

**RESOLUTION NO. \_\_\_\_\_**

**IN SUPPORT OF ADJUDICATION FUNDING IN THE  
WASHINGTON STATE 2023 TO 2024 BIENNIUM**

**WHEREAS**, there is a long running history of putting the waters of the state to beneficial use in Whatcom County, which are vital to domestic, commercial, agricultural and industrial users; and

**WHEREAS**, greater certainty is needed regarding who holds both senior and junior water rights and to what quantity each holder is entitled to; and

**WHEREAS**, climate change impacts seem to be reducing summer instream flows and recent scientific reports from the Intergovernmental Panel on Climate Change claim that time is running short for communities everywhere to mitigate and adapt to the worst effects of climate change; and

**WHEREAS**, allocation of legal water use during summer low flow periods is critical to a flourishing agricultural economy and essential for the recovery of the Nooksack River watershed's salmon populations; and

**WHEREAS**, healthy salmon runs are integral to Whatcom County's culture, economy, and ecosystems, and diminished summer low flows in our streams and rivers adversely impact fish species listed on the Endangered Species Act; and

**WHEREAS**, productive agricultural lands fed by the waters of the state are integral to Whatcom County's culture, economy and ecosystems and diminished summer low flows in our streams and rivers adversely impact agriculture outputs; and

**WHEREAS**, the Nooksack Indian Tribe and Lummi Nation have treaty-protected rights to a harvestable salmon population which is believed to be negatively impacted by low instream flows; and

**WHEREAS**, 25 years of stakeholder negotiations under the Washington State Watershed Planning Act and associated local efforts have not resulted in sufficient progress towards a collaborative solution to water quantity allocation; and

**WHEREAS**, efforts at a Collaborative Solutions Table involving stakeholders is a positive step, the quantification of legal water rights may require adjudication to encourage all parties to fully participate; and

**WHEREAS**, the adjudication process will take many years, delaying this process will further delay resolution to long-running concern in Whatcom County regarding the legal use of water resources; and

**WHEREAS**, the adjudication process will honor Tribal Treaty Rights, determine the seniority order of water rights and water quantity for all water rights holders, however, increasing the summer instream flows in Nooksack and its tributaries, restoration and expansion of the salmon habitat, ensuring adequate water security for a thriving agricultural base of local economy, improving the water quality and safety of aquaculture, climate mitigation challenges will require all parties to participate in a collaborative Solutions Table discussion.

**WHEREAS**, the Tribes have petitioned the State of Washington to advance a water rights adjudication in WRIA 1, and the Washington State Department of Ecology has requested \$2.7 million in their 2023-2024 operating budget to initiate the adjudication process in 2023; and

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**WHEREAS**, the adjudication proceedings may encourage collaborative processes under the direction of the adjudication court to proactively increase summer streamflow's, improve water quality, restore salmon habitat, and address the Nooksack basin's other water resources challenges; and

**WHEREAS**, the adjudication process and the Solutions Table process are meant to be complementary of each other; and

**WHEREAS**, it's been concluded that the 40-year adjudication process in reaching the Yakima Integrated Plan was contentious and that lawyers talking to lawyers for 30+ years was hardly community building. It took relationship building and key leadership to move beyond the adjudication to develop the Yakima Integrated Plan; and

**WHEREAS**, The Whatcom County Council supports the rights of all Whatcom County residents and their varying interests in the adjudication process.

**WHEREAS**, Whatcom County Council is committed to seeking an equitable opportunity for all; and

**WHEREAS**, inequity is often seen in many court processes when the party with the most ability to fund their position, wins, which is hardly equitable;

**NOW, THEREFORE, BE IT RESOLVED:**

- a. If the State and the Department of Ecology move forward with legal remedies against water right holders in WRIA 1 the Whatcom County Council supports fully funding adjudication.
- b. Whatcom County Council requests the legislature provide funding to the County to provide filing assistance for all participants in the adjudication process; also, if it's determined that tax payer dollars will be spent in bringing legal proceedings forward for adjudication, then tax payer dollars shall be allocated to fund legal representation for all parties involved in an equal proportion, in the pursuit of equity.
- c. Whatcom County Council supports a parallel collaborative Solutions Table process and strongly encourages the legislature to fund this in the 2023-24 Biennium Washington State Budget.
- d. Whatcom County Council asks the state legislature, in accordance with the doctrine of innocent until proven guilty, that the burden of proof falls on the Department of Ecology to prove that a water right has not been exercised as opposed to the burden of proof falling on the individual to prove that they have fully exercised their claim, as well as establish a system of amnesty and inclusion for those water rights claimants, whose claims have simply not been processed in a timely manner by the very agency seeking legal recourse.

**ATTEST:**

**WHATCOM COUNTY COUNCIL**  
**WHATCOM COUNTY, WASHINGTON**

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Dana Brown-Davis, Clerk of the Council

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Barry Buchanan, Council Chair

**APPROVED AS TO FORM:**

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Civil Deputy Prosecutor