STOCK WATER WORKING GROUP


The meeting was called to order at 3:30 by Senator Rockefeller
Overview by Senator Rockefeller and Representative Warnick

Discussion of Proposals:

Jack Field, WA Cattlemen’s Association - There is a need to carve out forage-based operations. The focus of the problem should be large confined operations.

There was discussion about providing an exemption for forage-based operations as part of package. There is a need to flesh out what is meant by forage-based operations. It is important to keep this in context as long as it does not impair senior water right holders. There was discussion that this concept is worth further consideration.

Chris Cheney, WA Dairy Federation (via conference phone) - It is critical that existing operations not be affected. There is a need for a definition of "stockwater." There is support for the definition included in Senator Rockefeller’s proposals.

Mo McBroom, WA Environmental Council - Most of the ideas in WEC’s proposal are embedded in Senator Rockefeller's proposals.

- There needs to be a prospective quantity limit. There will need to be discussion about how that is done and a need to consider fluctuations.
- There needs to be a definition of stock water use, which would not include large use such as dust control.
- There needs to be metering and tracking of what is going on in the industry.
- There is concern for injury to senior water rights and instream flows and there should be a process in place to protect senior water rights and instream flows.

There was discussion about whether excluding water for dust control makes sense considering that dust control is an air quality requirement. Additionally, there was discussion about the health benefits of dust control. The thought behind excluding it from a definition of stock water purposes is that it was not considered when the groundwater code was adopted in 1945. The group should look at how we can get a water right for those purposes for those operations. There was discussion about how new operations will obtain a water right when some water right applications have been pending for 22 years. Additionally, there have been cuts to the water resources program. Legislation will want to consider how to provide flexibility to the industry, i.e. if there is consolidation, if they conserve water, protection under the Trust Water Rights Program for reduced use, and other ways to provide assistance. There was discussion about, when grandfathering in existing users, is that occurring at an unlimited quantity or at the beneficial use level the user is at when the legislation is adopted. One thought is that users would be grandfathered in at the level they are at when the legislation is adopted, but there is concern about codifying this use in perpetuity. There was discussion about possibly using a registration process for existing users. There is a need to be flexible as there will be growth and reductions within the industry.
Senator Rockefeller's proposals - The goal with my proposals was to capture what the group has discussed.

- There is a need to define "stock water purposes" to eliminate some uncertainty around what is and is not included.
- There is a need to protect existing operations. The proposal does not address whether grandfathering in existing users is at an unlimited amount or at the amount currently being put to beneficial use at the time legislation is adopted or at some set point in time, but my thought was that it would be for actual use.
- A volumetric cap limit should be based on annual use patterns. There will need to be discussion about what level the volumetric cap should be set at, including looking at historic use. This cap should address large uses.
- Sustainability is important and the Code currently touches upon this but it needs to be expanded upon with specificity. There is a need to manage for the future to take care of the resource for our kids and grandkids.
- Data and management currently are piecemeal and not very well-funded. Additionally, there are budget constraints, which mean we need to prioritize.
- Existing case law limits Ecology's authority to protect property rights and it may make sense to address this issue. Ecology needs to have enforcement authority when there is impairment.
- There is a need for general stream adjudications.
- Finally, it is important to consider options that will assist new operations in finding water. We value this industry and we need to find a way to identify locations where these operations will thrive. We need to have the various agencies, Department of Agriculture, Department of Ecology, Office of Regulatory Assistance hanging out a welcome sign encouraging the operations to locate in Washington.

There was discussion about making sure any proposal is prospective only. There was some discussion about requiring existing operations to comply with any new law and give them some time to comply. There was discussion around a concern about continuing unfettered access to water for stockwater purposes. These proposals are consistent with policies Ecology has had in the past. There was discussion about adjudications, including the cost and time that it takes to complete a general stream adjudication. The working group may want to consider the recommendations that came out of the Water Disputes Task Force, including negotiation, establishing water courts, etc.

Representative Warnick - Dairymen and livestock operators are concerned about their kids future. There is a need to provide flexibility to move water between uses, i.e. water for livestock and water for crops should be considered "ag water". The working group should revisit the Z draft that Ecology worked on during last session.

There was discussion about the current lawsuit.

- Question about whether now is the time for the working group to make proposals given the Attorney General's opinion about Kittitas County and the pending lawsuit.
- Whether the group should not make any specific recommendations in light of the lawsuit, especially in light of members of the working group being involved in the lawsuit.
- It is difficult being involved in the lawsuit while also working with the group to change the existing exemption.
- The lawsuit may impact prospective litigation.
Legislation has been passed even though there was litigation pending, i.e. the Columbia River Bill.

There was concern that by not moving forward, the group might lose the opportunity to craft balanced policy now.

Important to move forward and craft legislation now.

There was discussion about forming subgroups to propose solutions and bring those solutions to the entire group. Many of the stakeholders would want to participate in any subgroup, so it may not make sense to form subgroups. The challenge with forming subgroups is that no one wants to self-select off the subgroups.

A suggestion was made that Ecology take lead role of bringing together the group to discuss the proposals presented at today's meeting. There is a need for the stakeholders to further discuss the proposals. Ecology will convene meetings of the working group between now and December Legislative Assembly with an emphasis on stakeholder attendance to discuss the proposals.

There was discussion about Legislative Members forgoing leadership roles of Co-Chairs of the working group.

Discussion of report due 12/1/09 - The proviso establishes that the group must report activities and recommendations of the work group. There was some discussion that the working group does not have enough information to write the report at this point.

Discussion that the entire working group meet around December Legislative Assembly - The co-chairs will notify the working group regarding the date of the meeting around December Legislative Assembly.

The meeting adjourned at 5:25 pm.

AN AUDIO RECORDING OF THE MEETING IS NOT AVAILABLE.