



CLEAN, FLOWING WATERS FOR THE WEST

The Center for  
**Environmental Law & Policy**

January 29, 2009

Honorable Brian Blake  
House Committee on Agriculture & Natural Resources  
Washington State Legislature  
Olympia, Washington

Re: "Stockwater" bills HB 1091, 1489, and 1509

Dear Representative Blake –

Thank you for the opportunity to provide testimony on House Bills 1091, 1489 and 1509, all relating to application of the well permit exemption to "stockwater" purposes. The Center for Environmental Law & Policy (CELP) is a non-profit, public interest organization dedicated to the protection of rivers, streams and drinking water aquifers in Washington state and the Columbia Basin.

CELP supports HB 1091 with one concern. HB 1091 would provide needed clarity regarding the scope of the stockwater provision in RCW 90.44.050. It should be amended to become immediate law.

CELP opposes HB 1489 and 1509, for the following reasons.

The proliferation of permit-exempt wells in Washington state has become an enormous problem. For the most part, water is over-appropriated throughout Washington – that is, the state has issued water rights that exceed the quantity of water available and, as a result, water users are being impacted. Salmon streams do not have sufficient flows to support habitat necessary for healthy populations. In eastern Washington, aquifers are being depleted at alarming rates. There is no "new" water to give away, particularly for uses that require intensive water supply during summer months.

Despite the over-allocation of state water resources, the state's well construction database reveals that 7,000 new permit-exempt wells are being drilled each year. Exempt wells are causing harm to existing (senior) water users and to rivers and streams, as well as exacerbating declines in aquifers. There has been no enforcement or regulation to control these problems. This is not an abstract issue – there are numerous examples (view the proceedings from CELP's May 2008 exempt well workshop at [www.celp.org/kittitas/conference/proceedings.html](http://www.celp.org/kittitas/conference/proceedings.html)).

In this context, the 2005 Attorney General Opinion on stockwater and exempt wells portended trouble. The use of unlimited quantities of water for industrial animal facilities (e.g. large dairies and CAFOs) would worsen water scarcity and conflict. Fortunately, the Attorney General and Ecology have since determined that "stockwater purposes" are limited to drinking water for animals and do not include industrial uses such as equipment cleaning and dust control measures.

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Hence, it is the opinion of the Attorney General and Ecology that the exemption as currently set forth in RCW 90.44.050 cannot be used to supply non-potable water uses in dairies and feedlots. That said, for large animal facilities, even potable water needs will require large quantities. For example, a 30,000-head feedlot would require 20 gallons per day (gpd) for drinking water for each head, leading to a withdrawal of 600,000 gallons per day – an amount that dwarfs the 5,000 gpd limit in the statute.

HB 1489 and 1509 would change the definition of stockwater to encompass non-potable industrial uses. HB 1489 would allow up to 350 acre-feet per year for animal facilities. But, if the well is located in an area where water is not available, as is the case in much of eastern Washington, then impacts will result.

Further, HB 1489's provision (Section 2, Subsection (2)) to privatize water right decision making is simply bad policy. Determinations about water availability and impairment should be made by the Department of Ecology, not would-be water users. The opportunity for mistakes and bias by industry consultants would place a major burden on existing private property rights and the public interest. This approach should be rejected.

The cattle and dairy industries do have an option. Where water is not available for new permits, facilities can purchase and transfer existing water rights.

Requiring permits for stock water withdrawals is about requiring industry responsibility and fairness, protecting private property rights, preventing significant harm to long term Washington agriculture and Municipal/County emergency preparedness. Requiring animal industries to abide by state regulatory and water right frameworks for the use of a diminishing natural resource will not inhibit the ability of the industry to grow and produce jobs and revenue for Washington citizens. Every other water using industry in the state is required to obtain permits or purchase water rights to conduct business. There is no special reason that animal agriculture needs an exemption to the responsible and sustainable use of this critical public resource.

The feedlot industry is asking the Legislature to create a major loophole in the water code that would harm over-appropriated watersheds and aquifers and put a special class of users in front of hundreds of water rights applicants who have diligently and responsibly applied for permits, as well as threaten the rights of existing water users and farmers. As reported by the Columbia Basin GWMA on January 26, 2009, the Odessa Subarea aquifers are in serious decline with no prospects for improvements. Similar problems exist with aquifers in the Pullman area, west of Spokane (West Plains area), and east of Yakima (Moxee area). Puget Sound Partnership reports that water is over-allocated in most of the salmon streams that drain to Puget Sound.

Rather than expand water exemptions, It is time for the Legislature to consider how to best allocate scarce waters, including addressing the need to hold water resources in reserve for emergency preparedness for upcoming periods of drought. We support HB 1091 as a reasonable limitation on exempt wells and encourage the Committee to tackle the larger issues of existing and future water scarcity and the need for exempt well reform.

Thank you for the opportunity to provide testimony on this important topic.

Sincerely,



Rachael Paschal Osborn  
Executive Director