SWWG - Environmental Caucus by CELP
December 2, 2009
Comments on SWWG Seven-Part Concepts

Disclaimer: CELP and other environmental and farming groups are parties to a pending lawsuit concerning interpretation of the stockwater exemption. Nothing set forth herein is or may be taken as a position on what the law has been or is currently, as that will be determined in the lawsuit. The positions taken herein should be construed only as forward-looking statements relative to future changes to the statute that may result from the work of the Stockwater Working Group.

FINDINGS—INTENT: The legislature finds that effective water resource management and a stable livestock industry are vital to the economic and environmental well-being of the state. The legislature further finds that achievement of these goals is hindered by controversy (uncertainty?) surrounding the exemption from water right permit requirements for withdrawals of public groundwater for "stock-watering purposes" pursuant to RCW 90.44.050. Therefore, in order to promote the clarity needed for both a sustainable livestock industry and effective water resource management, the legislature intends to:

- Because of our proposed volumetric cap of 5.6 acre-feet per year (AFY), the Findings-Intent language should distinguish between small-scale livestock operations (i.e., farms and ranches which can operate within a 5.6 AFY limit) and large industrial facilities.

1) Define "stock-watering purposes"

- Includes all water uses associated with small livestock operations, including drinking water, cleaning livestock and equipment, misting for cooling and other basic needs for animal welfare.
- Does not include industrial and commercial uses, including dust control, irrigation, animal carcass processing, etc.
- Exemption is limited by volumetric cap, see #4.

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.

- Ecology to evaluate all existing stockwater users using water in excess of 5.6 AFY according to the 4-part test for water rights, to ensure that water is available and water use is efficient, does not impair existing rights, and does not harm the public interest (e.g., deplete hydraulically connected streamflow), as well as determination of priority date of use.
- Create mitigation elements, including transfer incentives, water banking and/or exchange, funding and other mechanisms for existing uses that do not meet 4-part test.
- Adopt sustainability package (see #7).
- Ecology to make bi-annual status reports; progress on confirmation and mitigation processes to be completed at 25% per year for four years.
- Registration process is separate activity as set forth in #3.

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.

- Mandatory registration of all stockwater uses (similar to Dept. of Ag registration requirements).
- Verification process (i.e., confirmation of validity and mitigation requirements) is separate activity as set forth in #2.
- All stockwater users to be metered.
4) Establish clear quantity limits for new livestock operations that intend to rely upon the exemption in the future.
   - Exempt wells for future stockwater uses may be established only in areas where Ecology affirmatively determines that water is available.
   - Quantity limit of 5.6 AFY.
   - Single well per operation (i.e., avoid six-packs for stockwater), or 5.6 AFY limit on multiple wells per operation.

5) Provide a process to recognize and protect from relinquishment the reduced water use of registered livestock operations.
   - Permanent protection from relinquishment promotes speculation in water rights.
   - Do not agree until Legislature simultaneously addresses the impact of resumption of long-unused water rights (i.e., 5-plus years of non-use) on existing water users, instream flows, and water quality.

6) Facilitate more efficient consolidation and movement of livestock and their associated water requirements among registered livestock operations.
   - Transfers subject to same requirements as all other water uses.

7) Create mechanisms to manage the use of the permit exemption and ensure that existing water rights are not impaired.
   - Adopt a binding “sustainability policy for groundwater”: groundwater must be allocated and managed to prevent mining (i.e., withdrawals in excess of recharge) and to prevent depletion of hydraulically connected surface waters.
   - Establish groundwater monitoring program in basins where groundwater mining or surface water depletion is occurring or at risk of occurring.
   - Establish program to make affirmative determinations of water availability before allowing future exempt wells.
   - Adjudicate water rights statewide.
   - Funding required for all seven parts of the framework.

Issues Not Addressed in the Seven-Part Concepts:
   - How should Washington address current problems of water scarcity, in which most watersheds are fully or over-allocated and climate change will exacerbate water supply and scarcity problems in the future?
   - What is Legislative policy regarding effective approval of new stockwater exempt well use in basins where water right applications are pending and new stockwater use would “jump” the line of applicants?
   - What is Legislative policy regarding promotion of endangered species (salmon) recovery for streams that are fed by hydraulically connected groundwater that may be subject to appropriation for stockwater purposes?
   - What is Legislative policy regarding acknowledgement and protection of existing but unquantified tribal treaty water rights for both on-reservation and instream flow purposes?