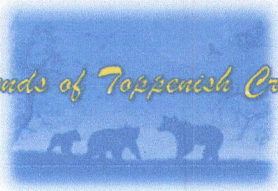


Friends of Toppenish Creek



May 14, 2021

Dear WA State Dept. of Ecology and U.S. Environmental Protection Agency:

Please accept these comments from the Friends of Toppenish Creek (FOTC) regarding the proposed 2021 – 2023 Environmental Performance Partnership Agreement (Agreement) between the WA State Dept. of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA).

Friends of Toppenish Creek is a 501 C (3) non-profit group in the Lower Yakima Valley:

Friends of Toppenish Creek is dedicated to protecting the rights of rural communities and improving oversight of industrial agriculture. FOTC operates under the simple principle that all people deserve clean air, clean water and protection from abuse that results when profit is favored over people. FOTC works through public education, citizen investigations, research, legislation, special events, and direct action.

FOTC believes that Ecology has failed to protect the air, water, and soil in the Lower Yakima Valley (LYV), in large part because the agency is cowed by the dairy industry. We will explain in this letter.

The Cow Palace Dairy and the WA Dairy Federation are currently suing the EPA in an effort to undo the EPA's work on a cluster of dairies in the LYV. EPA research found that 61% of domestic wells one mile downgradient from the dairies had nitrate levels above the safe drinking water standard. EPA monitoring wells at the site had some of the highest nitrate readings in the nation. This is beyond dispute, but the dairy industry continues to attack environmental protections, and the dairy industry enlists Ecology support.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza".

Jean Mendoza

Executive Director, FOTC

3142 Signal Peak Road
White Swan, WA 98952

FOTC Concerns Regarding the Agreement

1. Chapter 2 - Quality Assurance:

On page 17 the agreement cites Water Quality Program Policy 1-11 Chapter 2 Ensuring Credible Data for Water Quality Management.

- A. Ecology fails to do this for the LYV. In 2018-2019 a LYV Groundwater Management Area (GWMA), under Ecology's oversight, set up a system of 30 monitoring wells in alluvial fans where hydrogeology and geology vary significantly within small areas. The LYV GWMA drilled these wells without a research hypothesis, without a plan on how to use the data to prove or disprove improvement to water quality as BMPs are implemented. There is no strategy for measuring implementation of BMPs and no listing of the BMPs that will be evaluated¹.
- B. The LYV GWMA contracted with the WA State Dept. of Agriculture (WSDA) to conduct a Nitrogen Availability Assessment (NAA) that lacked a QAPP and was contested by both the Yakima Farm Bureau and FOTC because the process was significantly flawed².

2. Chapter 4 – Environmental Justice:

- A. **Ecology EJ:** Reading about Ecology subscribing to environmental justice (EJ) is like listening to a lecture on vegan diets by the cattlemen's association. It is hard to take seriously.
 - a. Ecology has publicly stated, without proof, that there is no health risk when dairymen compost 950 bovine carcasses in 2,300 feet of windrows in a rural community, where 70% of the population is Latino³. The fact that bureaucrats with solid health care plans would make this determination from their climate controlled offices speaks volumes about Ecology's understanding of life at the poverty level.
 - b. Ecology oversaw the LYV GWMA meetings in which a coalition of dairymen prevented any discussion of environmental justice. EJ was never addressed during the seven years in which the LYV GWMA Advisory Committee (GWAC) met. The LYV GWMA did not engage the 25% of the community who speak little or no English².
 - c. Ecology is in charge of PFAS surveillance in WA State and does no monitoring in the Central Washington regions where over half of the sewage sludge is applied to cropland and the sludge is not tested for PFAS. It is disturbing that Ecology is willing to risk contamination of rich agricultural soils with a chemical that does not degrade⁴.

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1. Lower Yakima Valley Groundwater Management Area Program, Vol. I (2018) Available at <https://www.yakimacounty.us/DocumentCenter/View/22177/GWMA-VolumeI-July2019>
 2. FOTC Minority Report for the LYV GWMA (2018) Available at <https://www.yakimacounty.us/2162/Minority-Report-GWMA-by-Jean-Mendoza>
 3. Yakima Herald Republic (2020) Composted Cows: A Success Story for Some, A Concern for Others. Available at https://www.yakimaherald.com/news/local/composted-cows-a-success-story-for-some-a-concern-for-others/article_4a007eb6-3947-574d-9f9a-1a355620fa1b.html
 4. America's Dairyland May Have a PFAS Problem (2019) Natural Resources Defense Council. Available at <https://www.nrdc.org/stories/americas-dairyland-may-have-pfas-problem#:~:text=Milk%20containing%20PFAS%20tends%20to,end%20up%20in%20their%20milk>

- d. Ecology refuses to intervene when the Yakima Regional Clean Air Agency (YRCAA) fails to investigate complaints regarding air pollution by LYV dairies. One third of all WA milk cows are housed in the LYV. Yakima County animal agriculture emits between 5,000 and 8,000 tons of ammonia per year, mostly from the LYV, and the YRCAA refuses to address the problem.
- e. Ecology declined to participate in a forum on equity in the City of Yakima that was funded by the WA State legislature to inform and to gather EJ information.
- f. Data is needed to prove pollution and compel sources of pollution to acquire NPDES permits or air quality permits. Ecology and the YRCAA do not conduct studies that would prove air and water pollution from LYV dairies. Ecology and YRCAA do not accept statements from the people who are impacted by pollution. Ecology and YRCAA reject the results of citizen science. The agencies say they cannot regulate these sources of pollution because there is no proof of pollution and they refuse to do the research.

B. Moving Children's Health: FOTC disagrees in the strongest terms with the decision to move Children's Health out of the Environmental Justice Chapter.

- a. Children are de facto a marginalized group with limited representation. Ecology commits environmental injustice by ignoring the impact of pollution on the next generation.
- b. FOTC only finds one reference to children's health in the Agreement and that reference requires coordination and networking with other agencies, a code for shifting responsibility. Keeping Children's Health under EJ acknowledges the importance of this population.
- c. Chapter 7 – Air Quality never mentions the major impact of polluted air on children's developing lungs. The impact on children is more serious than the impact on adults. This is an EJ issue. The population of the LYV is young with a high percentage of children.
- d. On behalf of the children FOTC asks you to 1. return Children's Health to Chapter 4 – Environmental Justice; 2. emphasize the importance of a safe environment for children; and 3. provide pathways so agencies, working together with citizens, can advocate for the next generation.

C. Ecology Goals: None of the three Ecology goals for EJ listed on page 23 of the Agreement are realized in the LYV. Those unattained goals are to provide all people:

- a. The same degree of protection from environmental and health hazards.
- b. Equal access to decision-making processes.
- c. A health environment in which to live, learn, and work.

3. Chapter 7 – Enhancing Public Health by Improving Air Quality:

The Clean Air Act in Washington is implemented in some counties, including Yakima, by Clean Air Agencies. Ecology acknowledges that Yakima County has the highest levels of

particle air pollution in Washington State⁵. The Yakima Regional Clean Air Agency (YRCAA) fails to adequately address this problem. Instead, the YRCAA pressures the state to give the agency more money, while simultaneously shielding the polluting dairy industry from any financial responsibility. This issue is so severe that FOTC will include an attachment regarding the YRCAA to our comments on the Agreement. Please read that attachment to better understand how the Clean Air Acts are subverted in Yakima County.

In brief, the YRCAA, with Ecology's tacit approval, has:

- a. Rejected environmental justice.
- b. Refused to address public health.
- c. Received citizen complaints with disinterest or disdain.
- d. Supported the dairy industry's interests and prevented citizen representation on the board of directors.
- e. Ignored valid citizen science.
- f. Failed to investigate citizen complaints in a timely manner, and often failed to investigate at all.

RCW 70A.15.1005 Declaration of public policies and purpose, states in paragraph 6: *It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.*

Ecology's 2011 County Emissions Inventory estimated ammonia emissions from animal agriculture in Yakima County at > 8,000 tons annually.

Nevertheless, the YRCAA decided in 2018 not to register LYV dairies and not to collect fees from the dairies.

4. Chapter 9 - Water Quality Program:

- A. **Non-Point Sources:** To the best of our knowledge delivery of a Non-Point Source Pollution Plan has dragged on for years and there is a distinct possibility that the WA NPS Plan will not be delivered as scheduled. FOTC believes this is due in large part to Ecology's deference to large agricultural interests that hold too much sway over governance. The WA Cattle Feeders Association has acted as an equal partner with Ecology in developing a *Clean Water Guidance for Agriculture*. Industrial agriculture asserts that the industry should dictate best management practices. Industrial agriculture's opinion certainly has merit, but that group lacks expertise in environmental science and should not be allowed to veto valid BMP's. Ecology refuses to accept the role of expert on water quality and allows industry to override the agency scientists.

5. WA Dept. of Ecology (2021) Particle Pollution in Washington's Air. Available at <https://ecology.wa.gov/Air-Climate/Air-quality/Air-quality-targets/Air-quality-standards/Particle-pollution>

The first sentence on page 72, in part 2C, under Activities and Measures reads “Per the settlement, Ecology will submit a Washington State Nonpoint Plan update to EPA by the end of 2022.” FOTC has been unable to find that case based on the footnote. Can you help us?

- B. Point Sources: Concentrated animal feeding operations (CAFOs) are point sources of pollution. In 2017 Ecology issued two new NPDES General Permits for CAFOs in Washington State. A coalition of environmental groups challenged the permits before the WA State Pollution Control Hearings Board for the following reasons:
1. The Permits fail to require AKART for existing lagoons.
 2. The permits failed to require AKART for composting areas, animal pens, and corrals.
 3. Ecology failed to establish effluent limits and monitoring requirements necessary to ensure compliance with the State Water Quality Standards.
 4. Ecology provided no explanation of how the permit will ensure compliance with Water Quality Standards.
 5. The permits do not ensure compliance with State Water Quality Standards for Groundwater.
 6. Ecology violated state and federal law by failing to require adequate monitoring.
 7. The permit’s Groundwater Quality Effluent Limitation is unenforceable without groundwater monitoring and violates Washington’s Anti-Degradation Principle.
 8. The permits fail to require monitoring to ensure compliance with effluent limits regarding surface water.
 9. Ecology failed to comply with federal law by requiring the development of site-specific nutrient management plans subject to public scrutiny prior to permit issuance.
 10. Ecology failed to ensure the permit accounted for the impacts of climate change.

The PCHB ruled against the petitioners in 2018. The WA State Court of Appeals heard our appeal in November 2020.

In the meantime, Ecology fails to enforce a major part of the Clean Water Act for Point Sources since < 25 of Washington’s approximately 250 CAFO dairies are under permit. Thus, the objectives for water quality protection from point source pollution, listed on page 74 of the Agreement, have not been met and are unlikely to be met in the future.

The Friends of Toppenish Creek have asked Ecology to investigate discharges to surface water from an unpermitted LYV dairy that is located next to the Yakima River. Ecology has not tested the river for the presence of pollutants from the dairy, despite research proving a connection between ground and surface waters. Ecology has advised FOTC that the agency will not accept citizen research to demonstrate discharge. Thus, Ecology does not require the dairy to obtain an NPDES permit since there is no data to show a discharge.

FOTC requests EPA actions that require Ecology to issue a strong NPDES General Permit for CAFO’s that protects ground and surface water in Washington State according to the requirements of the law. Perhaps, once upon a time there was a dairy that did not discharge to waters of the state. This hypothetical case is not sufficient to relieve Washington dairies of

the requirement to obtain NPDES permits. Ecology should require all Washington dairies to acquire NPDES permits, and the EPA should provide all the necessary support to make this happen.

- C. **NPDES Permitting:** Ecology outreach regarding a 2022 CAFO General Permit is lacking.
- a. The permit writers did not advertise public meetings regarding permit renewal in the media. Instead, Ecology sent notices to select contacts within industry and the environmental community.
 - b. Ecology did not send notices to many of the people who commented on the 2017 permit.
 - c. Ecology did not inform people in Grant or Franklin Counties where there is significant pollution from large CAFOs.
 - d. Ecology sent a doodle poll to potential participants and then chose a date and time when most environmental leaders were unable to attend.

5. Some Ecology administrators lack integrity:

- A. **Working with Criminals:** Slightly over ten years ago Easterday Ranches, Inc. took steps to construct a 30,000 head feedlot in Franklin County. Easterday drilled a well into the Grande Ronde aquifer to water the cattle. Easterday estimated drinking water needs for 30,000 head at 450,000 to 600,000 gallons per day. Ecology helped Easterday to transfer water rights from a neighboring property that gave the operation another 316 acre feet per year for other feedlot purposes.

Neighbors sued to stop the feedlot under RCW 90.44.050, contending that such a large withdrawal of groundwater is not authorized by law, would dry up their domestic wells, and deplete the aquifer. Easterday disagreed and Ecology sided with Easterday. Ecology stood shoulder to shoulder with Easterday and trade groups in court and defended actions that deplete Washington groundwater stores.

The case progressed to the WA State Supreme Court which found in favor of Easterday. Now, thanks to Ecology's help, animal agriculture can withdraw unlimited amounts of water from declining aquifers.

Since that time, the Easterday family has engaged in political action, most notably through the WA Cattle Feeders Association. This group sits on Ecology's Agriculture and Water Advisory Committee and meets with the WA State Board of Health to advocate for changes in the law that benefit a few farmers and worsen public health.

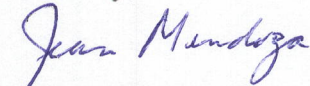
In March 2021 Cody Easterday, President of Easterday Ranches, pled guilty to defrauding Tyson Foods of \$244 million. Subsequently Easterday Ranches and Easterday Farms filed for bankruptcy. This is not new. The Easterday family has filed for bankruptcy before. Every time this happens innocent, hard working people incur losses because they are not paid for property they sold in good faith, or for services rendered.

Ecology has worked with criminals to dilute Washington's environmental laws, and at the same time Ecology provided legitimacy to a scamming operation.

B. **False Testimony:** In 2020 FOTC appealed Ecology's certification of the LYV GWMA. Then Water Quality Manager for Ecology's Central Offices, David Bowen, gave testimony in defense of a *Nitrogen Availability Assessment* commissioned by the GWMA advisory committee. FOTC now accuses Mr. Bowen of misleading the Pollution Control Hearings Board. We believe he gave false testimony when he said that sources of nitrates in groundwater are not significant when the sources have NPDES permits. See Attachment.

Thank you for evaluating the facts presented here by FOTC. We hope we have contributed towards an improved collaboration between Ecology and the EPA, that will result in a healthier environment in Washington State and the Lower Yakima Valley.

Sincerely,



Jean Mendoza

Executive Director, FOTC

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