

Whatcom Family Farmers

Comments on behalf of Whatcom Family Farmers have been attached.



*Preserving the legacy and future of family farming in Whatcom County
by unifying the farming community and building public support.*

March 1, 2024

Robin McPherson, Manager
Water Resources Program - Adjudications Unit
PO Box 47600
Olympia, WA 98504-7600

Dear Ms. McPherson,

Whatcom Family Farmers (WFF) is a non profit farming organization dedicated to preserving the legacy and future of family farming in Whatcom County. As Ecology is likely aware, WFF has been opposed to an adjudication ever since Ecology proposed it. The idea that an extremely complicated, divisive, and expensive legal proceeding would somehow solve all the issues surrounding water rights, when the only thing that has worked elsewhere has been collaborative solutions, seems like a naive endeavor to embark on.

Regardless, Ecology has decided to file an adjudication, and while we remain hopeful common sense will, at some point, prevail, and a settlement process will resume, we now begin to see the complications of this process emerge. For a personal example of how this is affecting individual farming decisions, please see our documentary Losing the Farm at <https://www.losingthefarm.com/>

Currently at the forefront of these issues are the proposed claim forms Ecology has put out and requested input on. As expected in such a complex proceeding, there are numerous issues with the forms.

We appreciate the detailed comments from the Whatcom Ag Water Board, as well as the Washington State Dairy Federation. Rather than go into the detail those organizations have, we will offer more general comments.

Comment #1: Ecology proposes both a long claim and a shorter claim form. However, it does not have the legal authority to provide a shorter form.

Washington state law clearly states that the authority to create a new process for water users lies with the Superior Court, not Ecology. Why would Ecology create this second form without the legal right to do so?

Comment #2: In the proposed short form, Ecology is attempting to create substantial changes to the water code by allowing outdoor irrigation use to be exempt from the challenges other water users face to prove their water usage.

It is not Ecology's place to create this new process, rather, it is to follow the law. This proposed change to the water code would potentially provide exemptions to proving your water use for up to 20,000 users. Given the high rate of application for the likely lawns and gardens this exemption would be used on, we could expect 20,000 acre feet of water to be exempt from this process. That is a substantial water use! By comparison, WRIA 1 estimates 34,000 acre feet of use by municipal and group domestic users, serving significantly more people than the 20,000 users Ecology proposes to exempt.

In essence, Ecology is proposing a free pass to a significant user of water in the region. How is this fair to those with much more senior rights to the water? Is giving a free pass to someone who happens to own a smaller lot in rural Whatcom county fair to the tribes, cities, and counties many of whom have senior water rights to these lot owners? From an outside point of view, it appears as if Ecology is trying to make this simpler to make this process smoother by eliminating a large number of water users who, while individually may have smaller rights, collectively will end up holding significant rights.

This is completely counter to what Ecology is supposedly trying to do: get better understanding and control of water use in Whatcom County. Given that there are several thousand undeveloped lots in rural Whatcom County, what this proposal will do in reality is create a rush to fill these lots and sign up for the "easy" process, thereby driving further sprawl in rural Whatcom County.

Comment #3: Ecology incorrectly limits stockwater to only water for animals to drink.

Previous decisions on stock watering make it very clear that this exemption includes more uses than just the water animals drink, but rather multiple uses for the care and feeding of animals. The ability to keep animals and the facilities they use clean as well is a critical part of animal agriculture. More importantly, exempting those uses now would leave animal agriculture at a severe disadvantage. Given that many basins are now closed to future water rights, and farms have been relying on this exemption based on previous court decisions, where would farms find the "new" water to take adequate care of their animals? It would most certainly lead to the end of animal agriculture in WRIA 1.

Comment #4: Ecology used incorrect usage numbers in their estimates for animal usage.

Since Ecology did not provide their sources for their chart of usage per animal, it is impossible to say how they came up with the numbers they did. However, it appears as if the numbers are significantly under what actual consumption is. It appears as if numbers were used from the 1980's- 90's, and usage has significantly gone up since then. Additionally, new data surrounding animal use during warm periods show animal use can double during hotter weather. Given the projections of climate change, Ecology should significantly revise its estimates.

Again we refer to comments from the Dairy Federation and the Ag Water Board for more detailed comments on this and many other issues. Overall, these forms are often confusing and contradictory. It is no surprise, given the blind eye Ecology turned during the process of determining Whatcom for a water rights adjudication, that these forms would have so many issues. Sadly, we are just seeing the beginning of how badly dysfunctional this process is. It is highly likely we will see more farms such as the one highlighted in the documentary who will consider this the last straw and look to leave Whatcom County behind.

Fred Likkel
Executive Director
Whatcom Family Farmers