



*Friends of Toppenish Creek*

November 17, 2025

Hello Mr. Kenning,

Thank you so much for meeting with us last Friday. We realize that you are responsible for an entire state while we focus primarily on the Yakima Valley. To help you remember our concerns, let us summarize our perspective on Lower Yakima Valley (LYV) water problems.

We believe:

- A. There are too many cows in too small an area. This is the major reason why the LYV has such high levels of nitrate groundwater pollution.
- B. Dairies in the LYV pump too much groundwater and this leads to falling aquifers and reduced groundwater returns to the Yakima River.

Here are some specifics:

1. The NPDES permit for the Port of Sunnyside (POS) is inadequate to reduce nitrate levels at the port. POS nitrate levels are among the highest in the LYV and overall they are not improving. Ecology has not written a new permit for the port since 2014, despite major problems with the 2014 permit.

As an example of our frustration consider this: The 2014 POS permit raised the enforcement limit for nitrate in groundwater at the port from 9.1 mg/L to 78.2 mg/L. See page 25 of Attachment 1. Safe drinking water levels are currently 10 mg/L. Due to this unreasonably high enforcement limit it is almost impossible for the POS to be out of compliance for nitrates in groundwater.

We are more than frustrated. We are outraged. And it gets worse when Ecology refuses to discuss this issue with us. See Attachment 2. As we state in this attachment a large CAFO dairy continues to spread manure at the port and no one questions this practice. Hopefully you can see why FOTC is often angry.

2. When Ecology convened a Lower Yakima Valley Groundwater Management Area in 2012, the administrative agency, Yakima County, stated that the GWMA would reduce nitrate levels in groundwater within five years. This turned out to be a huge falsehood, but the Friends of Toppenish Creek believed what we were told by people who should

have known better. We joined the advisory committee and actively participated in the work spending thousands of volunteer hours.

In 2019 when the GWMA published the project results, FOTC was so disappointed that we filed a minority report.<sup>1</sup> Among our concerns was a study that categorized all of irrigated agriculture together.<sup>2</sup> Crops such as wine grapes that require little fertilizer were grouped together with crops like corn that require very large amounts of fertilizer. Due to this data manipulation the study concluded that apple orchards are the leading contributor to nitrates in LYV groundwater despite frequent testimony by orchardists that fruit crops are not heavily fertilized because this leads to lots of foliage and less fruit. Blaming apples for elevated nitrates in groundwater was a blatant attempt to mislead.

Currently the GWMA program is implemented by a team of agency representatives plus a representative from the WA Dairy Federation. From FOTC's perspective this clearly demonstrates a significant bias in favor of the dairy industry. The public is not allowed to attend GWMA Implementation Team meetings so our information comes weeks to months late and sometimes only after we submit public records requests.

Recently we complained to Ecology to no avail after the GWMA Implementation Team published a study of the GWMA area that said groundwater flows straight south and straight through a basalt outcropping called Snipes Mountain, when in fact groundwater makes a 90 degree turn at the outcropping. That same study said that nitrate levels on the LYV Dairy Cluster are less than the safe drinking water level of 10 mg/L when in fact they are not. (See Attachments 3, 4, and 5)

We and others should be able to rely on Ecology to provide accurate, science based information. If or when we bring errors to Ecology's attention, the agency should seek the truth and not look for ways to hide mistakes.

3. As we all know, National Pollution Discharge Elimination System (NPDES) Permits are extremely important and often difficult. In Washington Friends of Toppenish Creek, along with the Water Keeper Alliance, Center for Food Safety, Western Environmental Law Center, Sierra Club, Food and Water Watch, and Puget Soundkeeper have advocated for stronger NPDES permits for CAFOs for years.

In 2011 it was time for Ecology to issue a new permit for CAFOs. The agency chose to postpone that issuance in hopes of developing a permit that would be more user friendly. Ecology finally issued a permit in 2017 that our coalition considered weak. We appealed the permit to the WA State Pollution Control Hearings Board and lost. we

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<sup>1</sup> Available at [GWMA MR Plan XV.pdf](#)

<sup>2</sup> Nitrogen Availability Assessment. Available at [Estimated nitrogen available for transport in the lower Yakima valley groundwater management area](#)

proceeded to the WA State Court of Appeals and in 2021 that body ruled in our favor on major issues. Ecology completed a revisions that we again considered too weak. We again appealed to the WA State PCHB in 2023.

During subsequent discussions Ecology and our attorneys came to agreement on four issues. Under summary judgement in February of this year the PCHB ordered Ecology to act pursuant to the agreed upon issues. As you noted when we talked on Friday, Ecology expects to present a revised NPDES permit for CAFOs in 2027.

It has been a long journey. Please consider three important points:

- I. FOTC has advocated for better funding so that Ecology can better implement the NPDES permit program for CAFOs. See Attachment 6. At this time permit fees do not cover the cost of program implementation as required by law.
  - II. There are currently 16 Washington CAFO dairies with NPDES permits; 13 are in Yakima County; and 4 of the 13 no longer milk cows. This is not much of an accomplishment. There are no benefits to having a permit, no matter how well crafted, if so many discharging facilities are unpermitted. We know that the EPA has offered assistance to bring more dairies under permit. See Attachment 7.
  - III. FOTC also wishes to help. In that vein we have submitted ERTS complaints that we believe should have triggered permits. To our way of thinking those ERTS complaints were inadequately investigated by the WA State Dept. of Agriculture with the result that polluters escape consequences to their actions. FOTC believes that the Memorandum of Understanding between Ecology and WSDA impedes work to prevent dairy pollution.
4. Although water quantity is outside your area of responsibility, falling aquifers are relevant. If there is no water then water pollution does not matter. That is exactly what dairy advocates said a number of years ago. Around the year 2000 Yakima County gave the DeVries family permission to set up a CAFO dairy in Moxee, Tom DeVries agreed to install four monitoring wells. About ten years later three of those wells had gone dry. No water = No problem.

This issue even went to the U.S. Supreme Court when Christine Gregoire argued for Ecology and prevailed in PUD No. 1 of Jefferson County et al. v. Washington Department of Ecology et al.<sup>33</sup> The Supreme Court stated among other things:

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<sup>33</sup> Available at [PUD No. 1 of Jefferson Cty. v. Washington Dept. of Ecology, 511 US 700 - Supreme Court 1994 - Google Scholar](#)

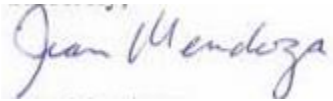
*Petitioners also assert more generally that the Clean Water Act is only concerned with water "quality," and does not allow the regulation of water "quantity." This is an artificial distinction. In many cases, water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation or, as here, as a fishery. In any event, there is recognition in the Clean Water Act itself that reduced stream flow, i. e., diminishment of water quantity, can constitute water pollution.*

This issue is important today because a calf feeding operation, the Fryslan Calf Ranch, proposes to expand in the Mabton area. Ecology stated in 2015 that such a large calf feeding operation would require mitigation for instream flows. See Attachment 8.

We bring this to your attention because Fryslan is supposed to obtain a nutrient management plan and has stated they would obtain an NPDES permit. The parent company for Fryslan has a long history of environmental violations. Please think about the impact this operation might have on both water quality and quantity in the LYV.

Thank you again for meeting with us and for touring the LYV. This was the first time that someone with your level of authority has met with us and we are grateful.

Best wishes,

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

Jean Mendoza

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