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**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

FRIENDS OF TOPPENISH CREEK,

Appellant,

v.

LOWER YAKIMA VALLEY GWMA
ADVISORY COMMITTEE and
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

PCHB No. 19-060

DECLARATION OF DAVID BOWEN IN
SUPPORT OF ECOLOGY'S CROSS
MOTION FOR SUMMARY JUDGMENT

I, DAVID BOWEN, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I am now and at all times mentioned a citizen of the United States and a resident of the state of Washington.

2. I am over the age of 18 and have personal knowledge of the facts stated in this declaration and I am competent to testify thereto.

3. I am the Water Quality Program Section Manager for the Department of Ecology in the Central Regional Office. I am Ecology's representative on the Lower Yakima Valley Groundwater Management Advisory Committee (Committee). I attended most of the meetings of the Committee from March 16, 2016, until the present time. I am familiar with the work of the Committee and the Groundwater Management Program (Program) that resulted

1 from it. I drafted the findings concluding that the Program is consistent with the intent of
2 WAC 173-100.

3 4. Ecology designated the Lower Yakima Valley Groundwater Management Area
4 in 2012 in response to a request from Yakima County. Attached hereto as Exhibits 1 and 2 are
5 true and correct copies of Ecology's letter and Order Designating the Groundwater
6 Management Area. Ecology appointed Yakima County as the lead agency and, in conjunction
7 with Yakima County, appointed the Committee to oversee development of the Program.

8 5. The Committee included approximately 39 different people representing over
9 20 different interests. It was a very diverse group. The Committee met approximately 120
10 times over the course of 7 years since its inception in 2012, until the final Program was
11 submitted to Ecology in June 2019. In addition to the Committee, there were 7 individual
12 workgroups that met periodically on specific issues. Overall, I estimate that there were
13 approximately 300 meetings during which the Program was developed. The process was
14 lengthy in part because of the number of interests involved but also because there was a need
15 for scientific work to be done to support the development of the Program.

16 6. The Committee operated on a consensus basis. This meant that, while not
17 everyone had to vote in favor of a particular proposal, there could be no negative votes. In the
18 event consensus could not be reached, proposals required approval of 75 percent of a quorum
19 of the Committee to move forward, with dissenters given the opportunity to submit a minority
20 report.

21 7. The Committee accomplished a great deal during its existence. Among other
22 things, the Committee conducted education and outreach efforts, conducted deep soil sampling,
23 completed a Nitrogen Availability Assessment, established a network of 30 monitoring wells,
24 compiled best management practices, and completed a high risk well assessment survey. A
25 technical team supported the work of the Committee, which included representatives from
26 Ecology, Washington State Department of Agriculture, Washington State Department of

1 Health, Yakima County, Washington State University Irrigated Agriculture Research and
2 Extension Center and others.

3 8. The Committee reviewed approximately 300 recommended actions to include in
4 the final Program. The Committee reviewed and voted on each proposal individually to create
5 a final list of recommended actions. These recommended actions were scored by the
6 Committee members, thereby creating the Program's ranked list of recommendations for
7 implementation. I certify that attached hereto as Exhibit 3 is Appendix J from the report.
8 Appendix J identifies the recommended actions, associated costs, the suggested responsible
9 party, and the timeline.

10 9. Upon completion of the draft Program, it was reviewed by Yakima County
11 under the State Environment Policy Act, and public hearings were held to receive public
12 comment. Thereafter, findings were drafted as required by WAC 173-100-120. I certify that
13 attached hereto as Exhibit 4 is a true and correct copy of the findings. The findings conclude
14 that "[t]he 64 recommendations approved by the [Groundwater Advisory Committee] provide
15 a technically sound set of best management practices, education and outreach efforts,
16 technology based actions, and inter-agency coordination initiatives to begin addressing the
17 reduction of nitrate in groundwater within the Lower Yakima Valley Groundwater
18 Management Area."


19 10. Upon completion, Yakima County withdrew as the lead agency, citing that
20 other agencies had more appropriate expertise. Therefore, in Ecology's certification letter,
21 Ecology required the Executive Committee to identify a new lead agency for implementation
22 of the Program. Ecology also required submission of a detailed implementation schedule and
23 directed the Committee to explore options for providing immediate assistance to individuals
24 with wells where nitrate levels are high. The South Yakima Conservation District volunteered
25 to be the lead agency for implementation. It is currently working on the detailed
26 implementation plan required by Ecology and is actively pursuing funding to implement the

1 Program. At the same time, I am working on developing options for providing the immediate
2 assistance called for by Ecology's certification letter. Funding for continued sampling of the
3 ambient monitoring network is proposed in the Governor's budget.

4 11. I have reviewed the Motion for Summary Judgment filed by the Friends of
5 Toppenish Creek (FOTC). FOTC was an active participant in the development of the Program
6 and had membership on the Committee. A number of the recommended actions in the Program
7 were suggested by FOTC.

8 12. In its Motion, FOTC contends that the Program fails to address all sources of
9 nitrates. Part of the work of the Committee included development of a Nitrogen Availability
10 Assessment which is attached to FOTC's Motion. This Assessment was developed by a
11 technical team that included review by Ecology's hydrogeologist Melanie Redding. Together,
12 state and local partners estimated potential nitrogen availability in the landscape from four
13 distinct categories: concentrated animal feeding operations; irrigated agricultural activities;
14 residential, commercial, industrial, and municipal sources; and atmospheric sources; using
15 existing locally-derived data wherever possible. Information gaps were filled with data from
16 scientific literature. Data used was reviewed by experts in each field. Municipal and industrial
17 wastewater discharges, which are regulated by NPDES permits that require compliance with
18 water quality standards, were not considered a significant source. Similarly, land application of
19 biosolids and underground injection wells (UICs) must comply with water quality standards.
20 Thus, these sources were also considered unlikely to be significant contributors to nitrates in
21 groundwater.

22 DATED this 27TH day of January 2020, at UNUW GAP, Washington

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24 
25 DAVID B. BOWEN
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on January 29, 2020, I caused to be served the Declaration of David Bowen in Support of Ecology’s Cross Motion for Summary Judgment in the above-captioned matter upon the parties herein as indicated below:

JEAN MENDOZA
FRIENDS OF TOPPENISH CREEK
3142 SIGNAL PEAK ROAD
WHITE SWAN WA 98952

[] U.S. Mail
[] Hand Delivered
[] Overnight Express
[x] Email:
jeanmendoza@icloud.com

NORM CHILDRESS
YAKIMA COUNTY COMMISSIONER
LOWER YAKIMA VALLEY GWMA ADVISORY
COMMITTEE
128 N 2ND STREET
YAKIMA WA 98901

[] U.S. Mail
[] Hand Delivered
[] Overnight Express
[x] Email:
norm.childress@co.yakima.wa.us

DATED this 29th day of January 2020, at Olympia, Washington.

[Handwritten Signature]
DONNA FREDRICKS, Legal Assistant

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