Main Office: 360.466.3163
Facsimile: 360.466.5309

Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

December 5, 2025

Ben Rau, Watershed Planning Unit Supervisor
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
Via online public comment form: https://wq.ecology.commentinput.com

RE: Comments on Washington's draft Voluntary Clean Water Guidance for Agriculture

Dear Ben Rau,

On behalf of the Swinomish Indian Tribal Community ("Swinomish" or the "Tribe") we offer the Washington Department of Ecology ("Ecology") the following comments based on our review of Washington's draft Voluntary Clean Water Guidance for Agriculture ("Guidance"). The draft Guidance provides a helpful overview of the various voluntary best management practices ("BMPs") related to addressing the issues identified by each chapter. However, the Tribe believes that without providing a clear nexus between agricultural pollution, the impacts of resulting water quality degradation – most of which have been evident in Washington waters for several decades -, and the legal and moral responsibilities of agricultural producers, this Guidance continues to fail to provide an effective framework improving water quality through adoption of BMPs in the agricultural sector. Specifically, the draft Guidance suffers from the following shortcomings:

1) **Failure to adequately characterize the nexus between agricultural practices, legally impaired water quality for salmon, ecological degradation, and resulting ecosystem, tribal, cultural, and economically harmful impacts.**
2) **Failure to include critical information on the high degree to which agricultural practices negatively contribute to degradation of water quality throughout Western Washington, facilitate and exacerbate climate warming of salmon streams, contribute to the decline of aquatic ecosystems generally, and more specifically, ESA-listed and ecologically important species, and treaty-reserved resources and rights.**

3) **Failure to adequately highlight and clarify legal and moral responsibilities of agricultural producers to protect water quality affected by their operations.**
4) **Failure to provide any clarity on when and how regulatory actions will be implemented as voluntary measures continue to fail provide the necessary tools for Ecology to carry out its legal duty to protect and restore water quality under Chapter 90.48 RCW.**

Based on these pervasive and significant failings, the Tribe requests that Ecology staff address them each specifically and substantively in a revised draft prior to submission to the Environmental Protection Agency.

About the Swinomish Tribe

The Swinomish Indian Tribal Community is a federally recognized Indian tribe and political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which among other things reserved fishing, hunting and gathering rights throughout the Skagit watershed and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the Lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters.

Since time immemorial, the Swinomish Tribe and its predecessors have occupied and utilized vast areas of land and water in northern Salish Sea to support the Swinomish way of life. The Swinomish Tribe is a guardian of the Skagit and Samish River basins and surrounding coastal areas. The Swinomish Tribe are also adjudicated co-managers of Washington fisheries along with the Washington Department of Fish and Wildlife (WDFW) and have worked with WDFW and NOAA Fisheries for decades in this capacity to ensure protection and restoration of fishery resources in the Skagit and Samish basins. Past and current degradation of water quality from agricultural production due to nonpoint source pollution in general, and temperature impairment due to loss of riparian vegetation in particular, is a significant barrier to recovery of salmon in these basins and therefore is a key factor impacting the Tribe's treaty-reserved resources and cultural lifeways.

Comments on Washington's draft Voluntary Clean Water Guidance for Agriculture

To address the shortcomings listed above, we urge Ecology to strengthen the draft Guidance in the following ways:

1. Provide a clear and comprehensive characterization of the nexus between agricultural practices, legally impaired water quality for salmon, ecological degradation, and resulting tribal, cultural, and economically harmful impacts.

While the draft Guidance details BMPs that can mitigate agricultural impacts on water quality, it does not sufficiently describe the specific pathways through which current agricultural practices contribute to water quality impairment, how this causes legal impairment of water quality for salmon, ecological degradation, and resulting tribal, cultural, and economically harmful impacts. By omitting a clear explanation of these causal links—including nutrient loading, sedimentation, pesticide contamination, hydrological alteration, reduction in riparian vegetation, and impacts to critical areas and riparian function—the Guidance fails to clearly articulate why adequate BMP implementation is necessary. A stronger, more transparent discussion of these connections is essential for motivating voluntary action, building public understanding, and ensuring agricultural producers appreciate the broader ecological consequences of landscape management decisions. Incorporating regionally relevant data and specific examples of the current ongoing and historical impacts would further ground the Guidance in the lived experience of communities, tribes, and resource users who are directly affected by degraded water quality.

2) Incorporate critical information on the high degree to which agricultural practices negatively contribute to degradation of water quality throughout Western Washington, facilitate and exacerbate climate warming of salmon streams, contribute to the decline of aquatic ecosystems generally, and more specifically, ESA-listed and ecologically important species, and treaty-reserved resources and rights.

Both in the introduction, and throughout each chapter the Guidance should candidly acknowledge the substantial role that specific forms of agricultural pollution—including elevated water temperatures from riparian removal and the refusal to retore riparian habitat to achieve water quality standards for salmon streams in WAC 173-201A-200, nutrient runoff (nitrogen and phosphorus), livestock waste and associated pathogens, pesticide and herbicide residues, and sediment from field erosion—plays in the continued decline of salmon, steelhead, orca, and other ecologically and culturally significant species. These impacts are well-documented in academic research, and they bear directly on the ability of Washington's tribes to exercise treaty-reserved rights. Without presenting this information clearly, the document understates the urgency with which BMPs must be adopted and the extent to which voluntary measures must meaningfully reduce pollution loads. Strengthening this discussion of impacts would also create a clearer connection between agricultural stewardship and the State's obligations under the Endangered Species Act, Clean Water Act, and its responsibilities to tribes regarding treaty-reserved resources.

3) Clearly articulate the legal and moral responsibilities of agricultural producers to protect water quality affected by their operations.

Although the Guidance positions BMP adoption as voluntary, it must not obscure the fact that all landowners and operators—agricultural or otherwise—are subject to state water quality standards—including those in WAC 173-201A-200—and have a duty to prevent pollution. The current draft provides no clarity on these baseline obligations or on the legal framework that

governs nonpoint source pollution in Washington, information that should be included front and center in the introduction of this Guidance. By explicitly outlining the statutory responsibilities—including those in the Clean Water Act, Water Pollution Control Act, Shoreline Management Act, Growth Management Act, Washington Pesticide Control Act, Washington Pesticide Application Act, and local Critical Areas Ordinances—along with the ethical imperatives of protecting shared water resources, Ecology can ensure that voluntary participation is grounded in a clear understanding of both rights and responsibilities. This clarification would also reinforce the fact that voluntary measures are not a substitute for compliance, but rather a flexible pathway to help producers meet existing legal obligations.

4) Clearly describe when and how regulatory actions will be implemented as voluntary measures continue to fail provide the necessary tools for Ecology to carry out its legal duty to protect and restore water quality under Chapter 90.48 RCW.

For voluntary guidance to be effective, participants must understand the consequences of inaction or insufficient action, and Ecology must be willing to use regulatory authority to fulfill its legal duty to protect and restore water quality under Chapter 90.48 RCW. The draft Guidance fails to provide meaningful detail regarding Ecology's approach should voluntary measures not achieve the pollution reductions necessary to meet water quality standards. This omission creates uncertainty for producers, undermines the credibility of the Guidance, weakens the incentive structure for voluntary implementation. Furthermore, this omission calls into question Ecology's commitment to upholding Washington State law RCW 90.48 which states:

> *It is declared to be the public policy of the State of Washington to maintain the highest possible standards to insure the purity of all waters of the state…consistent with…the propagation and protection of wild life, birds, game, fish, and other aquatic life…and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.*

Ecology should outline the circumstances under which regulatory measures may be triggered, the mechanisms available for enforcement and imposing violations, and the metrics or benchmarks that will be used to evaluate success or failure. Providing this clarity will not only improve transparency but also help ensure that voluntary efforts are robust, measurable, and aligned with the State's broader water quality obligations.

In the introduction chapter for the Guidance, Ecology obfuscates the legal responsibilities of landowners and Ecology's necessary role in taking enforcement actions when compliance is not met through voluntary action. The Guidance states:

As described earlier, if a producer uses suites of practices consistent with the recommendations in this guidance and appropriate to all farm-specific pollutants and water quality concerns, Ecology will presume that water quality is being adequately protected by the operation.

However, despite this presumption, if there is a documented discharge of pollution to state waters that has a significant impact on human health or the environment, Ecology may take additional action, even if BMPs are in place. Additional actions could include working with a producer to implement additional practices or to improve execution of existing practices.

This language is unacceptable and must be changed. It is wholly insufficient for Ecology to ever presume that water quality requirements are being met, regardless of what BMPs are in place. It presumes to give an agricultural operator a legal safe harbor when there is no basis for that in law or policy. When there is a documented discharge or legal impairment of water quality based on the State's adopted water quality standards, Ecology must conduct compliance checks and additional actions must include enforcement, not be limited to additional BMPs or improved execution.

Chapter-Specific Comments

Chapter 3: Nutrient Management

The opening section of Chapter 3, Appendix Part A recognizes the negative effects that agricultural nutrient inputs have on water and air quality. This foundational section is essential for educating agricultural producers about the profound impacts that nutrient pollution has on aquatic organisms, ecosystems, and downstream communities. However, the current five paragraphs fall short of providing the depth and scope of information necessary to convey the magnitude of this problem.

Although the section briefly summarizes key consequences of agricultural nutrient inputs—such as eutrophication, hypoxia, harmful algal blooms, drinking water contamination, and shifts in ecological function and species composition—it does so in a manner that understates the scale and severity of resulting harm. These impacts extend far beyond ecological impairment; they have significant cultural, social, economic, and public health implications for communities across Washington, particularly for tribes whose treaty-reserved resources and cultural lifeways depend on healthy aquatic ecosystems.

Nutrient runoff in the form of nitrogen, phosphorous, and manure from agriculture causes eutrophication, harmful algal blooms, and bacterial contamination that force closure of shellfish beds to harvest. For tribes this is a de facto extinguishment of treaty rights that grant tribes the ability to harvest in their usual and accustomed grounds. Such closures also cause immediate and

cascading losses on both local and tribal economies through reducing harvest revenue, processing work, and taxes paid to local governments. Commercially, in 2023, Washington's shellfish aquaculture generated $252 million in sales and contributed $416 million to the state's economy while supporting nearly 2,400 jobs.[1]

Without a more complete and candid presentation of the status of Washington's aquatic ecosystems, and without clearly describing the substantial role that poor nutrient management practices play in their continued decline, agricultural producers cannot reasonably be expected to voluntarily adopt the practices necessary to protect water quality. To be effective, this Guidance must offer producers a more complete understanding of why nutrient management matters—not just in abstract ecological terms, but in terms of the tangible, ongoing losses faced by businesses, communities, fisheries, and ecosystems statewide.

Accordingly, we urge Ecology to significantly expand the depth and breadth of information presented in this section and throughout the draft Guidance. This should include clearer explanations of ecological impacts, culturally specific harms, economic costs, and public health risks associated with nutrient pollution from agriculture. A more comprehensive presentation will help ensure that producers are fully informed and properly motivated to implement BMPs that meaningfully reduce nutrient loading and support the restoration and protection of Washington's waters.

Chapter 4 – Pesticide Management

The draft Guidance does not provide the critical foundational information necessary to convey the environmental and human-health risks associated with pesticide use. Nowhere does the chapter describe the well-documented dangers pesticides pose to soil and water quality, aquatic ecosystems, and public health. The absence of discussion regarding non-target impacts, bioaccumulation, synergistic toxicity, and documented effects on state- and federally listed species—such as salmon, steelhead, and other sensitive aquatic taxa—is a significant omission. Likewise, the Guidance does not address human health risks, including exposure pathways, acute and chronic toxicity, or risks to vulnerable populations. Without this essential context, agricultural producers are not provided with a clear understanding of why pesticide BMPs matter or what is at stake when pesticides enter the environment.

The chapter also fails to highlight producers' legal responsibilities and obligations related to pesticide storage, handling, and application. As with other chapters, this leaves the impression that pesticide stewardship is merely optional, rather than a shared responsibility governed by enforceable rules. To be effective, this chapter must include a clear, plain-language introduction that explains the fundamental concerns associated with pesticide use and underscores the

[1] Greene Economics, LLC. (2025, August 28). *Shellfish fee assessment: Annual regional economic impact of shellfish aquaculture* (Report to the Washington State Legislature). Washington State Legislature.

importance of implementing BMPs to reduce harm to water quality, human health, and ecological integrity.

The chapter states that all regulatory requirements will appear in bold. We support the clarity this provides and encourage Ecology to do this throughout all chapters in the Guidance. However, even within this chapter this practice is applied inconsistently. For example, the "Waste Disposal" section includes legally enforceable mandates—such as "Never dump pesticides into drains, ditches, or water bodies" and "Do not burn any pesticide container in an open fire"—but these directives are not bolded. Similarly, Appendix Part B notes that "Under FIFRA, all pesticides must be used strictly according to label directions, which are legally enforceable," yet this statement also lacks emphasis. Ensuring that all enforceable requirements are consistently bolded throughout the document would help producers distinguish between voluntary and mandatory practices and would should be applied across the entire Guidance.

The chapter's brief reference to timing restrictions on pesticide application states that Washington has specific rules in certain counties, but does not include the rules themselves or direct producers to the appropriate resources. Ecology should include these requirements in an appendix or, at minimum, provide clear, accessible links or citations so that producers can readily determine the rules applicable to their locality. Without this, the Guidance leaves producers uncertain about compliance expectations.

In the section *Pesticide Detection in Surface and Groundwater in Washington State* the Guidance cites the Kellendy *et al.* (2025) technical report, which found that among 17 sampling sites in Washington streams, 111 unique pesticides were detected, and that 95.7% of the 325 sampling events identified two or more pesticides in the water column. These findings are striking and indicate widespread and persistent pesticide presence in surface waters. Yet the draft Guidance drastically understates the significance of these alarming results by concluding merely that pesticide use "does lead to some surface water contamination in at least the streams sampled." This characterization is deeply inadequate and fails to convey the seriousness of a situation in which virtually all sampling events detected multiple pesticides.

Ecology should provide a more detailed summary of pesticide presence in Washington's waters, including a detailed explanation of the ecological and human-health implications of such pervasive contamination. Without this analysis, producers are not equipped with the information necessary to understand why minimizing pesticide inputs and adopting robust BMPs—such as buffer zones, timing restrictions, drift-reduction technologies, and integrated pest management—is imperative to protecting Washington's waters, fisheries, and communities.

Chapter 7 – Water Management – Irrigation Systems

This section appropriately identifies erosion, sedimentation, and nutrient loading as concerns associated with tailwater runoff. However, it should explicitly recognize that proper tailwater runoff management is also critical for preventing pesticide runoff, which constitutes a significant and well-documented threat to aquatic organisms, including ESA-listed species. Omitting pesticide contamination leaves the discussion incomplete and fails to provide producers with a full understanding of the pollutants commonly associated with irrigation return flows.

The subsection on "Impacts on Surface Water, Groundwater, Erosion, and Leaching" acknowledges that irrigation withdrawals affect streamflow and temperature, yet it does not explain the significant ecological consequences of these changes. Reduced flows and elevated temperatures have direct, profound impacts on aquatic ecosystems, including increased physiological stress on fish, habitat fragmentation, mortality of ESA-listed salmonids, and degradation of riparian and instream ecological function. These changes also carry substantial cultural and economic repercussions, particularly for tribes whose treaty-protected fisheries depend on the availability of cold, clean water. If Ecology expects agricultural producers to voluntarily adopt BMPs, the Guidance must clearly articulate the real-world consequences of reduced flows, increased temperatures, nutrient loading, pesticides, and sediment—rather than referencing these issues in the abstract.

Across the chapter, Ecology repeatedly notes that poor irrigation management "impacts water quality," but provides no explanation of how these impacts relate to state and federal water quality standards or the regulatory framework under which those standards are enforced. Without this context, the idea of "water quality impacts" remains vague, and agricultural producers are not given the information necessary to understand that they have legal responsibilities to avoid causing or contributing to water quality violations. This chapter should therefore include a concise overview of applicable water quality requirements and clarify that agricultural nonpoint pollution is subject to enforceable standards. This context is essential for grounding voluntary BMPs in an accurate understanding of existing legal obligations.

Regarding the section on water rights, the Tribe strongly supports the inclusion of Washington State law affirming that minimum instream flows must be maintained to protect fish, wildlife, water quality and quantity. However, this section should expand upon what this requirement means in practice. For example, maintaining instream flows for fish and water quality during summer months and drought conditions includes ensuring that water temperatures remain below lethal thresholds for rearing, spawning and migrating salmon. Incorporating this level of detail will provide producers with a clearer picture of how water withdrawals affect aquatic species and why flow protections matter.

In addition, this section must explicitly acknowledge tribal senior water rights, which secure the ability to harvest fish and protect fish habitat, and which generally hold priority over most non-

tribal water uses. Recognizing these senior rights is essential for accurately describing Washington's water rights framework, affirming the State's trust responsibilities, and ensuring that agricultural producers understand the legal context within which water management decisions occur.

Conclusion

While the draft Voluntary Clean Water Guidance for Agriculture represents an important resource to aid agricultural producers in improving water quality in Washington, **its current form does not provide the clarity, context, or accountability necessary to ensure meaningful and effective implementation of best management practices**. To support voluntary stewardship that produces measurable improvements, the Guidance must clearly articulate the connections between agricultural activities and water quality degradation; fully acknowledge the impacts to aquatic ecosystems, ESA-listed species, and treaty-reserved resources; and accurately describe the legal and moral responsibilities that all agricultural producers hold in protecting shared waters. Equally essential is the inclusion of a transparent explanation of the regulatory backstop and potential enforcement actions that will be employed if voluntary measures fail to achieve required water quality outcomes.

The Tribe respectfully urges Ecology to revise the draft Guidance to substantively address the concerns and recommendations outlined in this letter. Strengthening the Guidance in these ways is critical—not only for protecting Washington's waters and the species and communities that depend on them, but also for upholding the State's legal obligations and its trust responsibility to tribes. The Tribe remains committed to working collaboratively with Ecology to ensure that the final Guidance is a robust and informative tool to help agricultural producers meet their legal obligation to protect Washington's water quality.

Thank you for your consideration of these important concerns. If you have any questions or wish to engage further, please feel free to contact me.

Galen Priest

Environmental Policy Analyst
Swinomish Indian Tribal Community
gpriest@swinomish.nsn.us
360-770-9963