

**Agricultural Advisory Committee
Meeting Summary
March 13, 2024**

Start Time:	3:00 p.m.
Location:	Hybrid Meeting – Zoom & at Whatcom County Planning & Development

Meeting Highlights
There were 16 people in attendance (Voting members: 7 of 8, Staff members: 2, Ex-Officio: 4 Members of the public: 3).

Attendees – Members	Affiliation	Present
Chapman, Alan	Whatcom Conservation District	<input checked="" type="checkbox"/>
McDermott, Matthew	Ag Producer	<input checked="" type="checkbox"/>
Kubalek, Roger	Ag Producer	<input checked="" type="checkbox"/>
Singh, Gurjit	Ag Producer	<input type="checkbox"/>
Harron, Elli	Ag Producer	<input checked="" type="checkbox"/>
Welch, Chantel	Ag Programs	<input checked="" type="checkbox"/>
Likkel, Fred	Whatcom Family Farmers	<input checked="" type="checkbox"/>
Pehl, Clay	Consumer of Ag Products	<input checked="" type="checkbox"/>
VACANT	Ag Producer	<input type="checkbox"/>
VACANT	Ag Producer	<input type="checkbox"/>
VACANT	Ag Producer	<input type="checkbox"/>
VACANT	Ag Producer	<input type="checkbox"/>
VACANT	Ag Producer	<input type="checkbox"/>

Quorum Present	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
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Attendees – Ex-Official/Contributing	Affiliation	Present
Corina Cheever	Whatcom Conservation District	<input checked="" type="checkbox"/>
Benedict, Chris	WSU Extension	<input checked="" type="checkbox"/>
Hall, Alex	NRCS	<input checked="" type="checkbox"/>
Hallberg, Brooklyn	FFA Youth	<input checked="" type="checkbox"/>

Attendees - Staff	Present
Dakota Stranik	<input checked="" type="checkbox"/>
Becky Snijder van Wissenkerke	<input checked="" type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Others Present
Robin McPherson (ECY) Sheila Coughlan (ECY) Kim Hallberg

Zoom Recording:

https://us02web.zoom.us/rec/play/yqx16kQC4BYitSbSgbwMe4elGu311zn_dsU5c9PEo7hJXBA0Za7G8UmtQhJlhM45BGub6r9iiL98F3g.WfUXMhCwlu_7lv_M?canPlayFromShare=true&from=share_recordin

[g_detail&continueMode=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fus02web.zoom.us%2Frec%2Fshare%2FtK8qlcDOKvqdNzSbnZSMVjB7flWYkXVbdTf7QegixEONkdUP7X-XA6sGcJfKYQ.kXvFOrQQrbS_kz9R](https://www.zoom.us/j/9171111111?pwd=QkVqdNzSbnZSMVjB7flWYkXVbdTf7QegixEONkdUP7X-XA6sGcJfKYQ.kXvFOrQQrbS_kz9R)

1- Roll call and introductions - starting at 00:00:00

WCC 2.34.040 establishes that "a quorum shall consist of at least half of the appointed voting members." A quorum was established with 7 of 8 appointed voting members present.

2- Agenda review and adjustments - starting at 00:04:11

Fred motioned to approve the agenda as written, Chantel seconded, agenda was unanimously approved.

3- Open Public Session - starting at 00:06:22

There was no public comment.

4- Review & Approval of Previous Meeting Minutes - starting at 00:06:41

Motion to approve by Fred, seconded by Clay. With no objections, the February minutes were unanimously approved, adding two small changes to add Kim Hallberg's first name under attendees and also to make a small grammatical edit (lead to led).

5- Staff & Member Updates - starting at 00:08:14

With the meeting running ahead of schedule, this item was moved up on the agenda in order to fill time before the Q&A session. The topic of recruiting members for vacant seats was discussed. Potential applicants for the Ag Producer seats were discussed - Roger Hawley, John Maberry, Zach Steensma were identified. For the Ag Processing seats Darigold, Friesla, AmeriCold, American Freeze Dry, VersCold, Bellingham Cold Storage, & Puget Sound Food Hub were discussed.

Elli asked about the proposed berry research center potentially being built in the future at the current Boxx Berry Farms site. Chris Benedict provided some information and clarified that it hasn't moved forward in a number of months and there are some challenges with funding. The purpose is to create a new breeder location for small fruit, mainly raspberry varieties in Whatcom County. Historically the research has not occurred in Whatcom County. Currently it's being done on commercial fields but that is expensive and complicated. Current "machine picking trials" are being managed by Radar farms. Alan suggested that Input from the berry industry on their interest in this project would be helpful.

6- Adjudication Q&A with Robin McPherson (ECY) - starting at 00:16:09

Robin McPherson (ECY adjudication manager) & Sheila Coughlan (ECY adjudication engagement planner) introduced themselves and then questions began.

Q1 by Elli - 00:21:24

One of our goals was for long term water availability for the agricultural sector. How does that fit with adjudication?

A1: ECY determined through an [ECY assessment and report to the legislature](#) that adjudication is an important piece of the puzzle for larger solutions. We're hoping that adjudication makes available more certainty for water, for things like water banking, exchange, and trade in the long term for agriculture, and also can bring infrastructure to the area.

Q2 by Elli - 00:22:51

Fred shared a documentary on a farmer in Lynden who was a potato farmer and one of the reasons he went out of business was he was going to be fined \$10,000 a day for water use. How does that come about?

A2: The ECY [Water Resources](#) program includes Robin's work as well as the [Bellingham Field Office](#) which deals with review and enforcement locally. Kasey Cykler is the manager of the northwest regional office. Kelly Hamilton is the point person at the Bellingham Field Office for issues like enforcement, which occurs after extensive notice to a farmer that they are exceeding their legally authorized water use.

Q3 by Elli - 00:24:31

How is seniority in terms of water rights established?

A3: Under State law, water is protected under prior appropriation which means the earlier water users are protected from impairment by newer or later water users. The concept is that someone who has already established in their water use should be protected from somebody new coming in and taking water. Water upstream or in a connected aquifer can impair a senior water user. This comes from the 1917 surface water code & the 1945 groundwater code. On a water right document, the seniority date is usually the permit date written on the certificate.

Q4 by Elli - 00:27:54

We bought our 20 acres 6 years ago and had a well put in. So, when it comes around for us to fill in that water rights form, we are at this point a large garden with about 20 fruit trees, but let's say in 10 years our sons want to do more commercial agriculture, how does that work?

A4: I'm pretty limited in what I can say about specific hypotheticals. In the adjudication water users will need to fill out a claim form that documents their current and past water use. Describe the fruit trees, where and how much water is used. As far as expanding water use after the adjudication, that kind of water use would be considered junior. New water use in a lot of instances is currently legal under the requirements of the permit exemption, but that doesn't mean it's guaranteed forever, and it would be junior and can be interruptible in times of shortage.

Q5 by Roger - 00:30:22

So just to clarify, after adjudication there will still be a well exemption that's allowed, but then it'll be a junior exception compared to people who had wells in 10, 15, 20, 70 years ago?

A5: The goal of adjudication is really to inventory exactly what the legal water right is that goes with each operation or each parcel. Adjudicated rights will result in adjudicated certificates, and new water users won't have adjudicated certificates. Adjudication applies existing law. On its own adjudication is not designed to change the law. Adjudication doesn't change the permit

Exemption for the future, but those uses would be very junior and they would be interruptible to protect senior users. That actually includes stream flow and water for fish. We're hoping that certificating water rights will facilitate water exchanges. Water banking happens elsewhere in the state. It's difficult to do without really understanding the quantity and purpose of each water right.

Q6 by Alan - 00:32:58

Has Ecology identified what they thought would be useful sub-basins to deal with? What brings this to mind is places like Point Roberts and Lummi Island which are not really in the aquifers that we're looking most closely at with respect to capacity. It would seem like those would be in a different discussion group rather than the Sumas aquifer.

A6 - 10 sub-basins have come from WRIA1 planning efforts based on hydrology. WRIA 1 groups are funded to go through some additional hydrology analysis to give more information about water within those sub basins. As far as Point Roberts & Lummi Island, we know they are not hydrologically connected and we wouldn't expect those to be in a discussion of impairment of Nooksack forks for instance, but they are included in adjudication because adjudication is identified as being the entire water resource inventory area.

Q7 by Alan 00:35:33

I'm somewhat familiar with the work that's being done for groundwater modeling and things of that sort, and they seem to be focused on the surficial aquifers which are down in the floodplain area, and not so much with those higher up on the slopes. I'm wondering how that work in the lowlands would be extrapolated?

A7: That's something that's being managed by the different WRIA groups under funding with the county.

Q8 by Fred - 00:36:43

You've talked about water banks, but we also have the challenge of relinquishment. Perhaps you could explain how relinquishment fits into the discussion surrounding adjudication?

A8: Relinquishment is the legal requirement that after 1967 water rights are generally relinquished for more than 5 years of non-use. That's from RCW 90.140. There's a number of exemptions to relinquishment. Water is particularly exempt from relinquishment if it is donated into temporary trust, which is really the best way to deal with current & future relinquishment concerns. As far as adjudication, the law asks water users to list their current water use and their maximum past water use. It's likely that information will be looked at if there were peaks of water use that were a lot greater than current water use, there will be discussions with water users about whether relinquishment exemptions will apply. Ecology will make that recommendation to the

court and then water users could bring their own information to the court for final decision by the Whatcom County Superior Court.

Q9 by Dakota 00:38:05

So, it could be I purchased a property in 2016 and have used the water to its maximum for a permit exempt well since then, but since it wasn't used to the maximum say for 10 years previously by the previous owner, I would then be curtailed?

A9: So, the question is what the priority of that water use would be. So, you know that you've used it since 2016, if you wanted to have that adjudicated at an earlier priority date, you would want to look at the history of the parcel and the water to see if that quantity was used earlier than that to get a more senior priority date.

Q10 by Dakota 00:39:18

And does that only apply to actual water rights or does that also apply to exempt wells that want to use more than 500 gallons per day?

A10: All water claimants in the adjudication are going to need to bring in their claims, their current water use, their historic water use, and their earliest water use. That is what allows Ecology to put them in the inventory with their dates.

Q11 by Dakota 00:40:00

But you would need to contact previous landowners as far back as 1967?

A11: 1967 is the relinquishment date, so if you are claiming earlier than that you will need something that identifies that water use. The conservation district has historic aerial photos, there are land records, county property records, well records, etc. to show that claim priority date. Ecology does have our water right search with historic water rights documents and that really is a great source of historic information.

Q12 by Alan 00:41:13

Are you aware of any Ecology reports that would be able to estimate the current rights that they are aware of in terms of acre feet that have been certificated?

A12: We have our own database with documented water rights. There was a really detailed [report for the PUD](#) a few years ago that was done by RH2, and that used some aerial data and other data to estimate the extent of water use going on. ([story map of report](#) - [one pager](#))

Q13 by Fred - 00:42:20

As relinquishment comes up, and I know we've had farmers that have had to relinquish a bunch of water as they get into the process, I'm struggling to see where do you see water banking to fit in when relinquishment is a part of it? There doesn't really seem to be much money to put into a bank as water rights are taken away from farmers who are no longer using it and that's a big concern.

A13: We're anticipating that a lot of water rights will be certificated, that has been used continually throughout history with all kinds of priority dates. So that water can be used

for water banking in the future. Some of it will be relinquished, but a great deal of it won't be.

Q14 by Fred - 00:43:21

But if they're using it, how are they going to be able to put it into a bank?

A14: They don't put it in the bank when they're using it, the bank is for when they're not using it, seasonally or intermittently. The more certainty we have in an area, the more movement we see of water through banks for seasons that it's not used.

Fred commented that water banking in this area is a very limited tool and it's been a struggle to figure out how it would work. There is currently no water bank set up in Whatcom County.

Robin commented that lack of certainty of water rights is one reason why it is difficult, and that's how adjudication fits in.

Q15 by Roger - 00:45:41

A permit exempt well that goes through this process, will that become a certificate for that well exemption or does it just remain an exemption?

Q15: What we'll be asking from the court is to move permit exempt uses to adjudicated certificate.

Q16 by Alan - 00:46:30

Maybe you can elaborate further because in your presentation in Ferndale you mentioned there are 3 exempt well uses and a proper juggling of things might end up claiming more than a single 5,000 gal per day use.

A16: The [Ferndale video](#) should be up soon. I would call that stacking exemptions. In some cases, an individual might have a home that has a domestic exemption, but also has a farm which would fall under the industrial exemption, and potentially a stock water exemption. The way we're seeing the adjudication now, is that the best way to do that would be to submit different forms for each one, to be clear that those are individual stacked exemptions and to allow the user to submit the best priority and quantity date under each one.

Q17 by Fred - 00:48:45

So, the biggest part of this is bringing in Tribal water rights to the discussion. But most likely, based on what we're seeing, those water rights are going to be based on in stream flows, that are not met a significant portion of the summer. And you could put all of agricultural use back into the Nooksack river and only gain a few days. Which means there are significant times when we're not meeting in stream flows no matter what we do. So, I'm curious what that means for our farms, especially these smaller farms who are junior users. How is adjudication going to work with that over time so they can start to figure out what certainty means?

A17: Lummi Nation & Nooksack Tribe have been working with Natural Resources & the WRIA 1 Management Board for many years. The adjudication is listing them as defendants. They've agreed with this and in fact asked for it, and they'll be represented and assisted by the United States. They also have a federal settlement team convened. This will be the first time that the tribes will be required to bring their own quantified in stream flow rights into any public forum, but particularly into the court, and the court will make a decision on those. There will be opportunity for objection and appeal. These are serious claims, and when we talk about uncertainty it's the uncertainty of a lot of very serious Federal law hanging over us. Aquavella is the Yakima adjudication that did this with the rights of the Yakima Nation, and it did put Yakima Nation in stream flow in certain places at certain quantities with seniority over the stream. What we saw in those situations is that it really elevated interest in settlement. I do know that the Federal Government and the tribes and everybody else is really interested in the settlement of those rights, much more than curtailment that simply shuts off water use. I also know that when you look stream by stream things can look a lot more interesting than imagining it as an actual blanket, and there will be a lot of internal dynamics. I encourage everybody in the forums that you have and relationships that you have to be asking questions of the Tribes, working with them, maintaining those relationships so that these good conversations can happen going forward.

Q18 by Alan - 00:53:30

As I understand it, the Yakima settlement gave on reservation in stream jurisdiction to both reclamation and the Yakima nation, but the Judge said that if anyone wanted to question that off reservation that he would be willing to hear the case. Does that fit your recollection?

A18:

I think that's what went on with Aquavella, but just let me tell you, there are different ways that courts stay involved throughout or after an adjudication. There is the adjudication in Whatcom County, of the Lummi Peninsula groundwater. That is a Lummi on reservation specific aquifer. The federal court out of Seattle actually manages that, month to month through a water master. That's ongoing jurisdiction of the court. There are other adjudications where the court closes the books & their files and does not retain jurisdiction over the ongoing management of the decree. Those are two very different ways it can happen - it can happen with a settlement or a ruling, and the court can be involved to different degrees depending on what the parties want and what the court wants. Yakima has both a decree and then it has a settlement for the administration of the decree going forward.

Q19 by Fred - 00:55:34

It sounds pretty clear that settlement at some point is going to be the best way, maybe the only way out of this. What is Ecology doing to encourage settlement?

A19: We're filing the adjudication. Settlement can't happen without Lummi Nation and Nooksack Tribe, and they've been very clear throughout, especially the past 5 years, that they will not come to the table until the adjudication is filed. We also are attending WRIA 1 meetings as requested, Whatcom County and Executive Sidhu have held meetings and invited us and we're participating wherever we're invited for that. But we really don't have

a statutory role in convening any kind of settlement or solutions table or settlement meetings, and we don't see that as practical until this is filed, and we intend to do that this spring.

Alan acknowledged this agenda item was over time, Robin offered a few closing statements, mentioning a number of recent [meetings and presentations to the small farm community](#), and that her team is looking for the best way to keep reaching people whether via Zoom, Q&A's, in-person, etc. Sheila Coughlan is the best contact for those ideas - scou461@ecy.wa.gov

Q20 by Alan - 00:59:35

Given that the budget was preparing for a 20-year adjudication, do you have any insight into how long into that period it would take before there was some serious discussion of settlement?

A20: The budget is biennial, so we are funded every two years. And there are projections in the budget for how long it will take, but it's not like they give us a lump sum for 20. But we've penciled it out, we're on target and on budget for now. I'm hoping that the filing itself is going to encourage conversation, and that although it starts very slow. I think there will be good conversations in the next few years.

After Robin & Sheila finished, Becky Snijder van Wissenkerke from Whatcom County Public Works shared some information on what Public Works is doing to assist with outreach and technical assistance regarding adjudication. Whatcom County is receiving funding from WA Dept of Ecology for these efforts. They have a [website](#) for resources, a [survey](#) to get input about what kind of information people need, any webinars or events will be posted there along with recordings. The county is hiring a consultant to develop a water use estimator tool for both household and agricultural water use, and will also be providing information on how to look up information to use on the claims form, evidence, historic imagery, etc. The consultant will also help provide informational meetings, webinars, in person events, and assistance with completing claims forms. Other ideas on how the county can help are welcome.

Some further discussion on water use was had before moving on to the next agenda item.

7- Discussion of Topics for Future Presentations – starting at 1:10:30

A survey of various topics was reviewed. A presentation on [CPAL](#), [Farm Plans](#), & the [Voluntary Stewardship Program \(VSP\)](#) was scheduled for the April meeting, with Dakota Stranik and Corina Cheever as presenters. Alan suggested that Thurston County might be a good comparison. Some discussion was also had around Rural Study Areas as well as the different approaches taken around farmland preservation by British Columbia and also Skagit County. Sarah Stoner, who facilitates the Skagit [Farmland Legacy program](#) was identified as a possible future presenter. Alan suggested one of the realtors from the Whatcom Farm Expo could speak to what it's like to purchase farmland in Whatcom County. Fred mentioned a possible future discussion around riparian buffers, habitat, and the intersection with ag once changes to CREP & SCC resources are finalized.

8- Follow-up on AAC Goal Refinement & Comp Plan Update – starting at 01:24:14

The committee reviewed a draft document developed by a subcommittee since the last meeting, clarifying broad AAC goals and sub-goals (broader than the Ag Strategic Plan).

The overarching goal for the AAC was drafted as:

“An economically viable, environmentally responsible agricultural economic sector that provides employment, enhances local food security, and conserves natural resources of air, soil and water”

Roger brought up the question of how “ag lands of long-term commercial significance” intersects with soils defined as prime, or prime when drained, or lesser value soils. Matt clarified that “ag land of long-term commercial significance” directly relates to prime ag soils.

Roger also brought up how there are currently over 100,000 acres enrolled in PDS’s Open Space Farm and Agricultural Land program, so it would merit distinguishing how much of that is actively being farmed and is contributing to the 100,000-acre goal of the AAC.

Alan is hoping to use this document as a way to communicate with other advisory committees and clarify overlapping goals to move forward on and build a more compelling case to bring to County Council.

Elli acknowledged that the Rural Land Study was recently included as part of the AAC’s comments on the Comp Plan update, and that those parcels have already been identified as high value for agriculture meriting further protection.

Alex Harris contributed that over 28,000 acres were identified in 2017 as high value ag lands at risk of development, and that that some of those acres have since been developed. An update to the Rural Study Areas is currently underway between Whatcom Public Works and PDS staff, and will demonstrate how much of that land has continued to be developed since the 2017 Rural Land Study. This update will also include an analysis of water rights.

Roger mentioned that part of protecting ag lands is encouraging densification of existing urban areas. Chantel mentioned an op-ed her colleague authored on protecting farmland by encouraging urban density, for inspiration.

Ag worker housing was added as a sub-goal.

It was decided that more work was necessary to clarify this document and perhaps simplifying it to remove some of the sub-goals or move them to a different page. The subcommittee (Roger, Alan, & Elli) agreed to reconvene before the next meeting in this effort.

Roger suggested that perhaps this is too simple of a document, and that clarification of “what” & “how” these goals will be accomplished would provide other committees with

clearer actions to support or not. Too simple of a document may not be specific enough to garner support.

9- New business – 01:56:55

No new business

10- Action items and next agenda – 01:57:00

Presentation on VSP, CPAL, & Farm Plans (Dakota & Corina)

Further discussion of goal refinement (work by sub-committee)

11- Dismissal and Next Meeting

The meeting adjourned at 5:03 p.m. The next meeting is scheduled for April 10, 2024 from 3-5 p.m. to be held both in-person and virtually.

Ideas on major goals and sub-goals as a focus of the Ag Advisory Committee. The Sub-Sub Goals are only to further the discussion.

Goal 1 An economically viable, environmentally responsible agricultural economic sector that provides employment, enhances local food security, and conserves natural resources of air, soil and water

Sub-Goal 1.A Agricultural soils of long term commercial significance are reserved for agricultural operations

Sub-Goal 1.A.1 Minimum of 100,000 acres

Sub-Goal 1.A.2 Rural Study Area target protection (28,449 acres in 2019)

Sub-Goal 1.A.3 Densification of urban areas in order to protect ag land

Sub-Goal 1.B Water available for agricultural sector that will sustain profitability with most effective water use efficiencies.

Sub-Goal 1.B.1 Local management of available water resources

Sub-Goal 1.B.2 Viable natural salmonid populations

Sub-Goal 1.C Institutions and infrastructure that will increase agricultural operations ability to operate viably and responsibly

Sub-Goal 1.C.1 Processing facilities

Sub-Goal 1.C.2 Local markets

Sub-Goal 1.C.3 Farm to market

Sub-Goal 1.C.4 Equipment supplies and maintenance

Sub-Goal 1.C.5 Technical and financial support

Sub-Goal 1.C.6 Training

Sub-Goal 1.C.6 Farm worker housing

Sub-Goal 1.D -Public recognition of the importance of a viable, responsible agricultural economic sector to the entire community.

Sub-Goal 1.D.1 Local food

Sub-Goal 1.D.2 Employment.

Sub-Goal 1.D.3 Open space

Sub-Goal 1.D.4 Wildlife habitat