
From: Chris Cheney
Sent: Tuesday, September 29, 2009 6:08 PM
To: Stock Water Working Group Members
Subject: RE: Stock-Water Work Group Submittals

This is from Jay Gordon and Chris Cheney and concurred with in separate emails from Jack Field and Ed Field.

For the record we support Jack Fields' proposal that the forage based operations be carved out of what really is a concentrated operation issue.

This a high altitude view of the issue, there are many details to deal with after drilling down.

We have said previously that our number one issue it to not impede, constrain or cause harm to our existing operations that have operated under the exemption. This to us means that what they have done in the past, they can continue to do in the future. A huge part of that is recognizing that herd/flock sizes change over time.

You may have heard us say that if the exemption went away today--tomorrow many operations would be illegal---technically all it would take is one calf being born tonight, unless one died at the same time.

EXPLANATION: (fairly simplified) A traditional water right is a certificate that states the amount of water that maybe used in terms of instantaneous and total use. That is "x amount per minute" up to "the total allowed use for the year". To get this water right someone in the past had to "prove up" under a permit. The amount beneficially used in the prove up period is the amount the certificate was issued for. So in the case of an irrigator, if the applicant proved use of 500 gpm for 120 acres of crop land and the total used was 360 ac/ft--that is what his water right is-----and shall not be exceeded and if for some reason he "under used" his right for a period of time, he maybe subject to relinquishment of part of the right.

For obvious reasons this really doesn't work for animal agriculture. Very few if any animal operations have remained static over the years, it is safe to bet that most have had to grow with the times--call it "Wal Martization" if you will. Like it or not, it is a fact of life that with decreasing margins the only hope for survival is increased production. And in our case that means that most likely even our operations that have "stock water rights" are not "legal" if they have grown in animal numbers.

That is one of the many reasons that the "exemption" as it has operated for the

last 64 years is vital to our survival. There is no other feasible way to accommodate the herd/fluctuations and incremental growth. We can't run out to get an additional right overnight or on a frequent basis to cover growth. In our view the "exemption" has covered this need.

Any changes proposed must allow for the orderly growth of our industry as it has been since the beginning of time and specifically in statute since 1945.

The next issue -- What is stockwater? We have presented the myriad uses of water in stock operations and arguably many are as important as drinking water for the wellness of the animals. We believe the definition should be agreed to and codified with no "sharp shooting" of minutiae. Since there is no statutory definition of stockwater, it appears hard to "discover" what was meant by the Legislature in 1945---but we note that many uses were anticipated as the words in statute are "stockwatering purposeS". emphasis added.

Some have stated that the notion of "unlimited" must stop--and certainly a compelling case was presented at our last workgroup meeting that there maybe now and for sure will be sometime in the future problems in some watersheds. We acknowledge this apparent fact but don't have a ready solution to propose as to what is an appropriate amount that is less than unlimited. There are differing opinions in Ag country as to the best approach on this. We will in fact be meeting before the next workgroup to discuss this, but obviously have nothing to suggest at this time.

Perhaps by considering the above points, you can see why we as an industry are quite concerned with the notion of "messing with the exemption", without very dramatic offsets of some sort to not unduly constrain or impede our operations. We honestly feel like a condemned man waiting on death row and having someone come in and ask, "what is your preferred way of death?"