



LOOMING BATTLE

Northwest Washington farmers brace for water-right lawsuit that Ecology is preparing

By DON JENKINS
Capital Press

WHATCOM COUNTY, Wash. — At the request of two tribes, the Washington Department of Ecology plans to sue water users in Whatcom County, raising the possibility of severely curtailing irrigation in Western Washington's top farm region.

Salmon need more water, the tribes say. Receptive to that, Ecology invokes equity, climate change and environmental justice to justify the adjudication, in which a local judge will sort out the region's water rights.

The county borders Canada in the northwest corner of the state. Water rights are tangled and uncertain here, and the tribes' willingness to "risk" their claims in state court presents a rare chance to achieve "certainty," according to Ecology.

Nooksack Tribal Council Chairman Ross Cline Sr. said he doesn't see the peril. Water law begins with the maxim, "first in time, first in right." The Nooksack tribe and Lummi Nation predate all settlers.

"We don't feel like we're taking a risk," Cline said. "We're pretty sure of the outcome. They'll find us No. 1, first in line."

If so, other water rights will remain uncertain until the tribes' rights are quantified. Not just surface-water rights, but groundwater rights are at stake because aquifers connect to the region's rivers and streams.

Junior to tribal rights, every other water right could become "interruptible," Whatcom Family Farmers executive director Fred Likkel said. "That's where this could go."

To get an idea of what his tribe wants, Cline suggests looking at a 1974 court decision. That's when federal District Judge George Boldt ruled that treaty tribes were entitled to half the salmon in Washington waters. In that case, the federal government sued Washington on behalf of the tribes.

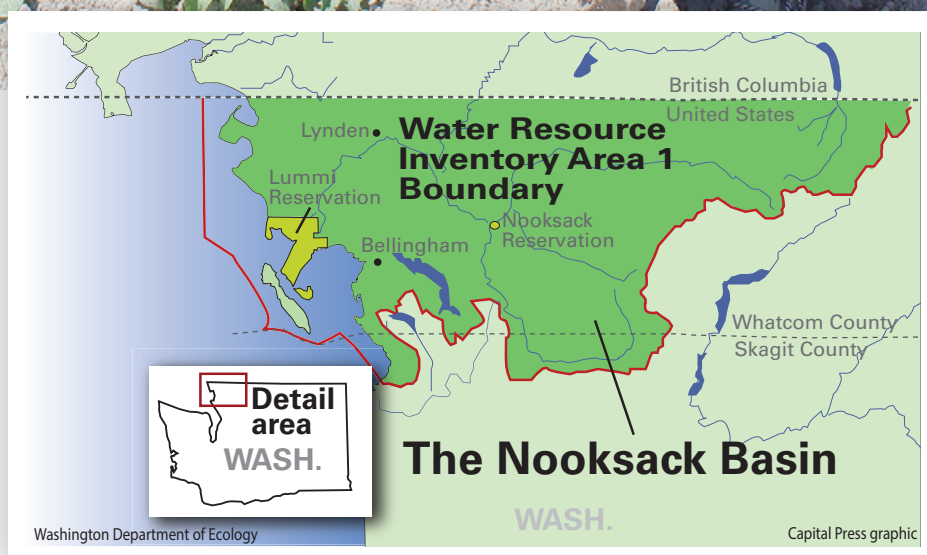
In Whatcom County, Ecology, a state agency, will sue state water users at the request of tribes, which are sovereign nations. Boldt's ruling suggests tribes are entitled to half the water, Cline said.



Ross Cline Sr.



Don Jenkins/Capital Press
Whatcom County, Wash., seed potato farmer Greg Ebe sees a long, expensive and unnecessary court fight ahead to defend his farm's water rights in a lawsuit the Washington Department of Ecology plans to file.



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Most Oregon wells drilled in groundwater concern areas

By MATEUSZ PERKOWSKI
Capital Press

Most new wells in Oregon are drilled where groundwater is already at risk of depletion, potentially aggravating conflicts among irrigators, according to state water regulators.

In the past decade, about 80% of applications for groundwater permits were in "areas of concern" or "significant concern" for declining aquifers and other groundwater problems, an agency study found.

Roughly 80% of those applications were approved by the state's Water Resources Department, the study said.

One-third of the "significant concern" areas identified in the OWRD's analysis aren't currently subject to regulatory groundwater restrictions, the report said.

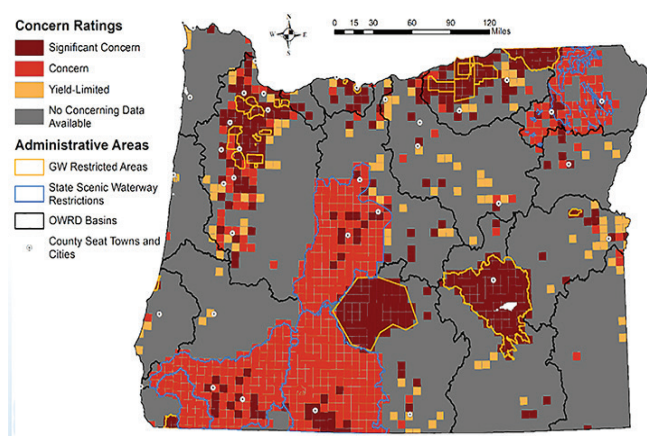
The report's findings were recently met with consternation by some members of the Oregon Water Resources Commission, which oversees the agency.

The problem is reminiscent of falling Chinook salmon populations in the Willamette River, which some consider the "best studied extinction ever," said Joe Moll, commission member and executive director of the McKenzie River Trust.

"I kind of fear we have a similar situation where we're watching something get worse. We're kind of working but we're somewhat limited, i.e. helpless," Moll said during the commission's most recent meeting.

Under Oregon water law, regulators are limited in their ability to reject permits for new wells, said Justin Iverson, OWRD's groundwater section manager.

For example, wells must generally be within a mile of a stream or river to trigger concerns about substantially interfering with surface waters, he said.



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OWRD

Biden administration to redo WOTUS

By DON JENKINS
Capital Press

The Biden administration announced June 9 it will redefine "waters of the United States," claiming the Trump administration's rule left streams unprotected, particularly in the arid Southwest.

The Environmental Protection Agency said it won't return to the 2015 Obama administration's WOTUS definition, but will revert



Michael Reagan

to the pre-Obama rule and then write a new one.

The American Farm Bureau and some Western congressmen criticized dropping the 2020 Trump rule. The reversal had been expected since the election. On his first day in office, President Biden ordered the EPA and U.S. Army

Corps of Engineers to review the rule with an eye toward rescinding it.

"Just as predicted, the Biden administration announced its intent to dismantle the Navigable Waters Protection Rule — a move that threatens the livelihoods of many in rural America," U.S. Rep. Dan Newhouse, R-Wash., said in a statement.

The federal Clean Water Act regulates the discharge of pollutants

into navigable waterways. WOTUS defines a navigable waterway.

Farm groups complained the Obama rule extended federal jurisdiction to pastures, fields and ditches that were dry most of the year. Environmentalists supported the Obama rule and opposed the Trump rule.

American Farm Bureau President Zippy Duvall said the Trump

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