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Swinomish Indian Tribal Community

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

August 28, 2025

Casey Sixkiller, Executive Director
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503
Via email: casey.sixkiller@ecy.wa.gov

RE: Comments on Washington's draft 2025 Water Quality Management Plan to Control Nonpoint Sources of Pollution

Dear Executive Director Sixkiller,

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 2025 Water Quality Management Plan to Control Nonpoint Sources of Pollution draft ("2025 Plan"). Unfortunately, the draft 2025 Nonpoint Plan fails to meet both the requirements of a Section 319 nonpoint plan and the fundamental goal of guiding an effective nonpoint source ("NPS") pollution management program. The 2025 Plan suffers from major shortcomings, including that it:

1) **Fails to establish enforceable timelines and automatic escalation to enforcement when voluntary compliance deadlines are missed.**
2) **Fails to define clear, measurable goals and annual milestones for reducing nonpoint source pollution, including temperature impairment in salmon-bearing streams.**
3) **Fails to require preemptive implementation of Best Management Practices (BMPs) in high-risk sectors such as agriculture, with clear communication that these are legal requirements—not optional measures.**
4) **Fails to commit to immediate enforcement for egregious or willful violations of the Washington State Pollution Control Act.**
5) **Fails to produce and publish annual, detailed public reports on BMP implementation, compliance rates, enforcement actions, and water quality trends.**

6) **Fails to update and maintain a fully accessible public-facing project tracking system with complete and current data.**
7) **Fails to conduct and publish a statewide analysis of water quality trends, relating changes to implemented strategies and BMP effectiveness.**
8) **Fails to incorporate the evaluation components required by EPA Section 319 guidance, including assessment of restored waters, pollutant load reductions, and emerging nonpoint source threats.**
9) **Fails to develop and implement an enforceable schedule for riparian restoration in temperature-impaired watersheds, as required by Washington's CZARA program obligations.**

Based on these pervasive and significant failings, the Tribe requests that Ecology staff address them each specifically in a revised draft document and provide another 60-day opportunity to review and provide comments.

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 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 2025 Nonpoint Plan

The 2025 Plan is of critical importance—not merely a pro forma requirement for EPA Section 319 funding, but a roadmap that should guide the State's approach to protecting water quality for the next five years. As the principal entity in Washington State with the jurisdiction and authority

to implement and enforce nonpoint source pollution management, Ecology carries a legal duty, and moral responsibility, under the Washington State Water Pollution Control Act (Chapter 90.48 RCW) to protect and restore the waters of the state to the highest standards. Section 90.48.010 RCW could not be more clear

> "It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure . . . the propagation and protection of wild life, birds, game, fish and other aquatic life, . . . Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state . . ."

Following this, the Legislature directed that Ecology "shall have the jurisdiction to control and prevent the pollution," of all surface and underground waters of the state. No other state agency shares this authority with Ecology. Despite this clear legislative mandate, nonpoint source pollution across the state, and especially throughout salmon streams in Western Washington, has exploded the past 20 years.

Washington waters sustain salmon, shellfish, and other resources guaranteed to tribes by treaty and essential for all Washingtonians. The 2025 Plan is a critically important milestone for Ecology to evaluate progress in its implementation of its NPS programs, assess the status and ongoing needs of waters impaired by NPS pollution, discuss additional management measures needed to attain water quality standards for all designated uses, and use adaptive management to develop meaningful and effective goals and strategies to attain and maintain water quality standards.

Overreliance on Voluntary Measures: A Culture of Noncompliance

RCW 90.48.120 gives Ecology the authority to address both actual and potential NPS pollution. This includes the ability to require best management practices ("BMPs") to prevent and control pollution. Ecology's entrenched avoidance of regulatory enforcement has created a culture in which violators face little credible risk of consequences. In fact, Ecology's lack of action so grossly behind schedule, as it has taken no meaningful action to address the 2004 Lower Skagit Temperature TMDL despite the Tribe's repeated requests and pleas to do so. This renders the stream temperature standards for salmon found in WAC 173-201A-200 essentially meaningless, and at best voluntary, and allows a culture of permissive compliance.

RCW 90.48.080 prohibits the discharge of polluting matter into state waters. This creates a general obligation for landowners or Ecology to ensure that pollution is prevented, implicitly requiring practices that achieve this goal, including the use of BMPs. Ecology states in the draft plan that one of its key principles is to "communicate clear standards and compliance expectations." We fully support this principle. However, the absence of concrete goals,

strategies, and timelines for actually doing so renders any such communications meaningless. Potential and actual NPS polluters—whether agricultural producers, or other land managers adjacent to 303(d) listed streams—must know, but have never been told by Ecology in the NW Region, that:

- **They are legally responsible for protecting water quality.**
- **They are required to implement BMPs (preemptively) for any activities that may impact water quality.**
- **Any negative impact to water quality as a result of their operation or land management is a violation of the Washington State Pollution Control Act and is subject to penalties and enforcement actions.**

When this clarity is absent, the message is that there is no urgency, and that voluntary measures may be postponed indefinitely without consequence. This perception is reinforced by Ecology's Voluntary Clean Water Guidance and "graduated compliance pathway," which Ecology justifies by claiming that some operators "may not have been previously aware they were regulated by the state for impacts to water quality." If this is true, it clearly demonstrates that Ecology's efforts to communicate standards and expectations has been wholly insufficient to date and is an indictment of Ecology's failure to communicate basic legal standards—not an excuse for noncompliance by landowners and operators—and not an excuse for Ecology's overreliance on voluntary measures for compliance.

The 2025 Plan must establish clear goals and specific strategies for addressing this significant issue in this Nonpoint Plan. Addressing NPS pollution must include:

- **Clear timelines** for rapid voluntary compliance, with automatic escalation to enforcement when deadlines are missed.
- **Immediate enforcement** for egregious or willful violations, rather than extended negotiation.
- **Effective outreach** to ensure all regulated entities are aware of their obligations before violations occur.

No owner or operator whose activities have the potential to harm state waters should be ignorant of their legal responsibilities, and regardless, that's no excuse for ongoing water quality violations. Potential NPS polluters need to know what enforcement actions can and will be taken should education, outreach, technical assistance, and financial assistance not be expeditiously applied. Until Ecology clearly communicates and enforces these standards, voluntary compliance will remain ineffective. Until a regulatory framework for nonpoint source pollution is established and enforced, Ecology's current reactionary mitigation sequence is fatally flawed and will continue to contribute to ongoing water quality degradation via delayed mitigation and untold harm to the Tribe's Treaty right to salmon and other marine and aquatic resources.

Furthermore, Ecology's support for flawed certification programs contributes to public misconceptions regarding water quality improvement efforts. For example, the Farmed Smart and Salmon Safe Certification programs do not reference or adhere to best available science riparian habitat standards[1], and offer absolutely no guarantees that water quality standards are being met. Such programs provide false assurance to consumers and the public at large that certified products and developments have no negative impact on salmon and the habitats upon which they rely. While the tribe supports sustainable production and development initiatives, any certification must apply best available science and provide assurances of no net loss of ecosystem function and attainment of water quality standards.

Lack of Timely Action and Weak Enforcement

Timeliness is critical in NPS management—both to prevent further harm and to demonstrate to regulated entities that noncompliance is not an option. Ecology's current enforcement process is slow, unpredictable, and resource-intensive.

As an example of their use of enforcement actions to address NPS pollution, Ecology offers the case of *Lemire v. Dept. of Ecology* (2013). This case effectively demonstrates key flaws in Ecology's sequence and approach. Instead of contemporaneously presenting violators with potential enforcement actions, a clear timeline for compliance, and assistance for voluntary actions, Ecology spent tremendous time and effort making multiple offers of assistance for voluntary compliance which were ultimately rejected because the violator saw no credible regulatory backstop. Ultimately, it took six (6) years before Ecology moved from coaxing voluntary compliance to issuance of an administrative order, and a full ten (10) years until the issue was resolved in court. Ecology states that "[a]t times, this process of working to persuade change can take months, and even up to a year or more" in the interim allowing continued degradation and adverse impacts to water quality.

These delays:

- **Undermine the deterrent effect of enforcement.**
- **Allow ongoing degradation of water quality.**
- **Waste staff time and resources that could be used on prevention.**

The 2025 Nonpoint Plan does not – but must – set goals and strategies to:

[1] "Riparian zones or cultivation setbacks of perennial waterways (waterways with year-round flow, regardless of fish presence) and seasonal waterways potentially harboring salmonids and other aquatic species are an average of 50-100 feet wide, with a minimum width of 35 feet or other width consistent with local regulation." https://salmonsafe.org/wp-content/uploads/2025/02/SS-Certification-Standards-for-Farms-Version-3.0-February-2025.pdf

- **Establish enforceable timelines for each step in the compliance pathway.**
- **Define specific triggers for escalation from technical assistance to formal enforcement.**
- **Commit to a policy that enforcement will follow swiftly on a defined timeline when voluntary measures fail or deadlines are exceeded.**

Tribes and the public have a right to know how quickly Ecology will act to correct violations. Without this transparency, enforcement will remain inconsistent, and violators will continue to calculate that delay and noncompliance serves their interests.

Significant Lack of Proactive Management

In Chapter 3 of the Nonpoint Plan Ecology states that "Ecology has moved from a program that was largely limited to responding to complaints and providing grants to one that proactively works to identify sources of pollution and implement on-the-ground fixes." While the Tribe appreciates Ecology's efforts to actively identify sources of NPS pollution and implement fixes, this is still not a proactive approach. A proactive approach would establish and effectively communicate clear standards and enforcement expectations such that would-be NPS polluters preemptively implement BMPs to address pollution.

Washington State Water Pollution Control Act (90.48 RCW) clearly and explicitly provides Ecology with the authority to "…***require*** the use of all known available and reasonable methods by industries and others to ***prevent*** and control pollution of the water of the state…" Yet, Ecology continually treats nonpoint pollution in a reactive manner, only responding to nonpoint sources that actively, or have a "high potential to" pollute waters of the state.

While mitigating existing nonpoint sources is critical to cleaning up Washington's waters, common sense tells us that prevention of nonpoint pollution is far more effective than resource-intensive fixes. It is clear that Ecology continues to implement its nonpoint programs under a flawed philosophy of prioritizing fixing pollution sources without first and foremost addressing the fact that many polluters constantly fail in their legal obligation to ***prevent*** nonpoint source pollution by applying BMPs in the first place.

Proactive prevention is more cost-effective than remediation, reduces the need for enforcement, and prevents harm to sensitive resources, including treaty-reserved fisheries and fish habitat, before damage occurs.

Ecology's approach to NPS pollution must be more proactive by setting goals in this plan to:

- **Establish and enforce requirements for preemptive BMP implementation in high-risk sectors such as agriculture.**

- **Work to educate agricultural entities and make it clear that prevention is an enforceable legal duty, not an optional best practice.**

Lack of Analysis, Transparency, and Accountability

The draft Nonpoint Plan falls short on transparency, analysis, and accountability—three elements essential for protecting water quality, meeting water quality standards, and meeting treaty obligations.

Analysis

The 2025 Plan is built on outdated information. Ecology's only comprehensive review of nonpoint pollution in the state was completed in 2014[2], and required updates on the status of nonpoint pollution impaired waters have not been included in this or previous nonpoint source plans, meaning that Ecology's nonpoint source management ignores more than a decade of new research, TMDL studies, and Section 319 grant evaluations. Effectiveness monitoring, which Ecology says has been ongoing since 2002, has slowed to a crawl: only one report on a single TMDL has been published since late 2021. Furthermore, Ecology's project-tracking website includes just 26 of the 123 projects in its directory[3,4], with most lacking any updates in the last 15 years. This outdated foundation undermines the plan's ability to set informed goals or adapt to current science and developing issues.

Ecology states *"The number of 303(d) listed waters have continued to increase in nearly all parameter groups. However, without further analysis, it is unclear whether this increase is due to degradation of water quality over time, a by-product of an increase in water quality monitoring quantity and quality, or a combination of the two factors."* Understanding which waters are improving or degrading, and whether Ecology's NPS pollution strategy is working is absolutely necessary for successful NPS planning and management. It is unconscionable that Ecology would deem it acceptable to not conduct basic analysis necessary to inform their planning and adaptive management, and to inform external entities on changes in quality to Washington's waters. If Ecology is collecting and tracking data to the extent they suggest, it is not difficult to analyze how water quality is changing through time for individual, monitored water bodies and relate this to strategies and BMPs being implemented. This must be a key goal included in this 2025 Plan in order to understand what is and isn't working, where, and why.

Transparency

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[2] Assessment of Nonpoint Pollution in Washington State. 2014. Washington State Department of Ecology. https://apps.ecology.wa.gov/publications/documents/1403028.pdf

[3]Effectiveness Monitoring for Water Quality Improvement Projects Ecology Publications & Forms. https://apps.ecology.wa.gov/publications/UIPages/PublicationList.aspx?IndexTypeName=Topic&NameValue=Effectiveness+Monitoring+for+Water+Quality+Improvement+Projects+(TMDLs)&DocumentTypeName=Publication

[4] https://fortress.wa.gov/ecy/ezshare/wq/WaterQualityImprovement/TMDL/projectdirectory.htm

Key tracking and transparency tools, such as the Nonpoint Implementation Mapping Application (NPI) and the Environmental Report Tracking System (ERTS), are not meaningfully accessible to tribes or the public. Without detailed data-driven reports, or public-facing data, there is no way to evaluate how many sites receive inspections, how quickly corrective actions occur, whether BMPs are implemented effectively, or if voluntary compliance measures are achieving measurable results.

Because Ecology continually fails to analyze and report data on water quality, nonpoint source pollution complaints, BMP implementation, and effectiveness monitoring, this 2025 Plan, and Ecology's entire nonpoint source management program lack the transparency necessary for the public, other agencies, and tribes to hold Ecology accountable for nonpoint source pollution management.

Accountability

Ecology's stated principles of outcome-focused management and accountability must be backed by transparent and accessible analysis and reports, and make demonstrable progress in impaired watersheds. For example, the Lower Skagit Tributaries Temperature TMDL was established in July of 2004[5], yet Hansen Creek, Nookachamps Creek, and Carpenter Creek exceeded temperature standards for 80%, 60%, and 86% of temperature samples respectively in data collected between 2009 and 2018[6]. There is no indication of improvement during this period, no analysis of performance measures, and no plan for implementing strategies beyond voluntary compliance. Performance measured on clear timelines, geographic coverage, and compliance outcomes should be the basis for priorities and goals set in this plan. Reporting must be regular, detailed, and included in each plan update so the public and tribes can hold the agency to its commitments.

Without current science, analysis of effectiveness monitoring and performance metrics, and clear, enforceable timelines, the Nonpoint Plan is a static pro forma policy document rather than an effective driver of water quality improvement and protection. It is unacceptable that Ecology has not conducted even the basic analysis needed to determine whether water quality is improving or declining in monitored water bodies making adaptive management impossible.

Ecology must be accountable and include in this 2025 Nonpoint Plan update goals and strategies to:

- **Produce and communicate a statewide analysis of trends in water quality, relating changes to implemented strategies and BMPs.**

[5] Lower Skagit River Tributaries Temperature Total Maximum Daily Load Water Quality Improvement Report. 2008. Washington State Department of Ecology.
[6] Skagit Tributaries Temperature Strategy meeting presentation on Watershed Selection. Added December 15, 2020. https://www.ezview.wa.gov/Portals/_1962/Documents/SkagitTemperature/Watershed%20Selection.pdf

- **Provide annual public reports and a public-facing tool to track BMP implementation, compliance rates, and enforcement actions.**
- **Update online project tracking with accurate, complete, and current data.**
- **Make the nonpoint source pollution management program accountable to public, federal, and tribal entities.**
- **Make concrete progress on long-neglected Lower Skagit Tributaries Temperature TMDL**

Vague Goals and Failure to Meet Section 319 requirements

One of the primary intents of a Nonpoint Plan under Section 319 is to "identify water restoration and protection goals and the program strategies to achieve and maintain quality standards. It includes relevant, current, and trackable annual milestones that best support program implementation." Ecology has never produced a report that met this clear standard, and the current plan continues this failure.

The goals and strategies listed in Table 8 of this plan lack any annual milestones that gauge in any substantive way the intended effectiveness of implementation of Ecology's NPS plan. While a certain number of restoration plans or evaluations completed each year is helpful, there are no goals or milestones to address Ecology's most significant responsibilities in regard to managing nonpoint source pollution. In order to address nonpoint source pollution and achieve water quality standards required for salmon, Ecology must:

- improve regulatory framework as noted throughout this letter;
- increase compliance rates;
- commit to timely transparency and accountability;
- document collaboration and alignment among other entities and agencies;
- measure effectiveness of on-the-ground solutions;
- reduce BMP implementation delays;
- provide concrete timelines and goals for NPS pollution reduction;
- remove or improve water quality impairments; and
- address the substantial and increasing level of temperature impairments.

The "milestones" in Ecology's Nonpoint Plan are a weak list of tasks, such as producing an annual report, contacting sites, participate in..., assist with…, review findings, number of webinars or meetings, etc., that **have no tangible or measurable outcome when it comes to remedying NPS pollution,** yet this is what Ecology is proposing for its NPS management program for the next five years.

This Nonpoint Plan update fails to demonstrate that Ecology has done the most important aspect of an NPS plan update which is to evaluate past and current management to inform goals and strategies going forward. The EPA has clear guidance, consistent with Section 319, for components of NPS plans. The Tribe has repeatedly commented that Ecology has failed to meet EPA requirements for the 5-year revision of its Nonpoint Plan, and the current Draft Plan is no exception - particularly in regards to evaluation of the NPS plan.

The EPA guidance states:

> *The state evaluates its NPSMP [Nonpoint Source Pollution Management Plan] using environmental and functional measures of success. Staff from the state's NPSMP, TMDL program, and other water quality-related programs collaborate on evaluation strategies to ascertain the following:*
>
> *• Restored waters/NPS impairments eliminated (i.e., water quality impairments removed) and other documentable water quality improvements and successes.*
>
> *• Section 319-funded watershed projects with significant NPS pollutant load reduction.*
>
> *• The number of remaining NPS-impaired waters.*
>
> *• The number of remaining NPS-threatened, healthy waters.*
>
> *• Any emerging NPS issues (e.g., emerging NPS pollutants or categories of concern).*
>
> *• Additional data needs.*

It is clear that no such evaluation has been conducted, and that Ecology has not met the requirement to use this five-year update as "an opportunity to gauge the effectiveness of programs, make needed mid-course corrections and describe outcomes and key actions expected each year." Ecology must conduct a full evaluation of their NPS program using environmental and functional measures of success, present the findings required by the EPA guidance, and demonstrate how Ecology has used these findings to adapt its NPS program and inform and update goals, strategies, timelines, and measurable outcomes.

Complete and Ongoing Failure to Protect Treaty-Reserved Resources

The Swinomish Indian Tribal Community has, as one of its most fundamental missions, the protection and restoration of salmon for present and future generations. This mission is not only central to Swinomish culture and way of life—it is an expression treaty-reserved rights under the Treaty of Point Elliott of 1855, as interpreted and upheld in *United States v. Washington* and subsequent cases. Salmon are the foundation of Swinomish fisheries, diet, subsistence, economy, spiritual practices, and the State of Washington has an affirmative legal and moral obligation—

rooted in both treaty commitments and its public trust responsibility—to protect the habitat necessary for their survival.

For decades, the Swinomish Tribe ***pleaded with Ecology to do something*** to address the now widespread illegal impairment of salmon streams due to temperature pollution, and has itself has invested heavily in restoring the degraded water quality, riparian vegetation, and nearshore habitat that salmon require. Yet these pleas have been ignored, and its efforts are continually undermined, by the State's persistent failure to address one of the most pervasive and well-documented threats to salmon recovery in the Skagit River watershed: high water temperatures. The 2005 Skagit River Chinook Recovery Plan, and the 2019 Puget Sound Steelhead Recovery Plan, identified temperature pollution as a limiting factor to Chinook salmon and Steelhead survival and recovery, respectively. Salmon are a cold-water species; elevated temperatures reduce dissolved oxygen levels, impair metabolism, increase susceptibility to toxins and pre-spawn mortality, and heighten vulnerability to predators. Riparian habitat and vegetation at a science-based width and distance is a proven, science-based solution—providing shade, cooling the hyporheic zone, and buffering the microclimate—yet the State has failed to require its restoration or protection in temperature-impaired salmon streams.

The absence of meaningful State regulatory action has allowed temperature pollution to persist at levels that imperil salmon runs, deplete harvest opportunities, and undermine treaty-reserved fishing rights. In recent decades, salmon harvests for the Tribe have declined substantially, leaving the Tribe unable to meet subsistence, ceremonial, and economic needs or feed its families the way it did since time immemorial. This represents not only a profound cultural loss, but also a diminishment of the Tribe's legally protected property rights in its fisheries. The State's continued reliance on piecemeal voluntary incentive programs—without enforceable timelines, benchmarks, or regulatory backstops—fails to meet the urgent biological needs of ESA-listed Chinook, Bull Trout and Steelhead, as well as non-listed fisheries that are tribally important, and fails to uphold the commitments embedded in federal law and policy.

For more than twenty years, the Swinomish Tribe has repeatedly called on the Washington Department of Ecology and its federal partners to take decisive action to prevent further harm to salmon resources and to restore riparian vegetation to remedy temperature impairment in the Skagit basin[7]. Those calls remain unanswered, despite state and federal recovery plans for Chinook and Puget Sound Steelhead that explicitly identify high water temperatures as a limiting factor[8]. The scale of the problem is well-documented: between 2004 and 2014, temperature pollution became the largest source of nonpoint source pollution in Washington, with over 1,700

[7] *See* Letters from Swinomish Tribe to Ecology dated June 26, 2018; December 17, 2018; March 15, 2019; December 19, 2019; and July 21, 2020.
[8] *See* Skagit Chinook Recovery Plan. 2005. Skagit River System Cooperative, Washington Department of Fish and Wildlife; Plan for the Puget Sound Steelhead Distinct Population Segment. 2019. National Marine Fisheries Service, NOAA.

miles of salmon streams in the Puget Sound basin identified as temperature-impaired[9]. Since then, well over 2,000 miles of salmon streams have been documented as legally impaired with temperature pollution, and that is with less than 20% of all salmon streams being monitored. Climate change is rapidly intensifying this crisis, making the State's failure to implement mandatory measures all the more consequential to the Tribe's treaty rights, as well as abjectly indefensible from a legal and policy standpoint.

The draft 2025 Nonpoint Plan[10], like its predecessors, contains no enforceable commitments, no measurable benchmarks, and no meaningful accountability to ensure compliance with water quality standards for salmon habitat.

This failure to act violates both the letter and the spirit of the State's obligations under federal law, treaty rights jurisprudence, and the trust responsibility. The continued degradation of salmon habitat in the Skagit River basin directly impairs the Tribe's treaty-reserved rights to take fish at usual and accustomed grounds and stations, and places recovery of Puget Sound Chinook—and by extension the critically endangered Southern Resident Killer Whales—further out of reach. **The State's persistent reliance on ineffective, voluntary approaches in the face of overwhelming evidence of their insufficiency constitutes an ongoing breach of trust, an environmental injustice, and a willful disregard of its legal duties**.

Conclusion

Ecology's substantial lack of progress in protecting treaty-reserved resources or meeting the scale of the challenges facing our watershed, fisheries, and communities hinders salmon recovery, shellfish viability, and undermine the state's legal obligation to all Washingtonians, but especially the tribes. The Swinomish Indian Tribal Community urges Ecology to use the 2025 Nonpoint Plan revision as an opportunity to make meaningful, enforceable changes that will protect treaty-reserved resources, meet water quality standards, and fulfill state and federal trust responsibilities. The ongoing reliance on voluntary measures—without clear timelines, regulatory backstops, or transparent accountability—has failed Washington's waters, salmon, and people. The Tribe calls on Ecology to commit to concrete, measurable, and enforceable actions now, before further irreversible harm occurs to salmon runs, treaty rights, and the ecological health of our state.

To that end, the final 2025 Nonpoint Plan must be substantially revised to, at a minimum:

1) **Establish enforceable timelines and automatic escalation to enforcement when voluntary compliance deadlines are missed.**

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[9] *See* Northwest Indian Fisheries Commission Habitat Conference Power Point, Tyson Waldo, October, 2019
[10] Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution -draft. 2025. https://apps.ecology.wa.gov/publications/documents/2510040.pdf

2) **Define clear, measurable goals and annual milestones for reducing nonpoint source pollution, including temperature impairment in salmon-bearing streams.**
3) **Require preemptive implementation of Best Management Practices (BMPs) in high-risk sectors such as agriculture, with clear communication that these are legal requirements—not optional measures.**
4) **Commit to immediate enforcement for egregious or willful violations of the Washington State Pollution Control Act.**
5) **Produce and publish annual, detailed public reports on BMP implementation, compliance rates, enforcement actions, and water quality trends.**
6) **Update and maintain a fully accessible public-facing project tracking system with complete and current data.**
7) **Conduct and publish a statewide analysis of water quality trends, relating changes to implemented strategies and BMP effectiveness.**
8) **Incorporate the evaluation components required by EPA Section 319 guidance, including assessment of restored waters, pollutant load reductions, and emerging nonpoint source threats.**
9) **Develop and implement an enforceable schedule for riparian restoration in temperature-impaired watersheds, as required by Washington's CZARA program obligations.**

The Swinomish Tribe stands ready to work with Ecology to advance these actions, but cannot accept another five years of ineffective, voluntary approaches while treaty-reserved resources continue to decline. **Ecology must act <u>now</u>—with urgency, transparency, and enforceable commitments—to uphold its legal duties and protect Washington's waters for current and future generations**.

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.

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cc: Kathryn Loy, WA State Department of Ecology, Water Quality Program
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