

Whatcom County Executive
DRAFT CONCEPT PAPER FOR DISCUSSION
FINDING A COMMUNITY SOLUTION to Water Issues in WRIA 1
October 23, 2020

Community leaders in Whatcom County have worked cooperatively for over two decades to resolve long-standing issues related to water management. These efforts have included participation by Lummi Nation, Nooksack Indian Tribe, Washington State Departments of Ecology and Fish & Wildlife, Whatcom County, the City of Bellingham, Public Utility District No. 1 of Whatcom County (PUD No.1), the small cities, as well as members of various local organizations and the public. These entities have worked through various processes and forums to address water management issues such as habitat for salmon and other species, adequate supplies of water for our residents and businesses, including those necessary to sustain agriculture, recovery of salmon population, water quality and restoring and maintaining shellfish harvesting.

During this time, there have been efforts by various parties to engage in water settlement discussions to resolve some or all of these issues including the 2006 Instream Flow Selection and Adoption Action Plan and the 2010 Lower Nooksack Strategy objective to develop and implement a process for negotiating settlement of water rights. Most recently, in 2015, the Lummi Nation proposed a comprehensive water settlement process that would lead to resolution of water supply, water quality, instream flows, and salmon habitat restoration needs, and include measures of accountability (known as the “Five Point Plan”). The Lummi Nation has expressed their belief that through continued partnerships and collaborative efforts these issues can be resolved in a manner that will benefit all of the people of Whatcom County. More specifically, the Five Point Plan called for:

1. **Increasing instream flows:** Increase and protect the flow of water in stream channels for the health of fish and other organisms.
2. **Achieving water quality standards:** Ensure that existing water quality standards are achieved.
3. **Restoring degraded habitat:** Restore and protect degraded salmon and shellfish habitat.
4. **Developing clarity on how our water supply is allocated:** Identify when, where, and how much water is needed throughout the watersheds and provide this supply in a manner that has the least impact on fish habitat.
5. **Holding all water users accountable:** Provide an economic incentive in the form of monetary penalties for violations that negatively impact our shared fish habitat and water quality. All county water users need to be held accountable with full transparency going forward.

A lot of good work has been accomplished over the past number of years, but there is still a lot more work to do to resolve conflicting interests over water. While the pace of resolution has

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been slow, the conflicts are increasingly creating anxiety among many segments of the community. The Executive believes these conflicts will only get worse with a growing population and the impact of a fast changing climate, both locally and globally, unless these discussions are prioritized. To address these mounting concerns, the Executive is interested in energizing and prioritizing comprehensive water settlement negotiations and facilitating the resolution of these long-standing issues to ensure our collective economic and environmental security for now and for our future generations, including preservation of Tribal rights. He is proposing a water settlement approach that is consistent with the WRIA 1 Watershed Management Board 2018-2023 Implementation Strategy, includes all of the elements in the Lummi Nation's Five Point Plan and incorporates floodplain and land use management. The approach proposes having the WRIA 1 Watershed Management Board (WRIA 1 Board) play the lead role in the comprehensive settlement process. The WRIA 1 Board operates under a 2016 Interlocal Agreement and includes the salmon co-manager caucus comprised of the Lummi Nation, Nooksack Indian Tribe and Washington Department of Fish & Wildlife and the local government caucus comprised of Whatcom County, all seven cities in Whatcom County, and PUD No.1. In addition, the Ag Water Board, representing all of the Watershed Improvement Districts, is an ex-officio member of the local government caucus group. With the exception of the Ag Water Board, the listed entities have been working cooperatively together under separate Interlocal agreements for watershed planning and salmon recovery previous to consolidating under a single agreement in 2016. The specific elements of the Executive's proposal are provided below.

Steps for a Proposed Comprehensive Water Resolution Process

1. Strategy for a Settlement Vision and Goals

The WRIA 1 Board does not currently have a specific strategy in their 2018-2023 Implementation Strategy for a comprehensive settlement of water-related issues. It does, however, state that implementing the strategies will support resolution of instream flows, habitat, and water quality issues in an integrated manner that will lead to and could support negotiated water right agreements among the affected parties and Lummi Nation and Nooksack Indian Tribes. The Executive proposes to work through the WRIA 1 Board to establish a settlement strategy to incorporate into the 2018-2023 Implementation Strategy. This strategy will consist of developing a comprehensive water settlement process and goals that ties together the elements of the Lummi Nation's 2015 Five Point Plan, the related strategies in the WRIA 1 Board's 2018-2023 Implementation Strategy (described below),

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and incorporates floodplain and land use management. This strategy will include robust accountability provisions that would ensure that the actions included in any settlement will be implemented. The strategy would also include determining the amount of staff needed by each WRIA 1 Board member to implement the process, which could include establishing a new dedicated position. While this description provides a general framework for approaching a comprehensive settlement strategy in the 2018-2023 Implementation Strategy, further details on the settlement strategy will need to be developed in conjunction with the entities of the WRIA 1 Board.

2. Legally-Binding Mechanism

An outcome of the strategy developed in Step 1 for a comprehensive water settlement process will include identifying a legally-binding mechanism(s) to ensure that the commitments made by the parties are implemented. These mechanisms could take a number of different forms such as binding agreements between the relevant parties, negotiated rule making or other statutory mechanisms, and/or some other legal process.



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2. Components of a Comprehensive Water Resolution Process

The elements included in the Lummi Nation’s 2015 concept were previously outlined and include achieving water quality, identifying and addressing water supply, restoring habitat for fish and shellfish, increasing stream flows, and holding water users accountable. These elements, as noted previously, are also consistent with the WRIA 1 Watershed Management Board 2018-2023 Implementation Strategy, which has nine sub-strategies:

- Community outreach (Strategy 1);
- Groundwater model development (Strategy 2);
- Regional (WRIA 1) Water Supply Planning (Strategy 3)
- Drainage-Based Management Planning (Strategy 4)
- Salmon Recovery Plan Implementation (Strategy 5)
- WRIA 1 Watershed Management Plan Update (Strategy 6)
- Integrated Monitoring Program and Central Data Management (Strategy 7)
- Whatcom Local Integrating Organization Coordination (Strategy 8)
- Hatcheries (Strategy 9)

While all of these sub-strategies advance comprehensive water resolution, there are four in particular that directly align with the advancement of the five-elements covered in the Lummi Nation’s 2015 concept and Steps 1 and 2. A brief explanation of the strategies is provided below (refer to reference list for links to additional details). It should be noted that the settlement process is anticipated to take several years and will extend beyond the time from of the WMB’s current implementation strategy.

A. Outreach (Strategy 1)

The public needs to be adequately informed about the settlement process and related activities. Whatcom County is administrative lead for the Implementation and Administration strategy in the WMB work plan, which includes outreach. However, the PUD No.1 has taken the lead on some initial outreach tasks and has received grant funds for the outreach. There are three elements of the grant including: Support Whatcom Watersheds Information Network; Reinitiate the Whatcom Assistance Program; and Develop and Implement a Communication Strategy. The intent of developing the communication strategy is to focus on informing the community on local recovery and water-related topics, which will include comprehensive water resolution efforts of the

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WRIA 1 Board either separately or in context with the related strategies described below. The PUD No.1 will be working with WRIA 1 Board entities, staff teams, and others to develop and implement the strategy.

B. Regional (WRIA 1) Water Supply Planning (Strategy 3)

Regional water supply planning (RWSP) establishes a framework to address water supply needs for instream and out-of-stream uses. The processes involve consolidating and quantifying water availability, use and supply needs, compiling information on instream water needs, and identifying management solutions. The administrative lead for this strategy is PUD No. 1 of Whatcom County. Grant funding has been provided to partially fund implementation of this strategy. The work conducted under this strategy will also support the Drainage-Based Management (DBM) strategy (described below) by gathering and synthesizing existing data, identifying management solutions, and recommending early actions in pilot areas that coincide with DBM pilot areas. The work products from the RWSP pilot areas will be used by DBM. The RWSP and DBM strategies are linked in the 2018-2023 WRIA 1 Watershed Management Board Implementation Strategy.

C. Drainage Based Management Planning (Strategy 4)

Drainage-based management (DBM) planning is an integrated process wherein all the water-related issues are addressed simultaneously, one sub-basin (drainage) or group of sub-basins at a time. DBM will be the primary process to identify sub-basin goals for water quality, water supply, habitat, and stream flows, and water management solutions to achieve those goals which must be consistent and supportive of land use goals. Monitoring plans will be developed and implemented to measure project and program effectiveness and ensure goals are being met. The administrative lead for this strategy is Whatcom County. Partial grant funding has been received to initiate this work. Other sources of funding will need to be identified to complete the work. Efficiency will be gained by implementing DBM and RWSP planning in the same pilot areas. The goals and actions that are outcomes of this process will form the template for agreements in Steps 1 and 2 of the Executive's proposal.

D. Salmon Recovery Plan Implementation (Strategy 5)

This strategy includes a number of goals that support this function of the WRIA 1 Board under the 2016 Interlocal Agreement. One of the functions under this strategy includes

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serving as the primary technical resource on salmon biology and habitat restoration objectives and methods in support of water resource planning and management in WRIA 1 such as the ongoing floodplain integrated planning and the RWSP and DBM strategies. The administrative lead for this strategy is the salmon co-managers. Currently, staff is in the process of updating the 2005 Salmon Recovery Plan, which provides the technical foundation for the salmon recovery plan, as well as implementing other actions.

E. Integrated Monitoring and Central Data Management (Strategy 7)

All of the above strategies involve the collection, management, and evaluation of large amounts of data that will need to be organized in a manner that allows comprehensive evaluation and ease of access. This will require an updated long term monitoring plan and development of a comprehensive data management plan. A comprehensive and integrated monitoring plan is a key component of accountability and measuring success, and a central data management system will allow all of the data to be evaluated in various ways. The administrative lead for this strategy is Whatcom County. Current activities include monitoring of long-term stream flow and temperature, monitoring of groundwater levels, and development of a regional groundwater flow model. Discussions have been initiated on developing an integrated monitoring program.

Referenced Documents and Other Related Materials to Inform a Comprehensive Water Resolution Process

[WRIA 1 Watershed Management Board Interlocal Agreement, 2016](#)

[WRIA 1 Watershed Management Board 2018-2023 Implementation Strategy, August 1, 2018, Approved Updates 09/26/2019](#)

[Drainage Based Management Plan Statement of Work, Approved September 9, 2020](#)

[WRIA 1 Watershed Management Board 2018-2023 Work Plan, Strategy 3: Regional \(WRIA-Wide\) Water Supply Plan Scope of Work, July 31, 2019, approved 8/1/2019](#)

[WRIA 1 Lower Nooksack Strategy, October 21, 2010](#)

[Instream Flow Selection and Adoption Action Plan, March 25, 2005](#)

[Federal Reserved Water Rights – The Negotiated Settlement Option, November 5, 2003](#)