



Washington Cattlemen's Association

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November 21, 2008

To: Gov. Chris Gregoire, and Executive Policy Office

Attorney General Rob McKenna

Speaker Frank Chopp, Representatives Bill Grant, Lynn Kessler, Brian Blake,
Kelly Linville, Dan Newhouse, Steve Hailey, Judy Warnick, Joel Kretz;

Senators Phil Rockefeller, Bob Morton Chris Marr, Ed Murray, Craig Pridemore,
Mike Hewitt, Jerome Delvin, Jenea Holmquist, Jim Honeyford, and Mark
Schoesler

Jay Manning, Director of Ecology

Robert Gore, Acting Director of Agriculture

Fr: WCA Executive Board, Jack Field, Executive Vice President

Re: Mr. Ken Slattery, DOE Water Resources Program, recent misinterpretation of the
stock watering exemption

The Washington Cattlemen's Association (WCA) is very concerned that a recent Department of Ecology (DOE) action will create a huge wave of concern throughout the livestock industry. Recently Mr. Ken Slattery, DOE's Water Resources Program Director, misinterpreted the 2005 Attorney General's Opinion #17 on stockwatering (AGO 2005 #17) and ignored significant sections of a 2001 PCHB ruling.

The Easterday Ranches in Franklin County have applied and worked through the county processes to site a feedlot in Franklin County near the town of Eltopia. Part of the application process required Easterday's to identify their water sources. Easterday's sited AGO 2005 #17 as their water right for stockwatering purposes. The DOE (Mr. Slattery) then responded with a letter that stated that the Easterday's had improperly interpreted AGO 2005 #17 and that there was a need for the Easterday's to obtain an additional water right to cover what the DOE (Mr. Slattery) claims is an "Industrial Use". Mr. Slattery stated in his letter to Mr. Easterday (dated November 12, 2008) "*However, it is Ecology's position that use of water for operations of a feedlot, such as dust suppression, cleaning of barns, and watering of vegetation, is not "stockwatering" but "industrial use" under the exemption. Industrial use is limited to 5,000 gallons per day under the exemption*". The WCA has joined with the Columbia Snake River Irrigators to support the Easterday request to utilize AGO 2005 #17 to satisfy their stockwatering needs. The Easterday's understand the legal principles of Washington's Water Code and Western Water Law, "first in time first in right" and "a

junior water right holder may not impair a senior water right holder". The Easterday's demonstrated their understanding and backed it up with a hydrologist that explained how the Easterday well will be drilled into a lower aquifer that is not connected to the existing aquifer that serves existing wells in the area. There is two hundred feet of basalt rock that effectively places a seal between the two aquifers.

A key reason the WCA is supporting the Easterday's request is our strong belief that the Attorney General Opinion, AGO 2005 #17, clarifies the exemption for stockwatering purposes. When Mr. Slattery decided to provide his own interpretation of AGO 2005 #17 that stockwatering is limited to the water that an animal drinks under RCW 90.44.050. This interpretation is incorrect on multiple levels. Mr. Slattery stated that the Easterday's would need to obtain a separate water right for dust control on the proposed feedlot. Mr. Slattery claims dust control is an "Industrial Use". Mr. Slattery stated in his letter (dated November 12, 2008) "*However, it is Ecology's position that use of water for operations of a feedlot, such as dust suppression, cleaning of barns, and watering of vegetation, is not "stockwatering" but "industrial use" under the exemption. Industrial use is limited to 5,000 gallons per day under the exemption*". The statement that the use of water for dust control for livestock is an "Industrial Use" is not only wrong it directly flies in the face of the Pollution Controls Hearings Board decision from 2001 (PCHB 01-073). In PCHB 01-073 the board was asked the following question: "*Does the stockwatering purpose of use that is exempt from permitting requirements under RCW 90.44.050 include uses of water by a dairy for washing machinery, cleaning, dust suppression, and/or dairy-related uses that do not involve the consumption of water by stock*"? The PCHB responded: The statute uses the term "stock watering purposes." The term "purposes" is plural, implying that there is more than one stockwatering purpose. A single purpose might lead to the conclusion that only water for drinking was envisioned. Since more than one purpose is contemplated, water use for stockwatering purposes covers all reasonable uses of water normally associated with the sound husbandry of livestock. This includes, but is not limited to, drinking, feeding, cleaning their stalls, washing them, washing the equipment used to feed or milk them, **controlling dust around them and cooling them.**

As you have seen from the PCHB as well as the Attorney General Mr. Slattery's recent re-interpretation of the RCW 90.44.050 that the Easterday's would need to obtain a separate water right for dust control is completely false. The Attorney General clearly stated that RCW 90.44.050 clearly exempts stockwater purposes.. The WCA believes it is essential we strongly support the Easterday's legal ability to satisfy their stock water requirements. This issue has the potential to significantly impact every livestock operation on an exempt well anywhere throughout our state. If this decision goes unchecked it will have a negative impact on the ability of livestock operations to maintain financial solvency. The Washington Cattlemen's Association respectfully requests that your office ask the DOE to rescind the letter that Mr. Slattery sent the Easterday's. It is imperative that State Agencies are held to following the law not setting it; changing the law is your and legislators job. We must all work collectively to ensure that the DOE does not take it upon themselves to re-interpret laws and rules as they see fit.