



3DT RECOMMENDATIONS

COMMENTS RECEIVED

As of January 4, 2013



Northwest Indian Fisheries Commission

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January 2, 2012

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Re: *3DT BMP Implementation Approach* does not implement important state and federal laws, and lacks sound scientific and public processes.

Dear Mark Clark, Dan Newhouse, and Ted Sturdevant,

The Northwest Indian Fisheries Commission (NWIFC) on behalf of its member tribes is concerned about your agencies joint development of a "BMP Implementation Approach," which stems from the ongoing "three directors process." Chief among these concerns is your development of nonpoint source pollution control recommendations which do not implement important state and federal laws and protect treaty-reserved resources, and second, your agencies' flawed public and scientific processes.

As we have noted in previous correspondence, we are encouraged that state agencies are attempting to improve the pollution control efforts on agricultural lands. Although the NWIFC

declined to participate in the three directors process, we consistently communicated¹ our concerns and recommended outcomes for the process, because improved pollution control on agricultural lands is essential to the protection and restoration of treaty-reserved salmon and shellfish resources. Unfortunately, the document *3DT BMP Implementation Approach* (hereafter “document”) largely ignores the requests to develop an accountable pollution control system that will achieve compliance with state water quality standards and align with efforts to protect and restore salmon. Rather than being a science-based process for determining pollution controls, the three directors recommendations are simply negotiated outcomes. Furthermore, the recommendations are largely based upon a farm planning system that lacks transparency and is not designed to implement state and federal requirements to protect designated uses such as salmon.²

Recommendations Do Not Implement Important State and Federal Laws

The three directors recommendations do not implement all water quality standards and as a result do not protect all designated uses of the state’s water quality standards, particularly salmon. Proposing programs which dismiss temperature, dissolved oxygen, and antidegradation water quality standards contravenes the purpose and intent of the federal Clean Water Act which authorizes Washington’s water quality standards. The recommendations, which will inevitably be implemented in part by federal funding, also do not protect federally listed endangered species, because the recommendations fail to address water quality parameters central to salmonid survival. This omission clearly undermines the Biological Opinion on EPA’s approval of Washington’s temperature, dissolved oxygen and antidegradation standards, which is predicated upon active implementation of those standards.³ The recommendations are also inconsistent with the requirements of the Coastal Zone Reauthorization Amendments, which require, *inter alia*, the implementation of practices and strategies that ensure compliance with all water quality standards. This partitioning of

¹ See Letter from Billy Frank, Jr to Ted Sturdevant, Dan Newhouse, and Mark Clark, re: tribal involvement in the three directors talks seeking to improve water quality on agricultural lands, July 12, 2011; letter from Billy Frank Jr., to Ted Sturdevant, Dan Newhouse and Mark Clark, re: follow up for request for member tribes to participate in the three directors process, March 2, 2012. See also letter from Mike Grayum to Ted Sturdevant, re: BMP implementation guidance, May 18, 2012.

² See e.g. Memorandum from Melissa Gildersleeve of the Department of Ecology Water Quality Program to Water Quality BMP Work Group, regarding NRCS Standards and Washington’s Water Quality standards, dated August 16, 2010.

³ See Endangered Species Act – Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation of EPA’s Proposed Approval of Revised Washington Water Quality Standards for Designated Uses, Temperature, Dissolved Oxygen, and Other Revisions (February 2008) (NMFS Tracking No.: 2007/02301, pages 46-47 and 105-106.

important water quality standards is unjustifiable and ultimately serves to undermine implementation of the Clean Water and Endangered Species Acts.

Recommendations Lack Scientific Rigor

The draft document recommends specific management practices, but is devoid of any scientific process for determining the adequacy of those recommendations. The document does not identify an analytical framework for determining buffer widths, modeling techniques employed to determine practice effectiveness, or literature reviews of peer-reviewed science. Agency recommendations also appear to be inconsistent with existing scientific literature and agency guidance, such as EPA's recommendations for buffer widths to control nutrients.⁴ In lieu of scientific review and analysis, it appears that agency recommendations are the result of interagency negotiations. The tribes expect that agencies will determine pollution controls based on scientific analysis – not on negotiations intended to appease agency stakeholders.

Proposal Subverts Interagency Alignment with Salmon Recovery Sought in *Treaty Rights at Risk*

The proposal allows for the application of different practices under purely voluntary versus compliance-based circumstances, which has the effect of further entrenching the existing misalignment of agency efforts. As discussed in our March 2nd 2012 correspondence to the directors, we see no reason why the substance of the pollution control recommendations should be dependent on which agency is approaching the landowner or whether it is a voluntary versus compliance based effort. Nonetheless, the document proposes a system that would allow entities to recommend different pollution controls – other than the negotiated core practices – merely because it is deemed “voluntary assistance.”

Through *Treaty Rights at Risk*, the tribes have requested that agency efforts implement salmon recovery and water quality standards in part by ensuring that agencies and government entities uniformly implement consistent, science-based practices. Recommended or funded practices should always be consistent with water quality standards and salmon recovery, regardless of whether the efforts stem from a regulatory or voluntary process, or what agency is engaging a landowner.

⁴ See EPA, Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations (2005) (EPA/600/R-05/118) at 17 (Summary and Conclusions). See also *id.* at 9, Table 2 and Figure 1. Guidance was formerly found at: <http://www.epa.gov/nrmrl/pubs/600R05118/600R05118.pdf>. Guidance is also on file at the NWIFC.

Minimum Funding Criteria Sets the Maximum, and therefore is a Necessary Element to Ensure Voluntary Programs Work

The Natural Resource Conservation Service's (NRCS) Puget Sound Salmon Recovery Partnership (PSSRP) funding has demonstrated that the most important factor in determining on-the-ground outcomes of voluntary programs are the minimum eligibility criteria. In the case of the PSSRP, NRCS required that landowners must agree to implement a minimum buffer in order to be eligible for the funding program. Of the seventeen PSSRP projects that implemented new buffers, only three projects exceeded the minimum criteria set by NRCS (a mere 15 or 35 feet wide depending on stream size and type). Two of the three projects implemented 50 foot buffers. The remaining project that implemented the largest buffer was put in place by the Swinomish Tribe as per Swinomish tribal requirements. Therefore, NRCS site-specific farm planning at most contributed to sizing riparian buffers for salmon protection for only two out of 17 projects.

This example demonstrates that minimum funding criteria for voluntary programs – not site-specific farm planning – is the most influential factor in determining the type and width of best management practices such as riparian buffers. It is therefore crucial that interagency recommendations include a common set of funding criteria that will ensure that projects implement all water quality standards, and are consistent with salmon recovery objectives.

State Agencies Should Review Program Effectiveness Before Proposing Recommendations

Examination of the three directors recommendations indicates that the agencies never examined the actual effectiveness of existing voluntary processes, programs, and criteria at achieving state water quality standards and salmon recovery goals. The absence of information-based analysis regarding the strengths and flaws of the existing system highlights the arbitrariness of the recommendations. Before asking government and the public to accept these recommendations, the three directors should produce the information and analysis addressing the effectiveness of the existing system and how the recommendations will improve it. For example, as of yet, there has been no meaningful evaluation of how money has been spent regarding the cost, location, type, and effectiveness of the BMPs that have been implemented under existing voluntary programs. How well has the existing heavy reliance on voluntary programs worked to restore streams degraded by agricultural activities? Improved accountability is essential. To that end, we recommend that the agencies address the attached list of questions prior moving forward with a set of recommendations.

Flawed Public Process

The document and proposed recommendations introduce many new and complex approaches, which attempt to repair the numerous deficiencies of existing voluntary and regulatory

programs.⁵ This is an important and necessary step forward – but it cannot be accomplished without providing for adequate public process. To help facilitate meaningful review and engagement, the agencies should openly provide their scientific justifications and programmatic reasoning for the proposed recommendations. Again, we recommend first investigating and answering the aforementioned questions on practice and program effectiveness as a means of developing such explanatory materials. After a more thorough exploration of program and practice efficacy is developed, the agencies should provide, at a minimum, the standard 30 to 60 days public review. The current truncated timeline to review a new, complex, and important pollution control program is not reasonable.

* * *

It is our hope that your agencies will better support salmon recovery and protection of treaty-reserved rights by aligning your programs and recommendations with salmon recovery and ensuring compliance with state and federal laws. These goals can be achieved by recalibrating your efforts to address all water quality standards in a transparent and scientific manner. Accordingly, we respectfully request that you review our July 12, 2011 and March 2, 2012 correspondences and subsequent requests, and begin revising the recommendations to ensure compliance with state and federal law. Additionally, to facilitate these outcomes, we recommend answering and analyzing the attached questions as a means of developing the reasoning for recommendations, and that the Department of Ecology conduct a tier II antidegradation analysis on any proposed programs as required by WAC 173-201A-320(d).

Should you have any questions regarding this correspondence, please do not hesitate to contact me at (360) 438-1180.

Sincerely,



Michael Grayum
Executive Director, NWIFC

Attachment

⁵ For examples of such deficiencies see e.g. Letter from Billy Frank, Jr to Ted Sturdevant, Dan Newhouse, and Mark Clark, re: tribal involvement in the three directors talks seeking to improve water quality on agricultural lands, July 12, 2011; letter from Billy Frank Jr., to Ted Sturdevant, Dan Newhouse and Mark Clark, re: follow up for request for member tribes to participate in the three directors process, March 2, 2012. *See also* letter from Mike Grayum to Ted Sturdevant, re: BMP implementation guidance, May 18, 2012.

cc:

Commissioners

Dennis McLerran, Regional Administrator, EPA Region 10

Dan Opalski, Director Office of Water, EPA Region 10

Linda Anderson-Carnahan, Acting Director Office of Ecosystem, EPA Region 10

Roylene Rides at the Door, State Conservationist NRCS

Will Stelle, Regional Administrator NOAA-Fisheries NWR

Steve Landino, Habitat Division Manager, NOAA-Fisheries NWR

Kelly Susewind, Water Quality Program Manager

Questions Necessary to Evaluate Effectiveness of Existing BMP Programs

BMP Implementation Tracking

Data needed for an effective understanding of watershed and statewide scale land owner BMP implementation activity.

All BMP Implementation:

- Type of BMP
- Location of BMP—parcel
- Cost
- Water Quality problem BMP intended to address
- Was the BMP implemented as a part of a suite (y/n)? If yes: list other BMPs.
- Time elapsed from BMP need identification to implementation

BMP Specific Information:

- Buffer:
 - Width (if a variable width buffer, include the average width, minimum width and maximum width).
 - Area
 - Length
 - Both sides of water body (y/n)
 - Entire length of parcel (y/n)
 - Upland use (livestock/crop production/other)
 - If animals present, are they permanently excluded (y/n)
- Exclusion Fence:
 - Length
 - Distance from surface water
 - Are animals permanently excluded (y/n)
- Off Stream Water:
 - Number of units
 - Distance from surface water for each unit
 - Does it include heavy use area protection
- Waste Storage:
 - Distance from surface water
 - Storage capacity
 - Covered (y/n)
- Confinement areas/heavy use area protection

- Distance from surface water
- Nutrient management
 - Key annual information:
 - Distance from surface water that nutrient application was set back
 - Soils monitoring/Samples (phosphorus/post harvest soil nitrate)
 - Additional information:
 - Application calculation (agronomic) based on realistic yield
 - Amount of manure applied (total)
 - Amount of acreage manure applied to
 - Crop type
 - Yield expectations/Yield

Information on maintenance of above actions and facilities

- Grants and cost share— Require collection of above data as a part of state and federal grant reporting. Use existing and planned tracking tools/databases.
- Grants and cost share—Collect additional information as a condition of awarding grants (BMP maintenance and nutrient management data).
- Enforcement—Collect data as a part of an order's reporting and monitoring requirements.



WASHINGTON ASSOCIATION OF CONSERVATION DISTRICTS

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December 28, 2012

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Mr. Ted Sturdevant, Director
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Gentlemen:

On behalf of the Washington Association of Conservation Districts (WACD), thank you for the brief opportunity to review the three Directors' report released Friday, December 7, 2012. First of all, I would like to register our disappointment with the fact that you have not responded to WACD in over one year following transmission of our recommendations dated December 8, 2011 for how conservation districts and your agencies can better work together. Second, you initially provided a wholly inadequate timeframe (less than one week) for conservation districts and stakeholders to respond to your lengthy proposed recommendations. Your decision to extend the comment period to December 28, 2012 falls short of providing many conservation districts an opportunity to participate in the comment process. In view of the exceedingly long period of time you took in closed meetings to consider our request, expand your review, and form your own recommendations, it would seem fair for you to extend the comment period to allow time for conservation districts to discuss your ideas at their upcoming board meetings, and for us to compile comments in sufficient detail to represent coordinated input by our 45 conservation districts.

Also, the Washington State Conservation Commission (WSCC) has scheduled a January 7, 2013 meeting to discuss the report, receive further input from conservation districts, and to consider action as necessary. I hope that these further inputs may be incorporated into any final proposed action by the three Directors.

Conservation districts and their WACD leadership have looked hard for signs in your report that you have responded to our recommendations. I applaud you for including in your recommendations two items that WACD fully supports – 1) your agencies committing to work

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with technical assistance providers in clarifying and better defining the potential to pollute, especially the more practical term “substantial potential to pollute”; and, 2) commencing formal cross-training of regulatory and non-regulatory field personnel. Both actions are long overdue, and should provide a much improved starting point for cooperation and clarity in the field, as well as an improved basis for all regulatory and referral actions by your two regulatory agencies (ECY and WSDA).

These two actions alone may accommodate our need for better understanding of how a field inspector or technical services provider interprets what he or she will encounter in the field, how field level personnel will learn to interact and cooperate with each other, and how field level personnel can communicate more clearly to agricultural landowners and operators in a timely manner. WACD supports work on these two items presently, and pledges to work with the three Directors’ agencies to help achieve them, including helping to coordinate conservation district input to the defining efforts for pollution potential, and exploring how WACD can serve as a host venue to initiate and follow-up on cross-training opportunities. These two items should proceed even while other aspects of the recommendations may be debated or further reviewed and refined.

Beyond these two clearly beneficial recommendations, I cannot at this time specify which recommendations contained in your report that WACD could support or would be forced to oppose, based on a consensus view by our 45 conservation districts. Instead, I offer the following interim suggestions.

Conservation Districts and Regulatory Agency Roles and Referrals

It remains a top priority of WACD to improve the way conservation districts and your two regulatory agencies (ECY and WSDA) communicate in the field, in particular, how we exchange referral information where your regulatory agencies have demonstrated that pollution has occurred, or where you demonstrate a “substantial potential to pollute”. These cases represent but a small portion of a conservation district’s business, but a lack of satisfaction by all parties has shown the need to continue to improve this area. In these cases, the current referral process lacks proper documentation for pollution or “substantial potential to pollute”, fails to emphasize the obligations of the landowner/operator, and places a conservation district in an inappropriate position of being responsible for a landowner’s decisions or lack of action. Our December 8, 2011 recommendations to you included some important ideas about how to improve this process. Your report includes some clarification about the key responsibilities of the landowner, but does not include all the necessary changes to establish the proper relationship between conservation districts and regulatory personnel.

WACD recommends that you consider incorporating the following additions or changes to your document:

1. ECY and WSDA must recognize that conservation districts can serve neither as agents for regulatory agencies nor shields to protect landowners and operators from their obligations to protect water quality. Conservation districts are a tool available to help landowners and

operators achieve protection of natural resources in a manner that is consistent with their operating and business objectives. Regulatory agencies themselves must maintain direct contact with a landowner/operator on substantial compliance issues, and not place a conservation district in a position of being responsible for a landowner's actions, or being required to report to a regulatory agency on landowner actions or decisions. Where a landowner chooses to involve a conservation district in his or her efforts to correct a pollution problem, the regulatory agency retains the responsibility to track and follow-up with the landowner on progress and the adequacy of corrective actions. Where the regulatory agency prescribes its own technical standards and practices to correct a pollution problem, the regulatory agency is responsible for tracking and documenting whether the landowner meets regulatory requirements for correction. This principle and operating procedure must be well understood, accepted and practiced by all parties – the landowner, conservation district, and both regulatory agencies.

2. Regulatory agencies also must recognize that a conservation district may have limitations as to how it can assist a landowner who is under enforcement scrutiny, due to lack of resources, or a focus on natural resource concerns of a higher priority, or specific funding source(s)' resource targets or restrictions. Regulatory agencies provide no funding to conservation districts for referral-based services to landowners. Lack of progress or action by a landowner because of limitations in technical or financial assistance funding, or because of different priorities, is not a fault of a conservation district. It remains the regulatory agency's responsibility to be in contact with the landowner, allow reasonable time for planning and practice implementation, and track and enforce progress regardless of the abilities of a conservation district to respond to a landowner's request for assistance in dealing with a specific pollution incident.
3. The report should more clearly demarcate the roles and responsibilities of regulatory and incentive-based programs and personnel around the "substantial potential to pollute" standard, or upon a finding of actual pollution. WACD believes that action by regulatory agencies is warranted in cases where actual pollution is documented, or where regulatory agencies determine that the defined "substantial potential to pollute" standard or "*bright line*" is triggered, and that your agencies are justified, in these cases, in requiring specific practices and standards that you indicate are necessary to correct a demonstrated pollution problem. On the other hand, where these circumstances do not exist, and where incentive-based programs and services can be delivered to landowners who voluntarily undertake conservation activities, these efforts should be performed without interference or attempts at direction by regulatory agencies. Further, regulatory agencies should not seek to perform these incentive-based functions (such as cost-share) in coordination with (or as a consequence to) your inspection and enforcement activities. For example, a landowner, should not receive a "reward" of 100% cost-share from ECY as a punishment for polluting, or for failure to participate in incentive-based programs targeted to reducing a given pollution potential.

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Regulatory agencies should focus your energy and resources dealing with cases where corrective action is required, "above the bright line" set by this clarified pollution standard.

Regulatory Agency Program Improvement

Perhaps the most troubling omission in your report is that, although two of the three Directors actually direct regulatory programs, your report lacks reference to the need for, and scope of, evaluation and reform of ECY and WSDA inspection and enforcement programs. There are no clearly-identified recommendations related to determining or demonstrating the effectiveness of the inspection program(s) – What has the inspection process identified as a resource problem or an administrative problem? How have these problems been specifically identified and addressed in your recommendations? How can inspectors improve how they interact with landowners and operators (especially communicating “substantial potential to pollute”), and put in place more timely inspection reporting and follow-up procedures? What compliance data are needed to document successful corrections? What are the technical competencies and training of regulatory inspectors to recognize pollution (and potential) and to understand farm operations and conservation plans? Also, what documentation exists regarding the effectiveness of regulatory personnel follow-up with landowners and operators causing pollution? What are the real costs for inspection and enforcement programs?

Why have regulatory agency directors omitted this important aspect of a balanced, two-pronged system of natural resource protection? The regulatory directors have appeared to focus your energies, in these recommendations, primarily on directing changes to incentive-based programs and priorities. Yet you offer no documented problem statements resulting from your inspection and enforcement activities that would justify your broad recommendations. Some consideration for reform of inspection and enforcement programs needs to be included in the report, and specific recommendations need to be added to the report.

Providing more time for comments and stakeholder input will allow for this to be properly considered in any final recommendations in the report. Conservation districts can provide meaningful input to how inspection and enforcement programs - properly targeted and carried out – can serve as an essential component of the two-pronged system, complementing the incentive-based approach, and serving as a credible regulatory backstop. I hope that you are open to suggestions in this important area, perhaps including specifics on this topic in Team Two’s Recommendations. In contrast to Director Sturdevant’s comments to the Legislature on November 29, 2012, success in this process *cannot* be achieved “without the Department of Ecology being seen.”

Scope of Recommendations

Your report suffers from a lack of clarity as to the scope of agricultural operations that are covered under the recommendations. Stakeholders are likely to be confused as to what agricultural activities your recommended actions apply. At once it speaks to manure and livestock, then all nutrients, then any agricultural activity that has a substantial potential to pollute such as to cause landowners to not meet state water quality requirements for conventional pollutants (sediments, nutrients, bacteria). Your report’s recommendations should

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each specify explicitly to what agricultural activity they apply, or the report should clearly stipulate that the recommendations apply to existing agency authorities relating to any agricultural activity, and any limitations otherwise implied should be edited from the report. Finally, your report fails to mention potential impacts on these recommendations of your negotiations with tribes and others about other water quality related parameters such as temperature and habitat.

State Budget Implications

Your report fails to include any economic analysis or state budget recommendations that support these far-reaching recommendations. We all know what difficulties we are dealing with in terms of state budget for the 2013-15 biennium. How do your agencies plan to coordinate these recommendations with your state budget requests and actions? Although you claim to seek no expansion in authority in the report, you clearly require additional budget to carry out your recommended actions. Further, how does existing funding play into these recommendations? For example, does ECY intend to include these recommended actions in the state nonpoint-source agricultural plan for 319 funding, and to redirect funding to technical assistance, watershed assessment, BMP implementation and monitoring? What changes in the NPS plan are needed to implement these recommendations, and which agency(ies) should receive and administer funding for these recommended activities?

Watershed Activities and Local Priorities

Many of the Team Two recommendations are very confusing, appearing to be a hodge-podge of various watershed planning and other program concepts, such as the PIC program. I would point out here that conservation districts play a key role in natural resource conservation programs as the lead local implementing organization under our long-recognized "locally-led" principle. Your recommended watershed activities appear to represent duplication - or worse, circumvention - of this role for conservation districts. WACD is justifiably concerned about your lack of consideration for the role that conservation districts play, as evidenced by your failure to include conservation districts in much of your year-long closed process, as shown in your Puget Sound National Estuary Program PIC program funding process, and as demonstrated by the approaches outlined in your recommendations.

A major strength of our state's 45 conservation districts is our ability to bring people and information together to make local decisions on resource priorities, and to take local action. This process is employed to develop both our state and federal conservation program budgets. WSCC and WACD are working together to improve both data and partnering input to the locally-led process, so local actions are helping to also meet documented state and national resource priorities. Your recommendations appear uninformed, and seem to create a duplicative or alternative approach using state agencies in place of our locally-led natural resource assessment and priority-setting process. Your watershed recommendations also seem to invest in a regulatory ratcheting-up process, leading to mandatory BMP application and other prescriptive requirements. This top-down approach is inconsistent with our locally-led principle and practice, and it is highly suspect whether such a heavy-handed, top-down approach will work to engage landowners and operators at the local and watershed level.

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In closing, I look forward to having sufficient time to provide you with thoughtful and coordinated comments from our conservation districts, and to help you improve the recommendations in your report so as to achieve meaningful change. I encourage you to conduct any further development of your recommendations in an open and transparent, "government in the sunshine" manner, and to seek the thoughts and suggestions of conservation districts, as implementers of many of your recommendations, and of stakeholders and interested parties.

Sincerely,

A handwritten signature in cursive script that reads "David Guenther". The signature is written in black ink and is positioned above the printed name and title.

David Guenther
President

DG:dg

cc: WACD Board of Directors
David Vogel, Executive Director
Jim Jesernig



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January 4, 2012

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Re: 3DT BMP Implementation Approach Comments.

Dear Mr. Shultz, Mr. Baldi, and Ms. Ford,

The Okanogan Conservation District Board of Supervisors directed me to provide the following detailed comments to you at their regularly scheduled meeting last evening. We hope that you and the other agency representatives will take these comments into equal consideration with the others that you have received previously. We apologize that these are being submitted to you after the deadline but this was the first opportunity for our Board to meet and discuss the document and provide feedback.

1. In the opening paragraph of the Background section, the last sentence described the object of your process to develop a more integrated system that is more transparent and accountable. It is an absolute disappointment to us, and we believe would be to the public to read this statement considering the process that was used (meetings behind closed doors, ‘gag orders’ placed on participants, etc.) to develop the document. Transparency and accountability are common buzz words used in Olympia and beyond these days, but the reality is will there be the horsepower from the top down at each agency to ensure that all levels of each ‘partner’ in this proposed process is held accountable and their actions are conducted in the transparent fashion you envision? If this had been done for the past decade, we likely would not need this document or plan.
2. The last bulleted paragraph of the Background section speaks to the focus of Team 2 being on local landowner engagement activities by CDs and others. If this team focused

on CD activities, we would like an accounting of which CDs were consulted on this process, when, and to what extent. We see that the membership of Team 2 did not include conservation districts.

3. After reading the Background section, we are disillusioned by the fact that the agencies involved in the development of this document do not clearly understand the functional and legal relationship between the Washington State Conservation Commission and Conservation Districts. There is no language that we are aware of in RCW 89.08.070 “General duties of commission” that authorizes the Conservation Commission to speak exclusively for conservation districts, to guide district programs or activities, or direct districts in the method of carrying out our natural resource conservation activities. The Commission is specifically mandated to ‘coordinate, facilitate, assist, harmonize...the resource conservation programs and activities of districts as they relate to...other public agencies’. We find it disrespectful that so much of this proposed program is predicated on the ability of local conservation districts to deliver voluntary conservation programs and provide assistance to some degree in a regulatory setting, yet no membership of local conservation districts were consulted in the development of this plan. The Conservation Commission should not be negotiating policy agreements on behalf of conservation districts without our specific consent and input which was not afforded in this process. The other agencies involved should have respected this and worked to be more inclusive in the process.
4. Team 1 Recommendation third bullet speaks to aligning “BMP recommendations with overall landowner resource objectives”. This is a clear example of why conservation district representatives should have been involved. This is a short-sighted partial truth of how conservation district and NRCS staff work with private landowners to develop comprehensive, site-specific, conservation plans. Properly trained conservation planners will align BMP recommendations with more than just the landowner’s objectives. They must align with the resource concerns, the ability of the landowner to implement the practices, and landowner’s goals. Focusing only on one or two of these three legs is what leads to failed conservation plans and practices.
5. Team 1 Recommendation fourth bullet speaks to the shortcomings of NRCS practices and the overall implementation process. We offer the following on several of the sub-bullets:
 - a. The first sub-bullet states that the fact landowners choose which practices to install is a short coming. This is not a short coming. This is another classic misunderstanding of the power of voluntary conservation. The landowner voluntarily selects the practices they feel they can implement within their resources as they can. The shortcoming is the follow-up of regulatory agencies that do not clearly state to landowners what must be accomplished to meet water quality regulations. This bullet is a broad, unnecessary, and inaccurate charge against a process that is used far beyond the issues and resource concerns covered by this document.
 - b. The second bullet calls out the lack of necessary specificity or guidance to ensure effective implementation. Again, the authors of this document do not understand that there is training to technical staff to teach staff how to properly design, implement, and monitor the effectiveness of these practices. There are not more specific guidelines in the practice standards because the site specific conditions and resource concerns vary far too widely to make such guidance ineffective, inaccurate, and misguided.
 - c. The third bullet is agreeably an issue which is why we have frequently requested that we be allowed to use grant funding from the Washington State Department of

Ecology Clean Water and 319 Grant Program (among other funding sources) to properly train staff. We have either been summarily denied or only offered partial funding for staff to attend such critical training. If this is a priority it should show in the eligibility for use of grant funds from all entities involved in the development of this document.

- d. The fourth bullet is a result of funding for conservation districts, NRCS, and partners to put enough staff on the ground in targeted basins for implementation. Even with sufficient staffing resources, there are two other stumbling blocks to implementing a strategic approach. First, this would require a minimum level of targeted enforcement in the area to impress upon the less conservation minded landowners to take seriously the implementation of conservation practices. Secondly, we must have sufficient resources to assist landowners who are willing but unable to pay the often high costs of installing conservation practices. When those three levels of support are aligned the process works just fine. Our experience is that this type of support is rarely found in a watershed or even small sub-watershed due to various socio-economic factors.
 - e. We agree that monitoring previously implemented practices is critical to effective resource protection, education of the planner, and maybe most importantly the education of the landowners. However, there is limited to no support from granting agencies to fund monitoring of conservation practices beyond the life of the grant paid for initial staff and installation costs. When that issue is addressed we believe that the agencies involved in the development of this plan will find Districts very willing partners in the long term monitoring of BMPs.
 - f. This bullet is insulting to us. The NRCS planning process is all about adaptive management, regardless of whether the environmental objectives are being met. Furthermore, we would like an explanation of how the authors of this document believe environmental objectives could be met prior to installation of BMPs as this statement suggests is possible. There is no need to install a BMP when to change environmental conditions if your objectives are being met. Again, this bullet is an example of a group of individuals who do not understand the NRCS planning process or the design and installation factors of BMPs.
6. Team 1 – Recommendation 3 has an example near the bottom of page 5 regarding the effectiveness of filter strips and the stated necessity to exclude grazing of this area. We ask the authors of this document to look at the health and vitality of vegetative plants installed in the Conservation Reserve Program more than 20 years ago compared to similarly situated lands with similar plant communities and grazing is allowed. Ecologists will be able to quickly deduce that those plant communities that are periodically grazed at agronomic rates are much healthier, more robust, and have maintained a greater diversity in plant species over time. We do not advocate the uncontrolled or unmanaged grazing of areas immediately adjacent to streams or other sensitive areas. We do encourage landowners to be active managers of their livestock and lands and use the livestock to encourage growth and regeneration of their plant communities through a well-designed grazing plan.
 7. Team 1 – Recommendation 4 is insinuating in our opinion that the team envisions landowner resource management systems (which we take to mean conservation plans) will have to have the previously identified six practices (or some combination of said practices) to have an acceptable conservation plan. This is a prescription for disaster insofar that landowners will be getting conservation plans that include practices they don't need, don't desire, and have no intention of installing except to appease a technical staff member from another agency that doesn't have the technical background to evaluate

the effectiveness of alternative practices. This entire paragraph seems to be a backdoor approach to achieving some form of an agriculture and water quality regulatory program similar to what was developed for the forest industry and fish resources. The difference is this process has been done without stakeholder and public input up to release of this document.

8. Team 1 – first bullet following Recommendation 4 speaks to developing additional criteria for NRCS standards “to better ensure proper installation”. More standards don’t ensure proper installation. Training, practice, and follow up, ensures proper installation. If Team 1 wishes to modify NRCS practices, there is a method and process to seek such amendments. However, that process will require science and must clearly demonstrate that the existing guidance on practice design and installation is not meeting resource criteria. Furthermore, this section blatantly calls for extending the minimum buffer width of 35 feet for the Forested Riparian Buffer. We would like an explanation of why this is necessary, what science dictates the need to increase the minimum buffer width, and what ecological gains could be realized by an increase in the minimum width.
9. Team 1 – last bullet before Team 2 Recommendations states that CD and NRCS staff would be expected to recommend one or all of the specific practices suggested earlier in this document. The really disappointing part of this is that CD and NRCS staff will likely recommend one or more of the suggested practices but we do not take to being told what to recommend any better than other agency personnel take to being told by outsiders what streams to monitor, or what regulations to enforce. If the state of the relationship between the voluntary/non-regulatory side of natural resource conservation and the regulatory side is in such a state that requires such statements, we have a lot more professional working relationship issues to address before we achieve conservation success.
10. Team 2 – State-wide Coordination Recommendation 1 – states that Team 2 will meet monthly to review implementation status. We are curious what Team 2 expects to see accomplished in three months that this proposes to cover. Should this process move forward, we believe that the process will need to be monitored closely by the agency directors for far longer than three months to ensure that each agency/partner is getting unified direction that is agreed to by the 3/5 directors. Furthermore, we believe that it this review team should be comprised of the actual directors and not their representatives. If this is a priority for each agency it should be treated as such and it will show the necessary leadership to those within each sector of this proposed action plan that the issue is being taken seriously all the way to the top.
11. Team 2 – State-Wide Coordination Recommendation 3 – We believe that the on the ground implementers should be involved in the state-wide coordination of this program. To continue to operate in a vacuum without direct input of staff from all agencies (Ecology, WSDA, CDs, NRCS, etc.) who work at the ground level implementing this program the entire process is doomed to at a minimum wallow in a quagmire of questions and uncertainties and at most be a complete failure leading to further mistrust and non-compliance. Furthermore, this recommendation calls for the Commission to compile data, coordinate meetings for this group, etc. This is already the statutory direction of what the Conservation Commission should do. The Commission members need to show the leadership and the various partners just need to step up and provide the information and participation. Buried further in this recommendation is the idea of holding a forum for coordination among agencies and suggests all manner of participants but doesn’t include conservation districts, tribal governments, or the numerous non-governmental organizations that are often working side by side with conservation districts and others to

- assist landowners with the implementation of BMPs. These entities should be explicitly identified as participants to prevent miscommunication and misinformation in the future.
12. Team 2 – Recommendation 2 – in the first full paragraph on page 10 stipulates, “the framework reflects a four-level process that initially emphasizes use of the state’s voluntary land owner technical assistance system...” We believe that the process should continuously emphasize the voluntary land owner technical assistance system. However, where that system doesn’t work the regulatory agencies should do the work for which they are authorized.
 13. Team 2 – Recommendation 2 – in the paragraph following Figure 1, it is suggested that the Assessment Team formed to address a local watershed assistance request could involve several state and federal agencies. We believe that without local agencies such as CDs, NRCS, Counties, and local NGO representative’s accurate watershed assessments will not be effective at truly identifying the causes of resource concerns, the socio-economic situation that will dictate compliance, or the local conditions that will direct implementers as to conservation practices and approaches with landowners that will be effective. In the bullets following this aforementioned paragraph the plan calls for the Assessment Team to collect available data but doesn’t mention data that may be available from conservation districts or even more disturbing there is no mention of watershed plans. Washington State spent millions of dollars over the past decade paying for the development of local watershed plans. Understandingly, not all Planning Units chose to develop a water quality component for their plans. But those who did should be give the respect and honor to have their hard work used for an endeavor such as this.
 14. Top of Page 12 states that if the Assessment Team develops a finding of resource impairment or prospective impairment a Watershed Improvement Team will be formulated. First of all, how many teams will be necessary to gain water quality compliance and how does the formulation of all of these teams lead to greater certainty and transparency for private landowners? We don’t believe all of the teams this document calls for will be beneficial, effective, and certainly not efficient. The developers of this document should develop a different process for providing the guidance these various teams are proposed to support.
 15. Page 12 – we would like clarification on who can make a watershed assistance request, to whom a group or person makes the request for assistance, and finally, who decides the request is valid and a priority. There is a potential to have dozens of these requests in a short timeframe and we want to know how priorities will be made for which requests are followed up with and which ones will have to wait.
 16. Page 12 – middle paragraph stipulates another group this process proposes to create is the Local Implementation Entity and they should be given three months to complete their chartering. This was clearly inserted by folks who have not had a lot of experience with effective planning (particularly in the CRM process). Our Conservation District has successfully sponsored more than 30 CRM planning groups. None of these ‘chartered’ in three months. First, the people involved in such a process, don’t have the ability to dedicate large amounts of time to the process. Secondly, anytime a new group is formed it takes more than a handful of meetings for the participants to get to know each other, the issues being faced, and come to a formative understanding of how they will operate, make decisions, and work together. Furthermore, do not call the process a CRM process if the document is going to restrict the collaborative process from the beginning to utilizing the previously identified foundational BMPs. This completely removes the collaborative opportunity to develop solutions that may work better, cheaper, and have longer term positive impacts.

17. Page 12-13 – this model concept appears focused on blaming nutrient loading in streams on livestock producers without regard to other human and natural resources of nutrients. When agriculture is gone from a watershed and streams maintain increased levels of nutrients, sediments, and other water quality issues this program purports to fix, who will be blamed then? While we agree that there will likely always be room for improvement in the agriculture sector when it comes to water quality, there are many other factors that influence whether a water body meets empirical water quality standards. There is far too much authority provided to regulatory agencies to place blame on agricultural operations when there are other but less easily identified sources of pollutants entering the state's waters.
18. Page 15 first full bullet – calls for a 'strong compliance assurance presence' in the form of on-going activities such as windshield and aerial surveys. We are mystified how regulatory agencies can make determinations of water quality compliance from either type of vehicle (often at quite some distance) yet stipulate that the conservation planning and BMP design and installation process undertaken on the ground in direct cooperation with the landowner is inadequate or insufficient as was stated near the beginning of this document. We believe that if we are to gain cooperation amongst the various agencies and partners we need to start respecting and appreciating the methods we each respectively use. Regulatory agencies should make their determinations for compliance based upon whatever methodology they wish so long as they have peer reviewed science that supports their process is valid. Conservation Districts and NRCS have already had our planning process and BMP general designs peer reviewed.
19. Figure 3 – we believe Step 1, if this process is ultimately implemented should be broader than just state and federal agencies. This process is for landowner scale potential to pollute determinations. Conservation Districts, county governments and other local entities should be included in this process for evaluation from the beginning.
20. Page 18 – under Steps 4b and 5b – addresses the process for a landowner referral from a regulatory agency to a conservation district for a voluntary, but structured technical assistance approach that will work towards and "Approved Clean Water BMP Plan." First, what does a voluntary but structured approach look like? We believe our planning process has excellent structure already. Why doesn't this paragraph just say what we feel the authors were intending to say which is developing a voluntary conservation plan with limited options and significant threat for regulation. Finally, what exactly is an approved Clean Water BMP Plan and who approves such a plan, and what are the criteria for approving said plan?
21. Page 19 – at the end of the discussion of Figure 4 the document recommends that the Commission, as part of its CD evaluation efforts, will include examination of referral activity, associated timeframes, and resulting outcomes. We would like to know what legal authority exists for the Conservation Commission to evaluate our performance as a separate and locally governed entity based upon criteria that we as of yet have not agreed to be bound and no law has bound us to implementing this plan or process?
22. Page 20 – Steps 4c and 5c – middle of the paragraph discusses how this pathway has an expectation that CD and NRCS field staff will not only make potential to pollute determinations but also advise landowners of the full range of state water quality BMPs. This appears to be the regulatory agencies attempting to get conservation districts to do their work for them. While we believe it will be helpful and beneficial to landowners for CD staff (we will not speak for NRCS staff or what activities they should or should not perform) inform landowners of their potential to pollute, such information must always be given in a manner where the landowner understands that CD staff are not the decision makers nor may they influence decision makers on whether a real and actual potential to

pollute situation exists. Furthermore, we recommend that this aforementioned statement be re-written to clarify that CD staff would, could, and likely will recommend a suite of conservation practices that they believe will address the identified resource concerns. Furthermore, CD staff could, as a matter of providing information, inform the landowner of the existence of the “state water quality BMPs” and they may desire to implement them in addition to or in lieu of the practices the CD staff member recommends.

23. Page 22 – Team 2, Recommendation 5 – recommends minimum core BMP implementation tracking data be collected. We would like to see who is recommended for tracking such information and who will provide the necessary funding support to carry out these activities.
24. Page 24 – Team 2, Recommendation 6 – suggests conducting cross training which we fully support. However, we believe the recommendation falls short where it suggests a site visit to a (indicating one) single field should be included. There are conservation planners that have years of experience and are still confronted with new situations that require creative solutions developed in collaboration with other experts to ensure minimum quality criteria will be met with the implementation of the selected conservation practices. For cross-training to be successful it must go into greater detail than this proposal suggests. Furthermore, we recommend that regulatory staff attend conservation planning and BMP design training that CD and NRCS staff take to become certified. This is necessary to have a truly cross-trained group of professionals from all agencies and will allow for greater understanding of our individual roles and responsibilities, and complexities of our individual activities and functions.
25. Team 2, Recommendation 7 – the language here we believe is indicative of the approach regulatory agencies wish to take. While the section eventually speaks to landowners being asked for feedback the title of this section and opening paragraph speaks to staff to landowner feedback. This should be changed to reflect what we believe is needed (and we support) which is landowner to staff feedback.
26. Attachment A, Keys to Identifying Nonpoint Water Pollution Issues – second bullet asks the ‘evaluator’ if livestock or livestock waste is present on the property. How close to waters of the state must livestock and/or livestock waste be, to be considered an actual pollution or a significant potential to pollute? This statement/bullet needs more clarification because otherwise there will likely be confusion or the potential for confusion by evaluators, landowners, and the public in the future.
27. Attachment A, Keys to Identifying Nonpoint Water Pollution Issues – middle of the opening paragraph is a blanket statement to the effect that the closer an agricultural activity is to water the more likely pollution is or will occur. This is a blanket statement of guilt and is not founded on reality and should be deleted or heavily edited. Many agricultural activities occur in close proximity to waters of the state with no negative effects to water quality.
28. Attachment A, Keys to Identifying Nonpoint Water Pollution Issues – in general we found no discussion of considerations for weather events. How is melting snow in the upland areas and adjacent to a confinement area or pasture addressed where it picks up material from area where livestock are wintered far away from a stream but the ground is frozen so the material is transported more than a hundred yards to a surface water? When the ground isn’t frozen and covered in snow there is more than ample vegetative cover to prevent runoff, the animal wintering/pasture area is located away from the stream. Everything was done right by the landowner, how does that landowner fair with the proposed state conservation practices? Finally, with climate change scenarios being purported to be here, how are regulatory agencies evaluating 24 hour/25 year flood events? Are parameters for such weather events being updated?

29. Attachment D – Example Coordinate Resource Management Process in Support of Local Implementation Entity – first of all it should read “Coordinated” not Coordinate in the title. Secondly, numbers 4 and 5 are suggested to be completed by the 2nd meeting (30 days after the first meeting). We feel this may put an unnecessary strain on the individuals involved as they work to learn to work together, and accomplish some of these tasks. Putting such time constraints on a CRM process takes away from the opportunity and ability of such a group to develop their effectiveness. Furthermore, there is no discussion of who will be a member of the CRM, who will facilitate (and/or pay for a facilitator) the process. These are important and should be clarified if this process is implemented.
30. Attachment D – Example Coordinate Resource Management Process in Support of Local Implementation Entity – Number 8 seeks to implement a monitoring system. We would like some clarification of who will pay for such monitoring, who will conduct the monitoring and for how long after implementation will monitoring occur?
31. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Inspection Pathway – Step 2 will be done by whom and when? We believe the first contact should occur the day an agency inspector identifies a concern or no later than the day after.
32. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Inspection Pathway – Step 5 – Who provides the technical assistance as suggested in this step? Does the landowner have an option for who provides the technical assistance?
33. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Inspection Pathway – Option #1 – Are the Foundational BMPs required or suggested to include in this pathway?
34. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Inspection Pathway – Step 8 – Who is conducting the monitoring, who is paying for the monitoring, and what schedule will the monitoring occur?
35. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Partnering Pathway – Step 2 – Who is an “Optional TA Provider”? When must they make first contact with the landowner? As stated in this step on the Inspection Pathway, we believe the landowner should be contacted the day or the day after the inspector identifies the concern.
36. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Partnering Pathway – Step 3 – Are the Foundational BMPs required or suggested to include in this pathway?
37. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Regulatory Pathway – Step 2 – When will the agency contact the landowner? We believe this should occur the day of or the day after the inspector identifies the concern. This also calls for a letter. While we agree that a written documentation should be provided to the landowner it should be presented by the inspector face to face so the landowner will have the opportunity if they wish to ask questions or seek clarification on the concerns, process, and options available to them.
38. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Complaint Response Pathway – Step 2 – When will the agency respond? We believe that complainants should have to identify themselves so that the landowner will know who their accusers are.
39. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Partnering Pathway – Step 3 – When will the site evaluation be conducted. We believe to be fair to the landowner it should be done within five days of the complaint being filed.

40. Attachment E – Detailed Substantial Potential to Pollute Procedural Flowcharts – Formal Partnering Pathway – Options 1, 2, & 3 – What are the general timelines expected or anticipated for these pathways? The timelines anticipated for all of these should be identified in the document if this process is ultimately implemented.

Overall the Okanogan Conservation District believes the discussion of how to address these issues and concerns is long overdue. However, we believe this document and the proposed process will only increase governmental bureaucracy and do little to address the resource concerns it so diligently is trying to improve. Most of what this document attempts to accomplish can be done by the parties involved in developing this document have honest, open, and productive conversations as part of the regularly scheduled Washington State Conservation Commission Meetings. This will take leadership on the part of each agency and a vision to utilize the Conservation Commission as the coordinating body that the 1939 Legislature envisioned could and should become.

The Okanogan Conservation District has been actively working to improve water quality related to livestock operations for most of its 73 years of existence. We have experience working with landowners, we have a vast knowledge of systems that work, and we have the respect and trust of landowners that we will provide them with fair and impartial input on the necessary conservation practices that will help the landowner achieve their conservation goals and along the way prevent pollution from entering the state's waterways. We only seek to have a system in place that does not compromise the foundation on which our relationship with landowners is built and have access to the necessary technical and financial resources necessary to work on priority resource concerns.

Sincerely,

Craig T. Nelson
District Manager

Cc: Senator Linda Evans Parlette - parlette_li@leg.wa.gov
Representative Joel Kretz - kretz.joel@leg.wa.gov
Commissioner Jim DeTro - jdetro@co.okanogan.wa.us



Washington Cattlemen's Association

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To: Mr. Ron Shultz, Ms. Jaclyn Ford and Mr. Josh Baldi

From: Vic Stokes, President, Washington Cattlemen's Association

Date: December 27, 2012

RE: Comments from the Washington Cattlemen's Association regarding the 3DT BMP Implementation Approach, *Teams 1 & 2 Recommendations to the Directors, DRAFT*

The Washington Cattlemen's Association (WCA) would like to submit the following comments on the 3DT BMP Implementation Approach, *Teams 1 & 2 Recommendations to the Directors, DRAFT*. The WCA would like to voice its strong opposition to the 3DT DRAFT. The WCA believes the 3DT Draft represents a new layer of regulation and bureaucracy that will result in massive economic hardships for livestock producers throughout Washington State without any clear expectation of improving water quality.

The WCA is ashamed that the WSDA and WACC both supported a document that has such a strong bias against livestock grazing. The 3DT DRAFT represents the kind of narrow minded thinking that regulatory agencies all too often have when they spend their time talking amongst themselves instead of engaging the regulated industry and obtaining key stakeholder input. The WCA is extremely disappointed that all three agencies (Agriculture, Ecology and the Conservation Commission) would all support a document that demonstrates such a bias against livestock grazing and water quality.

The approach that the 3DT took clearly demonstrates the outcome the agencies hope to attain; regulations, restrictions and penalties. The WCA believes this document is a slap in the face to the livestock industry and will fight this DRAFT legislatively. Science was obviously something that the 3DT were not interested in; because there is no mention of science or reference to research work conducted in the fields of managed grazing, soil science, plant physiology or livestock behavior or any other work conducted by WSU Extension. Instead of utilizing science the 3DT DRAFT relies upon unfounded opinion that is anti-grazing.

The 3DT DRAFT represents numerous examples of takings as the State Agencies (DOE, WSDA and WACC) all agree that limiting private property rights yields cleaner water. Nowhere in the 3DT DRAFT is a reference to a funding mechanism to compensate private property owners for their losses now, and into the future. This attempted deprivation of private property rights is a *per se* takings and will be fought to the end. The 3DT DRAFT clearly demonstrates the State's inability to clearly communicate with landowners and their true motives and intentions to exclude landowners in this critical process. The 3DT DRAFT should wait until the Supreme

Court Rules on the *LeMire Case*. The Court's decision on the *LeMire Case* will significantly impact water quality regulations one way or the other. The State was told in Columbia County Superior Court in the *LeMire Case* that they (the State) must be able to prove pollution prior to regulating the landowner. RCW 90.48.120 does not obviate the State's requirement to prove pollution.

The 3DT DRAFT as presented is inviting litigation from livestock producers against the State since BMPs that create a large economic hardship on landowners constitute a takings. Buffers that take private property out of production and still require the private property owner to assume all costs associated with the maintenance and operation of the buffer (water, taxes, weed control, etc..) creates annual long term takings. Unmanaged buffers bring with them many unintended consequences that are regulated by other agencies.

The issue of buffers and private property was one of the main issues identified in the Ruckelshaus Center Critical Areas Ordinance discussions. There was and remains agreement throughout all of agriculture that regulatory buffers were and are unacceptable to private landowners. The 3DT DRAFT attempts to directly circumvent the Ruckelshaus Process by mandating unknown and potentially more restrictive BMP's instead of allowing the Ruckelshaus Process to succeed.

The WCA would like to know how landowners can be proactive when they do not know what the standards are they are trying to meet? The key to achieving water quality improvement is having attainable goals. Both landowners and regulators must know what the finish line looks like. The State is mandated to protect existing uses in WAC 173-201A-600; Use designations — Fresh waters; (1) All surface waters of the state not named in Table 602 are to be protected for the designated uses of: Salmonid spawning, rearing, and migration; primary contact recreation; domestic, industrial, and agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values.

WAC 173-201A-020 defines a "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 areas, 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. Why does the 3DT DRAFT only focus on livestock and none of the other non-point contributors?

The WCA believes the Department of Ecology (DOE) is abusing the authority granted to them under RCW 90.48.120 *Notice of department's determination that violation has or will occur...* as the DOE uses "windshield surveys" for regulation. The WCA does not believe that the regulatory agencies understand cause and effect enough to be able to properly apply a simple "windshield survey". In photographs 11 & 12 (windshield survey) the same conditions presented occur in nature in areas that livestock have never been present. The 3DT DRAFT would like livestock producers to believe that only livestock create water quality problems.

The WCA requests that the State incorporate the 2008 5th Circuit Court of Appeals Decision in the case of *National Pork Producers v. U.S. Environmental Protection Agency (EPA)* when they

(DOE) interpret RCW 90.48.120. The 5th Circuit Ruling caused the EPA to withdraw its requirement for a Federal CAFO permit if a facility intended to discharge; this requirement needs to be incorporated into RCW 90.48.120. The WCA believes the DOE should be required to apply the same case law that the 5th Circuit passed down in 2008 in *Pork Producers*, DOE. This would result in the DOE not being able to regulate “substantial potential to pollute”. The 5th Circuit Ruling requires a causal link to the operation and pollution. The WCA believes that the Clean Water Act (CWA) provides a comprehensive liability scheme, and EPA's attempt to supplement this scheme is in excess of its statutory authority. The Court declined to uphold the EPA's requirement that CAFOs that propose to discharge apply for an NPDES permit." These cases leave no doubt that there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, the EPA's authority is limited to the regulation of CAFOs that discharge. Any attempt to do otherwise exceeds EPA's statutory authority. The result of the 5th Circuit ruling is that EPA cannot impose a duty to apply for a permit on a CAFO that 'proposes to discharge' or any CAFO before there is an actual discharge." RCW 90.48.120 poses a major challenge to livestock operators as it authorizes the DOE to regulate on a “potential violation”. This concept is inherently flawed. It is important to remember that the State is also obligated to maintain minimum flows to satisfy stockwatering requirements for riparian stockgrazing operations in RCW 90.22.040 and as a result livestock operations have a legal expectation that their livestock may access surface water for Stockwater uses. In summary the WCA believes the State should adhere to the same standard and be required to demonstrate a causal link between pollution and a livestock operation prior to initiating a regulatory action.

The WCA would like to know why the DOE does not abide by;

WAC 173-201A-310; Tier I — Protection and maintenance of existing and designated uses.

(1) 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.

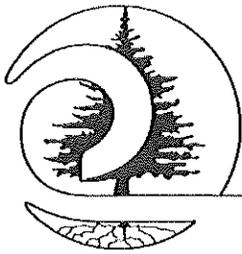
We believe that natural conditions and all other source contributors must be identified (*livestock, septic systems, agriculture, residential, etc...*). Once all contributing sources are identified, mutually agreed upon goals for addressing water quality can be set so the CRMP process can begin. DNA could be one of the tools the State uses to identify sources. RCW 90.48.120 does not alleviate the State's requirement to prove a causal link between a livestock operation and pollution.

Sincerely,

Vic Stokes, President
Washington Cattlemen's Association

Adams County Cattlemen's Association
Asotin County Cattlemen's Association
Benton County Cattlemen's Association
Clallam/Jefferson County Cattlemen's Association
Clark County Cattlemen's Association
Columbia County Cattlemen's Association
Douglas County Cattlemen's Association

Ferry County Cattlemen's Association
Franklin County Cattlemen's Association
Garfield County Cattlemen's Association
Grant County Cattlemen's Association
Grays Harbor/Pacific County Cattlemen's Association
King/Peirce County Cattlemen's Association
Kittitas County Cattlemen's Association
Klickitat County Stockgrowers Association
Lincoln County Cattlemen's Association
Okanogan County Cattlemen's Association
Pend Oreille County Cattlemen's Association
Skagit County Cattlemen's Association
Snohomish County Cattlemen's Association
Thurston County Cattlemen's Association
Walla Walla County Cattlemen's Association
Whitman County Cattlemen's Association
Yakima County Cattlemen's Association



Clallam Conservation District

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December 11, 2012

VIA EMAIL

Dan Newhouse, Director Washington State Dept. of Ag.
Ted Sturdevant, Director Washington State Dept. of Ecology
Mark Clark, Executive Director Washington State Conservation Commission
C/O Jaclyn Ford, Josh Baldi & Ron Shultz
Olympia, WA

Re: 3DT Implementation Approach -- *Teams 1 & 2 Recommendations to the Directors; final draft 12-06- 12-V2*

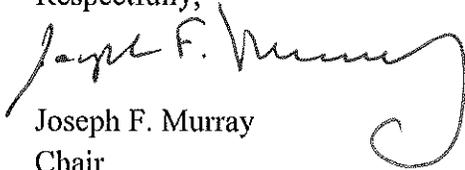
Honorable Directors:

While we applaud the time that you and your staff have put into reconciling voluntary and regulatory initiatives to protect water quality from agricultural sources of pollution, we urge you take the necessary next step of opening up the process and soliciting meaningful input from stakeholders.

We received the final draft recommendations document on Friday, December 7, which appeared to be hastily written. It isn't possible to sufficiently review and provide comments with adequate documentation and for you to give due consideration less than a week later.

There are significant ramifications to the recommendations. Several have been the topic of yet unresolved state-wide processes (Ag, Fish and Water & Ruckelshaus Process). To adopt these recommendations in a manner that disenfranchises stakeholders is uncharacteristic of this State's staunch adherence to the principle of open, transparent and participatory government. This very issue of lack of stakeholder participation in the agriculture water quality talks ended up becoming the dominant theme of a recent Agriculture & Forestry Leadership Program policy project in which our manager Joe Holtrop participated. You have a second chance to better seek stakeholder input. We urge you to refrain from adopting the document as it is. Please create the opportunity for meaningful public input.

Respectfully,



Joseph F. Murray
Chair



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December 28, 2012

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Mr. Ted Sturdevant, Director
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Dear Three Directors,

Thank you for the opportunity to comment on the three Directors' report, released for our review on December 7, 2012.

The WICD supports a cooperative process of CD/NRCS working with landowners and regulatory agencies to resolve water quality problems. There is room for improvement in collaboration, strategizing and targeting, monitoring and follow-up, non-compliance enforcement, etc. The voluntary approach can work if water quality violators clearly understand that inaction is followed by enforcement. Respective roles of regulatory and planning agencies must be respected, because each has trained professionals to fulfill their respective roles.

Following are our comments on the December 7, 2012 draft of the report:

Team 1 Recommendations –

Page 3 “shortcomings” –

- “NRCS practice standards lack necessary specificity” – Maybe a few practices like Access Control, Field Border, Hedgerow, Manure Transfer, etc. lack some “meets and bounds” details but we think this is intentional by NRCS to allow the planner flexibility to address site specific concerns and objectives. An arbitrary number assigned in a non-scientific manner for these practices could wind up being an over-kill and make the practice harder to sell and be no more effective.
- “Untrained or inadequately trained staff completing the planning process” – CD/NRCS planners should always be well trained and qualified. If they are not, they should be. If DOE/WSDA is intending to also do WQ BMP prescriptions or plans, will they have similar background and training as CD/NRCS planners? This would require a significant commitment to intensive training to become qualified.
- We agree, funding for maintenance and monitoring of practices is important. Also, well trained staff is important to do this to know what to look for.

Page 3 & 4 - Attachments A-C are already basic and fundamental to the NRCS/CD planner and planning process. Are these attachments meant then to educate landowners or DOE/WSDA?

Page 5 – Foundational BMPs

“Riparian Forest Buffer” practice can have water quality benefits, but the main intended benefit of a forested buffer is habitat improvement. Also, the 35’ minimum setback may be an over-kill and make stream exclusion harder to sell to landowners. For example, if a landowner agrees to implement prescribed grazing and exclude livestock during the rainy season from low-lying fields, a lesser setback from the watercourse would probably resolve water quality issues. Also, what type of watercourse will be mandated to have a Riparian Forest Buffer? If every ditch on a farm is mandated to have this buffer it could create a big loss of farmland and economic hardship. Also on a small farm such a buffer may sometimes take away most of a landowner’s fields for grazing or other ag use.

“Filter Strip” practice using RUSLE2 may not remove dissolved pollutants. CD/NRCS staff needs training on using this practice for this purpose. Also, flash grazing in a filter strip should be allowed under specific circumstances. For example, if the filter strip is a well-managed pasture on upland soils and manure droppings are picked prior to the rainy season, grazing should not affect filtering ability of vegetation and should be allowed.

Foundational BMPs are inherently incomplete to address all water quality concerns. Water quality resource concerns observed on a site-specific basis will almost certainly identify the need for “additional criteria” BMPs. Hence, these “additional criteria” practices would be “Foundational” or basic, and needed as well to protect water quality. Practices such as Waste Storage Facility, Roof, Roof Runoff Structure, Diversion, Underground Outlet, Prescribed Grazing, Access Control, Manure Transfer, Cover

Crop, Heavy Use Area Protection, etc. fall into this category. Foundational BMP prescriptions can't replace the NRCS planning process to resolve all site-specific water quality concerns.

Page 6 –

It is "expected" by Team 1 these 6 foundational water quality BMPs will be used to correct water quality issues. It is understood by Team 1 that alternative BMPs could be desired by the landowner, and the suggestion was made that regulatory agencies would need to approve alternative BMPs based on criteria. Why not refer to CD/NRCS for this assessment, because CD/NRCS staff are already trained and qualified to do this using the NRCS RMS planning process.

Page 7 -

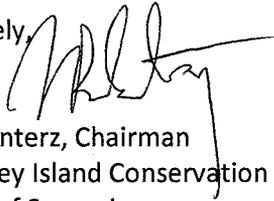
If alternative BMPs are suggested in the compliance scenario, rather than using foundational BMPs (with supporting practices), the CD/NRCS should be integral in planning and design. Under the compliance scenario it is stated that on a case by case basis review and approval of alternative BMPs must be made by WSDA/DOE. This means that plans would need to be released to the regulatory agencies for a decision, rather than trusting trained CD/NRCS planners. This decision would be best made by fully trained CD/NRCS planners, or at least in collaboration with them.

Team 2 recommendations -

No comment, except in regard to Figure 4 on page 20. Plans prepared in regulatory referral pathways would need to be reviewed and approved by the regulatory agency. As stated in the preceding paragraph, this means that plans would be released to the regulatory agencies for a decision, rather than trusting trained CD/NRCS planners. This decision on approval would be best made by fully trained CD/NRCS planners, or at least in collaboration with them.

We encourage you to consider integrating these comments into a final draft of this report.

Sincerely,



Fran Einterz, Chairman
Whidbey Island Conservation District
Board of Supervisors

cc: WA State Conservation Commission
WACD Board of Directors
David Vogel, WACD Executive Director

December 19, 2012

Mr. Ron Schultz, WSCC
Ms. Jaclyn Ford, WSDA
Mr. Josh Baldi, Ecology

R. Jane Rose, Chair, WCA Land Planning Committee
6847 U S Hwy 101
South Bend, WA 98586
360-875-5765

RE: BMP Implementation Approach

Washington Ag Statistics shows the top five commodities for income to the state's economy with Beef Cattle as the fifth in importance bringing in \$580,947,000 in annual income. When I study the proposed legislation for regulating point and non-point pollution to state waterways, I can see nothing but huge regulatory expense by the agencies and ultimately that expense goes to the taxpayer. The producers' time and expense will escalate as well if the "potential to pollute" goes forward as outlined in the proposed legislation. Our state is in arrears already; we can ill afford to make more huge expense and we cannot afford to jeopardize an industry of this importance. This legislation needs to be revised to allow good operators that are not polluting to continue to work within their Conservation District Farm Plans, stay in business and assure the continued benefit to our state's economy. This is overreaching legislation as proposed and is not needed to achieve the clean water that everyone wants. The legislation needs to be revised to delete "potential to pollute" regulation.

I did note that in the language that speaks to search warrants on producer's properties, that clear direction is missing that says that the producer has to be made aware by phone that a search is needed and that the producer must be given an opportunity to arrange for a convenient date and time for that search. Emails and cards do not assure that the producer saw the notice.

R. Jane Rose

Cc: Jack Field, Exec. V.P., WA Cattlemen's Association
Sen. Brian Hatfield, Chair, Senate Ag, Water Rural Econ. Dev. Committee
Rep. Brian Blake, Chair, House Ag. & Natural Resources Committee
John Stuhlmiller, Dir. Of Government Relations, WA State Farm Bureau
Ed Field, Exec. V.P., WA Cattle Feeders Association
Jay Gordon, Exec. Dir., WA State Dairy Federation

December 19, 2012

Robert P. Rose, Chair, Pacific County Weed Board
6847 U S Hwy 101
South Bend, WA 98586

Mr. Ron Schultz, WSCC
Ms. Jaclyn Ford, WSDA
Mr. Josh Baldi, Ecology

RE: BMP Implementation Approach

The 3 DT BMP that is supposed to lead to legislation and clarity for who has authority to regulate grazing appears to have only one goal and that is to totally eliminate grazing anywhere near water whether there is a pollution problem or not. On the West side this will practically eliminate any cattle grazing for all practical purposes.

There has been a lot of water fenced using the CREP program and this has led to a severe weed infestation of Japanese knotweed, tansy ragwort, scotch bloom, blackberries, and many other weeds along our West side rivers. The knotweed and blackberry infestations are particularly bad as they leave the ground bare in the winter and subject to severe erosion in the winter during high river flows. A lot of money is now being used to try to control these invasive weeds where cattle grazing controlled them before. Once you force landowners to abandon land by forcing them to fence it off from the pasture they have little incentive to maintain it and eventually it will become totally weed infested. Increasing the width of the buffers as suggested in the proposal and not allowing grazing on the buffers will only make the problem worse.

In Pacific County the Weed Board and Conservation District have problems getting some landowners to allow for spraying on their property even at no cost to them. Also, many people do not want any spraying near water so weed control along rivers is very hard to accomplish.

Also giving regulatory people the power to regulate potential pollution without determining actual water quality problems will definitely lead to abuse of power in a lot of instances and should always be avoided if at all possible.

The present system of NRCS writing farm plans and the Conservation District assisting ranchers and dairymen in implementing them seems to be the best plan. This plan continues to eliminate actual pollution problems and helps all ranchers and dairymen improve their grazing operations. It should be continued as is. Ecology should not be involved in agricultural farm plans.

The farm plans from NRCS also cover the application of manure and determine how much and where and when it can be applied. Additional legislation is not required because as problems arise they are taken care of by the Conservation District.

This proposed legislation is just government overreach looking for a problem to solve and will only cause more problems and cost at a lot of additional expense.

Robert P. Rose

Cc: Jack Field, Exec. V.P., WA Cattlemen's Association
Sen. Brian Hatfield, Chair, Senate Ag, Water Rural Econ. Dev. Committee
Rep. Brian Blake, Chair, House Ag, & Natural Resources Committee
John Stuhlmiller, Dir. Of Government Relations, WA State Farm Bureau
Ed Field, Exec. V.P., WA Cattle Feeders Association
Jay Gordon, Exec. Dir., WA State Dairy Federation

Cattle Producers of Washington



Cattle Producers of Washington

CPoW is an independent organization focused on the success of the cow/calf producer.

CPoW is Washington's fastest growing cattle producer organization, representing approximately 35% of the beef cowherd, contributing over \$100 million to Washington's economy.

CPoW members produce quality beef, proudly bred, born, and raised in Washington.

Cattle Producers of Washington
P.O. Box 2436
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Cattle Producers of Washington



Scott Nielsen
President
Home (509)-738-2607
Cell (509)-675-2608



December 19, 2012

Ron Schultz, WSCC
Jaclyn Ford, WSDA
Josh Baldi, Ecology

VIA: Email only

RE: BMP's dated December 6, 2012

Dear Mr. Schultz, Ms. Ford & Mr. Baldi,

Cattle Producers of Washington, Stevens County Cattlemen Association and Spokane County Cattlemen would like to take this opportunity to address the 3DT BMP Implementation Approach Draft 12-6-12(V2).

It is concerning that the Administrative Procedures Act (APA) was not followed in this process and it needs to be addressed as to why it was not followed.

As a general observation it should be noted that this policy was drafted with no input from the stakeholders, the landowners. This policy proposes regulations which will impact landowners and require them to follow protocols which may not be feasible. This document must be redrafted with input from landowners and specifically from the agriculture sector. Best Management Practices should not be drafted without input from the sector that will be required under this policy to follow them. These BMPs are extremely narrow and fail to take into consideration economic and scientific factors.

This document focuses on "the substantial potential to pollute" without taking into consideration the terminology has been challenged in the *Joe Lemire vs. The Pollution control Hearings Board et al*, Case No. 3-87703-3, where a ruling has not yet been made. Ecology has no basis to govern nonpoint source pollution under this definition until the Supreme Court makes its decision. This is an attempt to preempt the legal process.

Even when the *Lemire* decision becomes law, this policy must still follow the *National Pork Producers Council v. U.S. Environmental Protection Agency (EPA)* holding. The Court held in that case the US EPA overreached in its 2008 Clean Water Act (CWA) Rule, which required CAFOs that discharge or "propose" to discharge, to apply for a permit. Permits are not required when there is no proven discharge. This policy in its current form implies a regulation scheme which would require landowners to follow procedures when there has been no proven discharge. This is not an allowed action under the *National Pork Producers Council v. U.S. Environmental Protection Agency (EPA)* holding.

The implementation approach as proposed specifically lists conditions to be taken into consideration when establishing a "substantial potential to pollute" on page two. These conditions fail to take into consideration organic materials, environmental, wildlife, and other alternative sources, and further fails to consider the unique topography of each site and the differing needs due to topography. This section also fails to state who will be making the observations, what training this individual will have, how many observations will be required, and landowner input within initial observation time. It is imperative the individual in charge of the observations be an unbiased third party not reliant on finding pollutants for job security and funding, i.e. these observations cannot come from someone within the Department of Ecology.

Page three addresses the shortcomings of the NRCS without also evaluating the shortcomings of the other departments involved with this process. Currently there is a vehicle set-up which allows for the waters of this state to be protected. These agencies need to use the current vehicle and work within the limits set by statute and case law instead of trying to expand an enforcement process. The Department of Ecology (DOE) has long failed to recognize the outside contributions of pollutants and has failed to implement DNA or other reliable testing processes. DOE has further failed to recognize proactive measures other than fencing as required by DOE. Ecology has failed to acknowledge the contributions agriculture has made to improve water quality within this state.

Page four discusses the pictures used to make determinations as to conditions that constitute active pollution, again landowner input was not requested nor was it gathered to help define this process. These photographs depict site specific conditions and should not be used as this determination should be on a case by case basis using scientific methods.

Page five lists the BMPs for livestock riparian protection purposes. These BMPs were not developed with an agricultural mindset or any input from the stakeholders. These BMPs are not always options and site specific solutions should be considered depending on topography. Further these BMPs are not always economical or a solution that is easily implemented. This document also states the BMPs are "generally recognized as effective" without any basis to this statement and no scientific backing.

Page six lists landowners have an obligation under state law to correct substantial potential to pollute conditions, which is a term being challenged to the Supreme Court. The Revised Code of Washington at 90.22.040 makes it clear it shall be the policy of the state, and the DOE to retain sufficient minimum flows or levels in streams, lakes or other public waters to provide adequate waters in such water sources to satisfy stockwatering requirements for stock on riparian grazing lands.... The laws of this state also work to protect agriculture and stockwatering and those laws need to be taken into consideration.

Page eight addresses the state-wide effort and coordination, but again does not address the need for stakeholder input into this process and meeting attendance. Agriculture is key to this proposal and should have input into this policy making.

Page nine states the regulatory initiatives need to leverage the state's voluntary technical assistance programs. As discussed above, the current law does not allow for anything other than voluntary programs without the nexus of action and pollutant. Pollution must be proven for the state to force action on a landowner. This is another area where stakeholder input is a must.

Page ten further addresses the proposed changes and states the new policy will also shorten the timelines for landowners and lower dependence on up-front, intensive watershed scientific assessment and characterization. This page also supports immediately moving past levels where water quality or other resource conditions dictate a more urgent or intensive response. This entire section is borderline on governmental taking as it sets forth unrealistic timeframes, no scientific data to support conclusions by government agencies with little to no training, no requirements for said conclusions, and supports immediate response based on an undefined criteria. The criteria discussed in this document are pictures and a checklist. This framework would allow government oversight with a complete failure to prove actual pollution or even produce evidence of the "substantial potential to pollute." The framework this section addresses would allow government agencies free reign with little oversight and expanded police powers. This allows for a taking.

Page eleven shows an example of the framework which leads to more questions as to who these teams will be comprised of, how the data will be collected without a trespass onto private property, what policies or criteria will be taken into consideration. A list of who "could" comprise the team is listed, and stakeholders may be allowed under the "other" category, but is not clear in this policy and the entities listed are all government. Again there is no stakeholder input and no oversight.

Page twelve again states landowners are obligated under state law to correct active pollution or "substantial potential to pollute" without considering the issues previously addressed in this letter.

Page fourteen diagrams the watershed-scale operations cycle which shows the landowner, a person with an intimate knowledge of their ground, is not contacted under the fourth step. This is a waste of time and resources, as the landowner should be contacted initially to discuss the situation and help with the investigation into the problem. Page 21 diagrams the obligatory landowner implementation was not reviewed by landowners prior to this draft and is in direct contention with what is allowed under the law.

As the policy is currently drafted it allows for feedback via a comment card at the conclusion of each individual site visit, it is not clear how that comment card will be used. If the comment card is to be used in some manner, it needs to be addressed in the policy as well as if the comments will be kept confidential, the impacts the card will have, and what happens if interactions with certain staff are unsatisfactory more than once, more than twice, etc. These comment cards indicate some oversight by the agency the staff works for, but this is inadequate.

Attachment A on pages 27 through 29 is preemptive to the Lemire opinion from the Supreme Court. Again this has no stakeholder input and is a gross disregard for the law. Agriculture has protections within Washington State must be taken into consideration.

In conclusion: The current draft of the 3DT BMP Implementation Approach is an incomplete portrait of what is facing Washington State Water Law. This document must take into consideration current laws and cases before the Courts as well as stakeholder inputs into the policy itself. This document must face a rewrite to make it fair and unbiased and actually addresses a global approach to clean water.

Sincerely,

Dave Dashiell, Cattle Producers of Washington President

Scott Nielsen, Stevens County Cattlemen Association President

Jim Wentland, Spokane County Cattlemen President



www.cattleproducersofwa.org

|



Washington State Dairy Federation

P.O. Box 1768
Elma, WA. 98541
360-482-3485

W. Jay Gordon, Executive Director
Dan Wood, Director of Govt. Affairs

Comments on 3DT BMP Implementation Approach

December 28th 2012

Mark Clark, Executive Director, Washington State Conservation Commission
Dan Newhouse, Director, Washington State Department of Agriculture
Ted Sturdevant, Director, Washington State Department of Ecology

Via email: *Ron Shultz* RShultz@scc.wa.gov
 Jaclyn Ford JFord@agr.wa.gov
 Josh Baldi JBaldi@ecy.wa.gov

Dear Directors Clark, Newhouse and Sturdevant

Washington State Dairy Federation is dismayed at the content of the recommendations contained in the 3DT BMP Implementation Approach.

Despite earlier communication of interest in input from the affected community (agricultural operators) and trusted on-the-ground expertise (conservation districts), it appears little consideration was given to either.

Nor does it appear that WSU, tribal interests, or environmental interests were involved in developing recommendations.

It seems that the regulatory agencies and personnel knew well in advance what they wanted to recommend and that they were not going to let input from agricultural experts stand in the way of those recommendations.

This is contrary to the trust and partnership that was painstakingly developed over the several years the parties spent at the negotiation table at the Ruckelshaus Center.

The Voluntary Stewardship Program (VSP) was developed at that table by coming to understand the interests of the other parties, giving up a few long-held positions, and risking success by subscribing to the proposition that working together might yield more than decades of unproductive battles.

And now, as we stand on the verge of funding to implement the VSP, the agencies have rushed in with their scripted bigger-buffers-on-the-ground approach that previously resulted in decades of fights costing millions of private and public dollars.

Such an approach has proven itself unproductive.

The “director” talks have produced a list of recommendations from policy staff. Those recommendations are not grounded in the reality of implementation in the fields of agriculture across our state.

As an example of the regulatory bias, Attachment C includes 12 photos “illustrating” “substantial potential to pollute,” 2 additional photos illustrating “*unclear* substantial potential to pollute” and not a single photo illustrating an operation that **does not** show a potential to pollute.

Indeed, the language of the recommendation suggests that a “substantial potential to pollute” can occur under circumstances where the pollutant is not adjacent to state water and there is no direct conduit (ditch, pipe, depression, etc.) to the water.

The recommendations also recommend an “understanding” that “pollution determinations are made independent of the amount and duration of polluting activity and of ambient water quality conditions.”

Put together, this seems to indicate that wherever there is livestock and manure – regardless of the amount – near or not near waters of the state, with or without the means for any amount of that manure to travel to the waters of the state, there is a substantial potential to pollute.

Put more simply: If there is livestock, there is substantial potential to pollute.

Washington State Dairy Federation does not object to addressing actual pollution. We have demonstrated that in both the regulatory and voluntary context repeatedly.

But this document is dedicated to the “potential” to pollute, recommends regulations to address the potential, and then clothes those concepts in language that means virtually anything anywhere must be addressed.

This set of recommendations is an example of why people lose confidence in government.

Please withdraw the recommendations and involve the experts on the ground in crafting cooperative approaches.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Jay Gordon', with a long horizontal flourish extending to the right.

W. Jay Gordon, Executive Director

C: Governor Christine Gregoire
Agricultural Organizations



Eastern Klickitat Conservation District

1107 S. Columbus Ave. — Goldendale, WA 98620 - Phone (509) 773-5823 ext. 5 — Fax (509) 773-6046

December 11, 2012

Dan Newhouse, Director Washington State Dept. of Ag.
Ted Sturdevant, Director Washington State Dept. of Ecology
Mark Clark, Executive Director Washington State Conservation Commission

Re: 3DT Implementation Approach -- *Teams 1 & 2 Recommendations to the Directors; final draft*
12-06- 12-V2

Honorable Directors:

While we applaud the time that you and your staff have put into reconciling voluntary and regulatory initiatives to protect water quality from agricultural sources of pollution, we urge you take the next step to open up the process and allow more time to receive input from stakeholders. We received the document Friday, December 7th, and comments are due Thursday December 13th. It isn't possible to review, provide comment with adequate documentation and for you to give due consideration less than a week later. There appear to be significant repercussions to the recommendations as presented in the draft. For example, the document seems to disregard the significant work done by the Watershed Planning process in some WRIAs.

If adopted, the policies in the document will assure that mistrust will continue between landowners and State government, and have the potential to significantly affect the way conservation districts interact with landowners. Most districts will not have the opportunity to meet and discuss the document prior to the December 13th deadline.

The Board of Supervisors of Eastern Klickitat Conservation District strongly urges you to not adopt this document as is, and create an opportunity for meaningful public input.

Thank you for considering our request.

Sincerely,

Steve Matsen, Chair
Eastern Klickitat Conservation District

Doug Grabner
Ron Juris
Rhon Raschko
Mike Copenhefer



**KLICKITAT COUNTY
NATURAL RESOURCES /
ECONOMIC DEVELOPMENT
DEPARTMENT**

127 W. Court St., MS-CH-26, Goldendale, Washington 98620
VOICE: 509 773-2481; FAX: 509 773-4521

December 28, 2012

Dan Newhouse, Director Washington State Department of Agriculture
Ted Sturdevant, Director Washington State Department of Ecology
Mary Clark, Executive Director Washington State Conservation Commission

RE: *3DT Implementation Approach – Teams 1 & 2 Recommendations to the Directors; draft 12-6-12-V2*

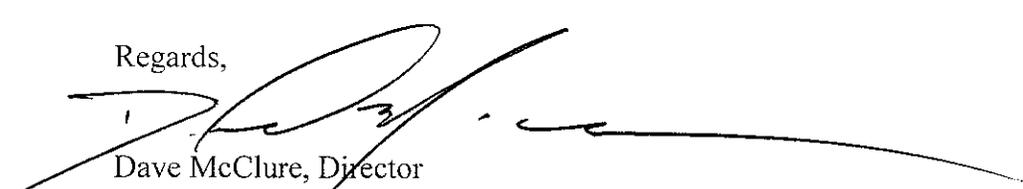
Honorable Directors,

It is disappointing that the draft *3DT Implementation Approach – Teams 1 & 2 Recommendations to the Directors* does not incorporate watershed planning/implementation under chapter 90.82 RCW. It is also disappointing that lead agencies and watershed planning units established pursuant to RCW 90.82.060 were not informed of the 3DT process or afforded the opportunity to provide input and comment. I would not have known about the process or draft document were it not for our local conservation districts.

Please be aware the citizens, counties, conservation districts, and cities have been working cooperatively and in good faith with the Department of Ecology and others for over a decade to assess, address, and monitor water quality in Water Resource Inventory Areas (WRIA's) 30 and 31. This includes efforts to implement the Temperature TMDL for the Little Klickitat River and focused efforts to develop and implement water quality improvement plans that address the 303(d) listings for temperature on Swale Creek and Rock Creek. Also, please be aware that the approved watershed management plans for WRIA's 30 and 31 include obligations and expectations relating to Ecology working with the planning units to address water quality issues.

Watershed planning/implementation under chapter 90.82 RCW should be incorporated in the approach to addressing water quality and lead agencies and planning units should be notified and provided with an opportunity to provide input and comment.

Regards,



Dave McClure, Director
Natural Resource / Economic Development Department
Klickitat County



Kittitas County Conservation District
607 E. Mountain View Ave - Ellensburg, WA 98926 - Phone (509) 925-8585 - Fax (509) 925-8591

December 28, 2012

Mr. Mark Clark
Executive Director
Washington State Conservation Commission
PO Box 47721
Olympia, WA 98504-7721

Mr. Dan Newhouse, Director
Washington State Department of Agriculture
PO Box 42560
Olympia, WA 98504-2560

Mr. Ted Sturdevant, Director
Director, Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

C/O Ron Shultz, Washington Conservation Commission

Gentlemen,

I'm writing this letter regarding the three directors (3D) report published in early December. We appreciate the extended comment period although this report is a lot of information to digest in a still short time period.

First, I would like to express my thanks to the three/five directors and the two teams that were assembled to complete this report and work on this effort. The concept of a coordinated effort and strong attempts to provide the best service to landowners and improve natural resource conditions is a good one.

Each of the recommendations by Team 1 are worthwhile in concept. I would however like to see more detail and more information. At this point, it's not clear how these recommendations will be implemented by field level staff and what we as District staff can expect from enforcement and inspection actions nor a clear demarcation of roles. Defining and understanding the terms "potential to pollute" and "substantial potential to pollute" is critical as well. How will we as districts be allowed to interact with the agencies in the process of the clearly defining these terms?

The old MOA process was not well used, at least in our County. When it did come into play, it was a constant struggle to help Ecology staff understand the conservation district role and the use and value of voluntary incentive based programs. So I especially like the cross training ideas. I would like to see

it specifically expanded though to include training by the other agencies to explain their inspection and enforcement programs and their follow-up to inspection and enforcement to District staff. We are often contacted by landowners who have questions, who want to know what we think, and who are looking for more information. If we can understand the inspection and enforcement process, we can provide better service to our landowners.

I have the following specific comments:

- Page 3, sub bullet one, I think that referring to the landowner's opportunity to choose as a shortcoming is an indication of flawed reasoning. If the technical agencies can present a landowner first with the information that backs-up the cause and severity of the natural resource issue, second with reasonable options that actually address the issue, and third with assistance necessary to implement the reasonable best options, there is no reason why the landowner shouldn't choose the best options. Unfortunately, it often seems as though the solution has already been decided upon before the landowner is consulted and the issue and site adequately studied. If you cannot show a landowner an actual problem, they are unlikely to select the BMP you think they should. This is not a shortcoming of the voluntary process, but the benefit of a voluntary process as it forces those promoting the implementation of BMPs to reasonably justify their recommendations.
- Page 5, the list of the "foundational water quality BMPs" does not include hedge rows. This is an important option on very small streams and waterways and should be included.
- Two places on page 5 reference the exclusion of grazing within the buffer or filter areas. This is such an unfortunate action to recommend. It removes one more tool from the landowner's toolbox. The use of highly managed livestock grazing can be a critical component of the maintenance of these areas.
- On page 9, bullet four, is there a reason Conservation Districts are not listed as potential forum participants? They certainly should be.
- Page 10, bullet one, I would be very careful with references to skipping scientific assessments and characterizations. Landowners are savvy and they have come to expect solid reasons and reasoning behind actions they're being asked to take. Often the only way to get that information is to bring in the technical experts and do the hard work. It will pay off in the long run.
- Page 11, why are conservation districts not included in the list of participants in the Multi-Agency Data Assessment Team? Again, we should be.

Lastly, I'd like to note that there appears to be no budgetary or economic impact references in this document. In order to accomplish the actions and activities, there must be additional funding made available either to the state agencies or to other technical organizations (e.g. Districts). Will these types of activities be eligible for 319 or CCWF grants? What other funding sources may be available?

Please keep us informed regarding future opportunities to participate in this process. We stand at the ready to provide our experience, insight and expertise and to work cooperatively with your agencies.

Sincerely,

Anna Lael
District Manager

LEWIS COUNTY CONSERVATION DISTRICT
COMMENTS
TO
3DT BMP IMPLEMENTATION APPROACH

These comments are reflections on how the regulatory/voluntary approach to assisting landowners has worked in Lewis County.

We have run into a few hurdles but overall the process has worked fairly well in having regulatory agencies inspect farms and refer landowners and operators to our conservation district for assistance.

NRCS standards and specifications are utilized to address all resource concerns on each farm. Conservation plans are written by technical experts from the district, reviewed by the operators and approved by the Board of Supervisors.

This is where some problems arise in Lewis County. During inspections by the regulatory agency after conservation plans have been developed and approved resource concerns are or are not seen that are not being addressed by the operator to protect water quality as written in the plan. The regulatory agency needs to be strict and explain to the operator that the issue needs to be addressed or action will be taken. We can have a plan for every operator but if the document is not implemented or the nutrients produced on the farm are not stored and utilized correctly the resource concerns are not being addressed as written and approved. It is the regulatory agencies job to ensure the conservation plans are being followed.

Specific points that the Lewis County Conservation District are concerned with are as follows:

1. We do not need to discuss the potential to pollute or the substantial potential to pollute. Farm plans address all resource concerns and if implemented and managed as written water quality will be protected.
2. We do not need new standards and specifications. NRCS standards and specifications address all resource concerns if implemented and managed as written in the conservation plans.
3. We agree this issue is contentious and to be consistent across the state all conservation districts and regulatory agencies need trained, competent employees to make the system work.
4. Again from our standpoint the issue falls on the inspector to be able to read and understand the conservation plan to be certain it is being implemented and the farm is being managed in accordance with the approved plan. If not it needs to be addressed by them.



December 28, 2012

Josh Baldi, Washington Department of Ecology (jbal461@ecy.wa.gov)
Jaclyn Ford, Washington Department of Agriculture (jford@agr.wa.gov)
Ron Shultz, Washington State Conservation Commission (rshu461@ecy.wa.gov)

RE: Three Directors' (3DT) nutrient management recommendations and coordinated action plan

On behalf of the Northwest Poultry Committee (NWPC) of the Northwest Food Processors Association (NWFPA), we write to provide general comments on the 3DT manure management recommendations and process currently underway. NWPC serves as the voice of the poultry industry within the NWFPA membership in Washington, Oregon and Idaho, representing firms involved in the production and processing of eggs, poultry and poultry products.

We would echo some of the concerns that have already been expressed in multiple meetings, conference calls and written submissions related to these proposals. Though Governor Gregoire's desire to address water quality and her commitment to the environment are commendable, lack of agreement or clarity about the extent and nature of the problem, let alone the means to address it, could create unnecessary friction among the various stakeholders and competitive disadvantages for Washington based producers.

Additionally, poultry operations tend to be situated on smaller acreage relative to other animal operations and thus rely on other parties to receive poultry manure and utilize it as fertilizer on agricultural fields. This raises the question of what extent the poultry operation is responsible for the nutrients once they are taken and applied by the end user. The poultry industry does not generally rely on lagoons for waste management.

We also question the wisdom of pushing conservation districts to a lesser role than they currently have in the larger regulatory scheme. It is common for DOE to refer producers to the conservation districts for help with industry best practices. These voluntary programs are working and regulators still have authority under the Clean Water Act to regulate sources of pollution. Any action that would result in reducing the availability of these organic sources of fertilizer will cause farmers to rely more heavily on chemical fertilizers.

The NWPC and NWFPA urge caution in moving forward on the 3DT recommendations at this time and we look forward to working with you to resolve outstanding concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Curry', is written over a light blue horizontal line.

James Curry
Director, Government Affairs

To: Mr. Ron Shultz, Ms. Jaclyn Ford, and Mr. Josh Baldi

From: John and Debbie Pearson, Whitman County Cattlemen and owners of "Pearson Farm and Fence"

Date: December 27, 2012

RE: Comments regarding the 3DT BMP Implementation Approach, *Teams 1 & 2 Recommendations to the Directors, DRAFT*

Debbie and I would like to submit the following comments on the 3DT BMP Implementation Approach, *Teams 1 & 2 Recommendations to the Directors, DRAFT*.

This draft had no input from stakeholders, is not backed up by science, doesn't follow state law when it comes to the Administrative Procedures Act, flies in the face of a Supreme court ruling, took many months and taxpayer's dollars to put together, amongst other problems.

Is this a knee jerk reaction to the Joe Lemire case?

If all this is true, which we believe it is, then my question is two fold. Does this document benefit the public, (we say no) and if not, who was this draft written for? It looks like this draft is self-serving for Dept of Ecology, The Conservation Commission and The Dept of Ag. Don't these people work for us? Where did the term "public servant" go?

Looks like another blatant waste of taxpayer's dollars to go along with the millions of dollars wasted on building fences, planting trees, etc in Eastern Washington, of which little of it was built to government specifications (1). I would also like to know why the Dept of Ecology and the Adams Conservation District were never held to task with the fraudulent behavior that went on for 10 years (2).

If I asked for this document from my employees, and this is what I was presented with, I would question their employment.

(1) (Article in Western Livestock Journal Dec 21st 2012),

(2) (State Audit report Adams County 2009)

Sincerely,

John and Debbie Pearson



Skagit Conservation District

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December 28, 2012

VIA EMAIL

Mark Clark, Executive Director Washington State Conservation Commission
Dan Newhouse, Director Washington State Dept. of Agriculture
Ted Sturdevant, Director Washington State Dept. of Ecology
C/O Josh Baldi, Jaclyn Ford and Ron Shultz
Olympia, WA

Re: 3DT Implementation Approach

Directors:

On behalf of the Board of Supervisors of the Skagit Conservation District, I thank you for the opportunity to comment on the above referenced document. Due to the extremely short time frame regarding review and comment, we will not be detailed in the extent of our observations. We will instead focus on the most substantive issues of concern to us.

We would begin with questions regarding identification and scope of the issues under discussion. We could not find any clearly defined problem statement(s) which formed the basis for the 3 Director Talks. Nor could we locate any citations, references, documentation, or demonstrated science, including studies and assessments, defining the scope of said undefined problem areas. The document identifies goals pursuant to the discussions, but without sufficient background and understanding of the issues under discussion, we are unable to determine if the approaches provided for consideration will adequately move all forward toward achievement of said undefined goals.

We would also question the process involved. We see the meetings focused on "achieving efficiency and effectiveness recommendations that provide clarity to stakeholders and agency staff on protocols, policies and programs.....to provide for a more integrated system that is also more transparent and accountable." If that was your goal, we would suggest that you have failed to meet the mark. By purposefully and intentionally excluding the two stakeholder groups directly responsible for implementing water quality improvements on the ground, landowners and conservation districts, what you propose is a program developed through an exclusionary, top down process that does not even begin to meet any transparency test. Closed door meetings may have been necessary to develop the proposed program, but when the average landowner (or public official, for that matter)



cannot find any of the documents through any traditional public venue, what you have done is create a process that limits full stakeholder participation.

Similar to lack of understanding as to what exactly the issues are which generated these discussions, we are very unclear as to what exactly any future public process will entail. The document does not describe the anticipated public involvement, timelines for implementation, nor the clarity of whether this will indeed be adopted through rule making or legislative action. Further, although the document contains pages of recommendation regarding activities for agency staff as well as private landowners, there has been zero economic analysis provided for review. Because there has been no analysis provided as to the scope or scale of any specific problems, it is impossible to determine what the costs associated with implementing the proposed recommendations will be. We see this as a major shortcoming of the 3DT Implementation Approach.

Finally, and speaking locally, we are extremely disappointed in the complete disregard of the Memorandum of Understanding (MOU) completed less than a year ago among the Skagit Conservation District, the Department of Ecology, and the Washington State Conservation Commission. We feel it was disingenuous at best to have us waste our time, money, and energy working on a document and process that will be largely ignored by the agencies who were signatory to it. We are told that if we wish to continue to operate under the MOU, we will have to basically conduct an equivalency analysis to prove that the current process and the fifty-plus plans developed and implemented under said process meet a new standard. Gentlemen, you wasted our time and that of the Puget Sound Partnership as facilitators, and misused our trust, in going through the motions of negotiating a MOU. One that appears that two of the three directors involved in the 3DT talks have demonstrated very clearly that they have no intention, nor had any intention, of standing behind. Why would we, therefore, proceed with any degree of expectation that the 3DT Implementation Approach will be implemented as described?

In closing, we would offer our considerable expertise and experience in working cooperatively in developing a viable transparent process that is not only protective of our natural resources, but supports sustainable working lands and our partnerships with our landowners.

Sincerely,

Carolyn Kelly
Manager

Toni Meacham
Attorney at Law
1420 Scootenev Rd
Connell, WA 99326
509-488-3289

12-14-12

Ron Schultz, WSCC
Jaclyn Ford, WSDA
Josh Baldi, Ecology

Re: BMPs 12-06-2012

Dear Mr. Schultz, Ms. Ford, and Mr. Baldi,

This office is currently representing Joe Lemire, and I would like to take this opportunity to address the 3DT BMP Implementation Approach Draft 12-6-12(V2). This document has been reviewed and discussed at length prior to making these comments and we ask that these comments be used and reviewed prior to finalizing this document.

It is inappropriate and premature that the Department of Ecology is moving ahead with proposed regulation changes in light of the fact that the Supreme Court ruling on the Joe Lemire vs. The Pollution control Hearings Board et al, Case No. 3-87703-3 ruling has not yet been made. The Department is proposing changes to something that is totally uncertain at this time without the guidance from the Supreme Court. There is no practical reason to do these regulatory changes at this time.

We would ask that the changes and the drafting of this document be postponed until after the Supreme Court ruling as this case has an impact on the interpretation that the Department of Ecology has been using to regulate nonpoint source pollution under the "substantial potential to pollute" standard.

Sincerely,

Toni Meacham

I am a Regional Extension Specialist for Washington State University on Agriculture and Natural Resources. I am also on the leadership team for the Center for Sustaining Agriculture and Natural Resources (CSANR) and the National Chair for Sustainable Agriculture within the National Association of County Agriculture Agents (NACAA). I have been looking through the 3DT BMP Implementation Approach developed by the directors of DOE, WSDA, Region 10 EPA and Conservation Commission and the NRCS State Conservationist. My first comment is; the 3DT BMP Implementation Approach does not include input from Washington State University, The State of Washington Water Research Center or any other agency (other than the selected individuals in the BMP Implementation Approach document) that work with water protection and riparian management. The 3DT BMP Implementation Approach is obviously invalid without the input of all the stakeholders concerned with water protection. I believe this document also needs to be reviewed by the state legislation on any type of validity. The final draft of the BMP Implementation Approach should be provided to the State Senate (Senators Hatfield, Shin, Honeyford, Becker, Delvin, Haugen, Hobbs, Schoesler) and House Committees (Representatives Blake, Stanford, Chandler, Wilcox, Buys, Dunshee, Finn, Kretz, Lytton, Orcutt, Pettigrew, Van De Wege) on Agriculture, Water and Natural Resources for their comments; especially since they had not been involved in the development of the 3DT BMP Implementation Approach final draft.

Second, if we look at pages 27-30 we see statements about the potential to pollute. If we follow the reasoning of the BMP Implementation Approach and look at the factors that are stated as livestock causal agents for the potential to pollute, then 100% of all livestock agriculture has the potential to pollute. The 3DT BMP Implementation Approach has negative implications not only on livestock production agriculture, but all production agriculture in Washington State.

Potential to pollute is opinion based and we need science to determine if pollution from an area is occurring. If we look at the photos on pages 37, 38, 40, 41, 42 can we draw any conclusions? Photos 37 and 40 appear to have active pollution problems and corrective livestock/land management practices in these areas need to be implemented. Based on the appearance of the photos on pages 38, 41 and 42 there appears to be no active pollution concerns and these do not fit the opinion based substantial potential to pollute classification in this document.

Is this the path we want to take based on potential issues?

When is the focus going to occur on real data and address real issues and needs instead of addressing **potential** problems?

I have been working on grazing management for many years in riparian and upland areas and currently work with the native plant society and other environmental groups on sustaining livestock production using sustainable practices. Potential is never used in any decision, management practice or program.

Thank you,

Steve Van Vleet, PhD
Washington State University
Agriculture & Natural Resources
svanvleet@wsu.edu