



Friends of Toppenish Creek

April 30, 2025

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

Friends of Toppenish Creek is a 501 C (3) non-profit organization located in the Lower Yakima Valley. Our mission:

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.

Friends of Toppenish Creek (FOTC) welcomes this opportunity to comment on the *Draft Environmental Performance Partnership Agreement Between the Department of Ecology and the Environmental Protection Agency: State fiscal Years 2026 – 2027*. Going from front to back of the document, we will share some perceptions of how this agreement might impact the Lower Yakima Valley (LYV).

Page 9: The Draft Agreement states: *It is very important for Ecology and EPA to work with Tribes to address Endangered Species Act issues related to the current and proposed listings of several species in Washington State.*

FOTC agrees with the Yakama Nation regarding the over-riding importance of salmon for the Yakima Valley. Consequently, we ask both Ecology and the EPA to pay close attention to FOTC concerns about diminished replenishment of the Yakima River in the LYV near the City of Mabton where endangered salmon need a healthy river to survive during migration.

FOTC has filed a complaint about conditional use permit violations by concentrated animal feeding operations (CAFOs) in that area with Yakima County Code Enforcement.¹ We

¹ Friends of Toppenish Creek has asked Yakima County Planning to review whether a Lower Yakima Valley Calf Ranch violates terms of a Conditional Use Permit (CUP). [Friends of Toppenish Creek - Protecting the rights of rural communities and improving oversight of industrial agriculture](#)

calculate that CAFOs pump over a million gallons of water per day from wells within three miles of Mabton. This is too much withdrawal from land that receives seven inches of precipitation per year. Groundwater should replenish the Yakima River, but it is diverted, and salmon suffer. Aquifers fall. Wells run dry. We hope EPA and Ecology will uphold the laws, especially the Endangered Species Act, as we pursue this complaint.

Page 11: The Draft Agreement summarizes the *Progress Assessment Process*. The Agreement says:

Effectiveness: Does the work covered in this Agreement apply resources to the highest environmental priorities and improve environmental outcomes?

Public access to review and engage: Does the work covered in this Agreement advance community access and public engagement related to that work?

Fiscal soundness and program accountability: Are the funds used for this Agreement managed in an efficient, legal, effective, and economical manner?

FOTC points out difficulties accomplishing these priorities for air quality in the Lower Yakima Valley (LYV) where there are 23 industrial dairies with over 2,000 milk cows per facility. According to FOTC calculations dairies of this size emit air pollutants in quantities that should require classification as Title V sources of pollution. But neither the Yakima Regional Clean Air Agency (YRCAA) nor Ecology regulate air pollution from these dairies or require reporting of toxic or hazardous air pollutants. Resources are not applied to this source of air pollution. Since the agencies do not dedicate resources to the largest source of air pollution in the LYV, funds are not managed in an efficient, effective, and economical manner.

FOTC has complained to the EPA External Civil Rights Compliance Office regarding failure of the YRCAA to engage with marginalized populations in the LYV.² The investigation is ongoing. We are concerned that the YRCAA accepts federal monies but fails to use those monies to engage and educate.

Page 15: The Draft Agreement states, *EPA and Ecology will continue to ensure scientific integrity objectives are reflected within our work.*

² FOTC Civil Rights Complaint, February 6, 2023. [ECRCO Dear EPA ECRCO V.pdf](#)

FOTC Civil Rights Complaint, March 6, 2023. [ECRCO Civil Rights Complaint March 2023 VI.pdf](#)

Page 19: The Draft Agreement states, *Finding solutions to current environmental problems requires the accurate and efficient capture, query, presentation, and sharing of data.*

FOTC is concerned that Ecology surreptitiously protects the dairy industry in Washington State. To this end, Ecology has modified scientific documents in ways that shield dairy pollution from scrutiny.

In 2023 Ecology and the WA State Dept. of Health commissioned a study in the LYV on behalf of the LYV Groundwater Management Area Implementation Team that mapped the target area for groundwater nitrate contamination. The maps said that nitrate levels in an area where the EPA had found some of the highest nitrate levels in the state were in the safe drinking water level.³ This is totally false. Ecology has repeated this misinformation in a video entitled *Eyes Underground*.⁴

Page 22: The Draft Agreement states: *Ecology and EPA share a desire for a strong compliance assurance program that achieves environmental protection by:*

- *Identifying compliance problems.*
- *Providing technical assistance.*
- *Returning facilities to compliance.*
- *Taking appropriate actions against violators.*
- *Deterring future violations.*

This does not happen in the LYV with respect to dairies. Non-compliance is the norm. The EPA found it necessary to go to court to enforce compliance by three LYV dairies in 2024.⁵ Meanwhile, Ecology participates on a LYV GWMA Implementation Team that badmouths the EPA efforts.

There is a dairy conglomerate in the LYV that applied for a conditional use permit to set up a calf feeding operation in 2015. There were many concerns including Ecology's statement that a facility with 5,000 calf hutches on 30 acres would withdraw too much water from falling aquifers and would diminish groundwater flow to the Yakima River.⁶

³ Tetra Tech Nitrate Mapping. [Tetra Tech Nitrate Mapping | Yakima County, WA](#)

⁴ WA Ecology. Eyes Underground. [Eyes Underground: Lower Yakima Valley](#)

⁵ EPA Region X. Lower Yakima Valley Groundwater. [Lower Yakima Valley Groundwater | US EPA](#)

⁶ Friends of Toppenish Creek has asked Yakima County Planning to review whether a Lower Yakima Valley Calf Ranch violates terms of a Conditional Use Permit (CUP). [Friends of Toppenish Creek - Protecting the rights of rural communities and improving oversight of industrial agriculture](#)

The dairy withdrew their application and resubmitted an application with a “reduced footprint” in 2016 that was approved in 2017. Today the facility has 7,000 calf hutches on 100 acres. The calf ranch has not created a required conservation easement, has not secured a required air quality permit, has not written a required nutrient management plan, has not complied with monitoring agreements for groundwater withdrawal and never asked for permission to expand. FOTC has filed a complaint regarding these permit violations. We have shared concerns with Ecology, but Ecology has said and done nothing so far. It is discouraging when Ecology signs on to agreements with EPA that purport to address environmental violations but does not follow through.

Pages 24: The Draft Agreement states,

. . . the partners commit to:

- *Prevent and reduce air pollution, which includes compliance with all air quality laws and rules.*
- *Reduce emissions of high-priority air pollutants, especially fine particles (PM2.5), ozone precursors, and air toxics.*
- *Prevent violations of federal air quality standards.*
- *Increase efficiencies and reduce transaction costs in air quality program administration and implementation.*

Page 28: The Draft Agreement states,

Objectives: To characterize the health consequences of toxic air pollution in Washington, Ecology will collect and compile data about these pollutants, including health effects and sources of emissions. These data will be used to:

- 1. Identify strategies to reduce exposure and health risks from toxic air pollution emissions, focusing on sources or areas that have the greatest health risk.*
- 2. Identify emission reduction strategies that focus on reducing health risks from smoke and diesel exhaust that provide the greatest health benefits.*
- 3. Better characterize industrial emissions by using more efficient data collection and improving partnerships with businesses.*

Page 32: The Draft Agreement states,

Ecology and local clean air agencies will maintain an effective compliance assurance program that protects human health and the environment by preventing and reducing air pollution. Carry out a balanced program that includes:

- *Compliance assistance.*
- *Compliance monitoring.*
- *Appropriate enforcement.*
- *Follow-up to ensure return to compliance.*

These actions do not take place in the LYV because the YRCAA and Ecology ignore impacts from industrial dairies. The agencies only monitor for PM 2.5, and not for ammonia, hydrogen sulfide, sulfur dioxide, volatile organic compounds, ozone, or other air pollutants.

The EPA had an opportunity to sample LYV air for these pollutants when the EPA brought mobile monitoring to the LYV in 2024. The EPA chose to set up the monitor in Wapato, about thirty miles upwind from the LYV dairies. Why did this happen?

In September of 2024 the EPA conducted a first-round of inspections for YRCAA administration of the Title V program.⁷ The EPA listed seventeen points of concern that the YRCAA should address. However, the EPA noted that there was only one permit writer at the agency with the experience and qualifications to address these problems. This person has left the agency and has not been replaced. The YRCAA currently operates with a staff of six when the number should be at least ten and ideally twelve.

FOTC strongly believes that the YRCAA is currently incapable of performing mandated duties and that both Ecology and the EPA should address this problem.

Page 53: The Draft Agreement states, regarding Point Source Pollution:

Objectives

- *All discharge permits are current; protect water quality, human health, and aquatic habitat; and include water conservation and pollution prevention measures.*
- *All discharges comply with permits, water quality standards, best management practices, and other requirements to protect Washington's waters.*

⁷ Yakima Regional Clean Air Agency Title V Program Review (1st Round) [yrcaa-2024-round-1-final-report.pdf](#)

- *All discharge permits implement applicable Waste Load Allocations from EPA-approved Total Maximum Daily Loads.*
- *Water quality laws are firmly and fairly enforced to ensure compliance.*
- *Requirements and procedures are clear and predictable.*
- *The National Pollutant Discharge Elimination System (NPDES) program is implemented effectively and in accordance with the current Memorandum of Agreement and Compliance Assurance Agreement.*

FOTC concerns and comments:

The Port of Sunnyside in the LYV has an Industrial Wastewater NPDES permit that has not been reviewed since 2015. Ecology simply rolls over the permit every five years. The Port of Sunnyside has a groundwater monitoring system that shows increasing nitrate contamination of groundwater, yet the port continues to allow LYV dairies to apply manure to spray fields. FOTC has asked Ecology to put this permit up for review and renewal to no avail.⁸

There are no Ecology approved best management practices for non-point agricultural sources as required by Washington law.⁹ Ecology and EPA cannot ensure compliance with BMPs when no one knows what they are.

Confined Animal Feeding Operations (CAFOs) are point sources of pollution. There are no waste load allocations for CAFOs in any of Washington's approved TMDLs. Consequently, there is no way to enforce compliance.

The National Pollutant Discharge Elimination System program for CAFOs is not fully implemented in Washington State. Less than 10% of Washington CAFOs have NPDES permits despite clear evidence of discharge. EPA has offered to assist Ecology in bringing more CAFOs under permit.¹⁰ Apparently, this offer has been ignored.

These are just a few occasions in which environmental laws are poorly implemented in Washington State. There are many more.

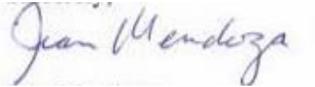
⁸ FOTC Letter to WA Ecology Water Quality Division. Available on request

⁹ Western Environmental Law Center. Agricultural Pollution of Puget Sound - The Quest for the Holy Grail: Agricultural BMPs In Washington. [Agricultural Pollution in Puget Sound: Inspiration to Change Washington's Reliance on Voluntary Incentive Programs to Save Salmon](#)

¹⁰ Letter from Daniel Opalski to Vincent McGowan. August 17, 2022.

The Friends of Toppenish Creek respectfully request the addition of a citizen enforcement clause in the *Environmental Performance Partnership Agreement Between the Department of Ecology and the Environmental Protection Agency: State fiscal Years 2026 – 2027*, that would provide a path by which citizens can make sure that both parties comply with this agreement.

Sincerely,

A handwritten signature in blue ink that reads "Jean Mendoza". The signature is written in a cursive style and is positioned above the printed name.

Jean Mendoza

Executive Director, Friends of Toppenish Creek

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White Swan, WA 98952