

June 14, 2022

Laura Watson, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Director Watson:

Thank you for your recent visit to our community. As you are aware, our communities are still reeling from the devastating floods of 2021. We greatly appreciate your visit here on April 20 to observe firsthand the twin problems of our Nooksack River. First, we have too little flow in the crucial summer months; fish are harmed, and our goals of salmon recovery are stymied. Then floods arrived a few weeks later causing loss of life and massive damage on both sides of the international border.

We are writing to seek your direct intervention and personal support in reinvigorating the proposed Solutions Table in Whatcom County. This effort is the most important opportunity for our entire community to come together with the stakeholders and local tribes to work out the solutions to our water resource problems. The Solutions Table offers the best hope for policy solutions for flooding, low flow, tribal treaty rights, and farm, municipal and exempt well water access.

We are grateful that the legislature in the last session provided funding for this important process. We are encouraged that Ecology staff on multiple occasions in both public and private meetings have expressed Ecology's support. Thanks to the leadership of County Executive Satpal Sidhu and the expert guidance of previous Ecology Directors Jay Manning and Maia Bellon, the ground rules have been established and a pathway toward progress has been identified.

Unfortunately, this great progress has been stalled and we are writing to you because there are possible misunderstandings about how proactive efforts like the Solutions Table would work that may be contributing to the current situation.

We are aware of your meetings with tribal leadership in regard to Ecology's proposal to fund pre-adjudication work. It is clear that Ecology staff promoted the benefits of an adjudication, and minimized potential pitfalls in the process. We are also aware that your staff believes that those securing senior

water rights in an adjudication would then be in a position to negotiate with entities not granted senior rights. Staff also stated publicly that the litigation could be concluded in a short timeframe and with relatively minimal expense, but privately recognized that complicating factors could greatly increase the time and cost of litigation.

We bring this to your attention because of our concern over recent developments. Despite some excellent progress in Whatcom County's FLIP process in our April 26th design charrette, discouraging news followed in the April 28th Watershed Management Board meeting. In the April 26th meeting all parties, including tribal and state staff, worked together to discuss real solutions to our issues. Short-term and long-term solutions were debated, discussed, and prioritized. All parties were encouraged that progress was being made.

The April 28th meeting dashed many of those hopes. Tribal leadership refused to join the Solutions Table process, preferring to wait until an adjudication is filed, and then noted the need for consensus in the process to move forward. This has effectively ended the progress toward critical policy solutions on water resource issues.

This decision was extremely discouraging. Could misunderstandings about the adjudication process have led to this decision? Have Ecology's efforts to promote adjudication led to the belief that litigation is the only way forward? While tribes may argue for a federal instream flow water right, it is unclear whether, where, and how much of a such a water right may exist. Further, even if such a federal instream water right is established, this type of water right cannot be transferred to other water users or for other purposes. Therefore, compensation for transfer of such a water right can only be accomplished under a settlement.

In tribal water rights settlements, there are precedents of significant federal funding for water resource infrastructure, economic development, and establishing water markets. The only way such settlements can occur is if the parties are working together to discuss solutions. We have no question about the sincerity of tribal leaders in seeking to improve the river and habitat for fish recovery and we share those goals.

There are many benefits available to the stakeholders and the two local tribes through the Solutions Table and a negotiated settlement. These include a much less costly and much shorter resolution of issues relating to rights and access. It means a focus on fish recovery and resolving the twin problems of the river, rather than a focus on an acrimonious legal defense of municipal water rights, individual farm, exempt well and individual farm water rights. It means the vast sums of taxpayer and private money taken from our communities for litigating a multi-decade battle over who has the right to our limited resource can be directed to actual solutions to our very significant water resource problems. In short, the Solutions Table offers an urgent path toward fish recovery and flood prevention, where litigation does not. Indeed, litigation will harm our community's efforts to assist in recovering salmon.

We urge you and your staff to directly address the obstacle currently stopping all progress through the Solutions Table. If the problem is a misunderstanding about the benefits and interactions of settlement versus adjudication, we encourage you to correct that. RCW 90.03.645 encourages early settlement of adjudication, and this can only succeed with direct communications at the local level. Our communities need the tools that can only come through a process like the Solutions Table if we are to move progress forward. For this reason, we urge you to take the action necessary to ensure progress can continue.

Thank you for your consideration and we stand eager to discuss this with you further.

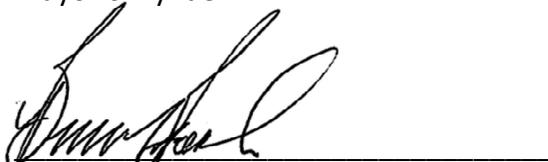
Sincerely,


Mary Lou Stewart
Mayor of Blaine


John Perry
Mayor of Everson


Scott Korthuis
Mayor of Lynden


Kevin Hester
Mayor of Nooksack


Bruce Bosch
Mayor of Sumas

- cc: Satpal Sidhu, Whatcom County Executive
- Simon Sefzik, 42nd District Washington State Senator
- Sharon Shewmake, 42nd District Washington State Representative
- Alicia Rule, 42nd District Washington State Representative
- Mary Huff, Department of Ecology, Floodplain Supervisor