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Tammy Dennee, CMP, CAE – Executive
Director

May 4, 2023

RE: Oppose Senate Bill 85 and -4 Amendments

Dear Chair Lieber and Committee Members,

My name is Sarah Liljefelt, I am a water law attorney, and the Chair of Oregon Cattlemen's Association's ("OCA's") Water Resources Committee. I am writing today on behalf of OCA in opposition to the water supply/water quantity provisions of Senate Bill 85-4.

The water supply provisions of SB 85 are duplicative of authority already held by the State to address water supply concerns from exempt uses of water. These powers are available in all circumstances, not just as related to CAFOs.

- Under ORS 537.545:
 - o New exempt groundwater users must register with the Water Resources Department
 - o The Department may require exempt water users to furnish information about water use
 - o The Department may regulate exempt water uses in priority with other, permitted water users
- Under ORS 540.435:
 - o The State can require water users install measuring devices and report water use

For example, in the sole case I'm aware of where a proposed CAFO operator sought to start a new, large use of exempt groundwater within a Critical Ground Water Area – Lost Valley Dairy – the Oregon Water Resources Department was able to regulate off the new exempt groundwater use very swiftly under the existing authority outlined above. See the attached letter from the Department to the proposed water user notifying him that the Department would regulate off his water use (and the Department did just that).

Further, the proposed 12,000 gallons per day limit proposed in SB 85-4 would have been arbitrary in the case of Lost Valley Dairy, and likely would have limited the Department's ability to adequately address and regulate off the proposed new water use within the Critical Ground Water Area. Thus, the proposed stockwater exemption provisions included in SB 85-4 may actually have the opposite result than intended.

The Lost Valley Dairy example is an outlier and clearly demonstrates that we do not have a widespread problem in need of a solution in our State. That situation is not the norm, and we

have adequate tools already in place to address issues that may occasionally arise. The water supply provisions of SB 85 create an unnecessary proposal in search of a problem that doesn't exist. Instead of creating a confusing web of laws on top of laws all regulating the same issues with different terms, we should step back and look at the existing safeguards already in place and how they have been used successfully to reach our shared goal of responsible and sustainable resource use.

Thank you for your time and consideration. Please vote in opposition to the Bill based on the provisions related to the Water Supply Plan, Hauled Water, and the Stockwater Exemption.

Sincerely,



Sarah Liljefelt
Water Resources Committee Chair
Oregon Cattlemen's Association



Oregon

Kate Brown, Governor

Water Resources Department

North Central Region
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February 5, 2016

Greg te Velde
5850 Avenue 160
Tipton, CA 93272

Re: Groundwater development for dairy operation and stockwater

Dear Mr. te Velde:

I'd like to provide some background information about the local groundwater resource in the area around your new proposed dairy located in Section 16 of T3N/R26E, Morrow County, Oregon. The subject site is located within the Ordinance Basalt Critical Groundwater Area (Ordinance Basalt CGWA), and less than one mile from the Ordinance Gravel Critical Groundwater Area. These groundwater management areas were established by Special Order Vol. 27, pp 40-86 in 1976, because significant groundwater level declines indicated annual consumptive use exceeded natural recharge of the groundwater systems. The order specifies control provisions that prohibited new permitted uses in the Ordinance Basalt CGWA and curtailed existing permitted uses in the Ordinance Gravel CGWA to protect senior groundwater users.

Your current water right transfer T-12248, currently in process with the Department, proposes to change places of use, types of use and points of appropriation (well locations) authorized by Certificates 49726, 55317, 49727, 55316. These rights currently authorize irrigation use from two basalt wells, MORR 595/590 and MORR 591, both located in the Ordinance Basalt CGWA. Please note that drilling new wells before the transfer is reviewed and approved carries a big risk. It is likely well construction conditions will be specified by a Department hydrogeologist to ensure the proposed wells will access the same aquifer as the existing wells, MORR 595/590 and MORR 591. Also, the Department will have to do an analysis of the transfer to determine if the proposed change can be done without injury or enlargement. Additionally, transfer applications are subject to protest by the public. So, there is a lot of uncertainty on whether a transfer can be approved until the transfer goes through the entire review process required by law and rule.

Department groundwater use data indicates that average combined use at these two wells is on the order of 1000 acre-feet per year. The four certificates noted above allow up to 1029.3 acre-feet per year of groundwater use. Total annual groundwater use within the Ordinance Basalt CGWA was approximately 3000 acre-feet in 2014. At this level of use, groundwater levels in the basalt are currently declining at a rate of about 2 feet per year. This indicates that the groundwater resource is beyond its capacity, is sensitive to overdraft, and that a sustainable new use is not available without injury to senior groundwater users. The most viable water supply option for the dairy project is a combination of surface water and basalt groundwater resulting from the proposed transfer of existing water rights.



Any new appropriation from the basalts, such as stock water for 30,000 head of dairy cattle, will represent a significant new use within the CGWA that will likely injure senior users. A rough estimate of dairy cattle drinking water use, assuming 20-50 gallons per head per day, is 672 to 1680 acre-feet per year. This represents approximately 22% to 56% increase in pumpage from the Ordnance Basalt CGWA, a resource that is already declining at the current level of use. This amount of additional use is not sustainable which could cause us to look at re-opening the Ordnance basalt CGWA order and consider regulation of the most junior uses, including exempt uses.

I am happy to participate in a meeting with you and your consulting team to discuss this matter further, and look for possible solutions. But I felt it prudent to share this information with you given the scale of your proposed project. Please call me at 541.278.5456 or email me at michael.f.ladd@ wrd.state.or.us if you have any questions or would like to arrange a meeting.

Sincerely,



Mike Ladd, Region Manager

Cc: Greg Silbernagel – Watermaster District 5, via e-mail
Scott Fairley – Governor’s office, via e-mail
William Mathews, ODA, via e-mail
Eric Nigg, DEQ, via e-mail
Carla McLane, Morrow County, via e-mail
Ivan Gall – Field Services Division, via e-mail
Wayne Downey, IRZ Consulting, via e-mail