

September 29, 2014

WATER QUALITY PROGRAM
WASHINGTON STATE DEPARTMENT OF ECOLOGY

Larry and Cheryl Morgan

OCT -2 2014

102 Hayward Road

Pullman, WA. 99163-8946

Re: Public Comment for the Municipal Stormwater Permits-Revised definitions explained.

MS4 Permittee: City of Pullman, WA. 99163

Attn: Washington State Department of Ecology

I have lived my entire life of 71 years in the Pullman area. For 66 of those years I have lived adjacent to the South Fork of the Palouse River. For the past 44 years my husband and I have lived just downstream from where I grew up.

Our home and property is located within the downstream reaches of the Hatley Creek Drainage Basin and is under [Whitman County jurisdiction]. The upper reaches of the basin are regulated under [urban jurisdiction] and have been developing rapidly since 1995.

The basin encompasses approximately 760 acres. There are two natural [unnavigable] streams located within the basin, Wawawai Creek and Hatley Creek. Wawawai Creek is located in the upper reaches of the basin and Hatley Creek is located in the lower reaches of the basin. Hatley Creek is a direct tributary to the South Fork of the Palouse River.

The entire basin drains to a 6.8 acre outlet basin via Hatley Creek, this is where our home and property is located. Hatley Creek flows adjacent to our front yard.

As early as [1995] we noticed increased flows of water and vast amounts of sediment (clay) flows to Hatley Creek. We became aware of the fact that urban stormwater sewer flows located in the upper reaches of the basin were the direct cause of the increased flows to Hatley Creek, thus we became involved in the public comment process.

We have continued to enter numerous written and oral comments to both the City and DOE apposing their authorization of conveyance of [untreated] urban stormwater sewer flows from the upper reaches of the Basin to Hatley Creek and onto our property without easements.

The City's written response in part states: "Stormwater discharge to a [natural] drainage is allowed by City code and state law. Easements are not required from property that conveys a [natural] drainage."

The City's written response in part concerning another natural drainage basin states: "The developer [shall obtain] stormwater drainage easements over the properties between the SFPR and the subject property and to the SFPR where [runoff impacts become inconsequential]".

Because the City has stated to us in the strongest of terms “that regulation of water quality enforcement is a DOE responsibility and not theirs” and because DOE has continued to dance around the issue of who is responsible for the enforcement of water quality of state waters as well, on June 8, 2006 I (Cheryl) mailed a few of our comment letters that we had entered within the public record process dating as far back as Jan. 2000 to Governor Gregoire.

Governor Gregoire asked David C. Peeler (DOE Water Quality Program Manager) to respond to us. We received a letter from Mr. Peeler dated July 19, 2006. (see attached)

Response #2 “Under the federal Phase II Municipal Stormwater permit requirements local governments will for the first time be required to properly manage urban stormwater runoff to control pollutants from new development and redevelopment **[within their jurisdiction]**”.

Response #3, Mr. Peeler does acknowledge the fact that “Hatley Creek is waters of the state and must be protected”.

The above information is intended to provide you with a brief history of who we are and where we live.

The following comments are directed to the Municipal Stormwater Permits:

The state defines stormwater itself as a “water of the state”. Because municipal stormwater is no longer in its “natural condition”, the written language within this document should refer to municipal stormwater as a stormwater **[sewer]**.

In reference to page (4) “**Discharge Point** means the location where a discharge leaves the permittee’s MS4 or a private or public stormwater conveyance”.

The City of Pullman’s MS4 [untreated] stormwater sewer is conveyed out of their jurisdiction into Hatley Creek. Hatley Creek is located in County jurisdiction. The County is not a permitted MS4.

On Oct. 1, 2013 there were significant clay flows in Hatley Creek and the SFPR. The clay flows were coming from the municipal stormwater sewer conveyance systems located in the upper reaches of the Basin. We sent photos via email to the City.

On Nov.8, 2013 there were more significant clay flows to Hatley Creek and to the SFPR. We sent photos to DOE via email to inform them that the City was non-compliant of their MS4 Municipal Stormwater Permit. We also sent them photos of the Oct. 1st flows.

On Nov. 17th and Dec. 2, 2013 there were more clay flows. We sent photos via email to DOE. It took up to one week before Hatley Creek cleared up from each event.

Clay flows from the upper reaches of the Basin have been ongoing since 1995.

It appears that the Washington State Municipal Stormwater Permits **are not enforceable by DOE**, thus the MS4 permits join the ranks of the non-enforceable DOE Construction Stormwater NPDES and State Waste Discharge General Permits.

Since 1995, DOE has continued to violate its mandatory duty to protect water quality impairments of Hatley Creek and the SFPR as mandated under the CWA and by state water quality standards from conveyance of municipal stormwater sewer flows.

The conveyance of municipal stormwater sewer flows to “state waters” has the known and documented effect of transforming natural waterways into a [public] stormwater sewer system.

DOE has authorized Hatley Creek to be the receiving water for conveyance of municipal stormwater sewer flows from the upper reaches of the basin.

Because surface waters in the upper reaches of the basin have been artificially collected and discharged to Hatley Creek in a manner different from the historical [natural] flows, Hatley Creek has been transformed into a [public utility] stormwater sewer conveyance system.

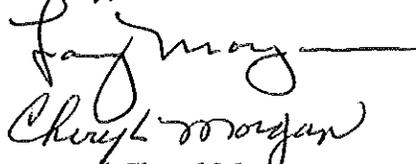
Riparian and littoral proprietors respectfully own the beds of [unnavigable streams].

Washington’s constitution provides that “[n]o private property [shall be taken] or damaged for public or private use without just compensation having been first made.”

DOE is negligent to the fact that they have not secured easement/s for the use of our property for a public utility for conveyance of municipal stormwater sewer flows, thus they are in violation of the Fourth Amendment to The United States Constitution.

We reserve all rights under state and federal law, and by submitting these comments and objections do not intend or imply to waive our rights nor should any such waiver be inferred.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Morgan".

Larry and Cheryl Morgan

Attachments: Photos of clay flows to Hatley Creek and to the SFPR

cc: EPA

The Lands Council

Gonzaga Environmental Law Clinic

Spokane River Keepers

Pugetsoundkeeper Alliance





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

July 19, 2006

Cheryl Morgan
102 Hayward Road
Pullman, WA 99163

Dear Ms. Morgan:

Thank you for your June 8, 2006, letter to Governor Christine Gregoire. She asked that I respond directly to you.

Based on your letter and your earlier comment letters on the proposed Eastern Washington Municipal Stormwater permit, it is clear that you have been working on stormwater runoff issues within the Hatley Creek Basin for many years.

Below are responses to your concerns in the order you have addressed them.

1. **The cumulative impacts of off-site urban stormwater conveyance are being ignored by the Department of Ecology.** Historically, this is probably true. Until relatively recently, Ecology had almost no role in overseeing urban stormwater runoff.

With the adoption by the EPA of the federal Phase II Municipal Stormwater Permit requirements, Ecology now has a direct role in regulating urban stormwater runoff. In anticipation of these permitting requirements, Ecology developed and published in September 2004 the Stormwater Management Manual for Eastern Washington. While not perfect, the stormwater manual does establish stormwater management practices which, if employed, will address most of the cumulative impacts of new development and redevelopment.

2. **Although the local, state, and federal government have a responsibility for protecting our natural resources, it doesn't appear that any single level of government is really "in charge" and therefore ultimately responsible.** Historically, the sole responsibility for managing urban stormwater runoff was left to local governments, and the state and federal governments had no role. Local governments were not required to manage or regulate urban stormwater runoff, and those that did, focused primarily on flood control to protect public and private property. Prior to the federal Phase II Municipal Stormwater Permit requirements, there wasn't a federal or state requirement that local governments regulate urban stormwater runoff.

Under the federal Phase II Municipal Stormwater permit requirements local governments will for the first time be required to properly manage urban stormwater runoff to control pollutants from new development and redevelopment within their jurisdiction. While the Phase II Municipal



Cheryl Morgan

July 19, 2006

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Stormwater Permit program focuses primarily on new development and redevelopment, there are provisions which over time will also start to address the impacts from existing development.

- 3. Hatley Creek is being designated by the City of Pullman and Ecology as an open channeled urban stormwater sewer system.** Ecology is not and has not designated Hatley Creek as an open channeled stormwater sewer system. Ecology considers Hatley Creek to be a creek and a water of the state and must be protected as such. This does not mean Hatley Creek should not receive urban stormwater runoff. However, it does mean that urban stormwater runoff that is discharged to the creek must not cause or contribute to a violation of state water quality standards.

As you know, Ecology has proposed extending the federal Phase II Municipal Stormwater Permitting requirements to include Washington State University (WSU) and the City of Pullman. This means that both WSU and the City of Pullman will be required to develop and implement stormwater management programs to reduce the discharge of pollutants to the maximum extent practicable and protect water quality. In the short-term, these stormwater management programs are not likely to improve conditions in Hatley Creek. However, I am hopeful that Hatley Creek will not be further degraded due to continued new development within the Hatley Creek basin.

If you have additional questions, please contact Dave Duncan at (509) 329-3554.

Sincerely,



David C. Peeler
Water Quality Program Manager

cc: Dave Duncan

Larry Morgan

From: "Buchert, Rob" <rob.buchert@pullman-wa.gov>
To: "Larry Morgan" <lmorgan103@frontier.com>
Sent: Tuesday, October 01, 2013 2:19 PM
Subject: RE: Creek Picuters
Thanks!

From: Larry Morgan [mailto:lmorgan103@frontier.com]
Sent: Tuesday, October 01, 2013 1:51 PM
To: Buchert, Rob
Subject: Creek Picuters

Rob, the first two pictures were taken in our yard before the culvert at the road, the others are of the creek feeding into the river. These pictures were taken at noon today.

Cheryl



Hatley Creek flowing through Morgan's Property



Hatley Creek flowing into the South Fork of the Yellowstone River

Larry Morgan

From: "Larry Morgan" <lmorgan102@frontier.com>
To: "Jeremy Ryf" <jryf461@ecy.wa.gov>; "David Duncan" <ddun461@ecy.wa.gov>
Sent: Friday, November 08, 2013 12:00 PM
Subject: Significant stormwater clay flows in Hatley Creek with direct out-fall into the South Fork of the Palouse River, caused by Urban Development in the upper reaches of The Hatley Creek Basin

Hello David and Jeremy: BMP's are definitely non-compliant to the Stormwater Permit for up-stream developments located in the upper reaches of the Hatley Creek Basin. On Oct. 1, 2013 there were also significant stormwater clay flows in Hatley Creek with a direct out-fall to the SFPR. (I have photos of those flows also) I contacted Rob Buchert concerning the flows on Oct. 1st. [Hatley Creek did not clear up for a week.] It was determined that the Oct. 1st stormwater clay flows were coming from the development area at the end of SW Center St. just beyond the Whitman Senior Living Community.

It is now Nov. 8, 2013 and the stormwater clay flows are just as significant. I took these photos this AM.



Hatley Creek
flowing through the Morgan Property.



Direct out-

fall of stormwater clay flows from Hatley Creek into the SFPR

Larry Morgan

From: "Larry Morgan" <lmorgan102@frontier.com>
To: "Jeremy Ryf" <jryf461@ecy.wa.gov>; "David Duncan" <ddun461@ecy.wa.gov>
Sent: Sunday, November 17, 2013 12:12 PM
Subject: Storm Water Clay flows from Urban Developments in the upper reaches of the Hatley Creek Basin with direct out-fall into the South Fork of the Palouse River

Hello David and Jeremy: Once again there were significant clay flows in Hatley Creek in the AM of Nov. 17, 2013 just as there were on Oct. 1, 2013 and on Nov. 8, 2013. I am once again sending photos I took this AM of the same areas these clay flows were coming from on Oct. 1st and Nov. 8th of 2013. I sent emails and photos of the flows to Rob Buchert (City of Pullman) on Oct. 1st and sent photos to the both of you on Nov. 8th. Hatley Creek and the SFPR took up to [one week] to clear up from these stormwater clay flows. The attached photos were taken in the AM of Nov. 17, 2013 from the development areas located at the end of SW Center St. just beyond the Whitman Senior Living Community. Please feel free to call us at 509-332-4741, Larry & Cheryl Morgan.



This site is the development area just beyond the Whitman Senior Living Community. The pooled clay water will end up flowing to Hatley Creek.



Direct

out-fall to the SFPR (11-17-2013) via Hatley Creek from urban stormwater clay flows from development areas located in the upper reaches of the Hatley Creek Basin.

Larry Morgan

From: "Larry Morgan" <lmorgan102@frontier.com>
 To: "Jeremy Ryf" <jryf461@ecy.wa.gov>; "David Duncan" <ddun461@ecy.wa.gov>
 Sent: Monday, December 02, 2013 3:19 PM
 Subject: Stormwater Clay flows in Hatley Creek with direct out-fall to the South Fork of the Palouse River from Urban developments located in the upper reaches of the Hatley Creek Basin

Hello David and Jeremy: These photos were taken this AM. Significant urban stormwater clay flows continue to impair "the waters of the state" located in Hatley Creek with direct out-fall to the South Fork of the Palouse River from Urban developments located in the upper reaches of the Hatley Creek Basin. These flows are non-compliant of the Eastern Washington Phase II Municipal Stormwater Permit and of the Federal Water Pollution Control Act ("Clean Water Act"). These flows are a re-repeat of the flows of Oct. 1, 2013, Nov. 8, 2013 and on Nov. 17, 2013 of which I have sent photos to you. It doesn't appear that Pullman has any enforcement control of their Stormwater Permit for these developers. Hopefully DOE will!!



Stormwater

grated man-hole located just before entering the underground piping system located underneath the Duck Ponds located in Sunnyside Park. These flows are coming from development sites located in the vicinity of the Whitman Senior Community located at 1285 SW Center St., Pullman, Wa.



Creek flowing through the Morgan Property from the upper reaches of the Hatley Creek Basin as noted above.



Direct out-fall of urban stormwater clay flows from Hatley Creek into the SFPR from development in the upper reaches of the Hatley Creek Basin.

