



**STATE OF WASHINGTON**  
**DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

December 30, 2022

Daniel Opalski, Director  
Office of Water and Watersheds, Region 10  
US Environmental Protection Agency  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
*Sent by email only:* [Opalski.dan@epa.gov](mailto:Opalski.dan@epa.gov)

Re: Update to the Water Quality Management Plan to Control Nonpoint Sources of Pollution

Dear Director Opalski:

I am pleased to provide you with the December 2022 update to the Water Quality Management Plan to Control Nonpoint Sources of Pollution (Nonpoint Plan). This document replaces the formerly approved July 2015 version of the Nonpoint Plan. Included in this submittal is Washington State's Voluntary Clean Water Guidance for Agriculture which includes a chapter on riparian areas, along with three other chapters.

This submittal is in accordance with EPA guidance to regularly update our Nonpoint Plan and it meets our legal commitments in the Northwest Environmental Advocates vs. U.S. Department of Commerce Stipulated Settlement Agreement. In that agreement we committed to providing the Environmental Protection Agency with our updated Nonpoint Plan and the first set of Voluntary Clean Water Guidance for Agriculture chapters by December 31, 2022.

The stipulated agreement states that we will submit five chapters of the Voluntary Clean Water Guidance for Agriculture, however we experienced some critical constraints due to resource limitations and we knew we could not get the fifth chapter: Livestock Manure Storage and Handling completed by December 31, 2022. We asked NWEA and EPA if they would object to a time extension for that chapter. That time extension was granted, extending to July 2023. The court extension is enclosed with this letter.

According to the stipulated agreement, EPA will take action on this Nonpoint plan submittal within 180 days. Also, the agreement states that you will make a determination regarding Endangered Species Act section 7 consultation with the U.S. Fish Wildlife Service and/or National Marine Fisheries Service. If you do intend to conduct a section 7 consultation, then the Washington Department of Ecology (Ecology) would like to participate in the ESA consultation process that concerns the Nonpoint Plan. We request that EPA acknowledge Ecology as an "applicant" and that the EPA provide updates on the review of the Nonpoint Plan during the consultation period.

An “applicant” is defined by 50 C.F.R. § 402.02 as “any person, as defined in § 3(13) of the Act, who requires formal approval or authorization from a federal agency as a prerequisite to conducting the action.” Ecology is considered a “Person”, as defined in § 3(13) of the ESA to include any department, instrumentality, or political subdivision of a state. Therefore, as an applicant, Ecology is required to request approval from EPA to participate in the ESA consultation process. The Endangered Species Consultation Handbook (March 1998) provides that the Services do not determine who is an applicant; instead the action agency that approves the action, in this case the EPA, determines applicant status.

Contingent on Ecology’s status as an applicant, any notice regarding the status or correspondence during the ESA consultation will be informative for Ecology for tracking the status of the Nonpoint Plan approval, future work on our funding guidelines, TMDL work and collaboration with EPA. We appreciate your consideration of this request.

Now that the update process has been completed, Ecology will be shifting its focus toward implementing the actions outlined in the plan.

Please contact me at (360) 407-6405 if you have any questions regarding this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vincent McGowan".

Vincent McGowan, P.E.  
Water Quality Program Manager

Enclosures

cc: Michelle Wilcox, EPA  
Jenny Wu, EPA