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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 302881

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.

**RESPONDENT LEMIRE'S ANSWER TO AMICUS CURIAE
BRIEF OF WATERKEEPERS WASHINGTON**

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TABLE OF CONTENTS

I. Introduction1

II. Statement of Case1

III. Argument3

 A. Water Quality Management is Implemented Through
 An Integrated Statutory Regimen Under Both State and
 Federal Law3

 1. Overview of State and Federal Statutory
 Regulating Water Quality and Pollution.....5

 2. State and Federal Law Have Adopted Consistent
 Terminology and Concepts With Respect to Water
 Quality Controls and Processes8

 3. Lemire’s Grazing and Agricultural Activities Do Not
 Constitute a “Discharge of Pollutants” Requiring an
 Individual Permit Under Either State or Federal Law11

 B. RCW 90.48.080 Does Not Provide Authority to Impose
 Quasi-Permit Requirements on Nonpoint Source
 Activities and Natural Runoff.....13

 1. Waterkeepers Interpretation of RCW 90.48.080 is
 Illogical, Contrary to Clear Language and Inconsistent
 With Regulations14

 2. Lemire Complied With Ecology’s Requirements by
 Applying Best Management Practices18

 3. Washington Law Has an Underlying Policy
 Protecting Agricultural Activities19

IV. Conclusion20

TABLE OF AUTHORITIES

Cases

Department of Ecology v. Campbell & Gwinn, LLC,
146 Wn.2d 1, 11, 43 P.3d 4 (2002)..... 17

Department of Ecology v. City of Spokane Valley,
___ Wn. App. ___, 275 P.3d 367, 372 (2012)..... 17

Dioxin/Organochlorine Center v. Clarke,
57 F.3d 1517, 1520 (9th Cir. 1995) 8

EPA v. State Water Resources Control Board,
426 U.S. 200, 202-03, 96 S. Ct. 2022, 48 L.Ed. 2d 578 (1976)..... 5

Fahn v. Cowlitz County,
93 Wn.2d 368, 374, 610 P.2d 857 (1980)..... 17

Fishermen Against the Destruction of Environment, Inc. v. Closter Farms,
Inc.,
300 F.3d 1294, 1297 (11th Cir. 2002) 16

Hallauer v. Spectrum Properties, Inc.,
143 Wn. 2d 126, 146, 18 P.3d 540 (2001)..... 4, 10

ITT Rayonier, Inc. v. Dalman,
122 Wn.2d 801, 807, 863 P.2d 64 (1993)..... 17

Natural Resources Defense Council v. EPA,
915 F.2d at 1316 6

Northwest Environmental Defense Center v. Brown,
640 F.3d 1063, 1070 (9th Cir. 2011) 9, 15

Oregon Natural Desert Association v. Dombeck,
172 F.3d 1092, 1096 (9th Cir. 1998) 6, 11, 12, 15

Oregon Natural Desert Association v. United States Forest Service,
550 F.3d 778 (9th Cir. 2008) 12

Oregon Natural Res. Council v. United States Forest Service, 834 F.2d 842, 849 (9th Cir. 1987)	7, 11
Pronsolino v. Nastro, 291 F.3d 1123, 1126-27 (9th Cir. 2002)	4, 7, 8
Public Utility Dist. No. 1 of Jefferson County v. Department of Ecology, 511 U.S. 700, 704, 114 S. Ct. 1900, 128 L. Ed 2d 716 (1994).....	5, 14
Public Utility District No. 1 of Pend Oreille County v. Department of Ecology, 146 Wn.2d 778, 820, 51 P.3d 744 (2002).....	14
Residents Opposed to Kittitas Turbines v. EFSEC, 165 Wn.2d 275, 308, 197 P.3d 1153 (2008).....	10

Federal Statutes

22 U.S.C. § 1362.....	12
33 U.S.C. § 1362(14).....	9
33 U.S.C. § 1313(d)(1)(A).....	7
33 U.S.C. § 1313(d)(1)(c).....	8
33 U.S.C. § 1329.....	7
33 U.S.C. § 1362(12).....	10
33. U.S.C. § 1342.....	6
Section 303 (33 U.S.C. § 1313)	7
Section 319 (33 U.S.C. § 1329)	7
RCW 90.48.080	passim
RCW 90.48.120	14, 17
RCW 90.48.260	6, 13, 16
RCW 90.48.422(3).....	20
RCW 90.48.450(1).....	19

Regulations

40 C.F.R. Section 130.2(g)-(i)	8
WAC 173-201A-020.....	9
WAC 173-201A-510(3).....	19
WAC 173-101A-510(3).....	18

WAC 173-201A-510(3).....	13
WAC 173-201A-510(3)(a).....	18
WAC 173-201A-510(3)(b).....	19
WAC 173-201A-510(3)(c).....	19
WAC 173-220-010.....	6
WAC 173-220-030.....	9, 10, 12, 18
WAC 173-220-030(18).....	9
WAC 173-220-030(5).....	16
WAC Ch. 173-201A.....	5, 7

I. INTRODUCTION

Waterkeepers Washington (“Waterkeepers”) argues that Department of Ecology (“Ecology”) has authority to issue enforcement orders with respect to purported nonpoint source runoff from agricultural activities. It is acknowledged that enforcement authority derives from RCW 90.48.080 but that the operative requirement of a “discharge” should be construed in a manner different than federal law and contrary to state administrative definition. Waterkeepers’ arguments lack of legal and factual foundation.

II. STATEMENT OF CASE

Waterkeepers has taken considerable liberty with the factual record. It was argued that (1) “Lemire ... repeatedly allowed this cattle to have extended access to the Pataha Creed without regard to pollution entering into the creek”; (2) purported grazing practices “... led to increased pollution within Pataha Creek”; and (3) there was a “... proliferation of bacteria in the creek (fecal Coliform) via cattle defecation in the creek and sediment pollution through erosion of stream banks.” None of these conclusory and conjectural statements are supported by the record.

The record contains no evidence that Lemire's modest cow-calf operation increased pollution of Pataha Creek or increase in bacteria (fecal coliform) or sediment pollution. Ecology did not test for water quality or establish that water quality standards for fecal coliform, pH, dissolved oxygen or temperature were exceeded at the Lemire property; no evidence was provided on rainfall, runoff patterns or content of natural stormwater runoff; and only speculation or conjecture regarding causal linkage between perceived (and not actual) site conditions and potential pollution. Ecology has acknowledged the "lack of evidence" but side steps the issue by arguing that it "...is immaterial to the issue decided by the Board." Ecology Reply Brief - 2.

Waterkeepers acknowledges that the enforcement order relates to a nonpoint source activity and purported polluting materials are carried by natural runoff. The record lacks any evidence of a discernable, defined or discreet conveyance vehicle or mechanism such as pipes, ditches, or channels. No evidence was presented to establish the course, manner, volume or content of natural surface water runoff. And, the uncontroverted evidence was that the climate was extremely dry and there was a lack of rainfall. The creek dries up in most years (July to December). There is no factual basis to support the contention that grazing practices "... led to increased pollution of Pataha Creek."

Ecology also ignores that Lemire offered uncontroverted evidence that his practices were consistent with “best management practices” established by Washington State University. Cattle did not have frequent or extended access to the riparian corridor. Best management practices included installation of watering troughs outside of riparian areas; placement of salt and minerals near water troughs; limiting livestock access to the stream by fencing (drift fencing) and topography; exclusion of livestock from stream areas during winter months and times of high water; provision of shade and vegetation outside of the riparian corridor; locating feed sites (high quality alfalfa) away from the riparian corridor; rotation pasture usage to coincide with physiological needs of plant species; and developing a managed grazing plan.

III. ARGUMENT

A. Water Quality Management is Implemented Through an Integrated Statutory Regimen Under Both State and Federal Law.

The Clean Water Act (CWA), originally known as the Federal Water Pollution Control Act (FWPCA), provides a structural framework for water pollution regulation and permit processes. Virtually every state statutory and administrative process reflects the federal mandates and directives. State of Washington has established water quality standards, individual and general discharge permit programs, and nonpoint source

management plans based on federal directives. Statutes dealing with the same subject matter must be interpreted and applied *in pari materia*. *Hallauer v. Spectrum Properties, Inc.*, 143 Wn. 2d 126, 146, 18 P.3d 540 (2001) (“... statutes which stand *in pari materia* are to be read together as constituting a unified whole to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes.”)

Waterkeepers misconstrues the issues in this case. This is not a case of federal preemption or prohibition. Ecology implements the federal mandates and regulates “discharges of pollutants” through the NPDES process. States are responsible for implementing programs to address nonpoint source pollution. The court in *Pronsolino* noted:

In doing so, the CWA uses distinctly different methods to control pollution released from point sources and that traceable to nonpoint sources. [Citation omitted]. The Act directly mandates technological controls to limit pollution point sources may discharge into a body of water. [Citation omitted]. On the other hand, the Act “provides no direct mechanism to control nonpoint source pollution but rather uses the ‘threat and promise’ of federal grants to the states to accomplish this task,’

Pronsolino v. Nastri, 291 F.3d 1123, 1126-27 (9th Cir. 2002) (addressing issue of EPA review of TMDL for river polluted only by nonpoint source runoff). The State of Washington has no adopted statutory or regulatory

process for nonpoint source pollution. Ecology has simply created *ad hoc* process through the use of administrative orders.

1. Overview of State and Federal Statutory Structure Regulating Water Quality and Pollution.

Federal and state pollution regulation developed on a concurrent basis.¹ CWA was adopted as a “comprehensive water quality statute designed to ‘restore and maintain the chemical, physical, and biological integrity of the nation’s water’”. *Public Utility Dist. No. 1 of Jefferson County v. Department of Ecology*, 511 U.S. 700, 704, 114 S. Ct. 1900, 128 L. Ed 2d 716 (1994). Early regulation attempted to control water pollution by focusing regulatory efforts on achieving “water quality standards.” See *EPA v. State Water Resources Control Board*, 426 U.S. 200, 202-03, 96 S. Ct. 2022, 48 L.Ed. 2d 578 (1976). Washington has adopted state water quality standards. WAC Ch. 173-201A.

In 1972, Congress implemented sweeping revisions to CWA and shifted the focus from the effects of pollution to the preventable causes of pollution. *Oregon Natural Desert Association v. Dombeck*, 172 F.3d

¹ The State of Washington adopted the Water Pollution Control Act in 1945. 1945 Wash. Laws, Ch. 216. The Clean Water Act (CWA), originally known as the Federal Water Pollution Control Act (FWPCA), was first enacted in 1948. From 1948 to 1972, Federal regulations focused upon the quality of waters receiving discharges. State law followed a similar pattern. Wastewater permits first were required in the state for commercial and industrial operations in 1955. The early laws included water quality standards but no mechanisms to assure compliance or regulate discharge of pollutants. Butler & King, 23 Wash. Prac. Environmental Law and Practice § 7.1 (2d ed.)

1092, 1096 (9th Cir. 1998). The redirected focus was to control effluent discharges through the National Pollutant Discharge Elimination System (“NPDES”). 33 U.S.C. § 1342; *Dombeck*, 172 F.3d at 1096 (“Direct federal regulation now focuses on reducing the level of effluent that flows from point sources.”). Any “discharge of a pollutant” requires a NPDES permit. 33 U.S.C. § 1342; CWA regulated only *discharges from point sources*.

The Act thus banned only discharges from point sources. The discharge of pollutants from nonpoint sources – for example, the runoff of pesticides from farmlands – was not directly prohibited. The Act focused on point source polluters presumably because they could be identified and regulated more easily than nonpoint source polluters.

Natural Resources Defense Council v. EPA, 915 F.2d at 1316. CWA established a federal-state regulatory system for administration of the NPDES permits. State of Washington administers the NPDES permit program through Ecology.² RCW 90.48.260.

CWA “...uses distinctly different methods to control pollution released from point sources and that traceable to nonpoint sources.”

² Following adoption of the Clean Water Act in 1972, the state legislature amended the Water Pollution Control Act so that Ecology could serve as the delegate for administration of CWA provisions within the state. RCW 90.48.260. Regulations were adopted “... to establish a state individual permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state” WAC 173-220-010. The state individual permit program was “... designed to satisfy the requirements for discharge permits under both Sections 402(b) of the FWPCA and Chapter 90.48 RCW.” *Id.*

Pronsolino, 291 F.3d at 1126; and *Oregon Natural Res. Council v. United States Forest Service*, 834 F.2d 842, 849 (9th Cir. 1987). Nonpoint source pollution is addressed primarily through two statutory mechanisms” (1) Section 303 (33 U.S.C. § 1313) which requires states to adopt and maintain water quality standards and identify impaired water bodies; and (2) Section 319 (33 U.S.C. § 1329) requiring development of nonpoint source management plans. The court in *Dombeck* noted.

Thus, the Act provides no direct mechanism to control nonpoint source pollution but rather uses the ‘threat and promise’ of federal grants to the state to accomplish this task. [Citations omitted]

Dombeck, 132 F.3d at 1097. *See also Pronsolino*, 291 F.3d at 1127 (noting that Section 303 “... is central to the Act’s carrot-and-stick approach to attaining acceptable water quality ...”). Neither process includes enforcement authority over private landowners.

State of Washington adopted water quality standards pursuant to the Section 303. WAC Ch. 173-201A. States are required to identify water segments that do not meet water quality standards (“Section 303(d) list”). 33 U.S.C. § 1313(d)(1)(A) (“Section 303(d) list”). Pataha Creek has been listed as an impaired water body for temperature, fecal coliform and pH exceedances. The state is required to establish a “total daily maximum

load” (TMDL) for pollutants. 33 U.S.C. § (d)(1)(c).³ 40 C.F.R. Section 130.2(g)-(i). The TMDLs “... are primarily informational tools that allow the states to proceed from the identification of waters requiring additional planning to the required plans.” *Pronsolino*, 291 F.3d at 1129. Ecology has adopted the Tucannon/Pahata Creek Temperature TMDL as “... a pilot project because of its small size and largely rural character.” Ecology has failed to adopt a TMDL for fecal chloroform or pH exceedances. In the absence of an adopted TMDL, there is no guidance for nonpoint source load allocations or applicable best management practices.

2. State and Federal Law Have Adopted Consistent Terminology and Concepts With Respect to Water Quality Controls and Processes.

State and federal regulatory schemes have adopted and applied similar (if not identical) definitions, concepts and structures to address water quality controls. The operative words - point source, nonpoint source, pollutant and discharge - have also gained an accepted meaning within the statutory structures. Waterkeepers asks the court to ignore the common structure of concepts and definitions.

³ A TMDL defines the maximum amount of a pollutant which can be discharged or “loaded” into the waters at issue from all combined sources. *Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517, 1520 (9th Cir. 1995). The TMDL “shall be established at a level necessary to implement the applicable water quality standards” Section 1313(d)(1)(C). The regulations divide TMDL’s into two types: “Load allocations” for nonpoint source pollution, and “waste load allocations” for point source pollution.

At the heart of this matter is the distinction drawn between point and nonpoint sources of pollution. State and federal law are consistent in definitional structure. CWA defines a “point source” to mean any “discernable, confined and discrete conveyance ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). State of Washington adopted the identical definition through regulation. WAC 173-220-030 (18). Nonpoint source pollution is not defined at the federal level, but is considered “the type of pollution that arises from many disbursed activities over large areas, and is not traceable to any single discrete source.” *Northwest Environmental Defense Center v. Brown*, 640 F.3d 1063, 1070 (9th Cir. 2011). WAC 173.201A-020 defines “nonpoint source” as follows:

“Nonpoint source” means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; *surface water runoff from agricultural lands*, urban area, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

Nonpoint and point sources are “not distinguished by the kind of pollution they create or by the activity causing the pollution, but rather by whether the pollution reaches the water through a confined, discrete conveyance.” *Brown*, 640 F.3d at 1071.

Ecology administers the NPDES permit process. A state individual discharge permit is required when there is a finding that there has been a “discharge of pollutants”. WAC 173-220-030 includes the following definition:

(15) “*Discharge of pollutant*” and the term “discharge of pollutants” each means (a) any addition of any pollutant or any combination of pollutants to the surface waters of the state from any *point source*, (B) any addition of any pollutant or combinations of pollutants to the waters of the contiguous zone or the ocean from any *point source* other than a vessel or other floating craft.

Ecology’s definition mirrors federal statutory definitions. 33 U.S.C. § 1362(12). RCW 90.48.080 incorporates the operative term “discharge” and declares that it “... shall be unlawful for any person to throw, drain, run or otherwise discharge ... any organic or inorganic material that shall cause or tend to cause pollution... .” The operative term in both state and federal legislation is “discharge.” It is illogical to argue that the word “discharge” has different meanings in different contexts. Statutes governing the same subject matter must be construed *in pari materia*. *Hallauer*, 143 Wn.2d at 146; *Residents Opposed to Kittitas Turbines v. EFSEC*, 165 Wn.2d 275, 308, 197 P.3d 1153 (2008).

Federal courts have rejected an expansive interpretation of “discharge” as it relates to grazing activities. *See Dombeck*, 172 F.3d at

1098 (refusing to adopt a broad definition of “discharge” that encompasses releases from nonpoint sources); and *United States Forest Service*, 550 F.3d at 784. The courts have also drawn a distinction between the terms “discharge” and “runoff”. The court in *Dombeck*, stated:

We have recognized the distinction between the terms “discharge” and “runoff”:

Nonpoint source pollution is not specifically defined in the Act, but is pollution that does not result from the “discharge” or “addition” of pollutants from a point source. Examples of nonpoint source pollution include runoff from irrigated agriculture and silvicultural activities.

Oregon Natural Resources Council, 834 F.2d at 849 n.9. We have further noted that “Congress had classified nonpoint source pollution as runoff caused primarily by rainfall around activities that employ or create pollutants. Such runoff could not be traced to any identifiable point of discharge.”

Dombeck, 172 F.3d at 1098. Nonpoint source activities involve runoff rather than a discharge. RCW 90.48.080 deals with “discharges” and should not be extended to natural runoff.

3. Lemire’s Grazing and Agricultural Activities Do Not Constitute a “Discharge of Pollutants” Requiring an Individual Permit Under Either State or Federal Law.

Waterkeepers and Ecology clearly acknowledge that Lemire operation does not include a “discharge of pollutants” that requires a state individual discharge permit. Waterkeepers states:

Lemire is correct in asserting that the NPDES permit program is the primary mechanism to enforce effluent limitations from point sources and *his ranching operation does not fit the type of pollution that is targeted for a NPDES permit.*

Waterkeepers, 6-7. It is also clear that Lemire does not operate a “concentrated animal feeding operation” (which requires a discharge permit). The statutory regimen recognizes that agricultural stormwater runoff and return flows from irrigated agriculture are not point sources. 22 U.S.C. § 1362 (14) and WAC 173-220-030.

Federal case authority is also clear and unequivocal - livestock grazing does not result in a “discharge of pollutants”. *Oregon Natural Desert Association v. Dombeck*, 172 F.3d 1092 (9th Cir. 1998) (holding that livestock grazing on USFS lands was not a “discharge of pollutants”); and *Oregon Natural Desert Association v. United States Forest Service*, 550 F.3d 778 (9th Cir. 2008) (following *Dombeck* and holding that livestock grazing does not constitute a “discharge.”) CWA excluded nonpoint source runoff from the NPDES permit process. *Dombeck* 172 F.3d at 1098 (“Had congress intended to require certification for runoff as well as discharges, it could have easily mirrored the language of § 1323); *United States Forest Service*, 550 F.3d at 785 (“[W]hile congress could have defined a ‘discharge’ to include generalized runoff as well as more obvious sources of water pollution, ... it chose to limit the permit

program’s application to the later [point source] category.”) This Court should draw upon federal analysis and reasoning in the construction of RCW 90.48.080’s statutory prohibition on “discharges”.

B. RCW 90.48.080 Does Not Provide Authority to Impose Quasi-Permit Requirements on Nonpoint Source Activities and Natural Runoff.

Waterkeepers acknowledges that “... [n]onpoint source pollution reductions can be enforced against responsible parties only to the extent that the state institutes a regulatory requirement for such reductions pursuant to state authority.” Waterkeepers at 9. Washington Water Pollution Control Act contains no specific provisions related to nonpoint source pollution or runoff.⁴ And the state adopted the federal regulatory structure with regard to “discharge of pollutants.” RCW 90.48.260. That structure did not include permit processes for nonpoint source runoff. Ecology has sought to bootstrap its circumscribed authority to create a new quasi-permit process through a tortured statutory construction. Waterkeepers has joined in this game of smoke and mirrors. (AR 15).

⁴ A careful review of Washington Water Pollution Control Act discloses no references to “nonpoint source pollution”. The sole reference to nonpoint source and storm water pollution is found in WAC 173-201A-510(3). Ecology contends that this provision “ ... is not directly on point because it pertains to violations of water quality standards, and Ecology does not allege that Mr. Lemire violated any water quality standard.” Ecology Reply Brief, 14).

1. Waterkeepers Interpretation of RCW 90.48.080 is Illogical, Contrary to Clear Language and Inconsistent with Regulations.

Waterkeepers argues that Ecology has broad statutory authority to regulate nonpoint source pollution.⁵ The words “nonpoint source” and “runoff” do not appear in the Water Pollution Control Act. The fact is that agency authority for issuance of administrative orders regarding nonpoint source pollution must be found in the language of two statutes – RCW 90.48.120 and 90.48.080.

Ecology exercised authority under RCW 90.48.120. Action is authorized under RCW 90.48.120 when “ ... any person shall violate or create substantial potential to violate the provisions of this chapter” Administrative Order No. 7178 was issued and based on Ecology’s determination that “ ... a person has violated RCW 90.48.080.” AR 15. RCW 90.48.080 provides:

It shall be unlawful for *any person* to *throw, drain, run, or otherwise* discharge into any waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharge into such waters any organic or inorganic material that shall cause or tend to

⁵ Waterkeepers relies on the case of *Public Utility District No. 1 of Pend Oreille County v. Department of Ecology*, 146 Wn.2d 778, 820, 51 P.3d 744 (2002) *PUD District No. 1*, which dealt with an application to change points of diversion of water rights and Section 401 certification with respect to a federal permit. The court simply held that Ecology was authorized to impose in stream flow conditions in the state water quality certification. The court followed Supreme Court decision in *PUD NO. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700, 114 S. Ct. 1900 (1994) (holding that additional conditions could be imposed under § 401 “ ... once the threshold condition, the existence of a discharge, is satisfied.”).

cause pollution by such waters according to the determinations of the Department, as provided for in this chapter.

A violation or potential violation of RCW 90.48.080 specifically requires proof that (1) a *person* has (2) "... thrown, drained, run, or otherwise discharged organic or inorganic material into the waters of the state ...", and (3) that shall cause or tend to cause pollution of such waters.

Waterkeepers ignores the first operative requirement - a violation requires that a "person" discharge organic or inorganic matter into state waters. Nonpoint source runoff occurs as a result of natural runoff and not by human intervention. The court in *Northwest Environmental Defense Center v. Brown*, 640 F.3d 1063, 1070 (9th Cir. 2011) noted:

In other words, runoff is not inherently a nonpoint or point source of pollution. Rather, it is a nonpoint or point source under [Clean Water Act] depending on whether it is allowed to run off naturally (and is thus a nonpoint source) or is collected, channeled, and discharged through a system of ditches, culvers, channels, or similar conveyances (and is thus a point source discharge).

RCW 90.48.080 plain language is consistent *only* with the concept of a "point source". Nonpoint source is natural and has no human component. The federal courts have been consistently held that there must be a proven manmade intervention in order to trigger a "discharge of pollutants." *Dombeck*, 172 F.3d at 1098 (surface water runoff caused by rain or show

did not constitute a “discharge”); *Fishermen Against the Destruction of Environment, Inc. v. Closter Farms, Inc.*, 300 F.3d 1294, 1297 (11th Cir. 2002) (holding that “agricultural stormwater discharges” exemption applies to any “discharges [that] were the result of precipitation.”).

Second, Waterkeepers argues that the term “discharge” as used in 90.48.080 has a different meaning than under federal law. Waterkeepers 12-16. This argument ignores the fact that the state has accepted responsibility for implementation and administration of the CWA within the state. RCW 90.48.260. The discharge permit is required for a “discharge of pollutants” only from a point source. WAC 173-220-030(5). Implicit in the structure is the recognition that a permit (or quasi-permit) is not required for nonpoint source conditions.

Third, RCW 90.48.080 utilizes the operative provisions of “... thrown, drain, run or otherwise discharge” The words are consistent with “point source” concepts which require a “discernable, confined and discrete conveyance.” Point source is also consistent with the dictionary definition of “discharge” - “to relieve a charge, load or burden; to release from confinement; to give outlet or vent to; to throw off or deliver a load, charge or burden; to pour forth fluid or other contents.” Websters Dictionary. Lemire’s interpretation is consistent with the plain language of the statute.

Fourth, a statutory interpretation of RCW 90.48.120 and 90.48.080 must be made in the context of the “statute and related statutes.” See *Department of Ecology v. City of Spokane Valley*, ____ Wn. App. ____, 275 P.3d 367, 372 (2012); *Department of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002) and *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993) (a term in a regulation should not be read in isolation but rather within the context of the regulatory and statutory scheme as a whole; statutory provisions must be read in their entirety and construed together, not by piecemeal). CWA and WPCA must be read and applied *in pair materia*. The statutory regimens are premised upon a unified permit process; identical definitions and rules; and coordinated programs with respect to nonpoint source activities. It is incongruous to acknowledge that an activity (grazing) is exempt from permitting requirements and then utilize the administrative process to establish a “back door” or “phantom” permit process. If the legislature had intended to control nonpoint source pollution under Chapter 90.48 RCW or the permit processes, it could have easily included it within the regulatory scheme. It did not. “It is well settled that an administrative agency is limited to the powers and authority granted to it by the legislature.” *Fahn v. Cowlitz County*, 93 Wn.2d 368, 374, 610 P.2d 857 (1980).

Finally, Waterkeepers argues that the definition of “discharge” must focus on “ ... the effect of a party’s actions.” Waterkeepers, 15. This is an odd argument to make in this case. Ecology has acknowledged that it “ ... does not allege that Mr. Lemire violated a water quality standard.” Ecology Reply Brief, 14. The record is also clear - there is no evidence of testing, pollution or discharge of materials on the Lemire property. Lemire implemented best management practices and no evidence was presented that such practices were ineffective or contributed to pollution and there is no evidence to establish the discernable, confined and discrete conveyance vehicle such as a pipe, ditch, channel or conduit from which pollutants are or may be discharged. WAC 173-220-030.

2. Lemire Complied With Ecology’s Requirements by Applying Best Management Practices.

The only reference to nonpoint sources in adopted regulations is WAC 173-101A-510(3). Ecology argues that the regulation is not applicable because it relates to water quality standards “and Ecology does not allege that Mr. Lemire violated a water quality standard.” Ecology Brief - 14. This is a telling admission.

As a beginning point, WAC 173-201A.510(3)(a) provides that “. . . activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards.” Ecology concedes that

Lemire's activities do not violate water quality standards. WAC 173.201A-510(3) further provides that "... 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)(c). Lemire applied best management practices. Any modification of the practices is allowed only on proof that there has been a violation of water quality criteria. WAC 173-201A-510(3)(b). There has been no proof that Lemire's best management practices resulted a violation of water quality criteria. In the absence of such proof, Administrative Order No. 7178 fails.

Under Ecology's analysis, ranchers and cattlemen are left with no statutory or regulatory guidance with respect to grazing activities. They are not required to obtain discharge permits but simply left to the vagaries of an undefined regulatory process. This is certainly not what was contemplated by the legislature.

3. Washington Law Has An Underlying Policy Protecting Agricultural Activities.

Washington Water Pollution Control Act establishes a legislative structure that is particular sensitivity to protecting agricultural activities. RCW 90.48.450(1) provides that "... [p]rior to issuing a notice ... related to discharges from agricultural activity on agricultural land, [Ecology]

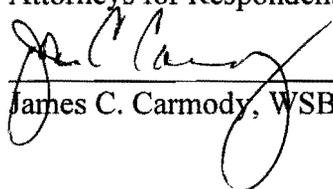
shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural purposes.” (emphasis added). Administrative Order No. 7178 also results in the practical destruction of stock water rights. RCW 90.48.422(3) specifically provides that Ecology “... may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right permit, certificate, statutory exemption or claim” Administrative Order No. 7178 resulted in conversion of agricultural land to nonagricultural purposes and impaired established stock water rights. These rights and interests were intentionally protected by legislature.

IV. CONCLUSION

This Court should affirm the trial court’s decision invalidating Administrative Order No. 7178.

DATED this 25th day of June, 2012.

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