



CLEAN, FLOWING WATERS FOR THE WEST

The Center for
Environmental Law & Policy

January 14, 2010

Representative Brian Blake
Chair, House Agriculture & Natural Resources Committee
Washington State Legislature
Olympia, WA

Dear Rep. Blake and Members of the Committee,

The Center for Environmental Law & Policy (CELP) thanks you for the opportunity to provide comments on the several water resource bills to be heard in the House Committee on Agriculture and Natural Resources on January 15, 2010. Our comments are set forth below.

In sum:

HB 2591 (cost recovery for water rights processing): strongly support
HB 2542 (land use & water availability study): support with proposed amendment
HB 2508 (water rights processing improvements): support with concerns
HB 2468 (metering exempt wells): strongly oppose
HB 2532 (cluster development water pilot): strongly oppose
HB 2548 (re water withdrawals): strongly oppose

HB 2591 (Cost Recovery for Water Rights Processing)

CELP strongly supports HB 2591 with one minor suggestion for amendment. This bill provides an appropriate alternative approach to providing resources to eliminate the water rights application backlog, by placing the cost of the government service on the party who will benefit from that service. This makes sense and CELP supports it.

We recommend elimination of or specific amendment to the last sentence in RCW 90.03.470(3)(b), which authorizes Water Conservancy Boards to collect fees. If the legislature wishes to so authorize the WCBs, it should provide for specific fee amounts and not leave it to the whim of the boards. Note also that WCBs are run by volunteers and do not have the same level of expense as does the state agency.

Please see CELP's 2005 report *Water is Worth It (Making the Case for a Water Management Fee)* for more information about why water resource fees are a great idea (on CELP's homepage at www.celp.org).

BOARD OF DIRECTORS: Kathy George – Anne Johnson – Bartlett Naylor – John Osborn MD
HONORARY BOARD: Billy Frank Jr. – Prof. Estella Leopold – Gov. Mike Lowry – Prof. Charles Wilkinson – Fran Wood MD

25 West Main, Suite 234, Spokane, Washington 99201
509.209.2899 / www.celp.org

HB 2542 (Land Use & Water Availability Study)

CELP supports HB 2542 with a proposed amendment. A study of available water supplies is appropriate and necessary to assess and address future growth. A credible and thorough study could provide important information for the Legislature to direct appropriations and amend the water code in the future.

Our primary concern with HB 2542 has to do with how water availability will be determined. Section 2 of the bill (Part 2(c)) directs the study author to determine water availability “based on water right permit decisions or instream flow rules.” It is not clear what this method would entail. Normally, water availability is assessed by looking at the total water budget: physical quantities of available water, less total demand represented by pre-existing water rights (including claims, permits and certificates, instream flows if they have been set, and exempt wells). If instream flows have not been set, it is still critical that an estimate of the need for water for instream flows be included in the water availability analysis. Also, because climate warming is projected to have a substantial impact on snowpack-dependent water availability (both amount and timing), that should be included as part of the analysis.

HB 2508 (Water Right Processing Improvements)

CELP supports this bill with concerns. This bill would effectively privatize the Department of Ecology’s water rights processing program. Historically the Legislature has had difficulty in fully funding the water rights program, leading to a substantial backlog of water right applications. This approach presented in this bill would provide a solution to the backlog problem. CELP prefers the cost recovery approach set forth in HB 2591, but this approach would work too.

CELP’s first concern regarding HB 2508 relates to the need to provide adequate funding to the Department of Ecology to provide oversight of private contractors and fulfill other tasks as authorized in the bill (e.g., determining geographic limits of water resource areas). The waters of Washington state belong to the public, and decisions to allocate those waters can be extremely complex. Ecology must have sufficient resources to certify that private consultants are qualified to make these decisions, and to provide oversight on their final decisions – especially when those decisions involve mitigation projects that affect other water users and instream flows.

CELP’s second concern regarding HB 2508 relates to the lack of discussion of instream flow protection in the bill. There are many streams in Washington where instream flow regulations have yet to be adopted. Further, for hundreds of regulated and unregulated streams around the state, instream flows are inadequate to support aquatic habitat, water quality and other public values. HB 2508 says nothing about the relationship between processing water right applications and the need to protect and restore streamflow. We urge you to amend the bill to include such protections.

Finally, we enthusiastically endorse Sections 4 and 6 of the bill, which provides a coherent and equitable method for making and applying water availability determinations in water short basins.

HB 2468 (Metering exempt wells)

CELP strongly opposes HB 2468. Generally speaking, metering water use is an important tool for management of water resources. If water managers don't know how much water is being used, it is difficult to assess how much water is available to allocate to new users.

The Department of Ecology has imposed metering requirements on permit-exempt wells in several recently adopted rules. The basis for requiring metering is to ensure that users do not exceed their allocated quantities, to keep track of total quantities allocated pursuant to finite "reservations" of water set forth in the rules, and to quantify and implement mitigation requirements. These are all rational reasons to require users to meter and report. A blanket exemption from metering will make it impossible for Ecology to adopt rules in water short basins that allow for new water uses. It is doubtful that Ecology will ever require metering of all exempt wells around the state. However, in watersheds where future water availability is in question, metering is an important tool for water management.

HB 2532 (Cluster Development Water Pilot)

CELP strongly opposes HB 2532. There are several problems with this bill. As a pilot project, this bill has no merit.

First, it would promote residential development on agricultural lands, a bad policy. To the contrary, the Legislature needs to promote policies that will preserve agricultural lands for long-term agricultural purposes. Spokane County recently adopted a new zoning rule forbidding cluster development on agricultural lands.

Second, cluster development is not necessarily a good approach to development. Clustering has merits within urban growth areas where increased density provides positive benefits, but ag lands are not an appropriate.

Third, the Legislature should vigorously avoid bills that give away water via the domestic permit-exemption without consideration of impacts on existing water users, instream flows, groundwater levels, and other factors. Many parties want "free water," but the Legislature has no criteria or standards for determining whether such give-aways would be appropriate or necessary. This bill sets a bad precedent that developers throughout the state will be asking to replicate.

Finally, the particular pilot development proposed in HB 2532 has no limit on the number of homes, and therefore on the quantities of water it will require. Unlimited free water is an even worse idea than just free water.

HB 2548 (Re Water Withdrawals)

CELP strongly opposes HB 2548. As presently written, RCW 90.54.050 implements the "precautionary principle" – that is, allows Ecology to formally halt water permitting in a watershed when it lacks enough information about water availability to make water permit decisions. This bill turns the precautionary concept on its head, requiring the agency to affirmatively determine that water is not available before formally withdrawing the basin from permitting. Such an approach is nonsensical. When Ecology has enough information to know that water is not available, the agency then proceeds to deny water rights. This

amendment would effectively strip Ecology of a tool it can use (albeit rarely) to protect existing users and the environment while scientific study proceeds.

The impetus for this bill appears to arise out of the current controversy in Kittitas County, where Ecology has adopted a temporary moratorium while attempting to sort out the impact of proliferating exempt wells on existing suppliers. We urge legislators to review CELP and Aqua Permanente's *Kittitas Water & Exempt Well Update* (Jan. 2010) (on our homepage at www.celp.org) to understand the links between continued use of unmitigated permit-exempt wells for water supply and the curtailment of existing water users in the Yakima basin.

Thank you again for the opportunity to comment on Committee water resource bills.

Yours very truly,



Rachael Paschal Osborn
Executive Director
rosborn@celp.org
509-209-2899 (office) / 509-954-5641 (mobile)

Cc: House Ag & Natural Resources Committee Members:
Rep. Timm Ormsby, Vice-Chair
Rep. Bruce Chandler
Rep. Norma Smith
Rep. Jim Jacks
Rep. Joel Kretz
Rep. Marko Liias
Rep. John McCoy
Rep. Sharon Nelson
Rep. Kirk Pearson
Rep. Christine Rolfes
Rep. Kevin Van De Wege
Rep. Judy Warnick