

# Washington Cattlemen's Association

Please see attached document providing comments on the Nooksack Adjudication Claim Form.  
Thank you.



# Washington Cattlemen's Association

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Thank you for the opportunity to comment on this claim form. Unfortunately, this claim form and instructions are riddled with errors, inconsistencies, actions, and determinations unsupported by law, rule or case rulings.

## **General Comments on the Form:**

Stock Watering and domestic definitions are wrong or conflicting. Definitions are offered where none exist and in other places fails to recognize existing definitions and rulings, including:

- a. Improper reading of common English language affecting our rights.
- b. Capricious reading of various sections of 90.44.050
- c. "Domestic Uses" section is a mess of confusing statements and definitions.
- d. Existing Definition of Stock Water purposes must be used and not ignored.

## **Additional Specific Comments:**

### **I. Incorrect and inconsistent definitions of Stock water and domestic purposes in instructions and the Claim Form**

Your statements regarding stock water -- found on paragraph one of page 5 and paragraph 2 of page 8 in the instruction forms -- are incorrect for the following reasons:

- a. 90.44.050 (see above) contains language that provides an exemption from ground water permitting for "stock watering purposes". Note that "purposes" is plural. Your instruction form states clearly on page 8 and rather ambiguously on page 5 that stock water is only for a single purpose – drinking. The legislature knew how to write law and the use of plural implies multiple purposes with the section of 90.44.050 granting a right of a permitting exemption for "stock watering purposes". Your attempt to parse out a single use or purpose – "drinking" or "for direct livestock use" - is not supported by the plain reading of the words. These words have been clearly understood and livestock farmers and landowners have used water – exempt from permit requirements- based on this section in 90.44.050 since 1945. Your agency does not have the right to ignore plain wording and meanings that are unchanged since the law was enacted in 1945. Your agency also does not have the right to change definitions that take away long held and practiced rights and expectations to use water. Farmers and landowners have used water to sustain, care, clean, and cool our animals under this RCW for almost 80 years.
- b. Your agency is inconsistent in parsing out uses within 90.44.050. Somehow your agency only finds a single purpose for stock water, yet 90.44.050 also uses plural for "domestic purposes". Your instruction form outlines (on the bottom of page 3) that "domestic purposes" are broadly suggested

to be “water associated with human health and welfare needs, such as drinking, cooking, sanitary purposes and other incidental uses.” Then your instructions include water for household pets for domestic purposes. You define several vague, then conflicting, then inaccurate and then narrow then broad set of uses within “domestic purposes”, yet find only a single purpose within the term stock watering purposes. You engage in no parsing and give no examples of what industrial use is. Why is it you choose to parse one category to a specific use (stock water), vaguely and confusingly parse another set of uses (domestic), and parse not at all another use (industrial)? This is a capricious reading of English language at best, inconsistent interpretations with unsupported opinions at least.

- c. The section on “**What is Domestic Use?**” found on page 3 is an absolute mess!! It contains inconsistent or erroneous language. The general scheme you propose on the claim form is:
- some claimants would be allowed to use a “small use” claim form only if domestic uses are “**No more than 500 GPD withdrawn on any day for indoor domestic uses such as cooking cleaning, bathing and pets.**” – (page one of claim form)
  - The instructions use the term “...the 500 GPD maximum indoor use.” (last line page 3). However, the first sentence of the same last paragraph states that “**Domestic includes outdoor watering or irrigation for a personal lawn, garden or landscaping.**” First that is not an accurate statement. Domestic uses are one exempt use and irrigating a lawn or garden is a separate exempt use and activity, under any logical reading of RCW 90.44.050 you are conflating the two. (see also Five Corners decision that there is no bundling of exempt uses.) Secondly, is it indoor uses only or outdoor?
  - An additional confusing area is found in the second to last paragraph on page 3. You indicate that if a homeowner uses more than 500 gallons for their household pets that they should then use the long form. That language combined with the language stating there is 500 GPD “maximum indoor use” for domestic purposes and up to 500 GPD for household pets – totals up to 1000 gallons for eligibility to use the Small Claims form. This is inconsistent and confusing, is it 500 gallons or 1000 gallons? Why and how did you establish the 500 gallons for pets? For that matter how did you choose 500 gallons for the various conflicting delineations of what is a “domestic use”?
  - Why on last line of page 3 did you conclude that the 500 gpd is for “indoor use”. Where is the language (in either RCW or Case law) that defines “domestic use” as **only indoor** uses? (I.E. Is washing a car, the driveway or the house now not allowed, nor filling a swimming pool, since these uses are “outside” the house?
- d. **There is an existing definition of Stock watering purposes found in the 2001 PCHB case, Devries v. Ecology (PCHB 01-073)<sup>1</sup>.**

Why did your agency choose to ignore this definition in the instructions? The PCHB decision ruled against your agency’s arguments and established a definition that is unchallenged and unchanged since 2001. Here is the PCHB decision on question number 4 of the DeVries case:

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<sup>1</sup> <https://eluh0222.my.site.com/casemanager/s/case/50082000001BEL2/detail>

**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 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. But again, the total withdrawal is constrained by the 5,000 gallons per day limitation. \**

*For these reasons, the Board grants summary judgment to DeVries on this issue.*

\* Note this same PCHB case found stock water use was (a) limited to 5,000 GPD and (b) all four “purposes” were “bundled” into a limit of 5,000 GPD collectively for all uses. These two PCHB findings were not supported and overturned by the conclusions of a subsequent Attorney General Opinion (AGO 2005 -No. 17)<sup>2</sup> and subsequent ruling by the State Supreme Court in the 2011 case of Five Corners Family Farmers v. State of Washington.<sup>3</sup> The Supreme Court found there is no ‘bundling’ of these exempt uses and no limitation on gallons for stock water purposes nor gallon limitation on ½ acre noncommercial lawns or gardens.

This is language is from AGO 2005 – No. 17 (highlight added) -

*“We conclude that the first proviso to RCW 90.44.050 makes it plain that groundwater withdrawals for stock-watering are exempt from the permit requirement, and that the exemption is not limited to withdrawals of less than 5,000 gallons a day. The relevant language exempts:*

*[original page 4] any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day[.]*

*RCW 90.44.050 (italics added). Based on its ordinary language and rules of grammar, the first proviso exempts:*

- *any withdrawal for stock-watering purposes,*

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<sup>2</sup> See AGO 2005 No. 17- Limits on Stockwater- AGO <https://www.atg.wa.gov/ago-opinions/interpretation-statutory-language-exempting-withdrawals-groundwater-stock-watering>

<sup>3</sup> <https://cases.justia.com/washington/supreme-court/84632-4-0.pdf?ts=1396151902>

- *[any withdrawal] for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area,*
- *[any withdrawal] for single or domestic group uses in an amount not exceeding 5,000 gallons a day [or as provided in RCW 90.44.052], or*
- *[any withdrawal] for an industrial purpose in an amount not exceeding 5,000 gallons a day.*

*Of these four categories of withdrawals, the third (single or group domestic use) and the fourth (industrial use) are expressly limited to withdrawals of less than 5,000 gallons a day. The second category (watering a lawn or a noncommercial garden) is not limited to 5,000 gallons a day but contains an acreage limit. By contrast, the first category (stock-watering purposes) contains no language limiting the amount of the withdrawal. Thus, the grammatical structure and plain language of this proviso indicates that of these four categories, groundwater withdrawals for stock-watering purposes are not limited. **Indeed, the language of the exceptions makes it evident that the Legislature was well aware of how to limit exempt withdrawals when it so chose, and it did not do so with respect to stock-watering.**<sup>[2]</sup>*

The Supreme Court in 2011 in Five Corners reached the same conclusions as the AGO; Stock water is not limited by gallons and the four exemptions are each separate exempt uses that are not bundled into a single limitation of 5,000 GPD.