

Stock Water Working Group Stakeholder Meeting Notes - November 24, 2009

The group discussed the upcoming presentations to the Senate Environment, Water, & Energy Committee and the House Agriculture and Natural Resources Committee. The group continued its discussions on the intent section of Ecology's z-draft from last session and the 7 topics that were identified in the meeting notes from the October 22 meeting, including:

1) Define "stock-watering purposes"

The group discussed the need to define "stock-watering purposes" in order to determine what the cap will be, i.e. will the cap be set based on the head cap of the facility or the number of cows that the operation currently has, as market conditions have affected the number of cows that operations currently have. There was discussion about the impacts a broad vs. narrow definition will have on the legislation, i.e. a broad definition favors existing operations but may hurt new operations because the cap may end up being lower.

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.

The group discussed the potential retroactive effect of confirming existing operations water use. The group discussed the Municipal Law litigation and the litigation currently pending in Franklin County. There are three issues in play: relinquishment (which may not apply to exemption), potential retroactive effect of the legislation (or is it just a recognition of rights validated through use under the exemption?), and the potential effect of a judicial interpretation of the existing exemption. The group discussed the need to address concerns going forward and the need to not hurt those operations currently using water under the exemption. The group discussed the issue of impairment.

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.

The group discussed establishing a process similar to the claims registry as there has not been litigation against that statute. Ecology's z-draft goes farther than the claims registry in that there is an extent and validity review. The group discussed the possibility of setting up a two-part process, a claims process for existing operations (leaving validation of the right up to Superior courts) and a registry/confirmation process for operations who would like the ability to transfer their water use to another operation.

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

Ecology's z-draft establishes a quantity limit of 10 acre feet but it would include all of the exempt uses, stockwater, domestic, lawn and garden, and industrial use. The z-draft discusses limitations in areas in which there has been curtailment or in which instream flows are not being met. New operations would need closer to 50 acre feet of water for their operations. The group discussed whether it makes sense for stockwater operations to jump ahead of other users.

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

The group discussed the use of the Trust Water Rights Program to protect water from relinquishment. The group discussed the need to establish a process that encourages efficiency.

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

The group discussed the circumstances that make stockwater operations different from other farming operations, i.e. the cows move around based on where the grass is and the numbers of cows in an operation fluctuate based on market conditions. The group discussed the riparian doctrine that gave preference to drinking water for cows and drinking water for people.

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

The group discussed the need to address the broader issue of exempt wells, including possibly a fix to Rettkowski and the need to think of this as a new exemption in the context of sustainable water management. There was discussion around the Oregon process - impaired aquifers, allowing exemption quantities to be reduced in certain circumstances, etc. The group discussed the need to look at impairment and water availability on a basin wide basis.

Additionally, the group discussed whether discussion on the stockwater exemption should continue. The group would like to continue discussions. The group discussed the importance of the Legislature to do things to assist the livestock industry. One issue the group would like to discuss further is the issue of transferability of the water. The group also expressed concern that there are affected water users who are not currently part of this discussion.