Exempt Wells in the West

Exempt Wells Conference: Problems and Approaches in the Northwest
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Nathan S. Bracken
Western States Water Council
Western States Water Council (WSWC)

- Advisor to western Governors on water policy issues
- 18 Western States
- Provides collective voice
- Fosters collaboration
- Formal affiliate of the Western Governors’ Association (WGA)
Exempt Wells in the West: A Snapshot

- Exempt from permitting and/or adjudication
- More than just domestic (livestock, industrial, etc.)
- Specified limits (gpd, af/year, acreage limits, etc.)
- Meters generally not required
- Well-drilling requirements generally apply
- Concerns vary among and within states
The Two Main Perspectives on Exempt Wells
Demand For Exempt Wells

growth + closed basin = exempt well demand
“Exempt” Subdivisions

Concerns:

- Exempt wells used for dense, concentrated developments
- Located in closed basins
- Exemptions facilitate less desirable development practices
- Circumvent planning process
Aquifers, Surface Flows, and Water Rights

Possible impacts:

- Lead to pumping rates that exceed aquifer safe yield
- Deplete surface flows
- Pumping “out of turn”
- Environmental concerns
Water Quality

- Naturally occurring inorganic contaminants
- Nitrates
- Pesticides
- Seawater intrusion
- Well maintenance and construction
Administrative Challenges

- General lack of information about exempt wells:
  - Number of exempt wells
  - Location of those wells
  - Amount of water they withdraw and consume
- Complicates water rights admin. and planning
- Limited state resources complicate efforts to:
  - Monitor exempt wells
  - Quantify and mitigate their impacts
  - Enforce pumping limits
Further Considerations

- Negative impacts do not occur in every instance
- Decline in irrigation may offset exempt domestic use
- Exempt wells do provide economic benefits
- Benefits may outweigh impacts in some cases
- Many exempt wells do not exceed limits
Legal Questions and Recent Litigation

- **Constitutional questions:**
  - New Mexico – *Bounds* decision
    - District Court: exemption violated due process
    - Court of Appeals: upheld exemption

- **Statutory and regulatory language:**
  - Montana – “physically manifold”
  - Washington – limit on “stockwatering”

- **What qualifies as a “domestic” or “livestock” use**
  - South Dakota – *Longview* farms decision
## Monitoring Methods

### Metering:
- Shows withdrawals, but not consumption
- Accurate
- Incentive to comply
- Costs could be significant
- Well owners may resist
- Won’t stop new wells

### Other Methods:
- Aerial infrared photography
- Self-reporting
- Improve well record info
Options

“Hammer” Approaches:
- Repeal exemption
- Significant, statewide reductions in pumping limits

“Scalpel” approaches:
- Refine exemptions
- Target efforts in specific watersheds
- Collaboration
- Regulatory options
Efforts to Reduce/Repeal Exemptions

- **Montana – H.B. 104 (did not pass – 2007)**
  - Reduce from 10 af/yr to 1 af/yr and 1/4 acre limit
- **Oregon – H.R. 2859 (did not pass – 2009):**
  - Reduce single or group exemption from 15,000 to 1,000 gpd
- **Oregon – H.B. 2566 (did not pass – 2007)**
  - Repeal exemption
- **Wash. – H.B. 1091 (did not pass – 2009 & 2010)**
  - Cap stockwatering use at 5,000 gpd
- **New Mexico – R. 19.27.5.9(D) (issued in 2006)**
  - Limited domestic use from 3 to 1 af/year
Other Recent Mitigation Efforts

- Montana – HB 602 (passed 2011)
  - Study to provide “clear policy” direction and legislation
- New Mexico
  - Domestic Well Management Areas (DWMA)
  - Municipal authority to limit exempt wells
- Oregon – S.B. 788 (passed 2009)
  - Requires filing of groundwater use and $300 fee
- Oregon – Measure 49 (passed 2007)
- Washington – Kittitas County/Walla Walla
  - Efforts focused on specific areas of concern
Collaboration is Critical

- Litigation and legislation will not end debate
- Collaboration gives stakeholders a say over outcome of disputes
- Negotiated solutions that produce workable results lessen likelihood of challenges
- “Peace in the valley” – water is a shared resource
Conclusion

- No “one-size-fits-all” approach
- Early and robust stakeholder collaboration is key
- Targeted mitigation efforts are likely more feasible than broad, statewide efforts
- Successful approaches will likely need to allow for responsible development
- Public outreach and education vital
- An ounce of prevention is worth a pound of cure
Questions?

Nathan S. Bracken
Legal Counsel
Western States Water Council
nbracken@wswc.utah.gov