



Friends of Toppenish Creek

Dec. 23, 2022

Dear WA State Dept. of Ecology,

The Friends of Toppenish Creek (FOTC) is an environmental non-profit group located in the 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 appreciates the opportunity to comment on *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution* draft. Our comments proceed from page 1 to page 225.

Page 4: FOTC notes that the WA State Dept. of Ecology (Ecology) Agriculture and Water Quality Committee's work group on non-point source pollution did not contribute to development of this document. We wonder how active that work group has been. FOTC could have added an important community and environmental perspective to the work of the Ag & WQ committee, and the NPS workgroup, but we were denied membership. Consequently we comment today, with a few weeks of preparation, on a document that other groups have studied for months and years.

Page 5: The draft states:

The passage of the state Water Pollution Control Act and federal Clean Water Act helped Washington State make important progress in cleaning up our rivers, lakes, and coastal waters largely by controlling pollution from factories, sewage plants, and other "point" sources of pollution.

This is incomplete/misleading. Washington State could have done better. Pollution from Washington concentrated animal feeding operations (CAFOs) is significant. There is overwhelming evidence that unpermitted CAFO dairies in Washington State pollute rivers, streams, and groundwater that feeds surface waters. There are well over 250 CAFOs in Washington State yet only 26 have National Pollutant Discharge Elimination System (NPDES) permits.

This plan aims to protect public health and restore our state's waters by setting clearer goals and standards, and emphasizing the implementation of proven suites of best management practices to prevent pollution.

This is incomplete. There is no official list of approved best management practices for CAFOs in Washington State as required by 33 U.S. Code § 1329(2)(A). FOTC bases this statement on replies from Ecology and the WA State Department of Agriculture (WSDA) when we asked for such a list. Both agencies said there were no records.

Best Management Practices (BMPs) and suites of BMPs are referenced throughout this document. FOTC has inquired about BMPs on a Yakima dairy and the WA State Dept. of Agriculture Dairy Nutrient Management Plan (WSDA DNMP) inspector simply told us that the dairy complied with the BMPs in their dairy nutrient management plan. This is not good enough. It is impossible for citizens to know whether compliance takes place unless we know the BMP content.

Page 7: The draft states:

To support development of the NPS Plan, Ecology conducted a study of existing information regarding nonpoint source pollution in Washington.² The objective of this study was to research and document the current known extent of NPS pollution, evaluate the land uses and human activities that can generate NPS pollution, and look at the linkage between land uses, human activities, and NPS pollution in Washington.

This study was published in 2014, so the data is at least eight years old. Study recommendations on page 106 were:

Recommendations from this study include:

- Improve the identification, quantification, and prioritization of nonpoint sources as part of developing load allocations and implementation in a TMDL.*
- Explore ways to obtain more detailed GIS land-use information and techniques to link that information to pollutant sources and best management practices (BMPs).*
- Consider improving reporting under state and federal grants to provide more accurate and consistent information about the nonpoint sources being addressed.*

- *Consider improving the tracking of water quality enforcement actions to categorize activities as permit-related (under permit or needing a permit) or nonpoint source.*
- *Continue studying the effectiveness of TMDL and of BMP implementation in controlling the most common and significant sources of nonpoint pollution.*
- *Provide clearer and more organized and centralized guidance on the toolbox of specific BMPs that match the range of land-use activities and pollutant sources found in Washington.*
- *Explore ways to improve and present information to the public and the regulated community about the causes and solutions to NPS pollution problems.*

FOTC believes that few of these recommendations have been implemented. Many of the recommendations have likely been forgotten and are no longer part of Ecology planning. This highlights a chronic problem for the agency, namely a slow rate of response to pressing issues and a high rate of postponing/abandoning goals and objectives.

Page 9 Atmospheric Deposition: FOTC suggests adding forest fires to sources of atmospheric deposition. According to Ecology, *Smoke from wildfires is the largest source of particle pollution in Washington.* (See Wildfire Smoke Information at <https://ecology.wa.gov/Air-Climate/Air-quality/Smoke-fire/Wildfire-smoke>)

Page 22 Shellfish Protection Districts: the draft says

Chapter 90.72 RCW encourages, and in some cases, requires counties to establish shellfish protection districts and programs to curb the loss of productive shellfish beds caused by nonpoint sources of pollution, such as storm water runoff, failing on-site sewage systems, and runoff from farm animal wastes.

The draft fails to note that Chapter 90.72.070 RCW says, *A dairy animal feeding operation with a certified dairy nutrient management plan as required in chapter 90.64 RCW and any other commercial agricultural operation on agricultural lands as defined in RCW36.70A.030 shall be subject to fees, rates, or charges by a shellfish protection district of no more than five hundred dollars in a calendar year.*

Five hundred dollars is a minor cost of doing business for large CAFOs and does little to stop pollution that seriously threatens shellfish producers.

Pages 17 & 18 Dairy Nutrient Management Act: The draft says:

The program is managed in conformance with a Memorandum of Understanding established between WSDA and Ecology in 2011. Ecology is responsible to EPA for Clean Water Act compliance for animal feeding operations (AFO)s and confined animal feeding operations (CAFOs) and retains the authority under Chapter 90.48 RCW to take compliance actions on any livestock operations where human health or environmental damage has or may occur due to potential or actual discharges. However, in accordance with the MOU, Ecology recognizes WSDA as the lead on all compliance actions against non-permitted dairies.

This law effectively shields Washington dairies from accountability when they discharge pollutants to waters of the state. There are CAFO dairies with high levels of nitrates, phosphorous, and other contaminants in annual soil tests year after year. This information is available to DNMP inspectors and there are no consequences.

FOTC has shown how water pollution complaints to the WSDA are routinely dismissed as unfounded by WSDA inspectors. See ERTS Complaints on www.friendstopenishcreek.org

RCW 90.64, the Dairy Nutrient Management Act, and the Memo of Understanding between WSDA and Ecology have failed to protect ground and surface waters. The statute should be declared void and the MOU rescinded.

Page 28 Section 303(d) and 303(c)-Water Quality Standards and Water Clean-up Plans (TMDLs)

This section makes it appear that Washington's TMDL program is healthy. It is not. Here are some examples of inadequate studies, based on data from the Washington Water Quality Web Page:

- It is well known that nutrients – nitrogen and phosphorous – are responsible for much of the eutrophication in Washington waters. Yet there is only one sampling for total nitrogen listed in Washington's water quality data. That sample was taken in 1996 at Sunday Lake in Snohomish County.
- Problems with over application of manure and fertilizer are well documented in Yakima County. Yet there is only one sampling for total phosphorous in Yakima listed in Washington's water quality data. That sampling was done in 2012 at Giffen Lake. There is no apparent follow-up.
- Ecology initiated a TMDL for bacteria in the Granger Drain in 2001. The 303(d)/305(b) list contains six water studies. Ecology's last sampling was done in 2005 and bacteria levels were still high at that time.
A 2013 Adaptive Management Monitoring Report for the Granger Drain TMDL appears to rely heavily on irrigation district samples from a single site near the mouth of the drain That site had a fecal coliform density of > 5,000 colony forming units (cfu) per hundred milliliters in 1997. By 2013 the number was

around 800 cfu/100 ml, only four times the WA standards of 100 cfu/100 ml. But Ecology felt confident that the target would be met by 2016, so, at least to our reading of the data, no further testing was performed.

- There are sixty-eight studies for the Nooksack River Watershed Bacteria TMDL in Ecology’s 303(d)/305(b) list – ten times more studies than the number in Yakima. The 2000 document *Nooksack River Watershed Bacteria Total Maximum Daily Load* says, “There are 16 dairies in the Nooksack watershed that will be under the dairy general permit within a month.” But, in 2022 three or fewer Nooksack valley dairies have NPDES permits, and the watershed is still listed as impaired.

Page 33 Endangered Species Act.

Pacific Lamprey migrate up rivers throughout the Columbia Basin, including the Wenatchee and the Yakima. Pacific Lamprey are “identified as a Species of Greatest Conservation Need (SGCN) under the WA [State Wildlife Action Plan \(SWAP\)](#). SGCN-classified species include both those with and without legal protection status under the Federal or State Endangered Species programs, as well as game species with low populations.” (WA State Dept. of Fish and Wildlife, 2022, <https://wdfw.wa.gov/species-habitats/species/entosphenus-tridentatus#conservation>) Lamprey are especially susceptible to rising water temperatures.

Endangered species in Washington that depend on healthy rivers and streams include: Upper Columbia spring Chinook salmon, sockeye salmon in the Snake River, humpback whale, and southern resident killer whale. Threatened species in Washington that depend on healthy rivers and streams include: Lower Columbia River Chinook salmon, Puget Sound Chinook salmon, Snake River fall run Chinook salmon, Snake River spring/summer Chinook salmon, Columbia River chum salmon, Hood Canal summer chum salmon, Lake Ozette sockeye salmon, Lower Columbia River steelhead, Puget Sound steelhead, Snake River steelhead, Upper Columbia River steelhead, and bull trout.

For FOTC, our neighbors and friends, the ESA alone is sufficient reason to treat non-point pollution seriously. Because of this list of threatened and endangered species FOTC strongly supports mandates for healthy, robust riparian buffers in Washington State.

Page 39: The document states:

Ecology will continue to support the implementation of the following key regulatory programs:

- *State’s Forest Practice Rules.*
- *Dairy Nutrient Management Program.*
- *Local regulation of on-site sewage systems.*

• *NPDES/State Waste Discharge Permit program*

FOTC objects to Ecology support for the Dairy Nutrient Management Program. Based on FOTC experience, this program serves to shield polluters from scrutiny and allows polluting dairies to continue polluting.

FOTC believes that Ecology's NPDES/State Waste Discharge Permit program for CAFOs could and should be more robust and more protective. For this reason FOTC engages in litigation to hopefully achieve stronger permits.

The ideal is to have all of the agencies managing these disparate programs working together to create a single unified program that links all of these efforts into a more cost-effective program to address nonpoint pollution and achieve compliance with the WQ Standards

FOTC congratulates Ecology on stating this lofty ideal. It will take money and dedication on the part of the bureaucracy to come close to achieving this ideal. FOTC observes that striving to ascertain the truth about air, water, and soil quality in Washington State will go a long way toward environmental health. We are aware of Ecology's emphasis on quality assurance and acknowledgement of the important role of data gathering. Accurate and comprehensive data is essential for effective oversight, equity, adaptive management, species preservation, sustainable farming, and environmental protection.

Page 72:

DNMP conducts routine inspections at all dairy and permitted CAFO operations approximately every 22 months, and including a wet-weather inspection every five years.

FOTC believes that DNMP inspections are not adequate to identify leakage from aging manure lagoons. FOTC is prepared to defend this statement with facts. It is misleading for Ecology to imply that the DNMP protects Washington waters.

DNMP partners with other agencies (Ecology, Health, local agencies) and technical assistance providers to educate manure users and to identify and correct actual or potential violations from non-dairy livestock operations in watersheds with documented water quality issues.

FOTC believes that this effort is inadequate to protect ground and surface waters. For example, no agency assesses discharge to groundwater from the approximately 500 acres of manure compost in the Lower Yakima Valley.

Page 77:

Ecology will work to ensure that the nonpoint program is well-integrated with our regulation of point source pollution. Specifically, Ecology will focus on connections between the nonpoint and TMDL programs, and the regulation of storm water and confined animal feeding operations.

How can FOTC learn about and attend these discussions at the earliest possible stages of development?

Page 85:

Toxic chemicals pollute storm water, streams and lakes in Washington. Exposure to these chemicals affects people's health and the health of the environment. Ecology will continue to use our TMDL and STI approaches to address impairments caused by toxics. In addition, Ecology will look for additional tools outside the Clean Water Act to address toxics.

FOTC observes that Ecology has done almost no testing of soils, ground and surface waters in the central part of the state for per- and polyfluoroalkyl substances (PFAS), especially where bio-solids have been applied to cropland.

Page 88:

Ecology works collaboratively with key local and state entities to coordinate the implementation of NPS control measures in high priority watersheds. While recognizing the importance of statewide coordination, Ecology also emphasizes the need to coordinate with partners at the local level. Regional offices lead local coordination efforts through multiple avenues.

FOTC wishes to document a likely problem dealing with the local Yakima Regional Clean Air Agency regarding greenhouse gas emissions. We are prepared to share information showing that the YRCAA has practiced a “head in the sand” approach to air emissions from animal agriculture. While the YRCAA has ignored the problem, CAFO dairies in Yakima County have produced so much methane that investors are willing to put up millions of dollars to build manure methane digesters. There are serious implications for climate change and for NPS water pollution that the YRCAA does not address.

Page 90:

In 2020, the WQ Program convened an Environmental Justice Working Group to implement the EJ Policy, by providing guidance and procedures for staff to include in their daily work. The primary objective of the working group is to ensure that the WQ

Program incorporates the elements of the EJ Policy across all business practices to provide Washingtonians with an equal opportunity for their voices to matter in our efforts to protect, preserve, and enhance our natural environment.

Will this EJ Working Group address Environmental Justice problems with the Lower Yakima Valley Groundwater Management Area?

Page 110:

Where existing regulatory programs provide specific oversight and enforcement authority related to a category of NPS pollution, Ecology will generally defer to the implementation of those programs, and not develop independent guidance. Current regulatory programs include:

- *Forest Practices Rules*
- *Onsite Sewage Systems Regulations and Ordinances*
- *Dairy Nutrient Management Program*

FOTC strongly suggests that Ecology cease deference to the Dairy Nutrient Management Program because that program has failed to stop major leaching of nutrients to groundwater.

Page 128:

Lower Yakima Valley Aquifer The Lower Yakima Valley has been the site of known groundwater nitrate contamination. Starting in October 2008, the Yakima Herald Republic ran a series of article entitled “Hidden Wells, Dirty Water” to highlight nitrate in drinking water used in large part by low income, farm families. At the request of Yakima Valley and in cooperation with the Department of Ecology the Lower Yakima Valley Groundwater Management Area advisory committee was formed. The committee has initiated sampling of groundwater at 170 domestic groundwater wells and in 2019 installed 30 dedicated groundwater monitoring wells to assess nitrate distribution and concentration in groundwater throughout the Lower Yakima Valley (PGG, 2019).

<https://ecology.wa.gov/Water-Shorelines/Water-quality/Groundwater/Protectingaquifers/Lower-Yakima-Valley-groundwater>

There is more to this story. The LYV GWMA well monitoring currently taking place is designed to establish a baseline so Ecology can document trends going forward from 2022. After twenty years Ecology has decided to establish a baseline for LYV groundwater quality.

Page 133:

Yakima Ground Water Management Area Washington State Department of Agriculture (WSDA) has been heavily involved with the nitrate groundwater contamination issues in the lower Yakima valley for over a decade. Recent work on the groundwater management area (GWMA) included staffing the technical committees and committing resources through an interagency agreement to conduct a comprehensive nitrogen loading assessment. Completion of this assessment will allow members of the GWMA to focus nitrogen management actions on land uses that contribute excess nitrogen most significantly to degradation of groundwater quality in the area

This information is misleading and outdated. Despite terms of the agreement WSDA did not complete a nitrogen loading assessment for the LYV GWMA. WSDA and Yakima County completed something different, a nitrogen availability assessment, with help from Ecology in 2018. That study was never approved by the LYV GWMA advisory committee due to serious flaws in the data analysis.

Page 147:

Ecology has regulatory authority to prevent pollution, require the Groundwater Quality Standards to be complied with and require that dischargers to waters of the state obtain a permit. Permits include the Concentrated Animal Feeding Operation General Permit, Biosolids General Permit and individual State Waste Discharge permits for land application of wastewater.

A quick read of this paragraph leads one to believe that all dischargers to groundwater have NPDES permits. This is not true. Only sixteen Washington CAFO dairies have NPDES permits, but most of the over 250 Washington dairies discharge to groundwater. In some cases, such as the unpermitted Henry Bosma Dairy in the LYV, discharge quantities are massive.

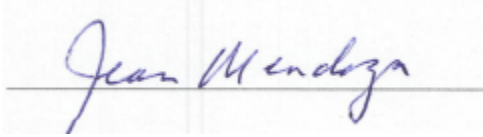
Page 150:

In the Lower Yakima Valley many people depend on ground water as a drinking water source. Past study results show that 12% of the valley's wells that have been tested do not meet drinking WQ Standards for nitrate. About 20% have elevated levels of nitrates, and many are above the background level for the area.

This is an understatement of the problem. All people in the LYV are dependent on groundwater for drinking, unless they rely on bottled water. By citing the lowest numbers Ecology minimizes the impact of LYV groundwater pollution. In fact, 61% of domestic wells one mile down gradient from cluster of LYV dairies were found to have nitrate

levels above the safe drinking water standard of 10 mg/L. One monitoring well on the dairy cluster had nitrate levels as high as 234 mg/L. The first three rounds of LYV GWMA sampling from thirty purpose-built monitoring wells found that 45% to 48% of the wells had nitrate levels above 10 mg/L in 2021 & 2022.

Sincerely,

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

Jean Mendoza
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