

STOCK WATER WORKING GROUP

December 2, 2009

9:30 am

Conference Rooms A, B, and C
John A. Cherberg Building

The meeting was called to order at 9:49 am by Representative Chandler.

Overview and welcome by Representative Chandler.

The Working Group began the meeting by discussing the topics from the October 22, 2009 and November 24, 2009 Stakeholder Meetings, including:

1. Define "stock-watering purposes."

There was disagreement about how to define the term "stock-watering purposes". There was discussion about determining what size operation should be able to rely on the exemption. There was discussion about dust control being used to prevent respiratory issues and whether it is considered part of a basic function for protection. The Agricultural groups raised the concern that the definition must include normal animal husbandry practices. There was discussion about whether the 5000 gallon/day limit is inclusive of these uses. The Working Group discussed whether a 5000 gallon/day limitation would include uses in the home and if parties were open to the concept of stacking these uses.

There was discussion about if the definition is looking at the limit or cap. Many states have taken the next step to define stock watering: one example is "all associated care and use of livestock."

There was discussion about volume in the definition of stock watering purposes. The environmental caucus noted that volume is important. The agricultural community questioned whether a distinction was necessary and noted there is a difference between small scale and large scale, industrial operations. If there is a distinction, then the definition matters. There was discussion about what the volume limit would be. There was discussion about the need to differentiate existing water uses from future use.

2. Provide a process for Ecology to tentatively confirm (and register?) the extent and validity of the water rights put to beneficial use by existing operations under the authority of the exemption.

There was discussion about creating a process to examine those using more than the limit to be able to ensure that proper livestock operations are getting the water that they need. There was discussion about the extent to which a problem would be created when there are many standing in line for a water right and exempt well users "jump" over them in line.

There was discussion about whether the topic was applying to existing users and/or new and future users. There was discussion about looking at how limits may affect other users. There was discussion about creating a new process that would affect existing users that would happen only if an existing user was impairing someone that has a senior water right. There was discussion about language that would protect existing users that are lawful. There was discussion about the potential difficulties in proving who is impairing who. There was discussion about whether it is useful to ask individual farmers to spend money to prove that they aren't impairing someone else. There was discussion about a concern that existing operations may be impairing other users with senior rights.

There was discussion about what the process should be for a water rights owner who feels like they are being impaired. The Department of Ecology lacks the ability to regulate in some disputes because of the Rettkowski decision.

There was discussion about a new tracking system to determine where water is and how it is available. There was discussion about whether existing uses are bifurcated from future uses in the impairment process. It was noted that exempt wells are not regulated. There was discussion about whether the Legislature might consider something short of a general adjudication for the Department of Ecology to help with this process.

There were two proposals for rewording topic #2. The environmental caucus suggested striking “(and register?)” and John Stuhlmiller suggested removing “tentatively” and “(and register?)”.

3. Provide a process for existing operations that rely upon the exemption to have their authorized withdrawal quantities and beneficial uses of water registered and verified by Ecology.

There was discussion concerning whether stock water uses should be metered. There was discussion about the inclusion of verifying data in a plan. The difference between verified data and opinion was discussed. There was a question about the Department of Ecology’s opinion on accomplishing the task and using data collection with the budget the way it is. The Department of Ecology noted that the cost of performing a 4-part test on every exempt well would be staggering. They also noted that if there was a Rettkowski fix and you could fix smaller basins that were in conflict, it would be a smart budget decision so there wouldn’t be a long adjudication process with everyone involved. There was a question about whether a new process would help.

There was discussion about agreeing about what extent and validity means. There was discussion about considering highest historical use. There was discussion about whether or not metering should be mandatory. There was discussion about how much water is released back after it has been pumped.

There were two proposals for rewording topic # 3. The environmental caucus suggested striking “and verified”. John Stuhlmiller suggested adding “voluntary” before “process for existing...,” changing “authorized” to “confirmed,” and removing “and verified”.

4. Establish clear quantity limits for new livestock operations that intend to rely upon the exemption in the future.

There was discussion about whether or not limits should apply to all exempt wells and not just those used for stock water. There was discussion about quantity limits and if they should be for the entire operation. There was discussion about the potential problems associated with one well per operation. There was discussion about the consequences of rezoning or subdividing land to allow for more wells. There was discussion about the volumetric limit also applying to multiple wells.

There was discussion about whether or not this topic applied to both existing operators and new operators. There was discussion about users who may share their water with others. There was discussion about quantity limits for users that intend to rely upon the exemption in the future. There was agreement that exempt wells should only be created where water is available. There was discussion about giving an agency the ability to close basins based upon certain types of uses, such as home use and stock watering use.

5. Provide a process to recognize and protect from relinquishment the reduced water use of registered livestock operations.

There was discussion about whether a livestock operator could use the Trust Water Rights Program in order to put water into the program and protect it from relinquishment. In the Department of Ecology's Z-draft legislation, a notice would come in and show there was a reduced use. The user would be exempt from relinquishment if they were in the trust water program. There would be protection of their use today and then ten years later if the market comes back. This was an incentive to conserve water.

There was discussion about how a water right holder's use would be determined. There was discussion about whether the user or the Department of Ecology would be more qualified to determine an appropriate amount. The Department of Ecology's Z-draft can be a point of discussion. There was discussion about existing relinquishment policies. There was discussion about providing safeguards to protect large surges in uses of water that may impair other users.

There was discussion about how stock water policies may affect future generations of users and whether or not looking at how we've done things in the past is the best approach. There was discussion concerning the cyclical nature of the livestock industry. There was discussion about how to avoid driving landowners into subdivisions and how to keep the cows on the land in order to keep that culture alive.

6. Facilitate more efficient consolidation and movement of livestock and their associated water requirements among registered livestock operations.

There was discussion about whether or not the transfer of livestock water should be subject to the same requirements as any other water in the state. There was discussion about whether or not stock water uses are different than other types of water uses. There was discussion around the agricultural water could be used for various agricultural purposes concept that was discussed in SB 5106 (2003). There was discussion about Oregon legislation that considers water availability on a watershed basis.

7. Create mechanisms to manage the use of the permit exemption and ensure that existing water rights are not impaired.

There was discussion about structural changes to the system. There was discussion about how to prevent the state from taking steps backward in regard to existing water use.

Senator Rockefeller discussed his proposals and noted that if we are going to deal with stock water fairly, we have to think more broadly. He noted how important it is to remember the uniqueness of stock water, but also consider this in the larger context of exempt wells.

1. Adopting a sustainability policy for ground water
 - Senator Rockefeller noted that this is broad but helpful to address issue of stock water.

2. Ground water data and management
 - Senator Rockefeller noted that we need good data and that the lack of data impairs the quality of decisions.
3. Requiring water users that need additional ground water above a volumetric cap in the exemption to obtain a water right permit
 - Senator Rockefeller noted that the work group didn't get to the specifics on a volume limit, but that there may need to be a limit on exemption.
4. Regulation among water rights based upon priority date
 - Senator Rockefeller noted that the prior appropriation doctrine still applies. An exempt well could be impairing senior rights. Allowing the use of exempt wells to impair established and senior water rights undermines not just these unique property rights, but the very system of water rights and water management that the State is supposed to uphold.
5. General stream adjudications
 - Senator Rockefeller noted that having a more limited form of adjudication could solve problems in a stream or watershed without litigation. The current process is slow.
6. Assisting new livestock operations to find water
 - Senator Rockefeller noted that deliberate attention should be devoted to this. The Department of Ecology and the Legislature should work together to try to support the industry.

Senator Hatfield commented that we need to utilize conservation districts. The industry wants to compromise and understands that jumping the line is a problem, but a limit may be problematic. He suggested a need for a broad definition of "stock-water purposes"

Mo McBroom commented that the policies before the work group are extremely useful. There just aren't financial resources to do the work that needs to be done to protect everybody. The work group hasn't explicitly talked about a better approach to fund our water management to positively affect everyone.

Sen. Morton commented that he was concerned that Idaho use is going to impede Washington's water supply. Evan Sheffels commented that the Department of Ecology is trying to work with Idaho and sees some surplus water in Pend Oreille that could help with our water supply problems. Idaho wants to get rid of water and we could use it. We know there are dangers all around. Those in Spokane are concerned because Idaho is moving forward with adjudications.

There was discussion about the draft report due to the Legislature. There was discussion about what the report will look like and how the work group's comments would be organized and characterized. There was discussion about whether it was possible to prioritize the topics or if they were viewed as a package.

There was discussion about possible legislation for this session. There was discussion about the possible effects of a decision in the pending lawsuit. There was discussion about focusing more on local jurisdictions.

There was discussion about having the report state that the parties met and dealt with the aforementioned issues. The group would also like to continue to meet. There was also discussion about addressing the funding problem for the Department of Ecology in the report.

The meeting was adjourned at 12:45 pm by Representative Chandler.

AN AUDIO RECORDING OF THIS MEETING IS NOT AVAILABLE.