# Scott Figenshow

Please see attached comment letter from two farm families: Debbie McGourin, McGourin Farms and Scott Figenshow, Clausen Legacy Farms, in the Palouse region of southern Spokane County.

August 27, 2025

by email to: **nonpoint@ecy.wa.gov**

Kathryn Loy
WA Department of Ecology, Water Quality Program
P.O. Box 47696
Olympia, WA 98504-7696

**RE: 2025 Nonpoint Source of Pollution Control Plan-Draft (The Plan), Dryland Farming COMMENTS**

Dear Ms Loy,

These comments are prepared from the perspective of multigenerational family farms in the Palouse, using no-till, low disturbance practices on dryland grain, pulse, and forage crops. We focus our comments on the gaps in the plan as they affect southern Spokane County and Whitman County.

Our aim is a Nonpoint Plan that works so well, landowners and farmers can use its best management practices suited to the situations on their land, making enforcement unnecessary.

**Required Action:**

A specific program for the Palouse region is needed, that includes definitions, accurate mapping, and completion of the soil conservation tillage practices within the Best Management Practices (BMP). Until all three are in place, then all farms should be exempt from the nonpoint source pollution control plan. The Plan identifies a gap between NRCS programs and Ecology's BMPs as detailed in section 2.3.5, p.46 and in Appendix G. We believe that it is possible for Ecology to take a continuous improvement mindset with ever-improving conservation tillage and cropping system Best Management Practices that are NRCS approved as satisfying water quality requirements.

We understand that Ecology is working with NRCS, Conservation Districts and others to complete the Voluntary Clean Water Guidance for Agriculture 'over the next few years', with additional chapters to be completed by the end of 2025. This document appears to be the guide for BMP's that farmers can rely on. Yet they have not all been completed.

For the Plan to work, the following items must be included in the Nonpoint Control Plan and the BMPs:

1. **Use the Environmental Protection Agency (EPA) definitions** for dry, seasonal creekbed/ stream types. These are common across the Palouse and missing in The Plan, instead only sitting in one BMP (Chapter 12). The EPA definitions are:

    a. **Year-round streams (perennial)** typically have water flowing in them year-round. Most of the water comes from smaller upstream waters or groundwater while runoff from rainfall or other precipitation is supplemental.

b. **Seasonal Streams (intermittent)** flow during certain times of the year when smaller upstream waters are flowing and when groundwater provides enough water for stream flow. Runoff from rainfall or other precipitation supplements the flow of seasonal stream. During dry periods, seasonal streams may not have flowing surface water. Larger seasonal streams are more common in dry areas.

c. **Rain-dependent streams (ephemeral)** flow only after precipitation. Runoff from rainfall is the primary source of water for these streams. Like seasonal streams, they can be found anywhere but are most prevalent in arid areas.

It is imperative to insert these definitions in Section 2.3.1 Clean Water Act, possibly within the 'Section 319-Nonpoint Source Management Programs' (pages 35-37), and clarify that in low rainfall, dryland farming areas (like the Palouse), the intermittent and ephemeral stream nonpoint performance can be achieved with conservation tillage and cropping system BMP's (once completed).

It is an ecological fallacy[1] to group ephemeral and intermittent streams with perennial streams. Without using the distinctions in the EPA stream type definitions, the Plan will fail.

2. Accurate **mapping** of the intermittent, ephemeral and perennial streams across the Palouse. There are well-known inaccuracies in the current watershed mapping conducted by WDFW and as published on the 'Freshwater DataStream data map' as it includes all dry creekbeds as if they were perennial streams.

   This incorrect mapping is referenced on Page 160 of the Nonpoint Plan, at Section 7.3.6 'Stream Flow Monitoring', and detailed in footnote 165 with the website URL.

   There are at least two well-known problems with the current maps:
   - The blue lines on the digital map do not accurately detail whether a stream is perennial, intermittent, or ephemeral.
   - The blue lines on the digital map are not in the real-world location in many places, exceeding the extent of its actual location, and/or has not adjusted for the presence of roadways.

   Work with landowners and farmers to ensure the maps are accurate, correctly identifying the intermittent and ephemeral streams. As we point out in Item 3 below, provide landowners and farmers with a choice of BMPs that are effective for their operation.

3. **Complete all 13 chapters of the "Voluntary Clean Water Guidance for Agriculture"** BMP's. We would expect that 'Chapter 2: Cropping Methods: Crop System' would incorporate and expand upon the range of conservation tillage methods that are discussed in the completed 'Chapter 1: Tillage and Residue Management', but which are not yet listed as acceptable BMP's adjacent to ephemeral and intermittent stream definitions. Instead, it appears that Ecology defaults to the Riparian Management Zone approach from Chapter 12: Riparian Areas. This is another ecological fallacy.

[1] Ecological Fallacy refers to the practice of making untested inferences about individual-level relationships from aggregate or group-level data. It is based on the problematic assumption that relationships that hold at one level of aggregation also hold at another level of aggregation. Source: ScienceDirect

Further we note that Chapter 12: Riparian Areas lists an Eastern Washinton default Riparian Management Zone of 150 ft in width, regardless of whether it is an Ephemeral or Intermittent stream. (see pages 33b-34b, Tables 11,12, 13) These tables must be revisited and corrected, and allow the choice of using the Chapter 1: Tillage and Residue Management BMP's for conservation tillage. The science of conservation tillage is well documented as equally effective as riparian planting, so Chapter 1 should have equal weight as Chapter 12.

Chapter 13: Suites of Recommended Practices is still in development. In particular, we think it should explain the range of BMP's which deliver equivalent results, and confirm that the choice of which to apply rests with the Farmer/Landowner, not Ecology.

Chapter 13 should also make explicity that the proper use of conservation tillage and cropping methods (as set out in Chapters 1 and 2), when adjacent to intermittent and ephemeral creekbeds, provide adequate protection from nonpoint pollution, and are **exempt** from the nonpoint pollution enforcement, as the BMP's are deemed compliant.

The Plan and BMP chapters should clarify that the Farmer / Landowner can **Self-certify** their selected practices. Under the 'technical support' descriptions, please include a process to review a self-certified selection of practices and provide the Farmer /Landowner with a "Clearance Letter", to state that so long as the landowner implements the agreed BMP's that their land satisfies Ecology's requirements. Our County Conservation Districts would be an ideal fit for this function, and could also assist the Farmer / Landower in implementing BMPs suited to their situation. The Farmer/ Landowner would benefit from an advocate to Ecology as to why the chosen BMPs are the right answer for their land.

**Implementation Steps:**

Until all three of the above three steps are completed by Ecology and its partners, no enforcement actions should be taken. The Nonpoint Plan should only require what can be implemented effectively by the landowner.

Further, we ask Ecology to turn this into a tool that supports constant improvement in our conservation tillage and farming practices.

Our experience is that the proper use of conservation tillage and cropping methods adjacent to intermittent and ephemeral creekbeds provide adequate protection from nonpoint pollution. In most cases heavy rainfall-induced runoff, if any, is only redistributed to another part of the farm or catchment, and rarely enters a perennial stream, unless the ground is frozen.

**Comments by Section:**

At issue is a disconnect between the observed enforcement actions of Ecology in the Palouse, which are at odds with the incomplete status of the BMP's, the lack of definitions, and the inaccurate mapping. We do not believe that The Plan has taken account of this situation; it is

not an accurate reflection of the actual practice of Ecology. This must be corrected. Our further comments suggest ways that could be achieved.

Generally, **Sections 3.1-3.6** speak to an incentive-based approach, backed up by enforcement. While we applaud an incentive-based approach in every instance, the incentives are not universally and consistently available. It is not economically viable for a family farm to remove farmland from production at the scale that the Straight to Implementation type of Advance Restoration Plan seems to be requiring of farmers who are required to use riparian strips as the Best Management Practice (BMP) in the Palouse.

More specifically, **Chapter 3: Strategies and Tools, Page 53**, Add "Palouse Plan" to the list of "key state initiatives connected to water quality", and develop a plan specific to the dryland characteristics of the Palouse, together with our County Conservation Districts, NRCS and local farmers.

The Palouse Plan would then appear to align with the bullet point "Watershed Work" on **Page 56, and Section 3.1** Watershed Cleanup Programs/319 Watershed Based Plans". Further, on page 61, we ask that Ecology clarify whether the Palouse Plan is using the 'Straight to Implementation' method. If it is, then we further seek clarity that the (still incomplete) BMP's including Chapter 1: Cropping Methods: Tillage and Residue Management and Chapter 2: Cropping Methods: Crop System are equally valid as BMPs for intermittent and ephemeral streams.

It would appear that section **3.1.3 Aligning Ecology's Nonpoint and TMDL Programs** would support the above.

For a landowner who chooses to apply the BMP on their land, the farmer is still required to demonstrate compliance of the WQ standards within 10 years (see **page 61**, bottom paragraph). If Ecology has specified the BMP, and the farmer has implemented it, the liability for WQ should rest with Ecology not the farmer/landowner. A landowner should not be held to the failure of a BMP to meet Ecology's goals if they complied with the agreed practice.

BMP implementation funding should be automatic and coordinated from Ecology if the corrected maps show that a parcel has perennial streams or is not using conservation tillage practices and is required to mitigate to meet Ecology requirements. No unfunded mandates! We point you to **Section 3.3.3 Ecology's Water Quality Incentive Programs, page 66**, we question why the incentive payment program is only available for riparian buffers, and not for the suite of Conservation Tillage and Cropping Systems set out in the Chapter 1 and Chapter 2 BMP's.

**Environmental Justice (pages 55-56):** This part of The Plan suggests that Ecology should be required to conduct a cost-benefit analysis from the perspective of the family farm, to understand the impacts of the mitigation requirements on the farm's economic viability. The Plan does not appear to investigate this aspect of environmental justice- where the current stewards of the land are potentially asked to create some economic benefit for the wider public without being compensated for doing so. Confirmed grant funding to landowners would need to be made available from whatever mix of federal and state funds to cover the cost of mitigation to ensure the farm remains viable.

Does a BMP have unintended consequences when used in the wrong situation? We worry that no assessment has been done on the potential for increased localized flooding risk that may

occur when the ephemeral and intermittent creeks are altered by the installation of riparian zones.

Environmental justice must include a variety of solutions, not the enforcement of a one-size-fits-all approach. Again, another ecological fallacy.

Further, it is important that one agency take Farmer / Landowner Self-certification review responsibility. If that is to be Ecology, then the farmer/landowner needs certainty that their contractual obligations are being met, whether with the County Weed Board requirements, or NRCS/ FSA/ USDA on any number of CRP/CSP/EQIP and other conservation programs commonly used across the region.

Lastly, we note that The Plan does not provide for any type of dispute resolution process to resolve situations where Ecology and the Landowner have reached an impasse. There must be a process in The Plan for Landowner / Farmer to appeal an enforcement action.

**In summary:**
A key feature of our topography are the dry intermittent and ephemeral creekbeds that weave among the rolling hills of the Palouse. They function very differently than perennial creeks, and need to be acknowledged as such. Our families are multi-generational stewards of this land, its soil is precious, and we care very deeply about protecting our shared environmental, farming, economic and water quality future for generations to come. Even the best BMP's can get overwhelmed whenever Mother Nature decides to test them. A forward-looking plan can recognize this, and still encourage continual improvement rather than rely on enforcement.

We would like to work with you to complete the full suite of definitions, mapping, and BMPs to ensure a full suite of practical and viable tools are available for dryland farming.

Sincerely,

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