

Review of Inclusion of Adjudication in Update to Comp Plan March 31, 2026

Planning Commission Version

The version of the Comprehensive Plan approved by the Planning Commission mentions “adjudication” in five chapters:

1. Chapter 2 – Land Use – Policy 2A-15 (*renumbered to 2A-17*)
2. Chapter 5 – Utilities - Description
3. Chapter 7 – Economic Development – Description and discussion, Policy 7C-6
4. Chapter 8 – Resource Lands - Description
5. Chapter 10 – Environment – Description

Chapters 5, 7, 8, and 10 include a brief description of what an adjudication is and are all essentially the same except for Chapter 7 which includes a small discussion of the impacts of the adjudication. As suggested by Councilmember Galloway, we could have just a single description somewhere in the plan, but that would make it more difficult for someone to read individual chapters if they don’t already know what an adjudication is. If Council would like to reduce it to a single description, I would defer to PDS on where that should go in the plan.

The language in Policy 2A-15 is language that’s in the current Comp Plan with the exception of a change from “Encouraging a negotiated water rights quantification...” to “Supporting adjudication or other negotiated water rights quantification...” as shown below. This recommended change came from the Shellfish Protection District Advisory Committee. This language appears to be consistent with the administration’s support of both adjudication and a negotiated settlement.

Policy 2A-15 (renumbered to 2A-17): Strive to improve predictability to property owners regarding the connection between legal water use, and land use and development by:

- *Supporting completion of groundwater studies that provide a better understanding of water quantities available and the connection between groundwater use and instream flow levels.*
- *Supporting the efforts of water purveyors to develop new legal water sources and the infrastructure and systems necessary to transport that water to existing water users that lack safe potable water or sufficient water rights.*
- *~~Encouraging a~~ Supporting adjudication or other negotiated water rights quantification and settlement between the Lummi Nation, Nooksack Indian Tribe and other water users in the Nooksack River basin.*
- *Encouraging the Department of Ecology to protect instream flows, particularly in times of extremely low summer flows.*
- *Coordinating with the Department of Ecology to find solutions to provide adequate water for out-of-stream users while protecting instream flows. Potential solutions may include consideration of recycling, conservation, water banking, public water system interties, stream recharge augmentation, change in place of use, desalinization and other alternative water supply measures.*
- *Requesting the Department of Ecology to create a water management plan for exempt wells in closed water basins that better aligns instream flows with current water rights and legal decisions on hydraulic continuity.*

The language in Policy 7C-6 is:

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Policy 7C-6: Participate in the ongoing implementation and operation of the countywide water resources management body (WRIA #1) for Whatcom County as well as the adjudication process.

The language that is not underlined is in the current Comp Plan. The new language appears to have been added by PDS staff. This added language just states that the County should participate in the adjudication, which we are legally obligated to and are doing, so this language is really just a statement of fact.

Proposed Council Amendments

Councilmember Elenbaas has proposed several amendments related to adjudication which mostly includes language indicating a preference for a negotiated settlement in place of an adjudication. In general, the administration questions whether it is appropriate to discuss a potential settlement of the adjudication, which is essentially a lawsuit, in the Comprehensive Plan. Comments on Councilmember Elenbaas's specific comments for amendments to Chapter 7 are provided below:

Policy 7A-15: Long term prosperity in Whatcom County depends on reliable access to water and fiscally responsible management of local resources. While adjudication may ultimately clarify legal rights, experience from other basins demonstrates that multi decade litigation creates uncertainty and imposes significant costs not only on water users but also on County government. A proactive, negotiated settlement approach can achieve water certainty faster, protect the economy, and relieve unnecessary strain on the County's justice system and taxpayers.

This does not appear to be an actual policy, but rather an explanation of the situation from CM Elenbaas's perspective that implies that the County should encourage a negotiated settlement rather than adjudication. The administration has stated that it supports both an adjudication and a negotiated settlement policy, so the administration does not support this proposed policy.

Policy 7A-16: Whatcom County shall actively pursue and support a negotiated or mediated settlement process among all major water use sectors - agricultural, municipal, industrial, tribal, and environmental - as an alternative to a protracted adjudication. The County should provide leadership, facilitation, and technical support to help all parties reach consensus on allocation, mitigation, and conservation measures that sustain the county's economic base while protecting ecological resources.

This policy clearly states that the County should pursue a negotiated settlement as an alternative to adjudication. Notwithstanding the concerns regarding the appropriateness of including settlement in the Comp Plan, the administration does support a process that can lead to finding solutions to our water challenges, but has concerns about the budget impacts of this policy.

Policy 7A-17: The County shall evaluate both the economic and fiscal costs of adjudication, including impacts on agricultural production, housing investment, and County government operations. Analyses should compare the long term financial obligations of supporting additional courtroom facilities, staffing, and judicial appointments against the potential savings achieved through a negotiated settlement process.

This policy is a directive to conduct a fiscal analysis of the impacts of adjudication on the County and local economy. This would have an impact on the budget to implement. Also, it is not clear how this information would be used and thus how useful it would be.

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Policy 7A-18: Recognizing that the State initiated the adjudication but does not fully fund its implementation, the County shall advocate for state reimbursement of adjudication-related costs. Including courtroom expansion, judicial staffing, and administrative expenses - while simultaneously pursuing settlement strategies that can reduce or eliminate the need for these ongoing expenditures.

The administration agrees that the state should cover the cost of the adjudication.

Policy 7A-19: A negotiated settlement should be used as a vehicle to invest in local economic infrastructure such as water storage, conveyance efficiency, and mitigation banking that benefits multiple sectors and offsets the costs of prolonged litigation. The County shall seek state and federal partnership funding to implement such projects as part of any basin-wide agreement.

The administration supports finding solutions to our water challenges and seeking funding from the state and federal government to implement those solutions.

Policy 7A-20: Ensure that settlement frameworks explicitly address the water needs of both agriculture and housing, acknowledging that stable water supply supports job creation, food security, and housing affordability. The County's facilitative efforts should aim to preserve the viability of existing farms while ensuring sufficient water resources for urban and rural housing consistent with Comprehensive Plan goals.

The administration supports the goals of this policy should the community decide to engage in a settlement process.