

87703-3

NO. 30288-1

FILED

JUL 02 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**In Division III of the Court of Appeals
of the State of Washington**

JOSEPH LEMIRE,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Appellant,

POLLUTION CONTROL HEARINGS BOARD,

Respondent below.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
12 JUL -2 PM 3:40
BY RONALD R. CARPENTER
CLERK

ORIGINAL

**AMICUS BRIEF OF THE LUMMI, JAMESTOWN S'KLALLAM, NOOKSACK,
PORT GAMBLE S'KLALLAM,, STILLAGUAMISH, SUQUAMISH,
SWINOMISH & TULALIP INDIAN TRIBES**

**OFFICE OF THE RESERVATION
ATTORNEY - LUMMI NATION**

s/ Diana R. Bob, WSBA # 37405

Attorney for the Lummi Nation &

Coordinating Counsel for Amici Tribes

2616 Kwina Road

Bellingham, WA 98226

Phone: (360) 384-7150

Fax: (360) 312-9824

E-Mail: dianab@lummi-nsn.gov

FILED

AUG 16 2012

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON



TABLE OF CONTENTS

	<i>Page</i>
I. INTERESTS OF AMICI	1
A. The Amici Tribes Hold Federally Reserved Fishing Rights	1
B. Any effects from pollution into the waters will be a public health concern for the Tribes as consumers of seafood	7
II. AUTHORITY AND ARGUMENT	9
A. State Law and Policy Mandate Prevention and Control of Water Pollution	9
B. Federal law requires the States to responsibly manage water quality	12
III. CONCLUSION	18

TABLE OF AUTHORITIES

CASES:

<i>Arkansas v. Oklahoma</i> , 503 U.S. 91, 101 (1992)	13
<i>Idaho Mining Assoc. Inc. v Browner</i> , 90 F.Supp.2d 1078 (D. Idaho 2000)	13
<i>Public Utility District No. 1 of Jefferson County v. State, Dept. of Ecology</i> , 511 U.S. 700 (1994)	12, 18
<i>Public Utility District No. 1 of Pend Oreille County v. State, Dept. of Ecology</i> , 146 Wash.2d 778 (2002)	18
<i>State of Washington v. Washington State Commercial Passenger Fishing Vessel Association</i> , 443 U.S. 658, 679 (1979)	4, 5
<i>U.S. v. Washington, Order on Cross-Motions for Summary Judgment (8/23/2007), W.D. Wa. Cause #70-9213, Subproceeding 01-1, ECF Docket # 392</i>	2
<i>United States v. Winans</i> , 198 U.S. 371 (1905)	1
<i>United States v. Washington</i> , 2007 WL 2437166 (W.D. Wash. 2007) (<i>Order on Cross-Motions for Summary Judgment</i>)	5
<i>United States v. Washington</i> , 157 F.3d 630 (1998)	2
<i>United States v. Washington</i> , 384 F. Supp. 312, <i>aff'd</i> 520 F.2d 676 (9th Cir. 1975), <i>cert. denied</i> 423 U.S. 1086 (1976), <i>aff'd in substantial part</i> , 443 U.S. 658 (1979)	1, 3, 4, 7

STATUTES & CONSTITUTIONAL PROVISIONS:

33 USC § 1362(7)	17
33 USC §1329	14
33 USC §1370	17
33 USC §1313	15, 18
33 U.S.C. § 1251 <i>et seq</i>	12
33 U.S.C. § 1251(a)(2)	12
WA Const., Art. 17, § 1	10
Laws of 1945, ch. 216 § 10 (<i>codified as RCW 90.48.030</i>)	17
RCW 90.48.010	10, 11
RCW 90.48.120	6, 11, 19
RCW 90.48.080	6, 10, 11
RCW 90.48.030	10

ADMINISTRATIVE REGULATIONS:

40 CFR 131.12	18
40 CFR 130.7(b)(4)	15
WAC 173-201A-070 <i>et seq</i>	18
WAC 173-201A-310(1)	18
WAC 173-225-010	15

OTHER:

EPA 841-B-03-004, U.S. Environmental Protection Agency, “National Management Measures to Control Nonpoint Pollution from Agriculture” (July 2003), available online at water.epa.gov/polwaste/nps/agriculture/agmm_index.cfm (attached as Appendix C) 14

Fish Consumption Rates, *Technical Support Document #11-09-050*, Washington Department of Ecology, September 2011, available online at www.ecy.wa.gov 8

Hankins, Martha, Washington Department of Ecology, *Toxics Cleanup Program, Fish Consumption Rates*, presentation material, *Environmental Cleanup Conference*, March 9, 2012 9

How Does Ecology Work with Non-dairy Livestock? Washington Department of Ecology, February 2011, *Publication No. 11-10-015*, available online at www.ecy.wa.gov 6

News Release 11-275, Washington Department of Ecology, “*Ecology starts dialogue about reducing toxic chemicals in fish to better protect public health*”, October 11, 2001, available online at www.ecy.wa.gov 8

Nooksack River Water Quality and Portage Bay Shellfish, Whatcom Conservation District, et al. September 19, 2002 (attached as Appendix A). 3

Pacific Salmonids: Major Threats and Impacts, NOAA Fisheries, Office of Protected Resources, www.nmfs.noaa.gov/pr/species/fish/salmon.htm 5

Status and Trends in Fecal Coliform Pollution in Shellfish Growing Areas of Puget Sound, 2010, Washington State Department of Health, www.doh.wa.gov/ehp/sf/Pubs/fecalreport.pdf 2

Water Quality Program Policy 1-11, Washington Department of Ecology, “*Assessment of Water Quality for the Clean Water Act Sections 303(d) and 305(b) Integrated Report*”, at p. 16 (Rev. Sept. 2006, updated March 2011), www.ecy.wa.gov/programs/wq/303d/wqp01-11-ch1Final2006.pdf 16

“*What is Nonpoint Source Pollution*”, U.S. Environmental Protection Agency, http://www.epa.gov/owow_keep/nps/ (April 6, 2012) (attached as Appendix B) 13

I. INTERESTS OF THE AMICI

A. The Amici Tribes Hold Federally Reserved Fishing Rights

The amici Tribes are the Lummi Nation, the Port Gamble S'Klallam Tribe, Jamestown S'Klallam Tribe, Nisqually Tribe, Nooksack Tribe, Quinault Tribe, Swinomish Tribal Indian Community, Stillaguamish Tribe of Indians, the Suquamish Tribe, and the Tulalip Tribes (collectively, “the Tribes”). The Tribes are all federally recognized Indian tribes located throughout western Washington State. They base their participation on the statewide impact on their federally protected rights of the matters related to water pollution being considered in this case.¹

Each of the amici Tribes holds fishing rights that were specifically reserved by treaty. *United States v. Washington*, 384 F. Supp. 312, aff'd 520 F.2d 676 (9th Cir. 1975), *cert. denied* 423 U.S. 1086 (1976), *aff'd in substantial part*, 443 U.S. 658 (1979). The importance of fish to the Tribes cannot be overstated. As early as 1905 the Supreme Court characterized these rights as being “not much less necessary to the existence of the Indians than the atmosphere they breathed.” *United States v. Winans*, 198 U.S. 371, 381 (1905). For the fish themselves,

¹ The Tribes' arguments in this brief rest solely on state law. The Tribes make no arguments based on their federally reserved rights or any other rights under federal law, and instead reserve the right to make all such arguments elsewhere.

adequate stream flows literally are the “atmosphere they breathe,” for without sufficiently clean water in the spawning, rearing and migration streams, there will be no salmon.

Not only do the amici Tribes have a right to harvest fish, they also have a right to have the habitat protected. The federal court has held that the treaties include an implied right to habitat protection, and that the State must not violate that right. *U.S. v. Washington, Order on Cross-Motions for Summary Judgment (8/23/2007), W.D. Wa. Cause #70-9213, Subproceeding 01-1, ECF Docket # 392*. The State’s attempts to enforce the Clean Water Act and similar environmental laws honor the State’s duty to protect the rights of the amici Tribes.

The treaty Tribes’ fishing rights extend to shellfish as well as fin fish, *United States v. Washington (Shellfish)*, 157 F.3d 630 (1998), and many of the tribes are dependent on shellfish resources for a significant portion of their members’ diets and livelihoods. This fact is particularly important in the context of the water issues that arise in the present case because shellfish, as filter feeders, are quite susceptible to water-borne pollutants and diseases and the resultant public health closures of harvest opportunities. See, e.g. *Status and Trends in Fecal Coliform Pollution in Shellfish Growing Areas of Puget Sound, 2010*, Washington State Department of Health, www.doh.wa.gov/ehp/sf/Pubs/fecalreport.pdf.

For example, the Lummi Nation, whose Reservation is located at the mouth of the Nooksack River in Whatcom County, has suffered repeated closures of both its on-Reservation shellfish beds and its off-Reservation usual and accustomed shellfish harvesting locations. *See Appendix A, Nooksack River Water Quality and Portage Bay Shellfish, Whatcom Conservation District, et al. September 19, 2002.* Whatcom County is home to the largest number of dairy farms in the state. *Id. at 4.* Over the years, fecal coliform pollution originating at least in part from these farms has been a significant factor in shellfish closures. *Id. at 3.*

The waters of concern to the Tribes not only flow through or along the borders of the Tribes' Reservations, the Treaty Tribes hold the right to fish on all runs that pass through their "usual and accustomed" fishing areas, regardless of where those fish runs originate. *See United States v. Washington*, 384 F.Supp. at 344 (treaty fishing rights extend to all fish available for harvest in a tribe's usual and accustomed fishing grounds). The interpretation of the water pollution control code provisions at issue in this action will affect essential attributes for fish production in streams everywhere in Washington, as well as the productivity of intertidal and marine areas. Thus, Amici are vitally concerned about adverse effects on water quality which would result from denying the necessary authority to bar pollution. The interests of the Tribes are as geographically wide-

ranging as are the potential impacts of the Court's decision in this matter.

In affirming the Tribes' treaty reserved fishing right, the Supreme Court confirmed that the Tribes' treaty fishing right is much more than just a chance, shared with the other citizens of the State, occasionally to dip their nets into the waters in the hope of catching fish. *State of Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 679 (1979). The Court placed special emphasis on the treaty language that "secured" the "right of taking fish", *Id.* Early in that litigation, all parties agreed in a "Joint Biological Statement" on the physical conditions necessary for productive fisheries, one of which is "an adequate supply of good-quality water." *See United States v. Washington*, 384 F.Supp. at 383.

Following the District Court's landmark decision in 1974, the Tribes' harvest opportunities and share of the harvestable catch grew, at least temporarily. But as District Court Judge Ricardo Martinez explained in 2007, that situation did not last:

[Tribal] harvest levels in 1974 and 1975 were 860,537 and 1,001,431 fish respectively. The number of fish harvested rose steadily to 5,494,973 in 1985. Numbers of fish harvested then fluctuated between approximately three and four million fish for the next several years, higher in the odd-numbered years when large numbers of pink salmon were harvested. After 1991, harvests of four million fish were not seen again, and after the 1993 harvest of 3,497,537 fish the numbers declined dramatically,

dipping as low as 575,958 in 1999. While post-1999 harvest numbers have risen somewhat, to 2,148,802 fish taken in 2003, the Tribal harvest through 2004 . . . remained less than half that of the years 1985 to 1991. Declaration of Keith Lutz, Dkt. #299.

United States v. Washington, 2007 WL 2437166 (W.D. Wash. 2007)

(*Order on Cross-Motions for Summary Judgment, fn. 3*).

Overall, the tribal harvest today is less than half that of the late 1980's. This lost harvest opportunity is despite the Tribes' implementation of highly-conservative fishery management practices and the use of hatcheries.

A fundamental reason for the reduction in harvest levels is the ongoing destruction, degradation, and modification of habitat needed for the survival of the salmon. *Pacific Salmonids: Major Threats and Impacts*, NOAA Fisheries, Office of Protected Resources, www.nmfs.noaa.gov/pr/species/fish/salmon.htm. Poor water quality is a significant factor in the reduction of fish habitat and the decline of fish runs. Failure to protect the quality of the habitat will result in further impairment of tribal harvests and therefore have a direct impact on the treaty fishing right. As noted above, the Federal Court has already acknowledged that habitat degradation caused by State action in failing to build and maintain culverts so fish habitat is protected is a treaty violation. *U.S. v. Washington, Order on Cross-Motions for Summary Judgment*

(8/23/2007), *W.D. Wa. Cause #70-9213, Subproceeding 01-1, ECF Docket # 392.*

The Tribes have a direct and unique interest in the manner in which the state Water Pollution Control Act, RCW 90.48.080 and RCW 90.48.120, is interpreted. These provisions of state law are directed at prevention of pollution of the waters within the state. Pollution of the waters where the treaty protected fish live and thrive must be prevented in order to maintain a habitable and productive ecosystem. Polluted waterways will impact fish production, the safety of shellfish and overall productivity of watersheds. As Ecology recognizes, “Washington state water quality data and studies mirror national reports that indicate that pollution from agricultural lands is a significant source of impairments,” and “[i]n Western Washington, commercial shellfish operations can be shut down repeatedly due to bacterial contamination.” *How Does Ecology Work with Non-dairy Livestock? Washington Department of Ecology, February 2011, Publication No. 11-10-015.* The provisions of the Water Pollution Control Act that relate to prevention of pollution are significant to the Tribes’ interests because if Ecology is barred from acting under its authority to prevent pollution, the Tribes’ treaty fishing right is inevitably harmed once the pollution of the watershed has occurred.

Thus, the Tribes have a vital interest in ensuring that the provisions

of state law that support clean water as an essential attribute of state policy are honored and enforced. The interpretation of the state water pollution control code that is at issue in this case – an interpretation that would prohibit or impair the Department of Ecology’s ability to act under clear authority to implement and enforce pollution prevention policy of the state – is of vital importance to the Tribes. For these reasons, the Tribes seek to make their views known as amicus curiae to assist the Court in making an informed determination of the state law questions involved here. The Tribes have no specific knowledge of the merits of the matter at hand, nor do the Tribes seek to address any issue regarding the trial court’s rulings regarding any topic other than the statutes dealing with pollution prevention.

B. Any effects from pollution into the waters will be a public health concern for the Tribes as consumers of seafood.

Not only are opportunities to harvest fish a primary concern of the Tribes’ but so is the overall health of the fisheries. The right to take fish was reserved during treaty time because of the social, economic, cultural and food supply importance the Tribes have placed on the fisheries resources. See *United States v. Washington*, 384 F.Supp. at 350-353. Contemporary tribal members consume significant amount of fish that travel through the waters of the state and regularly consume high amounts

of shellfish.

The state already recognizes the clear nexus between water quality standards, fish health and human health. “PCBs (polychlorinated biphenyls), dioxins, mercury, and other persistent chemicals can accumulate in fish tissue and harm the health of people who consume fish,” *Fish Consumption Rates, Technical Support Document, Washington Department of Ecology, September 2011, page 3*. Ecology is currently in the process of updating the fish consumption rates that will be linked to water quality standards:

Washington uses fish consumption rates as a basis for environmental cleanup and pollution control. Washington currently uses two rates: 6.5 grams per day incorporated into water quality standards, and 54 grams per day, which is used in setting sediment and water cleanup standards. The [current] rates were developed in the 1980s and 1990s.

Washington Department of Ecology News Release 11-275, “Ecology starts dialogue about reducing toxic chemicals in fish to better protect public health”, October 11, 2001.

The state now recognizes that these fish consumption standards are out of date and fail to reflect the current, accurate rates of fish consumption, and thus fail to create adequate standards for water quality. *Id.* In addition, the Model Toxics Control Act and its rules are based on what is called “the reasonable maximum exposure,” which has been based

on the “recreational angler” survey of fishers in Commencement Bay in 1991. *Fish Consumption Rates, Technical Support Document, page 9.* Based on surveys conducted by Ecology and comments received, Ecology’s preliminary recommendation for new fish consumption rates is in the range of 157 to 267 grams per day. *Hankins, Martha, Dept of Ecology, Toxics Cleanup Program, Fish Consumption Rates, presentation material, Environmental Cleanup Conference, March 9, 2012.* For tribal populations, with their historic dependence on aquatic resources, the consumption rates are substantially higher.

In recent cleanup efforts there have been several sites where Ecology has determined the recreational angler standard is not appropriate. *MTCA Regulation Update Issue Summary -- Fish Consumption Rates, Washington-Department of Ecology, July 2009.* Those determinations have been made for situations involving population groups who consume much larger amounts of fish and shellfish. Ecology states, “[t]hese groups include Native Americans, Asian Pacific Islander populations and subsistence fishers,” *Id.*

Because Ecology recognizes the inherent food and subsistence value of Washington fisheries and the associated impacts of pollution on those food sources, maintaining the authority to regulate the “potential to pollute” the waters of Washington State is core to the public health

concerns linked to a meaningful tribal treaty fishing right.

II. AUTHORITY AND ARGUMENT

A. State Law and Policy Mandate Prevention and Control of Water Pollution

Water is a public resource, essential to all for life itself. The language of our state constitution which reserves state ownership in “the beds and shores of all navigable waters in the state” recognizes the public importance of water as a common resource. *Const. art. 17, § 1*. Since at least 1945 it has been “the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state.” *RCW 90.48.010*. The Legislature has declared that “the state of Washington will exercise its powers, as fully and effectively as possible, to retain and secure high quality for all waters of the state.” *Id. (Emphasis added)*. To achieve that goal, the state will “require the use of all known available and reasonable methods by industry and others to prevent and control the pollution of the waters of the state.” *Id. (Emphasis added)*. The Legislature expressly granted to the Department of Ecology “the jurisdiction to control and prevent the pollution of streams, . . . ponds, inland waters, . . . water courses, and other surface and underground waters of the state.” *RCW 90.48.030 (emphasis added)*.

The Legislature left no ambiguity about its intention to outlaw

water pollution, regardless of the source. RCW 90.48.080 makes it unlawful for any person 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 [of Ecology].” To implement this policy, the Legislature granted Ecology authority to order corrective action, subject to full due process protections, where it concludes that a person’s actions have created “a substantial potential to violate” the ban on polluting the state’s waters. *RCW 90.48.120.*

It is difficult to imagine more sweeping or all-encompassing language. And it defies all logic and reason to argue that a person who allows his cattle to defecate in and around a streambed has not allowed pollution to be “otherwise discharge[d]” into the stream. Regardless of whether a cattle operation is deemed a “point source” or a “non-point source” of pollution, the purpose of Washington’s statute is that water pollution is unlawful, irrespective of the source. Likewise, the fact that the word “discharge” may have a limited, defined meaning in one statutory context does not negate the fact that a cow is “otherwise discharg[ing]” polluting fecal matter in violation of RCW 90.48.080 when it defecates in Pataha Creek.

It is equally clear that constructing fences to keep farm animals out of streams is a “known available and reasonable method . . . to prevent and control the pollution of the waters of the state.” *RCW 90.48.010*. Mr. Lemire certainly has the right to farm his land. But he does not have the right to harm public resources in the process. The Legislature has appropriately given Ecology the responsibility to protect public resources we all share and provided Ecology with the authority to require known and reasonable methods to prevent pollution of those resources. Whether Ecology has acted reasonably in this particular case is not a question that the amici Tribes will address. But Ecology unquestionably has the statutory authority to take action to control and prevent the substantial likelihood of pollution presented by a herd of cattle having routine and unfettered access to a stream. The court should not rule otherwise.

B. Federal law requires the States to responsibly manage water quality

In addition to the substantial, pre-existing state law addressing water pollution, the court must also consider the impact of federal law here. Congress passed the Clean Water Act (CWA) in 1972 to address water quality and to clean up the Nation’s waters. *33 U.S.C. § 1251 et seq.* The CWA is a “comprehensive water quality statute designed to ‘restore and maintain the chemical, physical, and biological integrity of the

Nation's waters.’ ” *Public Utility District No. 1 of Jefferson County v. State, Dept. of Ecology*, 511 US 700, 705 (1994) (*Elkhorn II*), quoting 33 U.S.C. § 1251(a). “The act also seeks to attain ‘water quality which provides for the protection and propagation of fish, shellfish, and wildlife.’” *Id. at 704, quoting 33 U.S.C. § 1251(a)(2)*. “The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by [this] shared objective.” *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992).

The CWA set a minimum national goal of “fishable/swimmable” waters throughout the country by 1983, with full elimination of pollutants to follow. *See generally Idaho Mining Assoc. Inc. v Browner*, 90 F.Supp.2d 1078, 1080-1082 (D. Idaho 2000). The statute relies on the states to devise ways of achieving that goal, with substantial financial assistance from the federal government. Essentially, the CWA requires states to propose a program of regulatory permits² for point sources of pollution and a program of other measures that will control nonpoint sources. If a state’s proposed program is approved by EPA, the state is then “authorized” to administer the program with regard to navigable waters, in lieu of direct regulation by the United States. If the state program is not approved, then the federal government exercises its

² These permits are called National Pollutant Discharge Elimination System (NPDES) permits.

regulatory authority directly. *Id.*

Initial efforts under the CWA were centered on point source discharges, but EPA has increasingly focused attention on the threats presented by nonpoint sources³:

The nation's aquatic resources are among its most valuable assets. While environmental protection programs in the United States have successfully improved water quality during the past 25 years, many challenges still remain. Although significant strides have been made in reducing the impacts of discrete pollutant sources, aquatic ecosystems remain impaired, primarily due to complex pollution problems caused by nonpoint source (NPS) pollution.

The most recent national water quality inventory shows that, as of 2000, 39% of assessed stream miles, 45% of assessed lake acres, and 51% of assessed estuary acres are impaired. The leading causes of impairment are nutrients, siltation, metals, and pathogens. State inventories indicate that agriculture, including crop production, animal operations, pastures, and rangeland, impacts 18% of the total river and stream miles assessed, or 48% of the river and streams identified as impaired (EPA, 2002).

EPA 841-B-03-004, "National Management Measures to Control Nonpoint Pollution from Agriculture" (July 2003), attached as Appendix C.

Consequently, the CWA requires each state to submit for EPA approval a report that "identifies those navigable waters within the State

³ A "nonpoint source" under the CWA is any source of pollution that is not characterized by a discrete discharge point such as a pipe or outfall. EPA unquestionably considers cattle with unfettered access to streams to be a typical example of nonpoint source discharge, as a glance at EPA's website on the topic will confirm. http://www.epa.gov/owow_keep/nps/ (copy included at Appendix B of this brief).

which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of” the CWA, and which “identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters.” *33 USC §1329*. The CWA also requires states to list water bodies within the state that fall below minimum water quality standards. *33 USC §1313* (called the “Section 303(d)” list, in reference to the CWA section number before codification in the U.S. Code.)

States are required to establish a prioritized list schedule for waters on the list and develop Total Maximum Daily Loads (TMDLs) for the listed waters based on the severity of the pollution and the sensitivity of the uses to be made of the waters, among other factors. *40 CFR 130.7(b)(4)*. In Washington State, Ecology develops the 303(d) list every other year and publishes the Policy on Washington State Water Quality Assessment. *WAC 173-225-010*. This document is detailed and substantive and explains the methodology applied to assess water quality criteria, the levels of categories for waters within the state and the prioritization of TMDLs. The assessment policy includes identification and categorization of pollution as well as situations where there is an

appearance of a substantial potential for pollution.

Ecology categorizes the water bodies of the state into five categories, with category 5 serving as the section 303(d) list to be submitted to the EPA. Categories one through four for water bodies range from those meeting criteria to those with varying levels of impairment. The categories reflect both state and federal law requirements.

Waterbody segments with data indicating impairment will be placed in Category 5 unless Ecology determines that the exceedance of water quality criteria is due to natural conditions or processes. Segments will be placed in Category 5 when human activities cause, or have a strong potential to cause, significant impacts in addition to natural conditions.

Policy on Water Quality Assessment, page 16.

The state Policy on Water Quality Assessment was developed in response to the federal Clean Water Act but includes components of Washington law. Ecology applies the preventative approach to waterbody identified as category 5 even before a TMDL is completed, by concluding that the inclusion of a water on the 303(d) list can reduce the amount of pollutants allowed to be released under permits issued by Ecology.

Pataha Creek, where the Lemire ranch is located, is on Washington's 303(d) list. *AR 7, at p. 2.* Therefore, Washington is under a federal statutory requirement to develop and implement a program to control nonpoint sources of pollution of Pataha Creek – or face the

possibility that the federal government will take over that responsibility directly. Far from acting arbitrarily in this case, Ecology is acting responsibly and consistently with federal law when it takes steps to control nonpoint sources of water pollution.

It is also clear, however, that the federal statute does not set the maximum level of effort for states where water pollution is concerned. Rather, it sets minimum levels of performance. The CWA did not dilute the pre-existing jurisdiction that the states hold over actors within the state. The federal statute expressly states that nothing in the Clean Water Act shall preclude or deny the right of any state to “adopt or enforce any standard or limitations respecting discharges of pollutants.” *33 USC §1370*. There are at least two reasons for this. First, the federal statute reflects deference to states that wish to apply stricter standards within their boundaries. Second, the federal statute applies only to “waters of the United States”, which in this context means navigable waters. *33 USC § 1362(7)*. Many smaller streams within the state, which provide significant fisheries habitat, may not fall under this category, but they are still of vital importance to Tribes and the citizens of the State.

In Washington this federalism approach means the Water Pollution Control Act that passed in 1945 is still the law of the land. *See Section II. A., supra*. As noted, the state Water Pollution Control Act provided broad

authority, “to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, and other surface and underground waters of the state of Washington.” *Laws of 1945, ch. 216 § 10 (codified as RCW 90.48.030)*. The state Water Pollution Control Act clearly provides Ecology with a state based mandate to engage in a remedial and preventative pollution control regime and the federal Clean Water Act supplements that previously granted authority.

In addition, federal law requires Washington State to adopt and implement an antidegradation policy that is consistent with the components detailed in 40 CFR 131.12. “Thus, state water quality standards must “include ‘a statewide antidegradation policy’ to ensure that ‘[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.’ ” ***Public Utility District No. 1 of Pend Oreille County v. State, Dept. of Ecology***, 146 Wash.2d 778, 807 (2002), *quoting Elkhorn II*, 511 U.S. at 705. The effect of the federal antidegradation policy is to protect and prevent clean waters from being unnecessarily degraded by either point source or nonpoint pollution. *33 USC § 1313*. The Washington antidegradation policy is codified at WAC 173-201A-070 *et seq.*⁴

⁴ At a minimum, the federally approved standards require that “existing and designated uses must be maintained and protected. No degradation may be allowed that would interfere with, or become injurious to, existing or designated uses, except as provided for in this chapter.” *WAC 173-201A-310(1)*.

III. CONCLUSION

Indian tribes and Indian people in Washington State have always been particularly dependent on aquatic resources for their sustenance, their livelihoods and their culture. They would not have agreed to treaties with the United States in the nineteenth century unless those treaties expressly secured to them the right of taking fish. In the twenty-first century, water pollution threatens to severely limit or even eliminate that right. Salmon stocks are declining and some of the amici tribes have suffered closures of shellfish beds on their own reservations as a result of water pollution originating outside those reservations.

In common with all citizens of the state, Tribes and their members depend upon the Washington State Department of Ecology to enforce the state and federal laws outlawing water pollution from all sources. The state Legislature has expressly given Ecology the authority and responsibility to take action “whenever, in the opinion of the Department, any person . . . creates a substantial potential to violate” the state water pollution prevention and control laws. *RCW 90.48.120*. The Legislature wisely did not require Ecology to wait until the damage was done. Instead, the Legislature empowered Ecology to act to prevent pollution by requiring all who present a substantial potential threat to a vital common resource to take reasonable steps to prevent pollution before it occurs.

If Mr. Lemire is correct in his contention that Ecology has no authority to require him to undertake preventative measures until Ecology proves that Mr. Lemire's cows have, in fact, polluted Patah Creek, then a significant portion of Washington's pollution control legislation will be rendered meaningless. That construction would mean that the people of the state must tolerate damage to vital public resources before action can be taken. Closing (or in this case, constructing) the ranch gate after the pollution has occurred is neither good policy nor consistent with the express direction of state and federal law to control and prevent water pollution. State action to protect the stream will also honor the obligation to protect habitat required by the treaties with the amici Tribes.

The amici Tribes urge the court to rule that Ecology has the authority to require a rancher to construct fences that keep his cattle away from streams in situations where the cattle present a substantial potential threat of polluting the stream. If reasonable minds could differ over whether such a threat is present in this case, the matter should be remanded to the Pollution Control Hearings Board for a determination of that factual question. But in no event should the court rule that Ecology lacks the authority to take the preventative action at issue in this case.

Dated this 21st day of June, 2012.

For the Lummi Nation:

Diana Bob.

Diana R. Bob, WSBA # 37405
2616 Kwina Road
Bellingham, WA 98226
Phone: (360) 384-7150
Fax: (360) 312-9824
E-Mail: dianab@lummi-nsn.gov

**For the Swinomish Indian
Tribal Community:**

Signature authorized via email
Emily Hutchinson, WSBA # 38284
11404 Moorage Way
LaConner, WA 98257

For the Tulalip Tribes:

Signature authorized via email
Kimberly Ordon, WSBA #16832
Signature authorized via email
Michael Taylor, WSBA #3664
Attorneys for The Tulalip Tribes
Law Offices of Kimberly Ordon, PS
P.O. Box 1407
Duvall, WA 98019

Signature authorized via email
Mason D. Morrisset, WSBA#273
Morisset Schlosser Jozwiak
1115 Norton Bldg
801 2nd Ave
Seattle, WA 98104-1509

**For the Jamestown S’Klallam & Port
Gamble S’Klallam Tribes:**

Signature authorized via email
Lauren P. Rasmussen, WSBA #33256
Law Offices of Lauren P. Rasmussen
1904 Third Avenue, Suite 1030
Seattle, WA 98107

For the Stillaguamish Tribe of Indians:

Signature authorized via email
Brian H. Collins, WSBA #18798
Stillaguamish Tribe of Indians
P.O. Box 277
Arlington, Washington 98223

For the Nooksack Indian Tribe:

Signature authorized via email
Thomas P. Schlosser, WSBA#6272
Morisset Schlosser Jozwiak
1115 Norton Bldg
801 2nd Ave
Seattle, WA 98104-1509

For the Suquamish Indian Tribe:

Signature authorized via email
Melody Allen, WSBA# 35084
Suquamish Tribe
Office of Tribal Attorney
PO Box 498
15838 Sandy Hook Rd
Suquamish, WA 98392-0498

APPENDIX A



Nooksack River Water Quality and Portage Bay Shellfish

OVERVIEW

Monitoring data demonstrates significant improvement of a serious water quality problem has been achieved following the development and implementation of a Total Maximum Daily Load (TMDL). This positive change occurred within a surprisingly short time period and, if this trend continues, use of an important tribal resource could be restored next year. This marked reduction in bacterial contamination could only have been accomplished through the collaborative efforts of the Lummi Nation, Washington State Dept. of Ecology (Ecology), Washington State Dept. of Health (DOH), United States Environmental Protection Agency (EPA), Portage Bay Shellfish Protection District (Whatcom



Harvesting oysters at a Lummi Bay oyster bed.

County), Whatcom Conservation District, United States Natural Resources Conservation Service (NRCS), members of the Whatcom County Chapter of the Washington State Dairy Federation, and participation of concerned citizens. "Success" of this effort

will have been achieved when water quality targets established for the Lower Nooksack River Basin Bacteria TMDL are met and the Portage Bay shellfish beds are re-opened and maintained in an "Approved" classification status.

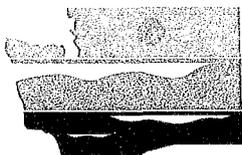
ABSTRACT

? Portage Bay shellfish are an important cultural, subsistence, recreational and commercial resource for the members of the Lummi Nation. Although water quality problems in the Nooksack River had

been known for years, coordinated actions to correct the problems really only began following the 1996 partial closure of Portage Bay on the Lummi Indian Reservation to commercial shellfish harvesting.

? The trends toward better water quality have been achieved through the collaborative efforts of many participants, each contributing to the extent of their respective charters. Examples

(Continued on page 2)



ABSTRACT

(Continued from page 1)

include improved regulatory oversight of potential pollution sources in the Nooksack River watershed, provision of technical and financial resources to dairy operators, and improved and sustained water quality monitoring.

? The trend toward better management of animal wastes in the Nooksack River started in 1997 when EPA Region 10 initiated its confined animal feeding operation (CAFO) inspection/enforcement initiative. The lesson learned – *routine inspections and enforcement for noncompliance*

are critical components of an effective CAFO regulatory program.

? The Lower Nooksack River Basin Bacteria TMDL was an invaluable tool to those working to eliminate bacterial contamination to the Nooksack River. The TMDL identified clear targets for guiding pollutant cleanup activities and provided the implementation plan around which the collaborative effort was formed.

? The significant improvement of Nooksack River water quality demonstrates that indi-

vidual, site-specific farm plans are an effective tool to address both water quality concerns and landowner objectives. The farm plan approach works best when all the farms identified as potentially contributing to the problem are required to implement a plan designed for their current operation.

? Water quality monitoring in the watershed has proven to be an indispensable tool for tracking changes in water quality, determining the effectiveness of control measures, and identifying sources of pollutant loading.

The lesson learned— routine inspections and enforcement for noncompliance are critical components of an effective CAFO regulatory program.

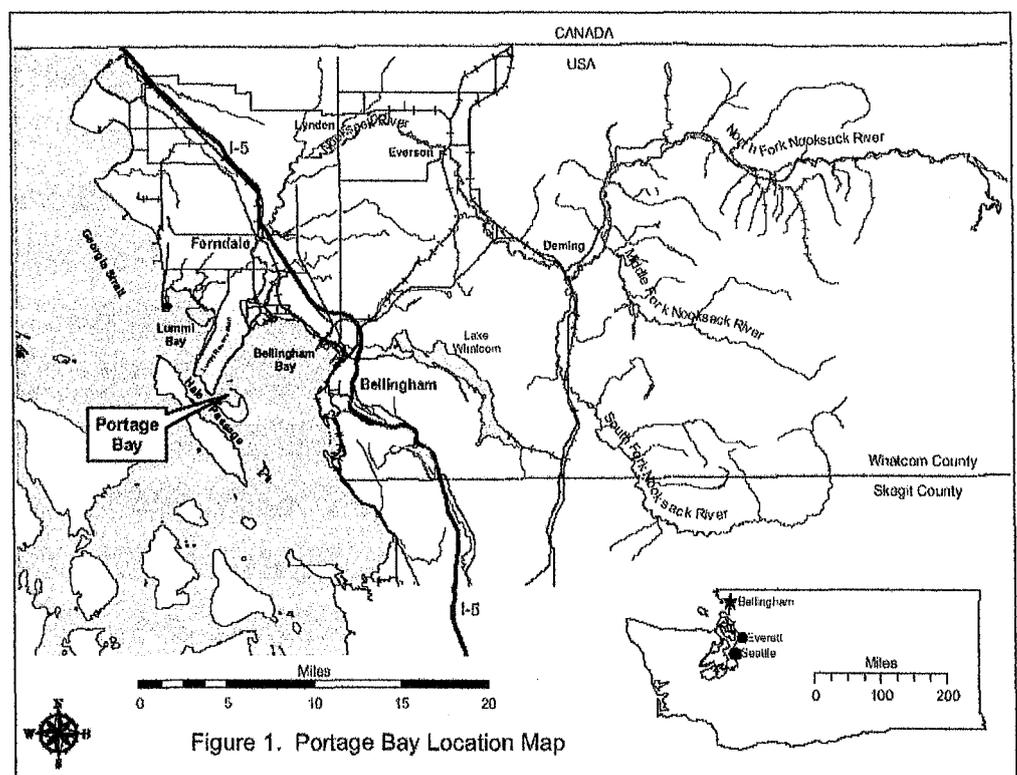
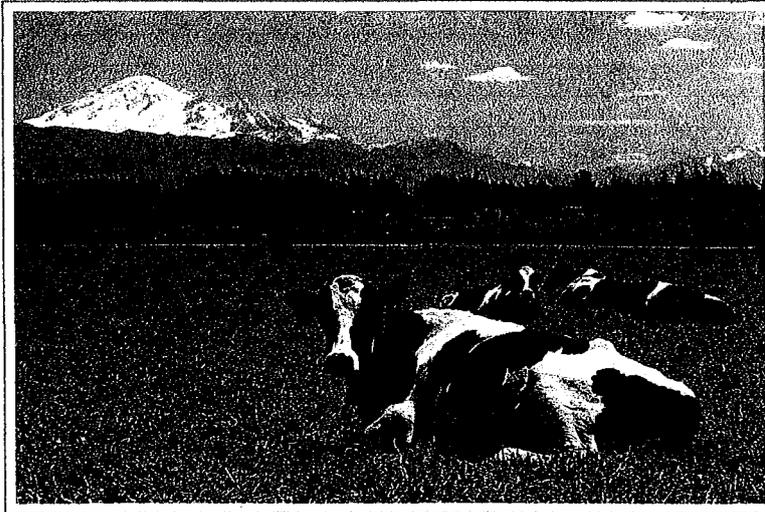


Figure 1. Portage Bay Location Map

BACKGROUND



Cows relaxing in the pasture of a Whatcom County dairy farm. When properly managed, farm practices are not detrimental to maintaining high water quality, and can actually provide environmental benefits.

Portage Bay is located in the western portion of Bellingham Bay and is part of the Lummi Indian Reservation (see Figure 1). Water quality of the Nooksack River affects Portage Bay because of Portage Bay's close proximity to the mouth of the river and the circulation of water within Bellingham Bay. Fecal coliform transported down the Nooksack River can flow over the shellfish beds in Portage Bay.

Fecal coliform bacteria are associated with wastes from warm-blooded animals, such as livestock, wildlife and humans. The presence of fecal coliform bacteria is an indicator of the potential presence of pathogenic organisms that are also a threat to human health. The National Shellfish Sanitation Program (NSSP) water quality standards for an "Approved" classification in commercial shellfish beds is

a fecal coliform geometric mean of not greater than 14 fecal Coliform forming units per 100 milliliters (14 CFU/100 ml) and an estimate of the 90th percentile not greater than 43 CFU/100 ml. Fecal coliform densities measured in 1997 and 1998 near the mouth of the Nooksack River showed greater than 10% of the samples exceeded 200 CFU/100 ml with several samples in excess of 800 CFU/100 ml.

In December 1996, the Lummi Nation voluntarily closed a 60-acre portion of Portage Bay to commercial shellfish harvest. This closure was done at the request of DOH, because fecal coliform densities were found to be exceeding the NSSP water quality standards. In August 1997, this area was formally downgraded by DOH from "Approved" to "Restricted". In August 1998 the Lummi Nation

voluntarily closed an additional 120-acres when an analysis of the DOH water quality data indicated that the NSSP standards were no longer being met at other sample stations. By the middle of 1999, additional sampling stations in the Approved areas were being threatened with a downgrade because of increasingly poor water quality.

Shellfish are an important resource to the Lummi Nation as they are harvested by tribal members for commercial, subsistence, cultural and recreational purposes. The Lummis estimate a loss of approximately \$250,000 per year in commercial income alone as the result of the initial 60-acre closure of Portage Bay shellfish beds. This loss does not include the value associated with subsistence and cultural use of this resource by the Lummis.

The significant improvement of Nooksack River water quality demonstrates that individual, site-specific farm plans are an effective tool to address both water quality concerns and landowner objectives.

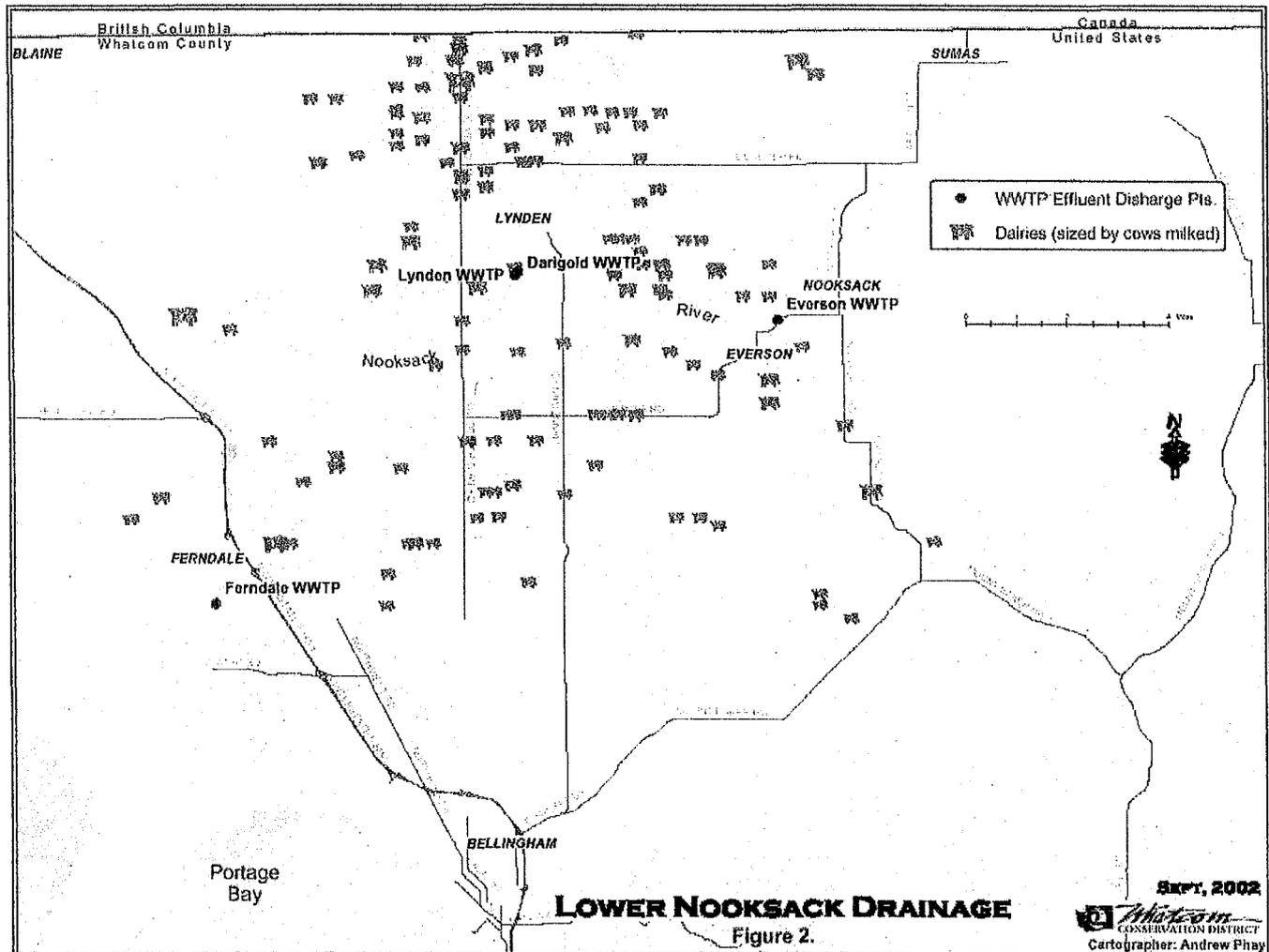
POLLUTANT SOURCES

Monitoring in the Nooksack River watershed confirmed that the largest sources of bacteria loading were dairies and municipal wastewater treatment plants (WWTPs). Figure 2 shows the location of dairies and WWTPs in this watershed. There are over 37,000 milking cows on about 122 dairy operations in this watershed. This total does not include beef livestock operations or dairy replacement cows. To put these numbers into environmental perspective, one cow excretes the equivalent of about 20 humans each day. The typical dairy operation of 300 cows generates about as much waste as a city of 6,000 people. At

the time of the 1996 shellfish bed downgrades, regulation of the dairy industry by Ecology was solely a complaint-driven response program. Dairy operations found by Ecology staff to be discharging wastes were referred to the local conservation district to obtain technical and financial assistance to resolve the problem(s). Formal enforcement by the state against illegal discharges was uncommon and many operations were referred repeatedly by Ecology over a period of years.

Evaluation of the municipal wastewater treatment plants that discharge to the Nooksack

River also determined the need to provide better and more reliable treatment to remove fecal coliform. The National Pollutant Discharge Elimination System (NPDES) permits, which regulate these discharges, were modified by Ecology to implement wasteload allocations of the TMDL. Construction of treatment plant upgrades by some of the municipalities is currently underway. Other contributions of fecal coliform from noncommercial animal keeping activities and runoff from failing septic systems are identified through the Nooksack tributary monitoring efforts and addressed by Ecology and/or Whatcom County staff.

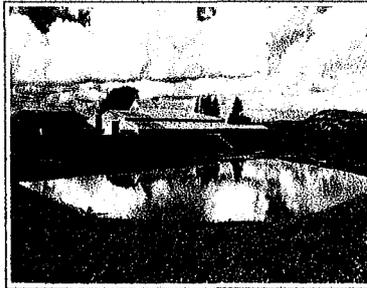


LOWER NOOKSACK DRAINAGE
Figure 2.

REGULATION OF DAIRY WASTES

At the time of the initial shellfish bed closure in Portage Bay in 1996, the prospects for reversing the downward trend in water quality seemed dim. The magnitude of the pollution in the Nooksack River and in waters near other dairy areas of the state were clear indicators that the complaint-driven response used in Washington State was ineffective at controlling discharges from dairy operations. After discussions with Ecology, the Lummi petitioned the EPA in the fall of 1996 for assistance in restoring and protecting their shellfish resources. Trust responsibilities to help the tribe and other factors prompted EPA to act on long held concerns about the inadequacy of the state's regulation of CAFOs. Information about water quality near dairy areas in Idaho and Oregon also indicated that the problems attributable to animal waste mismanagement were widespread and significant.

Following public workshops to describe the problem and planned actions, EPA began inspections in the winter of 1997. These inspections were targeted at Whatcom County dairy operations suspected of discharging animal wastes to surface waters. During February, March, and April of 1997 EPA inspected 57 dairy operations in the county. Of these inspected operations, 42 were issued warning letters notifying the operators about observed problems with animal waste management. Formal enforcement actions including significant monetary penalties were



This manure storage lagoon on a Whatcom County dairy farm was built to hold manure through the rainy season to avoid runoff to streams leading to shellfish beds.

initiated against 6 operators. Six operations of the 57 were notified that they appeared to be implementing good waste management practices. EPA conducted additional inspections during 1998 and 1999 and expanded the program to neighboring Skagit, Snohomish, King, and Pierce counties. EPA also expanded this initiative into Idaho and Oregon not only to address water quality problems in these adjoining states, but also to ensure that the regulatory playing field for this industry was level between states.

Within two years of EPA's inspection initiative, the Washington State Legislature passed the Dairy Nutrient Management Act (RCW 90.64). With this legislation Ecology began implementing a new state program for regulating the dairy industry. No longer complaint driven, inspectors began a regular inspection regime charged with identifying existing and potential animal waste discharge problems. An underlying premise of the new program is that operators who have invested resources and time into properly managing the

wastes (nutrients) generated by their animals are not put at an economic disadvantage. The following important elements are required by the Dairy Nutrient Management Act to address water quality problems associated with animal waste discharges and to provide the desired 'level playing field' for operators in the state's dairy industry:

- ? Routine compliance inspections by Ecology staff,
- ? Timely and appropriate enforcement response to documented non-compliance,
- ? Dairy operators develop and implement dairy nutrient management plans (farm plans) by 2003.

Since 1998 Ecology has maintained two staff in its Bellingham Field Office to conduct inspections of dairies in Whatcom County. Each dairy has been visited about three times since inception of the new dairy program. Since 1998, informal enforcement to eliminate potential pollution sources has been pursued 86 times. Formal enforcement, which has occurred 29 times, is initiated by issuing a Notice of Violation when an illegal discharge is documented. The Notice of Violation has been followed by issuance of 20 administrative orders, 12 penalty actions, and an additional 13 dairies are being regulated through an NPDES permit. About 10 percent of the dairies in Whatcom County are now regulated under an NPDES permit program.

An underlying premise of the new program is that operators who have invested resources and time into properly managing the wastes (nutrients) generated by their animals are not put at an economic disadvantage.

Over 50,000 acres in Whatcom County are now being managed under farm plans requiring 3,000 acres of vegetative practices to protect watercourses from surface runoff of sediment, nutrients, and bacteria.

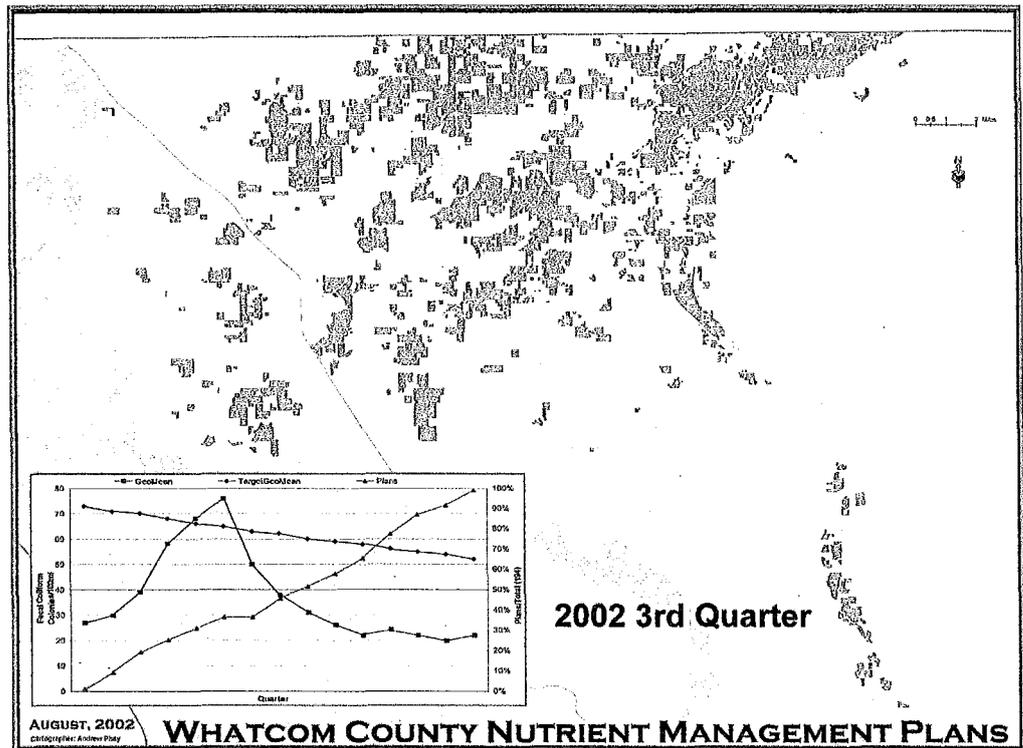


Figure 3. Map of farm plans recently designed and implemented within Whatcom County.

FARM PLANS

Farm plans provide detailed expectations as to what is appropriate and necessary nutrient management conduct for a particular farm/operation. Ecology and EPA inspectors documented no significant water quality problems at operations that were fully implementing farm plans developed pursuant to NRCS technical guidance. As a growing number of dairy operators implement farm plans this field observation about the effectiveness of farm plans to protect water quality has since been reinforced by significant improvement to water quality. Prior to the dairy legislation only a handful of dairy operators had fully implemented farm plans in Whatcom County even though technical and financial assistance had

been available for many years. Within three weeks of EPA's first inspections in Whatcom County, the Conservation District reported a backlog of over 80 producers asking for plans.

Since EPA and Ecology inspections began and the subsequent state dairy program was established, Whatcom Conservation District and NRCS staff has developed farm plans for 204 (99.5%) Whatcom County dairy operations. Over 50,000 acres in Whatcom County are now being managed under farm plans requiring 3,000 acres of vegetative practices to protect watercourses from surface runoff of sediment, nutrients, and bacteria. As shown in Figure 3, the improved water quality in the

Nooksack River corresponds with implementation of farm plans over the past four years by the local dairy industry.

The ongoing Agriculture, Fish and Water initiative in Washington is developing a farm plan-based approach for addressing both Clean Water Act and Endangered Species Act requirements. There is good reason to believe the success of farm plans in the Nooksack River watershed can be reproduced in other agricultural areas if broadly applied across the landscape.

TMDL

In addition to inspections and enforcement against discharging dairy operations, Ecology began development of a Total Maximum Daily Load (TMDL) for fecal coliform in the lower Nooksack River watershed. A TMDL is essentially a water quality restoration plan that determines the amount of pollutants a water body can assimilate without exceeding water quality standards. The TMDL allocates that load among sources in a conservative manner such that water quality standards will be met with a margin of safety when the allocations are achieved. Ecology solicited involvement and input from all interested and affected parties

(stakeholders) in developing the TMDL. This inclusive public participation process allowed Ecology to prepare an implementation strategy that identified a variety of actions necessary to achieve TMDL pollutant reduction targets.

Development the Lower Nooksack River Basin Bacteria TMDL required collection of considerable monitoring data to determine the sources of pollutant loading. Monitoring in the watershed documented that fecal coliform concentrations in the Nooksack River increased significantly in the lower watershed where the dairy operations are located. The monitoring data showed that the agricultural

areas of the lower Nooksack River basin contributed only 11 percent of the flow in the Nooksack River but accounted for 73 percent of the fecal coliform loading. The TMDL analyses determined reductions for direct discharges into the Nooksack River and for the Nooksack River tributaries necessary to meet state water quality standards and the NSSP criteria for shellfish harvesting in marine waters. Interim water quality goals established on a quarterly schedule were set in the TMDL implementation strategy. The interim water quality goals have been invaluable in focusing ongoing implementation efforts.

SHELLFISH PROTECTION DISTRICT

In response to the downgrades of the shellfish beds, DOH initiated meetings to find local sponsors and participants to develop a Shellfish Closure Response Plan for Portage Bay. The Whatcom Conservation District volunteered to be the lead in developing a shellfish recovery plan. This closure response plan was completed

January 2000 through the participation and effort of many interested individuals, the Lummi Nation, various agency staff and members of the local dairy industry. The final recovery plan includes comprehensive information about the watershed, water quality monitoring data, and lists activities needed to restore and protect

water quality and shellfish resources. The implementation activities identified shellfish resources. The implementation activities identified in the Shellfish Response Plan provided a basis for developing the summary implementation strategy (SIS) for the Lower Nooksack River Basin Bacteria TMDL.

Monitoring of the Nooksack River and its tributaries provided critical information for developing the TMDL, identifying sources of pollutant discharges and determining the efficacy of implementation activities.

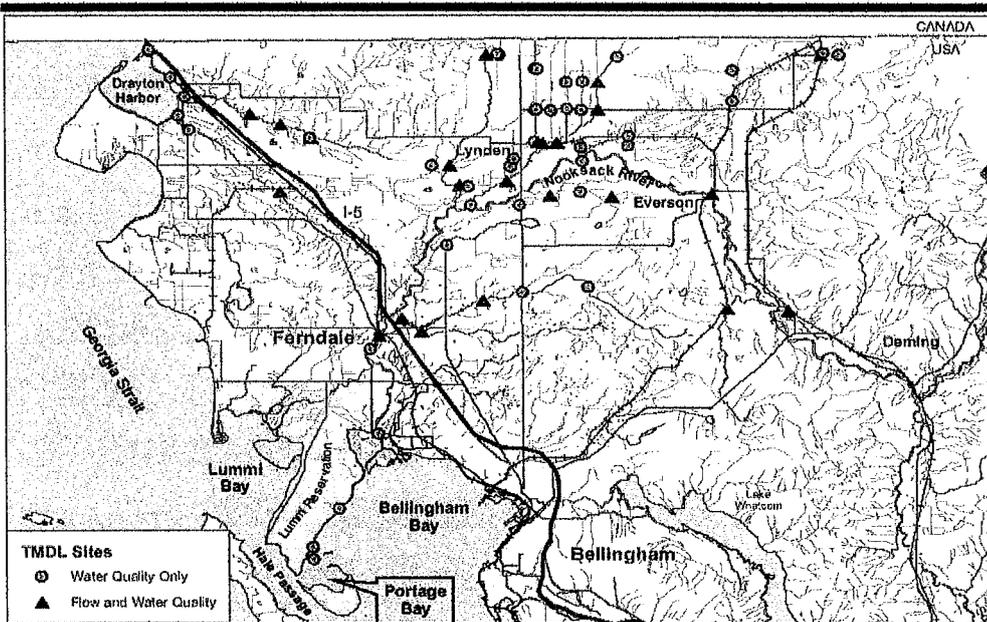


Figure 4. Water Quality Monitoring Locations

WATER QUALITY MONITORING

There have been three primary water quality monitoring efforts initiated in response to the Portage Bay shellfish closure that supplement on-going water quality monitoring conducted by the Lummi and Ecology. The three additional monitoring efforts focused on 1) the Nooksack River watershed, 2) the shoreline areas near Portage Bay on the Lummi Reservation, and 3) a dye study of the Gooseberry Point Wastewater Treatment Plant outfall operated by the Lummi Nation.

Monitoring of the Nooksack River and its tributaries provided critical information for developing the TMDL, identifying sources of pollutant discharges and determining the efficacy of implementation activities. Figure 5 presents monitoring data and a trend line showing the declining fecal coliform densities near the mouth of the Nooksack River.

Except for the monitoring conducted by Ecology to develop the TMDL, most of the ongoing monitoring in the watershed is being conducted under state and federal grants to the Whatcom Conservation District, the Lummi Nation, and the Northwest Indian College (NWIC). Ecology and EPA provided funds that have been used by the Lummi Natural Resources Department and the NWIC to collect and analyze semi-monthly (two samples per month) water quality samples. Figure 4 shows the extensive network of monitoring locations where sampling has been conducted in the Nooksack River lowland areas since November 1998. State and federal funding is also being used to conduct stream flow measurements at 20 of the water quality sampling sites so that fecal coliform loading can be evaluated. The current TMDL Im-

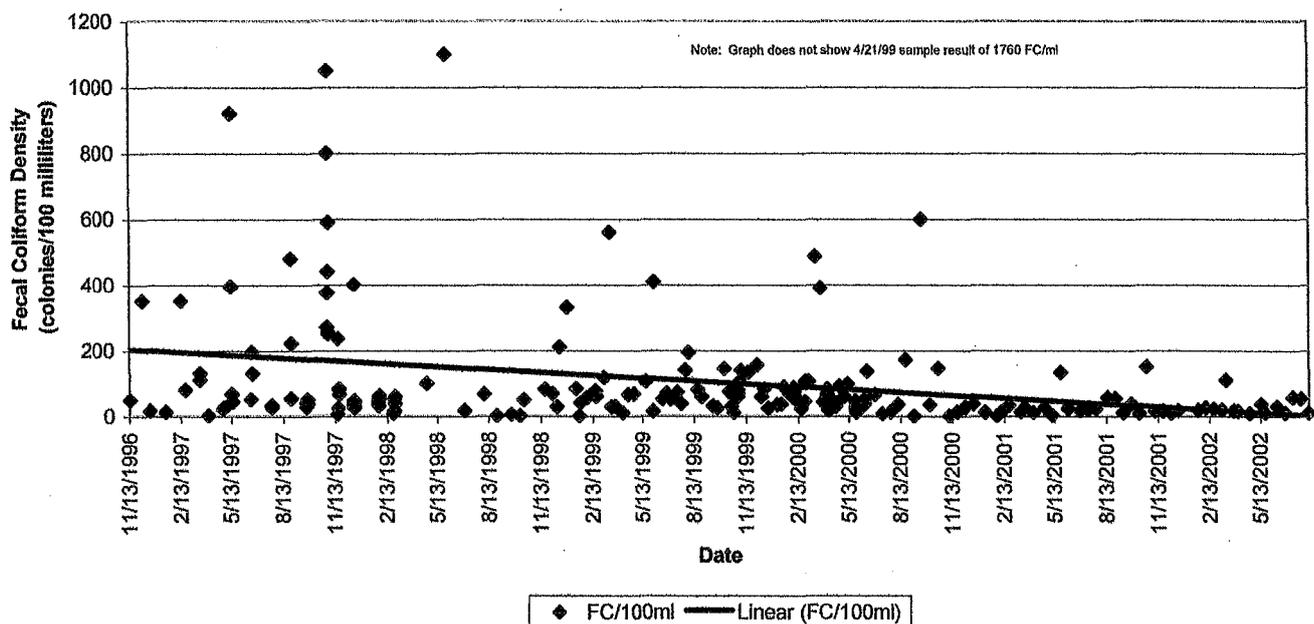
plementation Monitoring Program is funded through March 2004.

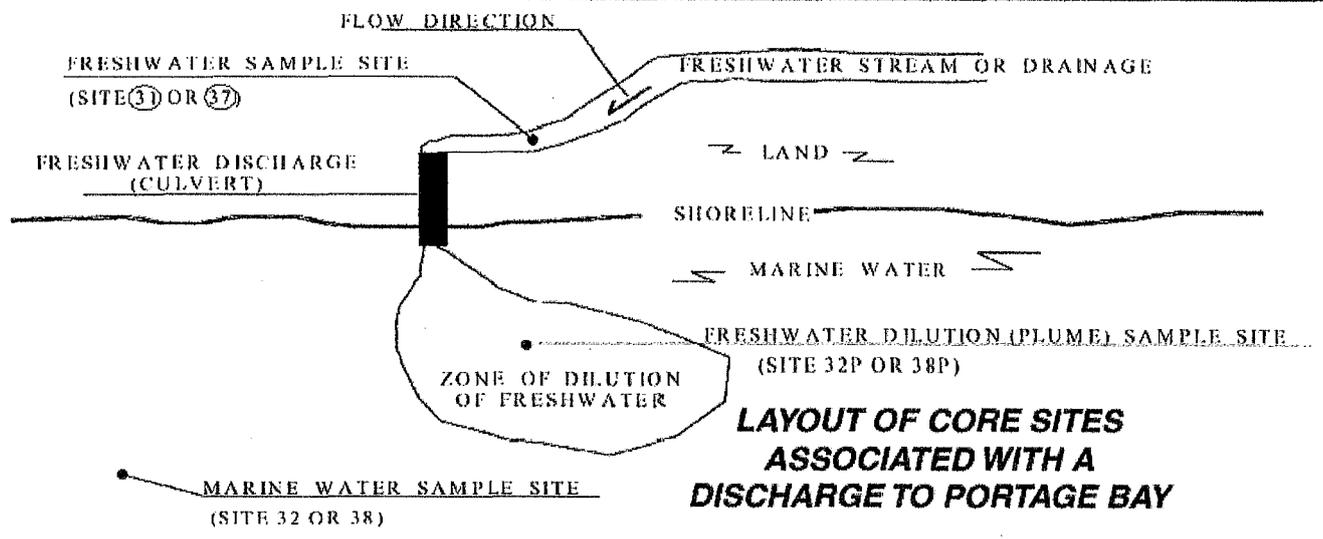
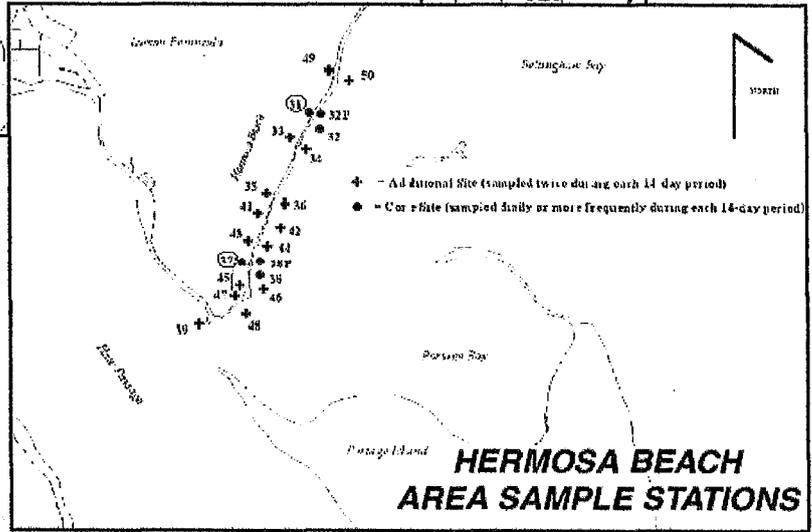
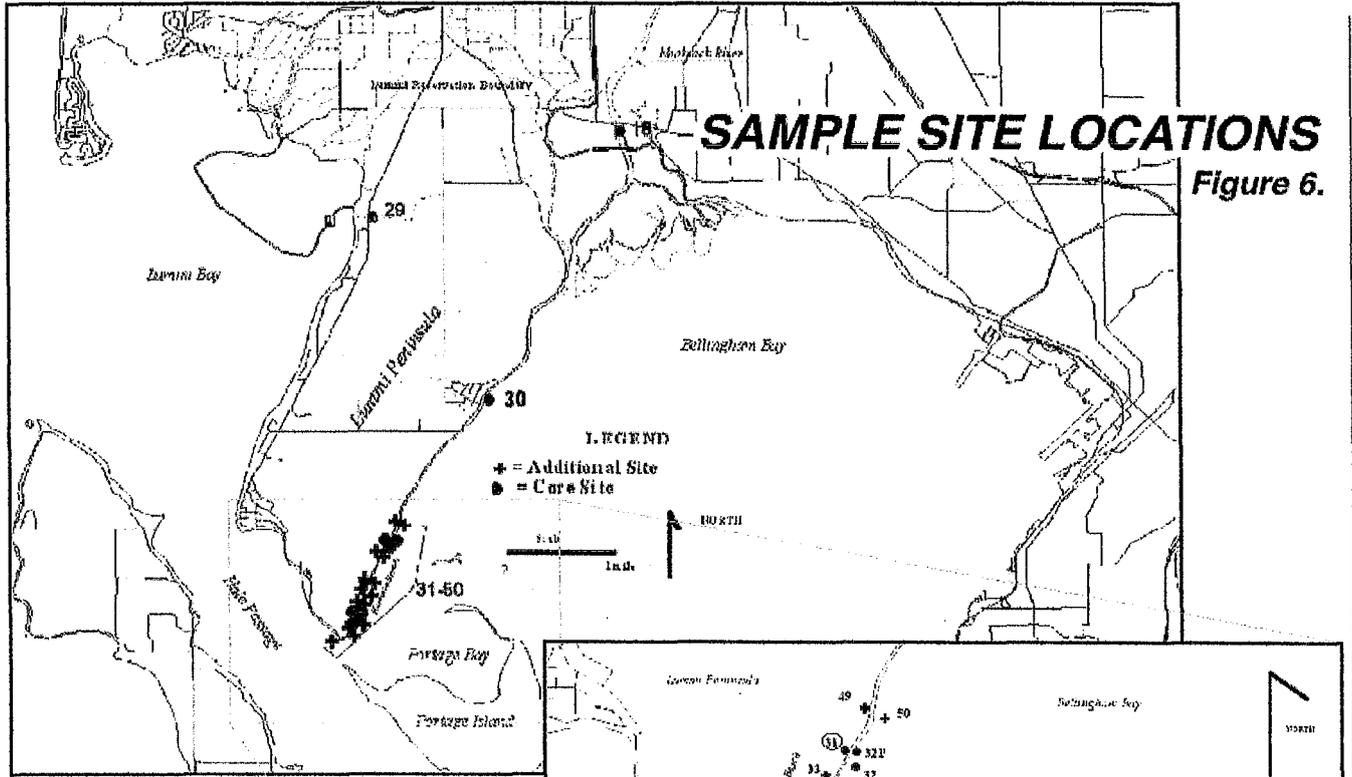
Additional water quality monitoring of the shoreline areas around Portage Bay was initiated by the Lummi Nation with EPA funding in order to determine if there are local sources of fecal coliform that contributed to the down grade. The three-year study provided a combination of spatially extensive sampling (i.e., samples collected over a wide area over a short time interval) and temporally intensive sampling (i.e., samples collected at a few sites over a few days to a week) around Portage Bay (Figure 6). The water quality sampling evaluated initial flush conditions and "baseflow" conditions. Results indicated that although there were some elevated fecal coliform levels encountered in a few of the samples, the discharge of this contaminated

water was very small and the associated loading was also very small. Overall, the conclusion is that the elevated fecal coliform and low salinity levels in Portage Bay could not be attributed to local sources.

The Lummi Nation, EPA, and the Washington Department of Health (DOH) cooperatively conducted a dye study of the Gooseberry Point Wastewater Treatment Plant outfall in 2001 to confirm a 1985 hydrographic study of shellfish growing waters of Hale Passage/Portage Bay. The 1985 study concluded that it is unlikely that effluent from the Gooseberry Point Wastewater Treatment Plant would have much impact on shellfish growing areas in Portage Bay. The more detailed drogue and dye studies conducted during 2001 during adverse receiving water conditions had results similar to the 1985 study – effluent from the wastewater treatment plant does not flow into Portage Bay.

Figure 5. Fecal Coliform Densities in the Nooksack River at the Marine Drive Bridge (Sample Station Maritetta Bridge [M1])





CONTACTS

Lummi Indian Nation

Merle Jefferson, Natural Resources Executive Director
Telephone (360) 384-2225
or Leroy Deardorff, Environmental Director
Telephone (360) 384-2272
or Jeremy Freimund, Water Resource Manager
Telephone (360) 384-2212
2616 Kwina Road
Bellingham, Washington 98226-9298
Email: jeremyf@lummi-nation.bia.edu

Environmental Protection Agency

David Ragsdale
Office of Water, Olympia Field Office
300 Desmond Dr. N.E., Suite 102
Olympia, Washington 98503
Telephone (360) 407-6589
Email: ragsdale.dave@epa.gov

Northwest Indian College

Michael Cochran
2522 Kwina Rd
Bellingham WA 98226
Telephone (360) 392-4299
Fax (360) 647-7084
Cell (360) 961-7505
Email: mcochrane@nwic.edu

Washington Department of Health

Don Lennartson, Public Health Advisor
Office of Food Safety & Shellfish Programs
Washington State Department of Health
Telephone (360) 236-3318
Cell (360) 790-6644
Fax (360) 236-2257
Email: don.lennartson@doh.wa.gov

Whatcom Conservation District

George J. Boggs, District Manager
6975 Hannegan Road, Lynden WA
Telephone (360) 354-2035 x115
Fax (360) 354-4678
Email: www.whatcomcd.org

Natural Resources Conservation Service

John Gillies, District Conservationist
6975 Hannegan Road
Lynden WA 98264
Telephone (360) 354-2035
E-mail: john.gillies@wa.usda.gov

Washington Department of Ecology

Steve L. Hood, Professional & Environmental Engineer
Bellingham Field Office
1204 Railroad Avenue, Suite 200
Bellingham, Washington 98225
Telephone (360) 738-6254
Email: shoo461@ecy.wa.gov

Whatcom County, Water Resources Division

Amilyn Stillings, Resource Planner (Shellfish)
322 N. Commercial St, Suite 110
Bellingham, WA 98225-4042
Telephone (360) 676-6876
Fax (360) 738-2468
Email: astillin@co.whatcom.wa.us

Document Layout by Sheila Schouten, Whatcom Conservation District

CURRENT STATUS

As dairy compliance inspections, enforcement actions, and implementation of farm plans began to take effect, water quality in the

the Nooksack River is suspected. Unless the source of this fecal coliform loading is identified and addressed, any upgrade of the shellfish beds



A DOE inspector taking a water quality sample.

Nooksack River and critical tributaries began to improve. The fecal coliform densities in the marine waters over the shellfish beds have followed the same improving trend as the river water quality. At the end of July 2002, only one sampling station of the four in the Restricted area remained out of compliance with the NSSP water quality standards. With twice-monthly sampling and continued good water quality in Portage Bay, the prospects for an upgrade in the near future were bright. The geometric mean for the Marine Drive site based on the last 30 samples is 27 FC/100 ml. This station has been below the TMDL target geometric mean of 39 FC/100 ml since the summer of 2000. Unfortunately, high counts of fecal coliform were measured at all four sample stations in the restricted area during the mid-August water quality sampling effort. The cause of these high numbers has not yet been identified, but a short-term loading event in

will be delayed by approximately one year.

Before a classification upgrade for the Restricted area of Portage Bay can be considered by DOH, three events have to happen. First and foremost, results from the sampling stations must come into compliance with the NSSP water quality standards. Second, DOH has to see documentation of pollution sources in the watershed that have been discovered and repaired. Third, DOH needs solid assurances that pollution control and monitoring programs will remain in place so that the Approved classification can be maintained into the foreseeable future. It is critically important that once the currently restricted shellfish beds are reopened that they stay opened. Experience has shown that continued enforcement, monitoring, and farm plan implementation will be required to maintain an Approved classification of the Portage Bay shellfish beds.

APPENDIX B



http://www.epa.gov/owow_keep/nps/
 Last updated on Wednesday, March 14, 2012

Polluted Runoff (Nonpoint Source Pollution)

You are here: [EPA Home](#) [Water](#) [Wetlands, Oceans & Watersheds](#) [Polluted Runoff \(Nonpoint Source Pollution\)](#)

Polluted Runoff Quick Finder

Basic Information	Grants Reporting & Tracking (GRTS)	NPS Outreach Toolbox	Tribal NPS Information
Capacity Building for NPS	Healthy Watersheds	Outreach	Watershed Academy
CWA Section 319	Key NPS Tools	Publications & Information	Watershed Central & Wiki
CZARA Section 6217	Kids Page	Resources	Watershed Planning Handbook
Education Resources	NPS Categories	Section 438	Watershed Management & Plan Builder
Events Calendar	NPS Monitoring	State-EPA NPS Partnership Success Stories	Where You Live
Funding		Total Maximum Daily Loads (TMDLs)	

What is nonpoint source pollution?



Nonpoint source (NPS) pollution, unlike pollution from industrial and sewage treatment plants, comes from many diffuse sources. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters.

Learn how you can [prevent nonpoint source pollution](#).

Find out about [nonpoint source pollution programs in your area](#).

Learn about [healthy watersheds](#) and protecting and conserving valuable ecosystems.

Things you can do



Learn how to [protect water quality from urban runoff](#).

Learn how [low impact development](#) can reduce urban runoff and improve water quality.

Learn how to [protect water quality from agricultural runoff](#).

Healthy Watersheds

Healthy Watersheds Initiative: National Framework and Action Plan, 2011

Stay Connected

Subscribe to NPSInfo, EPA's E-mail Discussion Forum
 Read EPA's NPS News-Notes
 NPS Events Calendar

NPS Categories

Abandoned Mine Drainage
 Agriculture
 Forestry
 Hydromodification & Habitat Alteration
 Marinas & Boating
 Roads, Highways & Bridges
 Urban Areas
 Low Impact Development
 Wetland & Riparian Management

APPENDIX C

Introduction

The nation's aquatic resources are among its most valuable assets. While environmental protection programs in the United States have successfully improved water quality during the past 25 years, many challenges still remain. Although significant strides have been made in reducing the impacts of discrete pollutant sources, aquatic ecosystems remain impaired, primarily due to complex pollution problems caused by nonpoint source (NPS) pollution.

The most recent national water quality inventory shows that, as of 2000, 39% of assessed stream miles, 45% of assessed lake acres, and 51% of assessed estuary acres are impaired. The leading causes of impairment are nutrients, siltation, metals, and pathogens. State inventories indicate that agriculture, including crop production, animal operations, pastures, and rangeland, impacts 18% of the total river and stream miles assessed, or 48% of the river and streams identified as impaired (EPA, 2002).

Agriculture is listed as a source of pollution for 48% of the impaired river miles reported in the United States.

The Purpose and Scope of this Guidance

This guidance document is intended to provide technical information to state program managers and others on the best available, economically achievable means of reducing NPS pollution of surface and ground water from agriculture. The guidance provides background information about agricultural NPS pollution, where it comes from and how it enters the nation's waters, discusses the broad concept of assessing and addressing water quality problems on a watershed level, and presents up-to-date technical information about how to reduce agricultural NPS pollution. This document is not intended to be a "how to" technical guide for natural resource assessment, planning, design, and implementation.

The causes of agricultural NPS pollution, specific pollutants of concern, and general approaches to reducing the impact of such pollutants on aquatic resources are discussed in the Overview (Chapter 2). A general discussion of best management practices (BMPs) and the use of combinations of individual practices (BMP systems) to protect surface and ground water is given in Chapter 3. Management measures for nutrient management; pesticide management; erosion and sediment control; managing facility wastewater, manure and runoff from animal feeding operations; grazing management; and irrigation water management are described in Chapter 4. Also in Chapter 4 are discussions of BMPs that can be used to achieve the management measures, including cost and effectiveness information. Chapter 5 summarizes watershed planning principles, and Chapters 6 and 7 give overviews of nonpoint source monitoring and pollutant load estimation, respectively.

While the scope of this guidance is broad, covering diverse agricultural NPS pollutants from a range of sources, there are a number of issues that are not covered. Such issues include nutrient transfer over long distances (e.g., the

This guidance is designed to provide current information to state program managers on controlling agricultural nonpoint source pollution.

This document does not impose legally-binding requirements on EPA, the states, or the public.

This guidance does NOT replace the 1993 *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*.

shipping of feed from one state to another in which the resulting animal waste is then applied to fields), animal nutrition (e.g., changing the nutrient mix fed to livestock as an approach to managing nutrients in animal waste), alternatives for manure (such as composting or regional distribution of manure from farms that do not need it to farms that can use it), odor control, and methane production. Furthermore, because it is national in scope, this document cannot address all practices or techniques specific to local or regional soils, climate, or agronomic conditions. In addition, new BMPs are being developed as a result of ongoing agricultural research. Readers should consult with state or local agencies including the United States Department of Agriculture (USDA)–Natural Resources Conservation Service (NRCS), Cooperative Extension, land grant universities, conservation districts, and agricultural organizations for additional information on agricultural nonpoint source pollution controls applicable to their local area.

This document provides guidance to states, territories, authorized tribes, and the public regarding management measures that may be used to reduce nonpoint source pollution from agricultural activities. This document refers to statutory and regulatory provisions which contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, states, territories, authorized tribes, or the public and may not apply to a particular situation based upon the circumstances. EPA, state, territory, and authorized tribe decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. EPA may change this guidance in the future.

Readers should note that this guidance is entirely consistent with the *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, 1993a) published under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). This guidance, however, does not supplant or replace the 1993 coastal management measures guidance for the purpose of implementing programs under Section 6217.

Under CZARA, states that participate in the Coastal Zone Management Program under the Coastal Zone Management Act are required to develop coastal nonpoint pollution control programs that ensure the implementation of EPA's management measures in their coastal management area. The 1993 guidance continues to apply to that program.

This document modifies and expands upon supplementary technical information contained in the Coastal Management Measures Guidance both to reflect circumstances relevant to differing inland conditions and to provide current technical information. It does not set new or additional standards for either CZARA Section 6217 Coastal Nonpoint Pollution Control Programs or Clean Water Act Section 319 Nonpoint Source Management Programs. It does, however, provide information that can be used by government agencies, private sector groups, and individuals to understand and apply measures and practices to address agricultural sources of nonpoint source pollution.

What is Nonpoint Source Pollution?

Nonpoint source pollution generally results from precipitation, land runoff, infiltration, drainage, seepage, hydrologic modification, or atmospheric deposition. As runoff from rainfall or snowmelt moves, it picks up and transports natural pollutants and pollutants resulting from human activity, ultimately depositing them into rivers, lakes, wetlands, coastal waters, and ground water. Technically, the term *nonpoint source* is defined to mean any source of water pollution that does not meet the legal definition of *point source* in Section 502(14) of the Clean Water Act of 1987:

The term ***point source*** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Although diffuse runoff is generally treated as nonpoint source pollution, runoff that enters and is discharged from conveyances such as those described above is treated as a point source discharge and hence is subject to the permit requirements of the Clean Water Act. In contrast, nonpoint sources are not subject to federal permit requirements. Point sources generally enter receiving water bodies at some identifiable site(s) and carry pollutants whose generation is controlled by some internal process or activity, rather than weather. Point source discharges such as municipal and industrial waste waters, runoff or leachate from solid waste disposal sites and concentrated animal feeding operations, and storm sewer outfalls from large urban centers are regulated and permitted under the Clean Water Act.

While it is imperative that water program managers understand and manage in accordance with legal definitions and requirements, the non-legal community often characterizes nonpoint sources in the following ways:

- Nonpoint source discharges enter surface and/or ground waters in a diffuse manner at intermittent intervals related mostly to meteorological events.
- Pollutant generation arises over an extensive land area and moves overland before it reaches surface waters or infiltrates into ground waters.
- The extent of NPS pollution is related to uncontrollable climatic events and to geographic and geologic conditions and varies greatly from place to place and from year to year.
- The extent of NPS pollution is often more difficult or expensive to monitor at the point(s) of origin, as compared to monitoring of point sources.

- Abatement of nonpoint sources is focused on land and runoff management practices, rather than on effluent treatment.
- Nonpoint source pollutants may be transported and/or deposited as airborne contaminants.

Nonpoint source pollutants that cause the greatest impacts are sediments, nutrients, toxic compounds, organic matter, and pathogens. Hydrologic modification can also cause adverse effects on the biological, physical, and chemical integrity of surface and ground waters.

Section 319 requires states to assess NPS pollution and implement management programs.

National Efforts to Address Nonpoint Source Pollution

Nonpoint Source Program — Section 319 of the Clean Water Act

During the first 15 years of the national program to abate and control water pollution (1972–1987), EPA and the states focused most of their water pollution control activities on traditional point sources. These point sources are regulated by EPA and the states through the National Pollutant Discharge Elimination System (NPDES) permit program established by Section 402 of the 1972 Federal Water Pollution Control Act (Clean Water Act). Discharges of dredged and fill materials into wetlands have also been regulated by the U.S. Army Corps of Engineers and EPA under Section 404 of the Clean Water Act.

As a result of the above activities, the nation has greatly reduced pollutant loads from point source discharges and has made considerable progress in restoring and maintaining water quality. However, the gains in controlling point sources have not solved all of the nation's water quality problems. Recent studies and surveys by EPA and by states, tribes, territories, and other entities, indicate that the majority of the remaining water quality impairments in our nation's rivers, streams, lakes, estuaries, coastal waters, and wetlands result from NPS pollution and other nontraditional sources, such as urban storm water discharges and combined sewer overflows.

Section 319 authorizes EPA to provide grants to assist state NPS pollution control programs.

In 1987, in view of the progress achieved in controlling point sources and the growing national awareness of the increasingly dominant influence of NPS pollution on water quality, Congress amended the Clean Water Act to provide a national framework to address nonpoint source pollution. Under this amended version, referred to as the 1987 Water Quality Act, Congress revised Section 101, "Declaration of Goals and Policy," to add the following fundamental principle:

It is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

More importantly, Congress enacted Section 319 of the 1987 Water Quality Act, which established a national program to address nonpoint sources of water pollution. Under Section 319, states address NPS pollution by assessing NPS pollution problems and causes within the state and implementing management programs to control the NPS pollution. Section 319 authorizes EPA to issue grants to states to assist them in implementing management programs or portions of management programs which have been approved by EPA. For additional information and a list of state contacts, see www.epa.gov/owow/nps.

National Estuary Program

EPA also administers the National Estuary Program under Section 320 of the Clean Water Act. This program focuses on point and NPS pollution in geographically targeted, high-priority estuarine waters. In this program, EPA assists state, regional, and local governments in developing and implementing comprehensive conservation and management plans that recommend priority corrective actions to restore estuarine water quality, fish populations, and other designated uses of the waters.

Pesticides Program

Another program administered by EPA that controls some forms of NPS pollution is the pesticides program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among other provisions, this program authorizes EPA to control pesticides that may threaten ground and surface water. FIFRA provides for the registration of pesticides and enforceable label requirements, which may include maximum rates of application, restrictions on use practices, and classification of pesticides as “restricted use” pesticides (which restricts use to certified applicators trained to handle toxic chemicals).

Coastal Nonpoint Pollution Control Program

In November 1990, Congress enacted the Coastal Zone Act Reauthorization Amendments (CZARA). These amendments were intended to address several concerns, including the impact of NPS pollution on coastal waters.

To more specifically address the impacts of NPS pollution on coastal water quality, Congress enacted Section 6217, *Protecting Coastal Waters* (codified as 16 U.S.C. Section 1455b). Section 6217 provides that each state with an approved Coastal Zone Management Program must develop and submit to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval a Coastal Nonpoint Pollution Control Program. The purpose of the program “shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other state and local authorities.”

Coastal Nonpoint Pollution Control Programs are not intended to supplant existing coastal zone management programs and NPS management programs. Rather, they are intended to serve as an update and expansion of existing NPS

The Federal Coastal Nonpoint Pollution Control Program (6217) is designed to enhance state and local efforts to manage land use activities that degrade coastal habitats and waters.

management programs and are to be coordinated closely with the coastal zone management programs that states and territories are already implementing pursuant to the Coastal Zone Management Act of 1972. The legislative history indicates that the central purpose of Section 6217 is to strengthen the links between federal and state Coastal Zone Management and Water Quality Programs and to enhance state and local efforts to manage land use activities that degrade coastal waters and habitats.

Section 6217(g) of CZARA requires EPA to publish, in consultation with NOAA, the U.S. Fish and Wildlife Service, and other federal agencies, "guidance for specifying management measures for sources of nonpoint pollution in coastal waters." Management measures are defined in Section 6217(g)(5) as:

economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint source control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

EPA published *Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters* (EPA, 1993a). In EPA's (1993a) document, management measures for urban areas; agricultural sources; forestry; marinas and recreational boating; hydromodification (channelization and channel modification, dams, and streambank and shoreline erosion); and wetlands, riparian areas, and vegetated treatment systems were defined and described. The management measures for controlling agricultural NPS pollution discussed in Chapter 4 of this document are based on those outlined by EPA (1993a).

Source Water Protection Program

The 1996 Amendments to the Safe Drinking Water Act provided for source water assessment and protection programs to prevent drinking water contamination. States are required to develop comprehensive Source Water Assessment Programs (SWAPs) that will: identify the areas that supply public tap water; inventory contaminants and assess water system susceptibility to contamination and inform the public of the results. EPA is responsible for the review and approval of state SWAPs. Several programs specifically address ground water protection.

Rural Clean Water Program (RCWP)

The Rural Clean Water Program (RCWP), an NPS pollution control program implemented by USDA and EPA, was conducted from 1980 to 1990 as an experimental effort to address agricultural NPS pollution in watersheds across the country.

The objectives of the RCWP were to:

- Achieve improved water quality in the approved project area in the most cost-effective manner possible while providing food, fiber, and a quality environment;

In selected watersheds, the RCWP showed that implementation of agricultural BMPs improved water quality.

- ❑ Assist agricultural landowners and farm operators in reducing agricultural NPS water pollutants and improving water quality in rural areas to meet water quality standards or goals; and
- ❑ Develop and test programs, policies, and procedures for the control of agricultural NPS pollution.

Twenty-one experimental projects were funded across the United States. Each project included implementation of BMPs to reduce NPS pollution and water quality monitoring to evaluate the effects of BMPs. The BMPs were targeted to critical areas in each project — sources of NPS pollutants identified as having significant impacts on the impaired water resource. Landowner participation was voluntary, with cost-sharing and technical assistance offered as incentives for implementing BMPs.

The linkage of water quality monitoring to land treatment efforts in the RCWP helped improve targeting of BMPs to sources most in need of treatment. Water quality findings from the RCWP projects were also used to adjust and refine agricultural NPS programs and BMPs. Additional details are available in the project evaluation report (EPA, 1993c).

2002 Farm Bill Conservation Provisions

Technical and financial assistance for landowners seeking to conserve, improve, and sustain our soil and other natural resources is authorized by the federal government under provisions of the Food Security and Rural Investment Act (Farm Bill). The following sections summarize provisions in the 2002 Act relating directly to installation and maintenance of BMPs. For additional information, see the U.S. Department of Agriculture's website at www.usda.gov.

Environmental Quality Incentives Program (EQIP) — The EQIP was established by the 1996 Farm Bill to provide a voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and related natural resources. Funding increases are authorized from \$200 million to \$1.1 billion between 2002 and 2007. EQIP offers financial, technical, and educational help to install or implement structural, vegetative, and management practices designed to conserve soil and other natural resources. The law dictates that 60% of the available monies be directed to livestock-related concerns. Cost-sharing generally pays up to 75% of the costs for certain conservation practices. Incentive payments may be made to encourage producers to perform land management practices such as nutrient management, manure management, integrated pest management, irrigation water management, and wildlife habitat management. Cost-share for construction of animal waste management facilities is now allowed for livestock operations over 1,000 animal units.

Conservation Reserve Program (CRP) — First authorized by the Food Security Act of 1985 (Farm Bill), this is a voluntary program that offers annual rental payments, incentive payments, and cost-share assistance for establishing long-term, resource-conserving cover crops on highly erodible land. Conservation Reserve Program contracts are issued for a duration of 10 to 15 years for up to 39.2 million acres of cropland and marginal pasture. Land can be accepted into the CRP through a competitive bidding process where all offers are ranked using an environmental benefits index, or through continuous sign-up for

Many Farm Bill programs provide funds for land treatment. Please contact your state or local USDA office for details.

eligible lands where certain special conservation practices (e.g. filter strips and riparian buffers) will be implemented.

Conservation Security Program — This 2002 Farm Bill program provides incentive payments to producers who adopt or maintain existing conservation practices. Producers may receive up to 20,000, 35,000, or 45,000 dollars per year for practice falling into 3 tiers. The higher payments go to the more comprehensive sets of practices. The program contracts are for 5 to 10 years.

The Conservation Reserve Enhancement Program (CREP) is a 1996 initiative continued in the 2002 Farm Bill. CREP is a joint, state-federal program designed to meet specific conservation objectives. CREP targets state and federal funds to achieve shared environmental goals of national and state significance. The program uses financial incentives to encourage farmers and ranchers to voluntarily protect soil, water, and wildlife resources.

Wetlands Reserve Program (WRP) — The WRP is a voluntary program to restore and protect wetlands and associated lands. Participants may sell a permanent or 30-year conservation easement or enter into a 10-year cost-share agreement with USDA to restore and protect wetlands. The landowner voluntarily limits future use of the land, yet retains private ownership. The NRCS provides technical assistance in developing a plan for restoration and maintenance of the land. The landowner retains the right to control access to the land and may lease the land for hunting, fishing, and other undeveloped recreational activities. The acreage is expanded by 1.2 million acres to 2.275 million acres in 2002.

Wildlife Habitat Incentives Program (WHIP) — This program is designed for people who want to develop and improve wildlife habitat on private lands. Plans are developed in consultation with the NRCS and local Conservation District. USDA will provide technical assistance and cost-share up to 75% of the cost of installing the wildlife practices. Participants may get bonus payments for agreements over 15 years.

Forest Land Enhancement Program (FLEP) — Authorized in the 2002 Farm Bill, the FLEP creates a new title for Forestry. It replaces and expands the Stewardship Incentive program and Forestry program. The new Forest Land Enhancement program will provide up to \$100 million over six years to private, non-industrial Forest owners. The new title also provides \$210 million to help fight fire on private land and address prevention.

Grazing Reserve Program (GRP) — This 2002 provision will use 30 year easements and rental agreements to improve management of up to 2 million acres of private grazing land. 500,000 acres are to be reserved for protected tracts of 40 acres or less as native grasslands. Restoration costs may go as high as 75%.

Funding Sources

For information on sources of funding to address nonpoint source pollution, see EPA's Nonpoint Source website at www.epa.gov/owow/nps/funding.html.

DECLARATION OF MAILING

I, Lynn S. Torno, declare under penalty of perjury that, on the date set forth below, I placed a true and correct copy of (1) the Tribes' Motion for Leave to Participate as Amicus Curiae, and (2) the Tribes' Amicus Brief in the US Mail, postage prepaid, addressed to the following persons:

Marc Worthy
Office of the Attorney General
800 Fifth Avenue, Suite 3000
Seattle, WA 98104-3188

Brian Hodges & Daniel Himebaugh
Pacific Legal Foundation
10940 NE 33rd Place, Suite 210
Bellevue, WA 98004-1432

James Cortland Carmody
Velikanje Halverson PC
PO Box 22550
Yakima, WA 98907-2550

Laura J. Watson & Ivy Anderson
Attorney General's Office
2425 Bristol Ct. SW
Olympia, WA 98504-0117

Richard K. Eichstaedt
Center for Justice
35 W. Main Avenue, Suite 300
Spokane, WA 99201-0199

Caroline M. Coppock-Lobdell
Western Resources Legal Center
5100 SW Macadam Avenue, Suite 350
Portland, OR 97239-3877

Toni Meachan
Attorney at Law
1420 Scootenay Road
Connell, WA 99326-5000

Samuel Plauche, Amanda Stock &
Jesse DeNike
811 First Avenue, Suite 630
Seattle, WA 98104

Dated this 28th day of June, 2012.



Lynn S. Torno, Paralegal
Office of the Reservation Attorney
For the Lummi Nation
2616 Kwina Road
Bellingham, WA 98226