

GWMA: Reasons to Reject the May 2018 Voting on Proposed GWMA Solutions – A Minority Report

May 18, 2019

Jean Mendoza for Friends of Toppenish Creek

In Brief

1. The current set of proposed solutions to groundwater pollution was ranked by voting. In violation of GWMA guidelines there was no effort to achieve consensus.
2. Many potential solutions, as written, are so vague that they are meaningless.
3. There is no provision for measurement of success or program evaluation. This is required by law.
4. The potential solutions are not prioritized based on the relative contribution from each nitrate source.
5. Many proposed solutions simply recommend a continuation of policies that have been in place for decades.
6. Public health has been ignored.
7. Outreach to the large population that speaks English less than well has been abandoned.
8. The most recent selection of recommended solutions was done by secret ballot. This is a violation of the Open Public Meetings Act.

Background & Justification

1. When the GWMA was formed in 2011-2012 we agreed to operate on consensus. This means “general agreement”. There are proposed solutions in this list that we have never discussed in an open meeting. We had no opportunity to ask what the authors meant or to weigh the pros and cons. We did not discuss these solutions in light of cost information. For some reason the GWMA leadership abandoned consensus seeking and adopted voting to select recommendations.

In the most recent May list, Yakima County added six new potential solutions that were not previously suggested to the GWAC. In February of 2018 FOTC asked to add a new potential solution. At first Yakima County ignored our suggestion. Then they rejected it.

FOTC sent questions to the GWMA leadership regarding the proposed solutions prior to the May 17 meeting. Our letter is attached. No one replied.

Here are further relevant and unanswered questions regarding the proposed solutions.

Administrative #3 says: Monitor changes occurring in agricultural operations. Evaluate whether those changes positively affect improvement in groundwater quality.

Which changes will SYCD and WSDA monitor? How will they gather the data? The GWMA experience has shown that SYCD and WSDA have difficulties engaging certain groups of farmers. How will the agencies address this problem? The estimated cost is \$150,000. Is this a total or annual appropriation?

Administrative #6 says: *Adopt and Implement an Adaptive Management Plan.* We have not discussed an Adaptive Management Plan. What, exactly, are we approving here?

Administrative #14 says: Require facility process improvements in waste treatment and food processing plants to reduce nitrogen and total discharge volume.

Please elaborate. What changes are we asking from the waste treatment and food processing plants? How much will this reduce nitrogen in the discharge?

Administrative #15 says: Study the relationship between nitrogen emissions and atmospheric deposition of reactive nitrogen. Develop a model that predicts what percentage of emissions return to the GWMA area as atmospheric deposition.

- Feasible, but inconsequential
- Effective, has deminimus impact on problem
- Cost disproportionate to benefit

Unlike most other proposed solutions, there are some very negative comments attached to Administrative Solution #15. Who made these determinations? Please justify them. What are the estimated costs? According to the WSDA Nitrogen Availability Assessment up to 1,076,637 # of nitrogen is added to the GWMA target area every year from atmospheric deposition. According to FOTC estimates, based

on WSDA and SYCD data, approximately 21,707,250 # of nitrogen is emitted to the atmosphere every year from animal agriculture in the lower valley. These are emissions before application to the fields. It is difficult to classify this as insignificant.

Administrative # 17 says: Revise WAC 246-203-130 (keeping of animals)

What specific changes to the law are proposed here?

Administrative #16 says: Design and implement pilot studies focusing on innovative farm techniques which reduce nitrogen loading to crops and monitor results.

\$25,000 is not very much for pilot studies. What specific study or studies do you have in mind?

Administrative #20 says: Estimate emissions of reactive nitrogen

- Not Feasible CAA Not Willing
- "big and expensive"

Please define "big and expensive". Did anyone ask Ecology for a cost estimate? FOTC has already done this study using the available research. We have shared our work with the GWAC. We are simply asking for further refinement and validation.

Administrative #23 says: Require new developments outside towns to address potential impacts on groundwater quality

What exactly would new developments be required to do to address potential impacts on groundwater quality? Don't private homeowners already have to conduct a "perc" test before building a septic system?

Data Collection #3 says: Collect data from Ambient Groundwater Monitoring Wells - \$20,000.

With 30 purpose built wells this equates to \$667 per year per well for sampling. How many samples per year? There is no money for data analysis and no plan for data analysis.

Data Collection #4 says: Monitor nitrate concentrations of irrigation water at head gates - \$30,000.

If there are 30 head gates this equates to \$1,000 per year per head gate.

Data Collection #7 says: Assess Nitrogen Loading. Building from the WSDA's Nitrogen Availability Assessment, develop a Nitrogen Loading Assessment for all agricultural, residential and commercial properties, using newly collected data.

In 2015 the estimated cost for a Nitrogen Loading Assessment was \$57,000. Now the estimated cost is \$1,250,000. Which estimate is correct? What will the agencies do for a million plus dollars?

Water #2 says: Create Irrigation Management Plans (similar to Nutrient Management Plans) for farms over a minimum size and provide financial assistance for implemented plans.

This solution requests \$200,000 annually for WCC and \$200,000 annually for SYCD with some monies for financial assistance and some for implemented plans. How much money is designated for the agencies and how much for financial assistance? What are proposed criteria for distribution of incentives?

Agriculture #5 says: Establish a multi-year deep soil sampling program. \$250 K / year for 5 years to finance extensive deep soil sampling program;

How can we ensure that this deep soil sampling program will be done according to plans? How many fields per year? What depths? How will contracting be done? What is the projected cost per field? Will information be shared with the public? How will the SYCD ensure better representation of all crops, irrigation types and soil types?

2. Many potential solutions, as written, are so vague that they are meaningless. Some solutions simply write a blank check for a new, poorly defined, bureaucracy that may or may not act on our behalf.

For Example: Administrative #4 says: Establish a Lead Agency responsible for implementation and oversight of the LYV GWMA Groundwater Management Plan and acquisition of stable funding to support their activities.

The GWAC has not discussed what a lead agency would look like. We have not agreed on the role and function of a lead agency or the rules that would govern such an entity. No responsible person would agree to such a proposal without a clear understanding of the long term implications and likely outcomes.

WAC 173-100-100 requires:

(6) An implementation section comprised of:

(a) A detailed work plan for implementing each aspect of the groundwater management strategies as presented in the recommendations section. For each recommended management action, the parties responsible for initiating the action and a schedule for implementation shall be identified. Where possible, the implementation plan should include specifically worded statements such as model ordinances, recommended governmental policy statements, interagency agreements, proposed legislative changes, and proposed amendments to local comprehensive plans, coordinated water system plans, basin management programs, and others as appropriate;

3. The potential solutions, as written, have no provision for measurement of success or program evaluation. There is minimal monitoring. There is no clear plan for gathering and analyzing water quality data.

For Example: Data Collection #1 says: Establish time-based performance objectives against which well-monitoring data can be compared.

The GWMA is supposed to do this. Any plan that we propose is invalid without a clear description of how we will measure the successful implementation of our recommendations.

Jim Dyjak from the Concerned Citizens of the Yakima Reservation has repeatedly asked for solutions that provide comprehensive and reliable monitoring. The GWMA leadership always agrees with his statements in public. But there is no follow-through. There is no monitoring and evaluation plan in the list of proposed solutions.

Here are the only proposed solutions that even remotely relate to monitoring and evaluation:

Administrative #3: Monitor changes occurring in agricultural operations. Evaluate whether those changes positively affect improvement in groundwater quality.

Administrative #12: Analyze the trends of nitrate data contained within reports required by NPDES and SWD permits – currently being done.

Administrative #21: Establish a monitoring system for compliance with NRCS Standard 317 on new composting facilities at Washington dairies (phased in for existing facilities).

Data Collection #1: Establish time-based performance objectives against which well-monitoring data can be compared.

Data Collection #3: Collect data from Ambient Groundwater Monitoring Wells.

Data Collection #4: Monitor nitrate concentrations of irrigation water at head gates.

Data Collection #5: Contract with USGS to collect data from water well system per 2017

RCW 90.44.410 requires:

(1) The groundwater area or sub-area management programs shall include:

(b) A management program based on long-term monitoring and resource management

(h) Identification of water quality objectives for the aquifer system which recognize existing and future uses of the aquifer and that are in accordance with department of ecology and department of social and health services drinking and surface water quality standards;

(m) A process for the periodic review of the groundwater management program and monitoring of the implementation of the program.

4. The potential solutions, as written, do not identify the major causes of groundwater pollution. We have gathered data. We have done a poor job of analyzing the data. We have not agreed on the meaning of that data. The agencies responsible for incorporating our input into the research simply refuse to do so . . . and these are the agencies who want more funding. The proposed solutions are not based on our research.

For Example: Administrative #14 says: Require facility process improvements in waste treatment and food processing plants to reduce nitrogen and total discharge volume.

The Nitrogen Availability Assessment (NAA) that was delivered to the GWAC in April 2017 was supposed to address permitted nitrogen loading from land application sites. The NAA did not do this. The NAA has not been updated to address these concerns. We have no estimate of how much nitrogen is available from food processing plants, or other industrial sources. We do not know if this is a significant source.

WAC 173-100-100 requires:

(2) A problem definition section that discusses land and water use activities potentially affecting the groundwater quality or quantity of the area

The discussion should define the extent of the groundwater problems caused or potentially caused by each activity, including effects which may extend across groundwater management area boundaries, supported by as much documentation as possible.

Seven or 10.6% of the 66 proposed solutions address pollution from septic systems, but the NAA estimates that only 2% to 5% of the problem is due to septics.

Two or 3% of the proposed solutions address pollution from atmospheric deposition but the NAA estimates that 4.7% to 16.6% of the problem is due to atmospheric deposition.

Nineteen or 28.8% of the proposed solutions address pollution from irrigated agriculture but the NAA estimates that 62% to 76% of the problem is due to irrigated agriculture.

5. Many proposed solutions, as written, simply authorize a continuation of policies that have been in place for decades. These proposed solutions are no different from the recommendations of task forces that met in the 1990's.

Over 30 of the 66 proposed solutions simply tell agencies to do what they are already doing, or supposed to be doing. For example: Education # 1, 2, 5, 6, 7, 8, 9; Administrative # 2, 3, 7, 9, 10, 11, 12, 13, 16, 17, 18, 21, 22, 25; Data Collection & Monitoring 2, 3, 7; Water 2, 3; Research & Development # 1, 2, 3, 4, 5, 6, 7, 8, 10, 11; Agriculture # 1, 2, 3, 6.

As Mr. Dyjak noted on May 17, 2018: Educational Solution # 2, Publish and distribute homeowner guide on how to maintain septic systems, is already being done by the Yakima Health District, the WA Dept. of Health and Yakima County.

6. Public health has been ignored. Early in the GWMA program the Friends of Toppenish Creek and community representatives asked for research to describe the impact of nitrate pollution in the Lower Yakima Valley on public health. This request was rejected by Yakima County. Commissioner Rand Elliott stated that we would reduce nitrates in the drinking water and this would automatically improve public health. At that time the GWMA promised

improvement in nitrate levels within five years. Later the promise was revised to mean improvement in nitrate levels within five years of implementation of our plan. Now officials say that it may take decades to see a change. Our most recent round of well testing found unsafe nitrate levels in 20% of domestic wells. To date there is no change.

Nevertheless, there are only five proposed solutions that address public health and three of these proposed solutions are limited to regulation of composting operations. There is no proposed research to study the cost or health impact of elevated nitrates on the people who live in the GWMA target area. There are no proposed solutions to help people with contaminated wells, although we said we would do this.

The 2012 GWMA Work Plan says that we will:

Assist residents whose supplies have been contaminated to access safe and reliable water supplies, using culturally-appropriate communications.

7. In spite of the fact that 70% to 80% of the population in the Lower Yakima Valley is Latino and a significant percentage speaks English less than well, these proposed solutions show that the GWMA leadership has given up any pretense of engaging that group. There are no proposed solutions that acknowledge the need to reach people in culturally appropriate ways.

8. The selection of recommended solutions to the problem of groundwater pollution is currently being done by secret ballot.

On May 4, 2018 Yakima County sent a document entitled *Draft Recommendations Voting Sheet* to members of the GWAC. There was an opportunity to score 66 proposed solutions on a scale of -3 to +3. Seventeen people responded.

At the May 17, 2018 GWMA meeting FOTC asked the GWMA leadership for the names of the 17 GWAC members who voted. The leadership declined to provide this information. The rationale was that this would avoid angry debate. FOTC stated that the GWMA proceedings fall under the WA State Open Public Meetings Act, RCW 42.30, which prohibits voting by secret ballot. The leadership noted that the information is available by public records request. This is not acting in good faith. It certainly makes more work for members who want accurate information and it

penalizes taxpayers who must pay for the work to respond to a public records request.

Surprisingly, the GWMA leadership asked the GWAC if the group wanted to go ahead and use the results of the voting. The majority of the members present said “yes” and the group continued as though the voting was legal. FOTC believes otherwise. There is nothing in the OPMA that authorizes a committee to take a vote to ignore the requirements of that rule.

WAC 42.30.120 (1) states:

Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of five hundred dollars for the first violation.

Respectfully submitted

Jean Mendoza

Friends of Toppenish Creek

Attachment 1.

May 7, 2018

Good Morning Jim,

I am studying the *GWAC Draft Recommendations – 5/03/2018*. I have some questions regarding proposed recommendation #7 under Agriculture. It says, “Make capital improvements”, “Install liners in liquid waste storage lagoons. Install impervious surfaces beneath silage storage.” The estimated cost is \$10 million.

Can you send us the basis for the cost estimates?

Here is what I know at this time:

1. I did not find an estimate of the acreage used for silage in the GWMA target area
2. The Nitrogen Availability Assessment (NAA) estimates 210 acres of lagoons in the target area and this equates to 9,147,600 square feet of lagoons. If the \$10 million was estimated to line all the LYV lagoons this would amount to about \$1 per square foot.
3. If the \$10 million was estimated on a per cow basis this would amount to about \$100 per milk cow.
4. WSU has published a readable Power Point that covers a range of costs for lining manure lagoons at <https://s3.wp.wsu.edu/uploads/sites/346/2017/06/Lagoon-Liner-case-study.pdf>
 - WSU estimates cost between \$15 per cow and \$333 per cow
 - WSU estimates cost between \$0.40 per square ft and \$2.55 per square ft

It is important to know exactly what we are potentially recommending. Thanks for expanding and explaining.

Jean Mendoza

Note: Subsequent to this Minority Report the voting on the recommended alternative solutions was shared with the entire GWAC. This Minority Report has not been posted on the GWMA web site as required on page 5 of the GWMA Operating Guidelines - Available at http://www.yakimacounty.us/DocumentCenter/View/10038/2012_0920_GWAC_OperatingGuidelines_Final?bidId= JRM, Dec. 18, 2018