

July 21, 2022

TO: Conservation Commission Members
Christopher Pettit, SCC Executive Director

FROM: Jon K. Culp, Water Resources Program Manager

SUBJECT: Stockwater Update

Action Item

Informational Item

Summary:

Staff have been working with the WACD Livestock Taskforce and other stakeholders on the Commissions directives from the December 2021 meeting.

- 1. The Commission offers to convene a stakeholder group to discuss how stock water could be provided in a manner consistent with state law, but still meet the needs of the landowner.*
 - In Progress
- 2. Examine existing instream flow rules to determine whether they include an exemption for stock water use.*
 - In Progress
- 3. Examine existing adjudicated watersheds to determine if they include a non-diversionary stock water reserve.*
 - List complete; analysis is in progress
- 4. Explore possible statutory changes for legislative consideration to allow for a de-minimus use for stock water.*
 - In Progress
- 5. Allow for a phased implementation of the new policy.*
 - Completed by Ecology

Staff Contact:

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Background and Discussion:

In 2021, Ecology proposed a change to POL-1025 to clarify that any such diversion of surface water for stock water purposes requires a water right or claim, and if no water right exists, one must be obtained by the landowner. This action created uncertainty about the legal use of surface water for existing and future livestock operations across the state. Because conservation districts have been working with stock producers to fence off surface water to improve water quality conditions, a path forward to establish legal certainty for both instream and out of stream users became important to many districts and their constituents.

We are working on multiple fronts to address concerns and identify a path or paths forward in order to help districts continue to enhance both water quality and water quantity goals at the local level.

1. Stakeholders

The following is a list of interested parties and stakeholders that we have either initiated a conversation with or planning a conversation with to gather input and perspective on the stockwater issue and its impacts.

Ashley House	WA Cattlemen's Assoc.
Dr. Jill Swannack	WA Sheep Producers
Josslin Schoesler	Cattle Producers of WA
Jack Field	WA Cattle Feeders Association?
Jay Gordon	WA Dairymen's Federation
_____	WA State Farm Bureau
_____	Washington Environmental Council
_____	Center for Environmental Law and Policy
_____	American Rivers
_____	The Nature Conservancy
Peggen Frank	Salmon Defense
Cody Disautel	The Confederated Tribes of the Colville Reservation
Phil Rigdon	The Yakama Nation
Larry Wasserman	Swinomish Tribe
Kadi Bizyayeva	Stillaguamish Tribe of Indians (Mara Machulsky (Jocelyn Leroux?))
Chris Sterns	Confederated Tribes of the Umatilla Reservation

2. Instream Flow Rule Exemption

Ecology has been working on a list of WRIA rules that include an exemption for stockwater. Note that this exemption is to the rule, not water law. A right is still required, but the basin isn't closed to new stockwater rights as long as they pass the four-part test in RCW 90.03.290:

1. the water will be put to "beneficial use",
2. the water is available,
3. there is no impairment to existing water rights, and

4. it is not detrimental to the public interest.

Dave Christiansen is the ECY staff lead on this effort at present. He has regional water managers reviewing the language in the rules to create better understanding of this path. There is some trepidation around how the Hirst Decision might impact this option if it were to go to the courts.

3. Adjudications

Ecology has provided a list of basin and sub-basin adjudications with a reserve for non-diversionary stock water. These would provide a path forward for exclusionary fencing projects with off-stream watering.

Ecology is working on further fleshing out the variations in allowance and language in each adjudication as there is no standard language consistent in all of them. See Table on last page. Dave Christiansen is presently the ECY staff lead on this effort. He has regional water managers reviewing the language in the rules to create better understanding of this path.

4. Statutory Exploration

Staff have some ideas about how water law might be amended, conceptually, to provide protections for stockwater use and instream resources. At this time, we are awaiting stakeholder input to further develop our thoughts under this directive.

Next Steps:

- Finalize stakeholder communication list
- Develop a shared list of dynamic questions
- Set up communication with stakeholders
- Communicate with Dave Christiansen around ECY continuing work on the use of Instream Flow Rule exemptions and Adjudication Reserves for stockwater.
- Prepare to communicate with regional Water Resource Program Section Managers about the instream flow rules and adjudications within their region and how they view them.