

**Whatcom County  
Council Climate Action and Natural Resources Committee**

**COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010**



**Committee Minutes - Final**

**Tuesday, January 24, 2023  
1:10 PM  
Hybrid Meeting**

**HYBRID MEETING - ADJOURNS BY 2:25 P.M. (PARTICIPATE IN-PERSON AT  
311 GRAND AVENUE SUITE 101, SEE REMOTE JOIN INSTRUCTIONS AT  
[www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil), OR CALL 360.778.5010) AGENDA  
REVISED 1.23.2023**

**COUNCILMEMBERS**

Todd Donovan  
Ben Elenbaas  
Kaylee Galloway

**CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## Call To Order

Committee Chair Kaylee Galloway called the meeting to order at 1:11 p.m. in a hybrid meeting.

## Roll Call

**Present:** 3 - Todd Donovan, Ben Elenbaas, and Kaylee Galloway

**Absent:** None

Also Present: Barry Buchanan, Tyler Byrd, Carol Frazey, and Kathy Kershner

## Announcements

### Committee Discussion and Recommendation to Council

1. [AB2023-062](#) Resolution in support of adjudication funding in the Washington State 2023 - 2024 biennium

Donovan stated that he wanted to pull this item and moved to table it. He stated he did not have a timeline for it.

Dana Brown-Davis, Clerk of the Council, stated the motion would be to recommend to the Council this evening that it be held, so Donovan changed the wording of his motion.

**Donovan moved that the Resolution be RECOMMENDED TO HOLD IN COMMITTEE. The motion carried by the following vote:**

**Aye:** 3 - Donovan, Elenbaas, and Galloway

**Nay:** 0

**Absent:** 0

2. [AB2023-086](#) Discussion and approval of letter regarding climate action legislative priorities

Galloway stated there is an amended version online (“Revised Letter 1.24.23”).

Senator Sharon Shewmake stated she would like to hear from the Council about figuring out how to support smaller farmers on some sort of legal assistance or case management work and that she would love to put that in as a budget request.

Elenbaas asked whether she got his proposed Resolution saying that if the adjudication was fully funded, that meant funding both sides of the coin. His problem with adjudication is that, as with any legal proceeding, the people

that can afford the best lawyers are probably going to have the best chance at a good outcome. He would like for the Legislature to figure out how to do the adjudication process in the most inclusive manner as to not put the less fortunate at the lower end of the ability to defend their claim. A lot of issues with water rights stem from the DOE's lack of taking care of the appropriately filed paperwork over decades so it seems ironic that the very agency that dropped the ball on these folks is now bringing them through a legal process where they are going to have to defend their ability. He would like to see the burden of proof fall on the DOE to prove that you have not used your water right instead of the burden of proof being on the farmer or individual that they have. There should also be some sort of amnesty or ability to get included if people have a claim and their claim just has never been processed.

Shewmake stated the status quo is also not a particularly equitable situation and is really inefficient because we have unclear property rights. Adjudication is a pathway to hope to get to the root of the problem and they do need to do that equity work. One of the first steps is making sure not everyone has to spend \$5-10 thousand or even more on a lawyer. She stated she would love to be able to work with them on this and said to let her know what their concerns are. She thinks adjudication is important but so is making sure that it is not just a big scary letter saying that you are part of a lawsuit and one that people do not understand.

Kasey Cykler, Department of Ecology, stated she appreciates the conversation. They support the Governor's current budget and cannot take a position on any other different fiscal or budget proposal, including something that the County may decide to put out, but she can provide information. She addressed concerns and stated the Governor's proposal funds staff for the DOE that will be available for customer service and technical assistance, specifically, for assisting citizenry in filing an adjudication claim. She stated that people are welcome to hire an attorney, but they are planning a more streamlined process with the intent that individual water right holders are able to submit their own paperwork themselves and do that pretty efficiently and simply.

Elenbaas responded to Cykler's comments.

Ria Berns, Department of Ecology, stated she was here to provide any answers to questions related to their request for adjudication funding this biennium.

Tyler Schroeder, Director of Administrative Services, stated the overall objective of the letter and the discussion with DOE as it relates to ensuring full funding for the process is important, but it is also important to recognize there have also been local conversations about a Solutions Table and technical studies we need to do. The Executive formally asked DOE and the Governor to provide some funding for that work. They would like to continue to have those conversations in the Legislature to ensure funding for both for a parallel path.

Elenbaas stated a lot of the issues we face are because we have not quantified instream flows or what our aquifer looks like so we are going into adjudication without all of the technical data needed to come to a conclusion. Money spent on technical data will help both sides.

Schroeder answered what the Executive's request was. The Executive sent a letter to the Governor requesting \$1 million to continue on a parallel path with a Solutions Table and technical studies.

Donovan stated he would like to amend the paragraph about adjudication in the letter to say we also request that the Legislature fund technical studies to continue work on quantifying the resource.

Galloway stated she could get that incorporated into a version for consideration tonight. She spoke about her own thoughts on whether the process continues to be parallel or if that is a subsequent process, and ensuring that any additional ask does not dilute or distract from fully funding the adjudication process.

Councilmembers discussed having to do the technical analysis one way or another and adding a request to assist funding those technical studies, the references to "HB 1181/SB 5203" and the Voluntary Stewardship Program in the paragraph titled, "Growth Management Act and Comprehensive Planning," and whether advocating for net ecological gain is still in the revised letter.

***Donovan moved*** that the Committee recommend that the full Council approve this letter.

Tyler Schroeder, Director of Administrative Services, spoke about a request regarding the Swift Creek Sediment Management Action Plan. The request by the DOE for the 2023-2025 biennium was \$12 million to continue the Swift Creek Action Plan work but it was reduced to \$4 million. It is

imperative and important to have the conversations with Olympia to try to get the full funding request amount that Ecology and the County are looking for to move forward with that sediment management plan.

Councilmembers discussed whether the Swift Creek request should be in a separate letter, whether the letter should state that “We believe a water rights adjudication in the Nooksack River watershed is necessary to bring together all water users,” asking the Legislature to fund technical studies to quantify the resource, and the paragraph having to do with culverts.

**Donovan's motion that the letter be RECOMMENDED FOR APPROVAL WITH PROPOSED AMENDMENT(S) carried by the following vote:**

**Aye:** 2 - Donovan, and Galloway

**Nay:** 1 - Elenbaas

**Absent:** 0

### **Items Added by Revision**

1. [AB2023-092](#) Discussion and approval of motion to send a letter to the County Executive in support of seeking US Department of Transportation culvert replacement funding

Donovan briefed the Councilmembers about a letter directed to the Executive from the Chair of the Nooksack Tribe discussing a memorandum of agreement on culverts and a grant they were applying for to get Federal (US Department of Transportation) dollars for culvert removal. He spoke about a change that the grant would have a better chance if the County was the lead.

Satpal Sidhu, County Executive, stated he received the letter and responded to it but then things changed and he was caught off guard. A grant is not a simple thing and is not in the County’s work plan.

Gary Stoyka, Public Works Department, stated they do plan to apply for the grant and it is a very tight timeline. They would need about two to three FTEs for engineering support and an engineering tech that would not be covered by this grant. In late 2022 they did apply for a grant for funding to get a culvert program going. As far as the memorandum of agreement, they are working on one and Council should be able to hear something within the next week. He confirmed they will be applying for the Department of Transportation grant.

Elizabeth Kosa, Public Works Department Acting Director, stated she talked with the County Engineer about what the department’s support could

be in light of engineering capacity. She stated this is a big deal to them and they are going to look at re-racking the priority of projects. She and Stoyka answered whether there is flexibility to have this work done by contract.

Donovan asked if they still need this letter since the County is already in collaboration with the Tribe.

Stoyka and Tyler Schroeder, Director of Administrative Services, answered whether the memorandum of agreement with the Tribe needs to be done before the February sixth grant deadline or whether that is just for the grant application.

Elenbaas stated this project will help with flood control as well.

John Thompson, Public Works Department, spoke about the number of culverts on county roads and spoke about other grants that Public Works has applied for (for other projects) and that are either already approved through the State or in process with the State. They have a lot in the hopper right now.

Kosa stated they have been doing culverts when they can both at a maintenance and operation level and at a capital level. This memorandum of agreement will help solidify that and the relationship with the tribes to ensure they are in compliance.

Jim Karcher, Public Works Department, answered whether a checklist or bid requirement is included in our road construction projects that says, if there is a culvert that meets the standard for a replacement, it is getting done at the time of construction.

Galloway stated the will of the committee is that they are going to hold off taking any sort of action on this and just recognize the Administration for taking leadership on it.

**This agenda item was FORWARDED TO COUNCIL WITHOUT A RECOMMENDATION.**

### **Other Business**

There was no other business.

### **Adjournment**

The meeting adjourned at 2:19 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

**Kaylee Galloway-via email 1/30/2023**

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

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Kaylee Galloway, Committee Chair

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Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE