



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 7, 2022

Brad Rader, President
Ag Water Board
204 Hawley Street
Lynden, WA 98624

Re: Ongoing discussions about solutions for agriculture in Whatcom County

Dear Mr. Rader and Members of the Ag Water Board:

It was a pleasure to meet with you in late May at your offices in Lynden. Thank you for an informative discussion and for your steadfast commitment to the future of Whatcom County's agricultural economy. The need to protect agriculture and rural lands is a goal shared by the Ag Water Board and the Department of Ecology (Ecology). As your letter of June 17, 2022 points out, the challenges facing us to manage water in a changing climate are immense, and we remain committed to working with you to pursue viable options for addressing water supplies.

Ecology's work on Nooksack Basin water solutions dates back to the era of the original 1985 instream flow rule, and has continued for several decades. We are grateful for the Nooksack Basin's well-established community of local partners who have worked together on water issues for many years, providing a good foundation for the work ahead of us. Ecology is actively engaged with local partners like yourselves to address flooding and drainage challenges, and we will continue to invest in the Basin to address many competing interests: critical habitat needs for fish, risks of legal action from treaty tribes and the federal government, and needs to supply water for growing cities and the Basin's vitally important farmlands.

In our recent discussions and in your letter, the Ag Water Board has requested Ecology suspend further work on an adjudication of water rights and commit resources instead to a regional dialogue to come up with ideas for water supply solutions. Ecology is supportive of the Whatcom County Executive's Solutions Table process, and we have no plans to step away from those discussions. I will meet again in mid-July with County Executive Siddhu to exchange current information and ideas for maintaining momentum. The Solutions Table is not, however, a substitute for the parallel process to adjudicate water rights. Experience has taught us that

sustainable water solutions require partnership, investment, and accountability. Adjudication is a companion piece to the community's proactive efforts to address water supply needs, providing the participation of necessary parties and the accountability that will be required for effective solutions that are clearly authorized by law.

You have raised valid concerns about the potential for prolonged legal disputes around water rights and the costs farmers may incur for lawyers and consultants in a comprehensive adjudication of water rights. However, Ecology is preparing to efficiently process categories of water rights through deliberate pathways, and to provide user-friendly court filing systems to reduce time and expense. Although adjudication is by definition an adversarial court process, the litigation does not have to be acrimonious. As you point out, RCW 90.03.645 encourages early settlement of adjudication, and some adjudication settlements have resulted in significant federal funding for water resource infrastructure, economic development, and water markets. As you are aware, both the Lummi Nation and Nooksack Tribe requested appointment of a federal water rights settlement team to bring attention and potential investment to Nooksack Basin solutions, and this request is supported by Director Laura Watson.

I look forward to further discussions with you and would welcome an opportunity meet with the Ag Water Board again in your offices or on your farms to see firsthand some of the challenges you face in your complex agricultural operations.

Respectfully,



Mary Verner
Water Resources Program Manager

ecc: Governor Jay Inslee
William Jones, Jr., Chair, Lummi Indian Business Council
Rosemary LaClair, Chair, Nooksack Tribal Council
Director Laura Watson, Ecology
Director Derek Sandison, Agriculture
Senator Simon Sefzik
Representative Sharon Shewmake
Representative Alicia Rule
Mayor Seth Fleetwood, Bellingham
Satpal Sidhu, Whatcom County Executive
President Atul Deshmane, Whatcom PUD Commission
Director Tom Buroker, Northwest Region, Ecology
Section Manager Kasey Cykler, Water Resources, Northwest Region, Ecology

