extraordinary
19 remedy that may only be awarded upon a clear showing that the plaintiff is entitled
20 to such relief." *Id.*

1 Plaintiffs contend that Hanford employees will suffer irreparable harm
2 because the vapor exposures that occurred between April and July 2016 are
3 repetitive of similar incidents over the last few decades. However, Defendants have
4 submitted substantial evidence demonstrating that they have expended significant
5 time and resources to address the TVAT recommendations, strengthened internal
6 protocol, deployed new technologies to enhance vapor monitoring, and required
7 supplied air until a suitable, safe alternative is achieved. The Court finds that the
8 evidence of Defendants' ongoing proactive measures, and lack of vapor exposures
9 since the supplied air mandate, strongly support that Plaintiffs are not likely to suffer
10 irreparable harm absent injunctive relief. Rather their request is premised on the
11 possibility of further harm, a harm they can voluntarily alleviate by using the
12 available preventative measures. *See Winters*, 555 U.S. at 22.

13 **C. The Balance of Equities**

14 Courts must balance the hardship to the movant if the injunction is not issued
15 against the harm the non-movant would suffer from a wrongfully-issued injunction.
16 *See Winters*, 555 U.S. at 24; *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir.
17 2009).

18 Plaintiffs contend that the balance of equities tilt strongly in favor of
19 preventing harm to Hanford employees compared to the economic detriment that
20 Defendants could face if the injunction were granted. ECF No. 48 at 32-34. Yet, the
ORDER DENYING PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION AND DEFENDANTS' MOTIONS TO STRIKE ~ 13

1 Court need not even consider monetary cost to conclude that the balance of equities
2 do not tilt in Plaintiffs' favor. First, mandatory SCBA use has been required since
3 August 3, 2016, and will continue under the MOA. *See* ECF No. 125-1 at 28-29.
4 Plaintiffs are amenable to a less cumbersome protective respiratory substitute, by
5 shifting from SBCA to respirators, with one caveat: Plaintiffs want to choose a third
6 party to determine that the shift can be safely accomplished. However, Defendants
7 are tasked with determining how to safely and efficiently retrieve and dispose of
8 hazardous tank waste while simultaneously protecting Hanford employees. Further,
9 Plaintiff Local 598 is a labor organization with more than 70 members who work at
10 Hanford. *See* ECF No. 76 at ¶ 5. Plaintiff Local 598 is also a member of HAMTC
11 and, therefore, Plaintiff has a voice at the table if and when an alternative supplied
12 air method is considered.

13 Second, Defendants have demonstrated that they have already evaluated and
14 begun implementing real-time vapor monitoring and detection methodologies
15 consistent with the remedy Plaintiffs seek. *See* ECF No. 118 at 33-34, 52-53.
16 Despite significant efforts to test the VMD software, implementation of the VMD
17 software is impossible to accomplish by trial and impractical to move from one
18 waste-disturbing activity to another. *See* ECF Nos. 118 at 54; 130 at 21; 203 at 82-
19 83.

20 //

1 Third, Defendants proffered evidence illustrating the significant impact to and
2 operational realities of a temporary VCZ expansion during waste-disturbing
3 activities vis-à-vis regulatory implications, inevitable work delay, training
4 requirements, infrastructure retooling, and employee reduction, among other
5 concerns. *See* ECF No. 118 at 35-41. Plaintiffs concede that a building exception
6 could be made to overcome the retooling impracticability. A building exception,
7 however, would not eliminate the significant remaining challenges.

8 Balancing the interests of all parties and weighing the damage to each, the
9 Court concludes that any minimal risk of harm to employees (the possibility of
10 harm), given the current protections in place and Defendant's continued efforts to
11 address the TVAT recommendations, does not outweigh the concrete impediments
12 Defendants could face or the public consequence of delaying the tank waste transfer
13 remediation efforts. A wrongfully-issued injunction would severely burden
14 Defendants, yielding speculative benefit, if any at all, to Hanford employees. The
15 Court finds that balancing the equities clearly favors denying the injunction.

16 **D. Advancement of the Public Interest**

17 "In exercising their sound discretion, courts of equity should pay particular
18 regard for the public consequences in employing the extraordinary remedy of
19 injunction." *Winters*, 555 U.S. at 24 (quoting *Weinberger v. Romero-Barcelo*, 456
20 U.S. 305, 312 (1982)). When the government is a party, the balance of hardships

1 and the advancement of the public interest are often seen to merge. *League of*
2 *Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752
3 F.3d 755, 766 (9th Cir. 2014). Regardless, the Court will not grant a preliminary
4 injunction unless the public interests in favor of granting an injunction “outweigh the
5 public interests that cut in favor of *not* issuing the injunction.” *Alliance for the Wild*
6 *Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (citation omitted) (emphasis
7 in original).

8 Here, the parties advance competing public interests. The public
9 unquestionably has an interest in protecting the health and safety of individuals from
10 toxic vapors and protecting the environment. The public also has a significant
11 interest in ensuring the expeditious completion of the tank waste transfer work to
12 protect individuals and the environment from irreversible damage attributed to
13 hazardous waste stored in leaking tanks. *See* ECF Nos. 48 at 18-19; 118 at 12. The
14 colossal clean-up work is, in essence, a critical race against the clock. *See* ECF Nos.
15 118 at 62; 135 at 55-56.

16 The Court finds that Plaintiffs have not demonstrated that the public interest in
17 favor of granting the injunction outweighs the public interest supporting denial. *See*
18 *Cottrell*, 632 F.3d at 1138. The strong governmental interest, coupled with the
19 ensuing public consequence that results by unavoidably delaying remediation
20 efforts, strongly outweigh restructuring the Hanford Site infrastructure to alter the

1 VCZ during waste-disturbing activities. *See* ECF Nos. 136 at 57, 118 at 35-41. The
2 Court also determines that Plaintiffs' proposed 200 foot expansion is supported by
3 insufficient data, and the TVAT Report—of which *all* parties rely—does not
4 recommend expansion. *See* ECF Nos. 53-6; 118 at 33. Without more, expansion is
5 not warranted for a myriad of reasons. Delaying the critical radioactive waste
6 remediation work underway is a strongly determinative reason in favor of denying
7 the injunction. *See* ECF No. 203 at 39.

8 Finally, the Court is sensitive to the public interest in ensuring the safety of
9 Hanford employees, but employees are currently protected by the SCBA mandate.
10 Even without mandatory SCBA use, Hanford employees have always had the option
11 of utilizing supplied air protection. Whether or not employees took advantage of the
12 use of supplied air for various reasons does not affect the Court's analysis. There is
13 simply no credible evidence before the Court to suggest that the SCBA mandate will
14 cease pending trial to merit injunctive relief now.

15 CONCLUSION

16 In sum, the Court finds that all four factors weigh in favor of denying an
17 injunction at this time. Plaintiffs' requests for a preliminary injunction are

18 **DENIED.**

19 //

20 //

ORDER DENYING PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION AND DEFENDANTS' MOTIONS TO STRIKE ~ 17

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

2 1. The State of Washington's Motion for Preliminary Injunction (ECF No.
3 48) is **DENIED**;

4 2. The Citizen Plaintiffs' Motion for Preliminary Injunction (ECF No. 74, 75)
5 is **DENIED**;

6 3. The United States' Motion to Strike Plaintiffs' Newly-Raised Evidence, or,
7 Alternatively, for Leave to File Supplemental Declaration (ECF No. 193)
8 and Motion to Expedite (ECF No. 194) are **DENIED as moot**.

9 4. Defendant Washington River Protection Solutions, LLC's Objection to
10 Plaintiffs' Reply Memorandum and Other Evidence (ECF No. 192) and
11 Motion to Expedite (ECF No. 191) are **OVERRULED and DENIED as**
12 **moot**.

13 The District Court Executive is directed to enter this Order and furnish copies
14 to counsel.

15 **DATED** November 15, 2016.



18
19
20

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