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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 30288-1

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

JOSEPH LEMIRE,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Appellant,

THE POLLUTION CONTROL HEARINGS BOARD,

Respondent Below.

**BRIEF OF WASHINGTON CATTLEMEN'S ASSOCIATION,
CATTLE PRODUCERS OF WASHINGTON, U.S. CATTLEMEN'S
ASSOCIATION, AND SPOKANE COUNTY CATTLEMEN
AS AMICI CURIAE IN SUPPORT OF RESPONDENT**

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I. INTRODUCTION

Joseph Lemire was issued and ordered to comply with an Administrative Order issued by the Washington Department of Ecology (“Ecology”) because of perceived potential pollution. These perceived concerns were based upon cursory observations at Lemire’s property and lacked evidentiary support of any actual pollution. Nonetheless, in relying on the “tend to cause pollution” clause of RCW 90.48.080, Ecology asserted broad jurisdiction over the perceived potential modality of water pollution. After appealing to Pollution Control Hearings Board, “PCHB,” the trial court properly invalidated the Administrative Order, finding that Ecology’s Order was not supported by evidence other than conjecture, and found genuine issues of material fact. The trial court’s holding should be upheld, as Ecology ignored the plain meaning of RCW 90.48.080 and relevant historical interpretations of reasonable land usage. Pursuant to RAP 10.6, Washington Cattlemen’s Association, Cattle Producers of Washington, U.S. Cattlemen’s Association, and Spokane County Cattlemen collectively file this amicus curiae brief in support of the trial court’s decision.

II. INTEREST OF AMICI CURIAE

Amici curiae collectively represent cattle ranching and stock growing operations. The membership represented by amicus curiae range

geographically from the arid conditions of Eastern Washington to the rainforest conditions of Washington's Pacific Coast, and operate in scale from family farms with a few heads of cattle, to large producers. As outlined in Amicis' Motion to Appear as Amici, Amici curiae have a significant interest in the Court's decision because it will directly impact cattle industry range management practices and the relationship with the PCHB and Ecology. Amici curiae are able to collectively represent the voice of thousands of cattle industry participants and can assist this Court with understanding the broader impacts of this case.

III. STATEMENT OF THE CASE

This appeal arises out of the Columbia County Superior Court's reversal of the PCHB's summary judgment in favor of Ecology, and the invalidation of Ecology's Administrative Order No. 7178. The underlying facts are generally in dispute, which led to the reversal of the PCHB's summary judgment in the Superior court. While there is a factual dispute, the insufficient evidence and conclusory allegations by Ecology support the trial court's decision.

A. Lemire's Property.

Lemire owns approximately 265.6 acres of property in Dayton, Washington. Resp't Reply Br. at 2. Since originally homesteaded in the 1880's, the land has been utilized for farming and cattle operations. *Id.*

The operation does not include a “contained animal feeding operation.” (CAFO). *Id.* Pataha Creek bisects and separates four small parcels of cropland and three small grazing parcels on the Lemire property, with an estimated 4,200-5,000 feet of creek bed on the property.

Pataha Creek is listed on the State’s Water Quality Assessment as Category 5 impaired waterbodies, meaning that water quality standards have been violated for one or more pollutants and there is no pollution control plan or Total Maximum Daily Load (TMDL). *Id.* at 4–5. There was no testing or analysis of water quality at or near the Lemire property and none of the published listing data identifies pollutant loads or violation of water quality standards at or near the Lemire property. *Id.* at 4–5.

B. Administrative Order No. 7178.

On November 23, 2009, Ecology issued Administrative Order No. 7178, based on general observations of conditions on the Lemire property that “creates a substantial potential to pollute, and therefore violate the provisions of RCW 90.48.080.” However, these site observations were made at a distance and there was no DNA testing to establish the source of manure.¹ Resp’t Reply Br. at 11. Ecology “concluded that the regular and extended access of cattle to Pataha Creek over the course of many years

¹ Other wildlife and deer frequent the area as well as the entire Pataha basin.

created a substantial potential to cause water pollution.” Appellant Br. at 7. Yet, Ecology did not conduct a water quality investigation at the Lemire property, no evidence was provided to establish water quality degradation, and Lemire specifically disputed these contentions. Resp’t Reply Br. at 11. Ecology has also failed to identify any discernible, confined or discrete water conveyances such as conduits, pipes, ditches, channels. *Id.* at 8–9.

Administrative Order No. 7178 imposes a requirement to fence the entire stream corridor with “[l]ivestock exclusion fencing that is a minimum of 35 feet from the top of the stream bank, measured horizontally.” *Id.* at 15. The fencing requirement extends beyond the stream corridor and eliminates all reasonable and practical use of the fenced area. *Id.* Lemire would lose at least 7.23 acres of grazing and farmland.² *Id.* at 15–16. Access to the stream for stockwater rights is also lost, as is access for all previous farming activities. *Id.*

Regulations referencing nonpoint source conditions require that “[a]ctivities which contribute to nonpoint source pollution shall be

² Ecology could announce that as much as 200 feet of riparian buffer be provided on either side of the stream, thereby increasing nearly six-times the amount of excluded land. See Wash. Dep’t of Ecology, How Ecology Regulates Wetlands 20 (1998), available at <http://www.ecy.wa.gov/pubs/97112.pdf>. Left only to the discretion of Ecology, ranchers are subject to ambiguous and uncertain determinations.

conducted utilizing best management practices [BMPs].”³ *Id.* at 13–14. Lemire offered uncontroverted evidence that his practices were consistent with “best management practices” established by Washington State University. *Id.* at 14. BMPs followed by Lemire are consistent with agricultural BMPs suggested by Ecology, with the exception of exclusionary fencing. *Id.*

C. PCHB Summary Judgment and Dismissal.

Pollution Control Hearings Board (“PCHB”) assumed jurisdiction of the appeal. *Id.* at 16; PCHB No. 09-159. Ecology challenged the appeal. A Motion to Dismiss and Motion for Summary Judgment were filed on February 25, 2010. The Motion for Summary Judgment was supported by declarations from both parties. *Id.* at 17. PCHB acknowledged that “Lemire disputes many of Ecology’s observations, and

³ WAC 173-201A-510(3) provides, in part, as follows:

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by a department and a violation of water quality criteria occurs, the discharger shall modify the existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria

WAC 173-201A-510(3).

the scope of the Administrative Order.” PCHB Order at *3. The PCHB granted the Motion to Dismiss and Summary Judgment. *Id.* at *8. The Summary Judgment was erroneously granted despite genuine issues of material fact and included significant errors of law.

D. Superior Court Decision.

Lemire filed a timely Petition for Judicial Review of the Board’s Decision with the Columbia County Superior Court. Resp’t Reply Br. at 17. Following briefing and oral argument by the parties, the court ruled that Administrative Order 7178 was invalid. *Lemire v. PCHB*, No. 10-2-00085-1 (Order on Administrative Appeal at *2, Sep. 21, 2011). The trial court concluded that the PCHB improperly granted summary judgment because of genuine issues of material fact, and that Administrative Order 7178 was invalid because it lacked the requisite legal and factual foundation for issuance. *Id.*

IV. ARGUMENT

A. Historical interpretations of nonpoint source pollution allow for the reasonable use of those water rights.

Beginning in the early twentieth century, Washington courts have held that cattle grazing adjacent to water courses affords the riparian owner to the reasonable use of the water. Current cattle operators are entitled to the same reasonable use of their lands and the adjacent riparian

rights.

The Washington Supreme Court found that:

[e]ach riparian owner is entitled to a reasonable use of the waters as an incident to his ownership, and, as all owners upon the same stream have the same right of reasonable use, the use of each must be consistent with the rights of others, and the right of each is qualified by the rights of others.

McEvoy v. Taylor, 56 Wn. 357, 358, 105 P. 851, 851 (1909). *Accord* *Miller v. Baker*, 68 Wn. 19, 22, 122 P. 604, 605 (1912); *Morris v. McNicol*, 83 Wn.2d 491, 495, 519 P.2d 7, 10 (1974).

In *McEvoy*, the appellants owned a farm with a spring and a stream that flowed onto their neighbor's property. 56 Wn. 357, 359, 105 P. 851, 852. The McEvoy's geese were allowed to drink and swim on the water and cows and horses were allowed to come to the stream and drink. *Id.*, 105 P. at 852. When the downstream landowner brought suit to enjoin the appellant's use of the stream because of animal waste in the water, the Washington Supreme Court held "[t]hey had the right to use the spring and pond to water their cattle or for their geese to swim upon, and the pollution of the water, being a natural incident to a proper and reasonable use, cannot be restrained nor prevented." *Id.* at 359, 105 P. at 852. Additionally, the court noted that:

[t]he washings from cultivated fields might, and probably would, carry soil and manure into streams of water, and make them muddy and impure; and so the habits of cattle, according to their natural instincts, would lead them to stand in the water and befoul the stream; but, nevertheless, the owners of the land must not lose the beneficial use of it.

Id. at 359–60, 105 P. at 852.

The *McEvoy* appellants represent the typical rancher with riparian land ownership in 1909, and since then, ranchers have implemented BMPs to significantly reduce the effects of cattle ranching. With both the historical recognition of reasonable land usage and the use of BMPs, cattle ranchers should not suddenly be denied the reasonable usage of their riparian rights merely because cattle are in the vicinity. Ecology’s determination that cattle “tend to cause pollution” because they are present in riparian areas is not an accurate historical interpretation, nor a reasonable interpretation.

More recently, the Supreme Court in *Tiegs v. Watts*, found that a jury instruction including the language of RCW 90.48.080 was an accurate description of a nuisance. 135 Wn.2d 1, 15, 954 P.2d 877, 884 (1998). Because RCW 90.48.080 describes a nuisance in the water pollution context, and the reasonable riparian land usage of livestock watering, like in *McEvoy*, is not a nuisance, the Court should reject Ecology’s conclusion that cattle near a stream, *per se*, “tend to cause pollution.”

Additionally, in other statutes, Washington specifically recognizes that cattle engage in riparian stockwatering and directs Ecology to satisfy stockwatering requirements:

It shall be the policy of the state, and the department of ecology shall be so guided in the implementation of RCW 90.22.010 and 90.22.020, to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for *stock on riparian grazing lands which drink directly therefrom* where such retention shall not result in an unconscionable waste of public waters. The policy hereof shall not apply to stockwatering relating to feed lots and other activities which are not related to normal stockgrazing land uses.

RCW 90.22.040 (emphasis added). So, Ecology's determination that a cow's mere presence near a stream "tends to cause pollution" is inconsistent with RCW 90.22.040 language of retaining minimal flows or levels for stock drinking.

Both historical interpretation and statutes recognize riparian grazing. As such, Ecology's conclusion that cattle's mere presence near a stream causes pollution is inconsistent and erroneous.

B. Ecology and the PCHB conflate point source with non-point source regulations.

Washington implements its own National Pollutant Discharge Elimination System (NPDES) program as allowed by federal law, 33

U.S.C. § 1342 (b), and chapters 173–220 WAC. See also, *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 603, 90 P.3d 659, 677 (2004). And courts have drawn a distinction between point source, and non-point source pollution, where “point sources which can be traced to a single, identifiable location like a factory or refinery; and non-point sources . . . comprised of diffuse sources of water which pick up and carry pollutants while moving over and through the ground.” *Tukwila Sch. Dist. No. 406 v. City of Tukwila*, 140 Wn. App. 735, 738, 167 P.3d 1167, 1169 (2007). The Ninth Circuit found cattle are excluded from the point source category, in that “[i]t would be strange indeed to classify as a point source something as inherently mobile as a cow.” *Oregon Natural Desert Ass'n v. Dombeck*, 172 F.3d 1092, 1099 (9th Cir. 1998). Applied to the cattle ranching activity in riparian areas, the presence of cattle in a riparian area is classified under the non-point pollution control scheme.

Ecology seeks to implement an unsubstantiated backdoor permitting regime that to non-point pollution controls. The PCHB, in upholding Ecology’s exclusionary fencing requirement, “conclude[d] that the record on summary judgment demonstrates no materially disputed facts about the potential for *discharge of organic material* to state waters in violation of the statute.” PCHB Order, at *6 (emphasis added). And, the “fails to control the polluting content of waste discharged or to be

discharged” clause of RCW 90.48.120 speaks explicitly to pollution discharges. However, discharges of pollution only apply to point sources. WAC 173-220-330(5); WAC 173-220-030(18). The court has recognized that point source discharges of manure cause pollution. *See State, Dept. of Ecology v. Douma*, 147 Wn. App. 143, 193 P.3d 1102 (2008) (deciding that a dairy pumping 500,000 gallons of manure into an unlined trench in contact with a high water table was a violation of RCW 90.48.080 and a discharge of pollutants into groundwater). Yet failing a discreet conveyance of manure, cattle in the presence of a riparian corridor does not meet the legal threshold of discharge from a point source, and is therefore outside the scope of the Washington NPDES permitting regime that Ecology is seeking to impose on Lemire.

C. Interpretation of “tend to cause pollution.”

The central inquiry in this matter is interpretation of “tend to cause pollution.” In order to issue Administrative Orders under the “substantial potential to violate” clause of RCW 90.48.120,⁴ Ecology is first required

⁴ The statute states as follows:

Whenever, in the opinion of the department, any person shall violate or creates a substantial potential to violate the provisions of this chapter or chapter 90.56 RCW, or fails to control the polluting content of waste discharged or to be discharged into any waters of the state, the department shall notify such person of its determination by registered mail

RCW 90.48.120(1)

to determine that there has been a violation of RCW 90.48.080.⁵ Ecology, by using the “tend to cause pollution” language of RCW 90.48.080, seeks to make a *per se* determination that all cattle operations within a riparian habitat “tend to cause pollution.” The plain and unambiguous language of the statute, and prior court interpretations, do not support this conclusion.

“[T]he court determines the meaning and purpose of a statute *de novo*, although in the case of an ambiguous statute which falls within the agency's expertise, the agency's interpretation of the statute is accorded great weight, provided it does not conflict with the statute. *Pub. Util. Dist. No. 1 of Pend Oreille County v. State, Dept. of Ecology*, 146 Wn.2d 778, 790, 51 P.3d 744, 750 (2002). “This court may grant relief if . . . the [agency] has ‘erroneously interpreted or applied the law.’” *Port of Seattle*, 151 Wn.2d at 587, 90 P.3d at 669 (quoting RCW 34.05.570(3)(b), (d)).

“In interpreting a statute, the primary objective of the court is to ascertain and carry out the intent and purpose of the Legislature in creating it.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of*

⁵ The statute provides as follows:

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause *or tend to cause pollution* of such waters according to the determination of the department, as provided for in this chapter.

RCW 90.48.080 (emphasis added).

Fraternal Order of Eagles, 148 Wn.2d 224, 239, 59 P.3d 655, 663 (2002).

To determine legislative intent, this court looks first to the language of the statute. *Id.* If the statute is unambiguous, its meaning is derived from the plain language of the statute alone. *Id.* Legislative definitions provided in a statute are controlling, but in the absence of a statutory definition, courts may give a term its plain and ordinary meaning by reference to a standard dictionary. *Id.* “This court, however, will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences.” *Id.*

1. “Tend”

The dictionary meaning found in definition 2(a) of “tend” means “to have an inclination to a particular quality, aspect, or state.” Webster’s Third New International Dictionary Unabridged 2354 (Philip Babcock Gove ed., 2002). Or in definition 3, “tend” means “to exert activity or influence in a particular direction.” *Id.* So together, “tend” means to have an inclination or exert activity to a particular direction or end result.

2. “Cause”

The nuisance context recognized by *Tiegs* in the application of RCW 90.48.080 gives weight to the court’s interpretation of “cause” in the civil tort context. This means that “cause” includes both “cause in fact,”

and “proximate cause” elements.⁶ *Hartley v. State*, 103 Wn.2d 768, 778, 698 P.2d 77, 83 (1985). For the court to find a “cause” of the pollution, both factual and legal causation must be established, with “[t]he question whether a business created a nuisance and caused damage . . . is one for the jury.” *Tiegs*, 135 Wn.2d at 15, 954 P.2d at 884. Therefore, causation is a question of fact, not a conclusion of law. The legislature’s choice to use “cause,” has important legal implications. If the legislature had chosen another word, such as “create,” “facilitate,” or “encourage,” Ecology’s interpretation may be entitled to more deference. However, the express use of “cause” by the legislature demonstrates the intent to require the same legal elements found in other civil causation requirements: both cause in fact and legal (proximate) cause. Ecology failed to offer sufficient evidence of pollution caused by Lemire’s cattle.

3. “Pollution”

The statutory definition of “pollution” is controlling.

[p]ollution “shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in

⁶ Cause in fact referring to the “but for” consequences of an act—the physical connection between an act and an injury, and legal causation questioning whether, as a matter of policy, the connection between the ultimate result and the act is too remote or insubstantial to impose liability, dependent upon mixed considerations of logic, common sense, justice, policy, and precedent. *Schooley v. Pinch's Deli Mkt., Inc.*, 134 Wn.2d 468, 478–79, 951 P.2d 749, 754 (1998).

temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as *will or is likely to create a nuisance or render such waters harmful....*”

Douma, 147 Wn. App. at 153 n.11, 193 P.3d at 1107 (2008) (quoting RCW 90.48.020) (emphasis added).

4. Analysis

Read together, “tend to cause pollution” unambiguously means:

1. to have an inclination or exert activity to a particular direction or end result that is the
2. both factual and legal causation of
3. such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful.

Therefore, in order to establish that there is an inclination or activity to a particular result, there needs to be sufficient evidence of each factor. Speculative and conclusory assumptions fail to meet the substantial evidence standard which “is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises.” *Edelman v. State*, 160 Wn. App. 294, 304, 248 P.3d 581, 586 (2011) (internal quotations omitted).

The deference given to the agency's interpretation of ambiguous statutes falls short, as the "tend to cause pollution" clause is facially unambiguous. The plain meaning of the statute's "tend to cause pollution" clause requires the elements of inclination or exerting activity to a particular direction or end result, the factual and legal causation requirement, and the statutory definition of pollution. Reading "tend to cause pollution" more broadly distorts the statutory language and produces results that are inconsistent with the legislative intent.

If the court gives the deference to Ecology's interpretation of "tend to cause pollution," an unprecedented grant of jurisdiction results, and would "result in unlikely, absurd, or strained consequences." Not only would a cattle rancher be subject to penalty for his cattle drinking from a stream, but equally applied so would a hiker or a fly fisherman making a sediment disturbance when stepping foot into a stream. This would meet the definition of pollution, as a disturbance would "change" the "turbidity . . . of the waters." Likewise, a driver with an oil drip on a car would be subject to penalty because the road's eventual runoff would be an "alteration of the physical, chemical or biological properties, of any waters of the state." And greater yet, reading "tend" as tantamount to "possibility" would grant Ecology jurisdiction over any minimally perceived impacts to the waters of the state. Ecology could then reach

any activity with waters of the state, even a temperature change caused, in fact, by a person placing an object of a different temperature in the waters of the state, would be causing found as temperature “pollution” by definition.⁷

The Court should find that the “tend to cause pollution” is a measurable and discrete determination based on evidence meeting the three above elements because a court “will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences.” Although “considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement,” *Citizens For A Safe Neighborhood v. City of Seattle*, 67 Wn. App. 436, 440, 836 P.2d 235, 238 (1992), Ecology’s conclusion that cattle operations, *per se*, “tend to cause pollution” is an untenable conclusion based on assumption that makes the reading of the statute an impermissible grant of jurisdictional authority. This Court should find that the statute’s plain language provides requirements for Ecology to demonstrate before issuing an Administrative Order based on violating RCW 90.48.080.

⁷ See Peter Atkins, *The Laws of Thermodynamics: A Very Short Introduction* 14–15 (2010) (explaining that objects of different temperatures in contact will change temperature until thermal equilibrium is reached).

D. Policy impacts.

The cattle industry in Washington represents a \$660 million dollar industry.⁸ Almost a third of the beef cows are on smaller operations with one to forty-nine head.⁹ Requiring exclusionary fencing for cattle operators with riparian water access creates an immense economic burden. The rancher must absorb the costs materials, installation labor, increased operating costs, and suffer decreased property values because of partitioned land and restricted water access.

First, the material, labor, and maintenance costs of the exclusionary fencing amount to thousands of dollars per mile. Second, restricting access to riparian grazing area likely increases production costs to the rancher, as less area is available for grazing and additional feed needs to be purchased, or alternatively the rancher will produce fewer head of cattle. Third, additional watering alternatives would have to be developed and maintained including wells, troughs, pipelines, “armored

⁸Based on the gross income from cattle and calves sold in 2010. 2011 Washington Annual Agriculture Bulletin 85 (2011) available at http://www.nass.usda.gov/Statistics_by_State/Washington/Publications/Annual_Statistica1_Bulletin/annual2011.pdf. (“Amici often provide broad background by way of reference to studies or articles.” Parsons v. State, Dept. of Soc. & Health Services, 129 Wn. App. 293, 302, 118 P.3d 930, 934 (2005)).

⁹ 2011 Washington Annual Agriculture Bulletin 86 (2011).

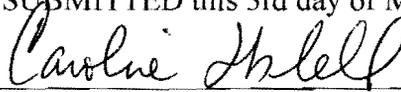
water gaps,”¹⁰ and water tanks. These increased costs and reduced land usage likely creates an immense burden on ranchers, with small ranchers disproportionately affected. Excluding calves from shade afforded in riparian corridors could also kill the calves on hot summer days, and fencing is unlikely to exclude other animals that use the stream for watering such as elk and deer. Administrative Orders of this type effectively take control of the entire farm. Segregating a rancher’s property with exclusionary fencing significantly decreases the land usage, thereby decreasing the property’s value. Most apparent is the loss of the riparian watering rights. “Property owners have a vested interest in their water rights . . . and these rights are entitled to due process protection.” *Sheep Mountain Cattle Co. v. State, Dept. of Ecology*, 45 Wn. App. 427, 430–31, 726 P.2d 55, 57 (1986) (citations omitted). And courts have recognized that “compensation must be made” for lands “damaged by depreciation in market values because of curtailment of their riparian rights.” *Petition of Clinton Water Dist. of Island County*, 36 Wn.2d 284, 288–89, 218 P.2d 309, 312 (1950). The loss in values is not only caused from the loss of use of the riparian corridor for cattle watering, but also

¹⁰ In a Feb. 12, 2010 internal draft available on the Internet, Ecology has detailed the methods of excluding cattle from all riparian areas, with exclusion fencing, “armored” water gaps for emergency watering, reinforced and gated stream crossings (with culverts and fill material subject to heavy permitting). Clean Water Practices for Livestock Grazing, Washington State Department of Ecology Internal Draft (Feb. 12, 2010) at 41–49, http://www.eli.org/pdf/WA_livestock_manual.pdf.

V. CONCLUSION

Ecology is seeking an impermissible grant of authority, and the trial court recognized this. Ecology's interpretation of nonpoint source pollution enforcement is inconsistent with historical interpretations of reasonable land usage, its own statutory requirements, and the plain language of the statute. Amici respectfully request that the Court affirm the trial court's ruling finding Administrative Order 7178 invalid, because holding otherwise would grant Ecology unprecedented authority resulting in unintended, absurd, and strained consequences.

RESPECTFULLY SUBMITTED this 3rd day of May, 2012.



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