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February 23, 2021

To: AWB Board
204 Hawley Street
Lynden WA 98264

Re: December 10, 2020 meeting discussion

Dear Members of Whatcom County's Ag Water Board,

Thank you for meeting with us on December 10, 2020, and for your follow-up letter dated December 21, 2020. We appreciate the time you took to speak with us in December to discuss adjudication and the value of working together as neighbors, and we were happy for the opportunity to share with you the importance of water to salmon and to our people.

We would like to take this opportunity to reiterate that the only path forward for us at this time is with adjudication. A complete inventory and formal court determination of all water rights will be needed to protect the instream flows necessary to restore and sustain harvestable levels of fish in our streams and rivers and to provide the certainty so important for a thriving farm economy. We all agree that discussions will be needed and as the Yakima case demonstrates, discussions can take place while the adjudication is pending. As we stated, initiating an adjudication is the first step, because clarity and certainty around water rights are fundamental to protecting stream flows and implementing water supply solutions.

As you know, both Lummi Nation and the Nooksack Tribe have been working for decades to recover salmon by restoring and protecting habitat and through responsible, science-based hatchery and harvest management. For more than twenty years now, we have also worked with our partners in WRIA 1 to resolve water use conflicts, including through the Joint Board and Watershed Management Board decision-making structures, yet those efforts have resulted in little meaningful improvement in instream flows. More than once, we have watched as others walked away from voluntary negotiations when the conversation became difficult. We have no confidence that voluntary negotiations will prove fruitful unless and until they occur within the context of an adjudication.

Despite our frustration at the lack of progress, we have continued to participate in the technical, planning, and implementation work of the WRIA 1 Watershed Management Board. We are committed

to that collaborative work, and we shall continue that work during a general stream adjudication that covers both surface and ground water rights. To the specific suggestions in your letter dated 12/21/20, we do not see either of them as viable alternatives to an adjudication for protecting instream flows.

As we said at our meeting on December 10, 2020, *filing an adjudication comes first*. We disagree that an adjudication will take over 25 years to complete, as legislative, administrative, and technological improvements have streamlined the process considerably. Further, we need not wait until adjudication is complete, as settlement agreements can be perfected while it is pending. At the December 17, 2020, WRIA Watershed Management Board meeting, Ecology Director Laura Watson and former Yakima County Court Commissioner Sid Ottem made the following key points that we believe are worth repeating:

- Adjudication is the best and most efficient way to get certainty on water rights in the Nooksack basin.
- The certainty adjudication provides helps drive solutions.
- Under Washington law, only a court has jurisdiction over the final determination of water rights.
- For real, long-lasting certainty, an adjudication is the only way.
- Settlements did happen outside of court, but as part of the adjudication process.
- Yakima now has a water bank with an active group of buyers and sellers, due to the adjudication.
- The solution is not to oppose adjudication but to work with it.
- Adjudication was a success in the Yakima.

As we have said, salmon are essential to our culture, identity, and way of life, and we are working to protect what remains, not just for ourselves, but for our children, grandchildren, and future generations. We all rely on the water and land, we are all still neighbors, and we can all work together to adjudicate the water rights and – at the same time - find solutions that work for farmers, fish, and people in Whatcom County. We encourage you to join with us in support of an adjudication at this time.

Sincerely,



Chairman Ross Cline, Sr
Nooksack Tribe



Merle Jefferson, Executive Director
Lummi Natural Resources Department