

Department of Ecology  
Bellingham Field Office

To: Whatcom County Council, Whatcom County Planning Commission  
From: Richard Grout, Manager BFO  
Subj: City of Lynden's Urban Growth Area, Regarding Water Rights  
Date: 17 Sept. 2009

The Department of Ecology Bellingham Field Office has been monitoring Whatcom County's review of Urban Growth Area (UGA) boundaries for the past few months. We are aware that on Thursday, Sept. 17, the county will hold a public hearing regarding the proposed UGA boundary amendments. We have previously submitted comments during the county's Urban Growth Area update process but, having read the online submittals from the City of Lynden for tonight's hearing, we would like to submit these comments for the hearing record.

The proposed expansion of the City of Lynden's UGA is of concern to us because the City of Lynden and Ecology disagree regarding the extent of Lynden's current water rights. Lynden asserts that they have 6,623.5 acre feet per year (afy) for their total annual water right (Qa) and 14,734 gpm of instantaneous withdrawal (Qi). Ecology believes that Lynden has 1792 afy and 11.7 cfs (5,251 gpm) from the Nooksack River, as summarized in Table 1, below. We also estimate that they have about 16 afy of irrigation rights from wells. Ecology has not taken enforcement action against Lynden because in 2004 we entered into an agreement to work with them, as part of the larger watershed effort, to secure additional water for their use. To date, those efforts have not produced any additional water and it remains the position of Ecology and our attorneys that Lynden is currently exceeding its water rights.

The City of Lynden also asserts the validity and ownership of Water Right 702 from Fishtrap Creek, commonly referred to as the Darigold water right. Ecology has advised the city that we believe this right is very likely relinquished as a result of non-use for a period of more than five years. We advised Lynden nearly three years ago that if they believe the Darigold right is valid they should apply for a change of the point of diversion, purpose of use, or place of use, which would trigger a formal review by Ecology of the extent and validity of this right. Thus far, Lynden has not accepted Ecology's invitation to submit a change application and have Ecology review this water right.

Finally, Lynden has listed as a source of water the existing water rights attached to the land within the proposed UGA expansion area. Ecology has made no formal determination regarding the extent and validity of those rights. The annual quantities of irrigation rights cannot always be converted to equivalent year-round municipal rights. It is also possible that some of those rights have relinquished due to non-use.

(See table below/over.)

Table 1 – Ecology’s Estimate of the City of Lynden’s Municipal Water Rights As of June 30, 2009

Water right type & number	Priority date	Source & purpose of use	Rate in cfs or gpm	Annual volume in acre-feet per year
Surface water certificate #6821	12/3/1956	Nooksack River – municipal supply	5.0 cfs	1120 afy (per Ecology’s Report of Exam for the certificate*)
Surface water certificate #8986	11/14/1962	Nooksack River – municipal supply	5.0 cfs	1680 afy (less amount used under certificate #6821)
Surface water certificate #S1-21540C	4/25/1974	Nooksack River – municipal supply	1.77 cfs	112 afy
Total municipal supply quantity			11.77 cfs	1792 afy (approximately 584 million gallons)

\*Lynden has asserted that this right (#6821) entitles them to more than triple this quantity. Ecology has advised the city and its attorneys that we do not accept their reasoning in arriving at that much larger total.