

To: Robin McPherson
Adjudications Assessment Manager
Department of Ecology Water Resources Program
Washington State Department of Ecology
P.O. BOX 47600
Transmitted Via Email to: rmcp461@ecy.wa.gov

July 7, 2020

RE: Ecology Review of General Stream Adjudication

Dear Ms. McPherson:

Thank you for taking the time to consider our comment on the Department of Ecology's (Ecology) statewide review of potential watersheds to conduct a general stream adjudication. We are submitting this comment in support of a general stream adjudication for the Nooksack Watershed Resource Inventory Area 1 (WRIA 1).

RE Sources is a non-profit organization located in northwest Washington and founded in 1982. We work to protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our priority programs include Protecting the Salish Sea, Freshwater Restoration, Climate Action, and Fighting Pollution—all critical issues affecting our region. Our North Sound Baykeeper is also a member of the Waterkeeper Alliance, with over 300 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. RE Sources has thousands of supporters in Whatcom, Skagit, and San Juan counties, and we submit these comments on their behalf.

RE Sources has been involved with the Environmental Caucus in various capacities from member to Representative since the inception of the WRIA 1 Planning Unit following the passage of the Watershed Planning Act (Chapter 90.82 RCW). Our staff currently serve as Environmental Caucus Representative and have done so consecutively since 2014. Through our involvement we have seen the cooperative nature of the Planning Unit stakeholders and Initiating Governments to create a Watershed Management Plan (WMP) in 2005. We had high hopes that implementation of the 2005 WMP would result in improved health of the watershed, including streamflows. Unfortunately, many projects in the WMP were not fully implemented, and there's been little to no observable improvements on streamflows and watershed health.

For the last few years, the Planning Unit and Watershed Management Board have been mired in process without being able to produce an agreed-upon vision for the watershed with substantive plans to implement including a plan to address the Streamflow

Restoration Act. Given this continuing inability to comprehensively address local problems (as opposed to the current project-by-project piecemeal approach), we see no alternative to basin-wide adjudication. The Whatcom County Executive wrote:

“Various water interests in Whatcom County have been engaged in water planning activities for over 20 years to resolve long-standing water management issues including participation in the watershed planning process under RCW 90.82. While a lot of good work has been accomplished during this time, there is a lot more to do to resolve these issues, including implementing the Watershed Management Plan approved by County Council in 2005. There have been several efforts by various stakeholders to engage in settlement discussions, yet, significant agreements on water management issues have not come to fruition.”¹

We agree with the County Executive and hope the pressure, brought on by adjudication yields substantial, long-lasting solutions to our collective water-supply problems.

Adjudication is a complicated and extensive legal process; however, we see no other way that will compel key governments and parties, namely Lummi Nation, Nooksack Indian Tribe, farmers, Whatcom County Public Utility District and other public and domestic water providers, and Department of Ecology, to the table. As Ecology notes, “Adjudications can encourage settlement and partnerships because all water users are joined together in a uniform process.”² To be clear, we hope that adjudication incentivizes a negotiated settlement to produce outcomes in a shorter time span that are agreeable to all or the majority of parties.

The end result of adjudication or settlement will provide certainty regarding water rights, including quantification and protection of Lummi Nation and Nooksack Indian Tribe’s treaty protected water rights. RE Sources believes this is critical in order to move forward on many watershed solutions such as water banks and natural resource marketplace concepts that often require confirmed water rights. The Nooksack watershed has sufficient water to meet the needs of people, farms, and fish; however, the supply and streamflow issues are seasonal and there are solutions available to address those issues if all parties are able to come together.

Time is limited given the impacts of climate change and population growth. We hope all parties in WRIA 1 with water rights at stake can come together to achieve water supply and streamflow agreements that benefit agriculture, municipal and domestic uses, and fish and wildlife.

Sincerely,

¹ S. Sidhu, Whatcom County Executive, “Memo to Members of Ag Water Board,” April 29, 2020.

² Ecology, *Focus on: Future Adjudications*, Pub. 19-11-092, Nov. 2019.

Shannon Wright
Executive Director

CC:

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