

Jerrod Sessler

As a landowner and advocate for rural Washingtonians, I approach the Department of Ecology's draft 2025 Water Quality Management Plan to Control Nonpoint Sources of Pollution with deep skepticism. Government interventions often burden citizens, erode constitutional protections like due process and property rights under the Fifth Amendment, and favor bureaucratic control over individual freedoms. While clean water is essential, this plan risks overreaching by blending voluntary best management practices (BMPs) with coercive enforcement, disproportionately impacting farmers, ranchers, dairymen, and property owners who steward our lands. I urge Ecology to prioritize incentives, transparency, and site-specific data over mandates that could lead to regulatory takings without compensation.

The plan's emphasis on agriculture—highlighting pollutants like fecal coliform and nitrates from manure or fertilizers (Chapter 1, Tables 1–6)—may be warranted under certain circumstances, but it overlooks urban stormwater and septic contributions. Critics, like those in recent commentaries, argue this creates unfair targeting, turning "voluntary" BMPs (e.g., riparian buffers in the Clean Water Guidance for Agriculture, May 2023) into de facto requirements via escalation under RCW 90.48. This could restrict land use, such as grazing near streams, without proving site-specific harm, potentially constituting a taking if it deprives economic value (as in *Lucas v. South Carolina Coastal Council*, 1992). While the plan promotes grants (Chapter 5), limited funding and bureaucratic hurdles may exclude small operations, exacerbating economic strain amid rising costs. Factually, the plan aligns with federal Clean Water Act (CWA) Section 319 requirements for EPA funding, but Washington's approach exceeds federal voluntarism by allowing actions on "substantial potential" pollution without intent (RCW 90.48.080). This contrasts with EPA's lighter NPS touch, where incentives dominate. Recent Substack analyses raise valid points on subjectivity—e.g., treating "lack of shade" as a temperature impairment—but the plan ties this to science-based standards (WAC 173-201A), not whims. Still, without mandatory upstream/downstream testing before restrictions, it risks arbitrary enforcement, eroding rights.

Encouragingly, under EPA Administrator Lee Zeldin's deregulatory agenda since January 2025, federal rollbacks—like narrower Waters of the U.S. (WOTUS) definitions and PFAS reconsiderations (March–July 2025)—could ease burdens on landowners. These changes reduce federal oversight of wetlands and runoff, providing flexibility for states but highlighting Washington's plan as potentially "over the top" in stringency. For instance, if EPA views the plan's rigorous TMDLs and monitoring (Chapters 3 and 7) as misaligned with national deregulation, it might withhold approval or funding, benefiting property owners by limiting state overreach. But, one has to ask why the overreach at the state level of the EPA disagrees that it is necessary or helpful?

This sets up potential conflict: Ecology plans EPA submission by December 2025, per its May 2025 reading guide. If rejected—due to perceived excessiveness amid EPA's 31-rule rollbacks—Washington could lose Section 319 grants (vital for BMP incentives), forcing reliance on state funds like the Centennial Clean Water Fund amid budget constraints. Legal challenges might ensue, with landowners or industry groups suing under preemption arguments, or Ecology appealing via administrative processes. Past tensions, like deferred coastal nonpoint approvals (2013–2024 NOAA/EPA letters), show delays could stall implementation, creating uncertainty but possibly empowering local control. In a deregulatory climate, such disputes might favor reduced regulation, protecting rights but risking water quality if unaddressed.

To balance protection and rights, extend the comment period (ending August 29, 2025) to at least a year for inclusive stakeholder input, including more rural voices. Require site-specific data for

actions, enhance incentives without match requirements, and align with federal deregulation to avoid conflicts. Property owners aren't polluters—they're stewards. Let's ensure this plan actually supports them, not burdens them further.