

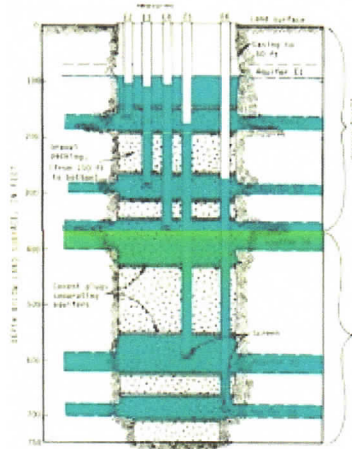


Center for Environmental Law & Policy

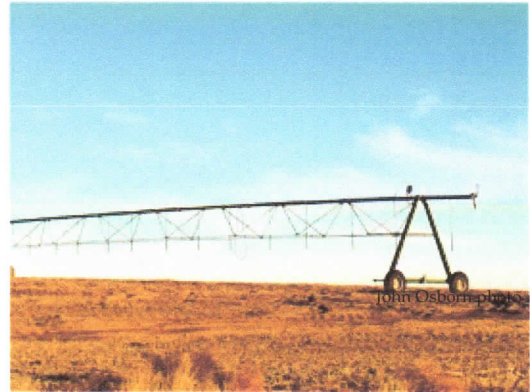
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WATER ISSUES

- Public Trust Doctrine
- Treaties & Tribes
- Columbia River
- Puget Sound
- Global Warming
- Drought
- Wells & Groundwater
- Municipal Water Law (1338)
- Watershed Planning
- Water Metering
- Water Efficiency



Cline, D.R, USGS and Dept of Ecology, 1984



Odessa Subarea irrigation pipe, and diagram of cascading wells.

WATER

- [Water Programs](#)
- [Water Events](#)
- [Water News](#)
- [Water Issues](#)
- [Water Wins](#)
- [Water Library](#)

Wells and Groundwater

Background

Ground water is the water that flows under ground horizontally and vertically through the rocks, gravel and sand below the earth's surface (aquifers). In most of the state, water that flows in our rivers and streams (surface water) is interconnected to the water flowing in underground aquifers (ground water). This is commonly referred to as "hydraulic continuity."

Wells that pump ground water "capture" surface water either by reducing the amount of water in a connected stream, or more often, by intercepting water that was otherwise destined to flow into a connected stream.

In Washington, ground water cannot be withdrawn from any aquifer unless a permit is first obtained from the Department of Ecology. However, the law exempts wells that withdraw 5,000 gallons or less per day for stockwatering, domestic purposes, including watering a lawn or non-commercial garden up to one-half acre in area, and industrial uses. These wells are referred to as "exempt wells." As a point of comparison, most Seattle homes typically use an average of 250 gallons of water a day.

Because an exempt well is a water right with a priority date of its first use, it is subject to all other "water laws" with which water right holders must comply. Accordingly, an exempt well cannot impair the right of any other existing water

right holder to withdraw or divert water. For example, if an exempt well is withdrawing water that is hydraulically connected to a stream that has a minimum flow established by rule before the exempt well was drilled, and the exempt well is lowering the flow in the river, it is illegally impairing a senior water right. The same goes for limiting another prior water right user's ability to take water.

A general rule of thumb is that a single exempt well can provide water for up to six homes and still keep below the 5,000 gallon-per-day limit; these wells are often referred to as "six-packs." Although the state has authority to require exempt wells to be metered, in actual practice it does not. As a result, we do not have good information about how much water is actually used by exempt wells.

A 2002 Washington Supreme Court decision, *Campbell & Gwinn v. Department of Ecology*, clarified that a developer building a subdivision cannot rely on multiple exempt wells when those wells withdraw more than 5,000 gallons a day. However, many unanswered legal questions remain about how exempt wells can be used. Developers continue to abuse this exception to drill wells to serve new homes rather than applying for water rights and requiring the state to answer four critical questions: 1) is water really available? 2) will it be for a beneficial use? 3) will this water use impair a senior existing water right? and 4) will this water use be detrimental to the public interest?

There has been much debate about whether exempt wells used for stockwatering fall under the 5,000 gallons per day limitation. The Pollution Control Hearings Board in 2001 determined that, indeed, stockwatering uses are limited to 5,000 gallons a day. However, Attorney General Rob McKenna published a formal [Opinion](#) on November 18, 2005 stating that, in his opinion, the amount of water that can be used from an exempt well for stockwatering is unlimited. While these formal legal opinions are not binding in any way, they have historically been given "great respect" and "great weight" by the courts.

The permitting process is long, cumbersome, and unrelentingly backlogged. But it is in place to ensure that water will be put to beneficial use, the permit is in the public interest, water is available to support the proposed use without infringing on senior water rights, and that adequate stream flows can be maintained. Use of the exempt well statute to dodge these controls can neither be a use that the Legislature in 1945 intended nor a use that is beneficial today and going forward.

As of late 2003, the state estimates there are 750,000 exempt wells Washington, with thousands of new wells being constructed each year. In 1995, that number was 404,000. Our growing population, the intense competition for limited water supplies, and long backlogs for ground water permits from Ecology have all contributed to the profuse drilling of these exempt wells.

These wells have a significant effect on our ability to properly manage water because the amounts of water withdrawn are not metered and, due to their unregulated nature, we are unsure of how many of these wells exist, exactly where they have been drilled, or what their impact is on nearby rivers and streams.

Learn More

Exempt Well Fact Sheet

CELP's paper, [Six-packs for Subdivisions](#)

Articles from CELP's quarterly newsletter, *Washington WaterWatch*:

[Victory in the Statewide Cases](#)

[Leeway turned loophole: the problem with exempt wells](#)

[A Landmark Decision on Non-permitted Wells](#)

Department of Ecology's [Wells](#) page.

