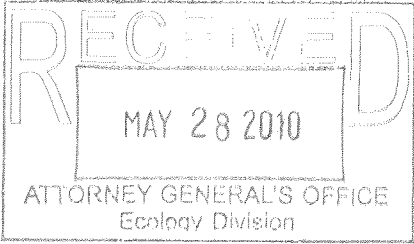


1 EXPEDITE (if filing within 5 court days of hearing)
2 Hearing is set:
3 Date:
4 Time:
5 Judge:



6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF FRANKLIN

8 FIVE CORNERS FAMILY FARMERS, SCOTT)
9 COLLIN, THE CENTER FOR ENVIRONMENTAL)
10 LAW AND POLICY, and SIERRA CLUB,)

NO. 09-2-51185-6

11 Plaintiffs,)

12 NOTICE OF APPEAL TO)
13 WASHINGTON SUPREME)
14 COURT)

15 vs.)

16 STATE OF WASHINGTON, WASHINGTON)
17 DEPARTMENT OF ECOLOGY, and EASTERDAY)
18 RANCHES, INC.,)

19 Defendants,)

20 and)

21 WASHINGTON CATTLEMEN'S ASSOCIATION,)
22 COLUMBIA SNAKE RIVER IRRIGATORS)
23 ASSOCIATION, WASHINGTON STATE DAIRY)
24 FEDERATION, NORTHWEST DAIRY)
25 ASSOCIATION, WASHINGTON CATTLE)
26 FEEDERS ASSOCIATION, CATTLE PRODUCERS)
OF WASHINGTON, WASHINGTON STATE SHEEP)
PRODUCERS and WASHINGTON FARM BUREAU,)

Intervenor-Defendants.)

27 Pursuant to RAP 4.2, 5.1, and 5.2(f), plaintiffs Scott Collin, Five Corners Family
28 Farmers, The Center for Environmental Law and Policy, and Sierra Club hereby appeal and seek
29 direct review by the Washington Supreme Court of the Order on Cross Motions for Summary
30 Judgment entered on May 5, 2010.

1 A copy of the Order is attached to this notice.

2 The name and address of the attorneys for each of the parties in this case are below.

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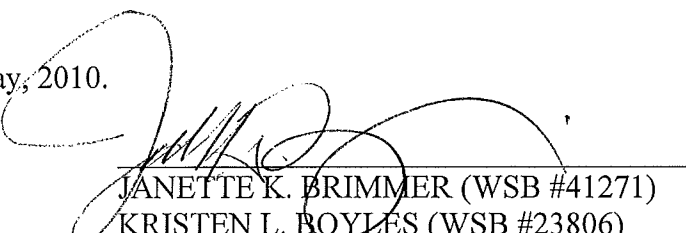
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17 DATED this 27th day of May, 2010.

18
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(206) 343-1526 [FAX]
Attorneys for Plaintiffs

FILED
FRANKLIN CO CLERK

2010 MAY -5 1 A 9:19

MICHAEL J. KILLIAN

BY DEPUTY

STATE OF WASHINGTON
FRANKLIN COUNTY SUPERIOR COURT

FIVE CORNERS FAMILY FARMERS,
SCOTT COLLIN, THE CENTER FOR
ENVIRONMENTAL LAW AND POLICY,
and SIERRA CLUB,

Plaintiffs,

v.

STATE OF WASHINGTON,
WASHINGTON STATE DEPARTMENT
OF ECOLOGY, and EASTERDAY
RANCHES, INC.,

Defendants,

and

WASHINGTON CATTLEMEN'S
ASSOCIATION, COLUMBIA SNAKE
RIVER IRRIGATORS ASSOCIATION,
WASHINGTON STATE DAIRY
FEDERATION, NORTHWEST DAIRY
ASSOCIATION, WASHINGTON CATTLE
FEEDERS ASSOCIATION, CATTLE
PRODUCERS OF WASHINGTON,
WASHINGTON STATE SHEEP
PRODUCERS and WASHINGTON FARM
BUREAU,

Intervenors/Defendants.

NO. 09-2-51185-6

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

COPY

THIS MATTER having come on regularly for hearing on April 2, 2010 on cross-motions
for summary judgment, Plaintiffs, Five Corners Family Farmers, Scott Collin, The Center for

1 Environmental Law and Policy and Sierra Club, appearing by and through their counsel of record,
 2 Janette K. Brimmer, Kristen L. Boyles and Earthjustice; Defendants, the State of Washington and
 3 Washington State Department of Ecology (hereinafter referred to collectively as the "State
 4 Defendants") appearing by the Attorney General Robert M. McKenna, through Assistant Attorney
 5 General, Maia D. Bellon; Defendant Easterday Ranches, Inc., (hereinafter referred to as "Easterday
 6 Ranches") appearing by and through its counsel of record, William L. Cameron, Lee Smart P.S.,
 7 Inc. and R. Crane Bergdahl; the Intervenor Washington State Dairy Federation; Northwest Dairy
 8 Association, Washington Cattle Feeders Association, Cattle Producers of Washington, Washington
 9 State Sheep Producers and Washington Farm Bureau (hereinafter referred to collectively as the
 10 "Agricultural Associations"), appearing by and through their counsel of record, Jeff Slothower of
 11 Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P; the Intervenor Washington Cattlemen's
 12 Association, appearing by and through its counsel, Gregory McElroy and McElroy Law Firm,
 13 PLLC; and the Intervenor Columbia Snake River Irrigators Association, appearing by and through
 14 its counsel, James Buchal and Murphy & Buchal LLP, and the Court having reviewed the records
 15 and files herein, including but not limited to the following pleadings:

Date Filed	Description
16 10/27/2009	Easterday's Motion to Dismiss
17 10/27/2009	Easterday's Memorandum in Support of Motion to Dismiss
18 10/27/2009	Declaration of William L. Cameron
11/12/2009	Plaintiffs' Response in Opposition to Motion to Dismiss
11/12/2009	Declaration of Scott J. Collin
11/12/2009	Declaration of John Osborn, M.D.
11/12/2009	Declaration of Janette K. Brimmer
11/12/2009	Declaration of Patricia A. Sumption
11/12/2009	Declaration of Sheila R. Poe
11/12/2009	Declaration of Randolph Allen Jones
11/19/2009	Defendant Easterday Ranches' Reply Memorandum in Support of Motion to Dismiss
11/20/2009	Easterday Ranches' Motion to Strike Declarations
11/20/2009	Plaintiffs' Opposition to Motion to Strike
12/04/2009	Order Denying Motion to Dismiss and Motion to Strike
01/22/2010	Plaintiffs' Notice of Motion and Motion for Summary Judgment
01/22/2010	Plaintiffs' Memorandum in Support of Motion for Summary Judgment
01/22/2010	Declaration of Janette K. Brimmer
02/18/2010	Easterday's Motion to Strike Declarations
02/18/2010	Defendant Easterday Ranches' Motion for Summary Judgment

	Date Filed	Description
1	02/18/2010	Memorandum in Support of Easterday's Motion for Summary Judgment and in Response to Five Corners' Motion for Summary Judgment
2		
3	02/19/2010	State of Washington's Note for Cross Motion and Cross Motion for Summary Judgment
4	02/19/2010	State Defendants' Memorandum in Support of Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment
5		
6	02/19/2010	Declaration of Maia Bellon in Support of State Defendants' Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment
7	02/19/2010	Intervenor Washington Cattlemen's Association Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment
8	02/19/2010	Declaration of John William Field in Opposition to Plaintiffs' Motion for Summary Judgment
9	02/19/2010	Intervenor The Columbia Snake River Irrigators Association's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Easterday Ranches' Cross-Motion for Summary Judgment and Renewed Motion to Strike
10		
11	02/19/2010	Declaration of Darryll Olsen, Ph.D. in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Easterday Ranches' Cross-Motion for Summary Judgment
12		
13	02/19/2010	Agricultural Association: Intervenor's Cross-Motion for Summary Judgment
14	02/19/2010	Agricultural Association: Intervenor's Memorandum of Law in Support of Agricultural Associations' Cross-Motion for Summary Judgment and in Response to Plaintiffs' Motion for Summary Judgment
15		
16	02/19/2010	Declaration of Jeff Slothower in Support of Agricultural Associations' Cross-Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment
17	02/19/2010	Declaration of Chris Cheney
18	02/19/2010	Declaration of Gloria Edwards
19	02/19/2010	Declaration of Don Floren
20	02/19/2010	Declaration of Gene Jenkins
21	02/19/2010	Declaration of Jim Werkhoven
22	02/19/2010	Declaration of Art Swannack
23	02/19/2010	Declaration of Ron Mauel
24	02/19/2010	Declaration of Art Groeneweg
25	02/19/2010	Declaration of Jay Gordon
26	02/19/2010	Declaration of Jeff Slothower in Support of Filing Electronically Transmitted Signatures
	03/01/2010	Joint Tribal Motion for Leave to Participate as <i>Amicus Curiae</i>
	03/01/2010	Joint Tribal <i>Amicus Curiae</i> Brief
	03/01/2010	Order on Motion for Leave to Participate as <i>Amicus Curiae</i> [Proposed]
	03/08/2010	Plaintiffs' Response to Motion for Leave to Participate as <i>Amicus Curiae</i>
	03/09/2010	Mail Returned Unclaimed

1	Date Filed	Description
2	03/17/2010	Plaintiffs' Combined Reply Memorandum in Support of Summary Judgment and in Opposition to Motions for Summary Judgment and/or to Dismiss by Defendants and Defendant/Intervenors
3	03/17/2010	Declaration of Rachael P. Osborn
4	03/17/2010	Second Declaration of Janette K. Brimmer
5	03/29/2010	Agricultural Associations' Reply in Support of Their Cross-Motion for Summary Judgment
6	03/29/2010	Declaration of Jeff Slothower in Support of Agricultural Associations' Reply in Support of Their Cross-Motion for Summary Judgment
7	03/29/2010	Agricultural Associations' Response to Tribes' Motion to File an <i>Amicus Curiae</i> Brief
8	03/29/2010	Intervenor The Columbia Snake River Irrigators Association's Reply Memorandum in Support of Easterday Ranches' Cross-Motion for Summary Judgment and Renewed Motion to Strike
9	03/29/2010	Intervenor The Columbia Snake River Irrigators Association's Response to Joint Tribal Motion to Participate as <i>Amicus Curiae</i>
10	03/29/2010	Declaration of James L. Buchal in Support of Intervenor The Columbia Snake River Irrigators Association's (1) Response to Joint Tribal Motion to Participate as <i>Amicus Curiae</i> and (2) Reply in Support of Defendant Easterday Ranches' Cross-Motion for Summary Judgment
11	03/29/2010	State Defendants' Reply to Plaintiffs' Combined Reply Memorandum in Support of Summary Judgment and in Opposition to Motions for Summary Judgment and/or to Dismiss by Defendants and Defendant/Intervenors
12	03/29/2010	Declaration of Maia Bellon in Support of State Defendants' Reply to Plaintiffs' Combined Reply Memorandum
13	03/29/2010	Easterday Ranches' Reply Memorandum
14	03/29/2010	Easterday's Memorandum in Opposition to Joint Tribal Motion to Appear as <i>Amicus Curiae</i>
15	03/29/2010	State Defendants' Response to Joint Tribal <i>Amicus Curiae</i> Brief
16	03/30/2010	

17
18 and the Court having heard the oral argument of counsel on April 2, 2010 and the Court being
19 otherwise advised on the premises,

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 21 1. As to Defendant, Easterday Ranches, Inc.'s motion for summary judgment, the
22 Court concludes that there are genuine issues of material fact as to Defendant Easterday Ranches'
23 motion for summary judgment on standing and therefore denies the motion on standing; and
- 24 2. The Court denies Defendant Easterday Ranches' motion to strike; and
- 25 3. As to Easterday Ranches' motion for summary judgment as to the interpretation of
26 RCW 90.44.050, and the State Defendants' motion for summary judgment and the Agricultural

1 Associations' motion for summary judgment, the Court grants these motions and declares that there
2 are no genuine issues of material fact and, as a matter of law, RCW 90.44.050 is unambiguous and
3 the plain meaning of RCW 90.44.050 is that permit-exempt withdrawals of public groundwater for
4 stock-watering purposes are not limited to any quantity; and

5 4. As to the Agricultural Associations' motion for summary judgment on the issue of
6 Plaintiffs' requested injunctive relief as against the State Defendants, the Court grants this motion
7 and declares that there are no genuine issues of material fact and, as a matter of law, Plaintiffs are
8 not entitled to an injunction requiring the State Defendants to enforce the stock-water permit
9 exemption contained within RCW 90.44.050 as being limited to 5,000 gallons per day or any other
10 quantity of water; and

11 5. The Plaintiffs' motion for summary judgment is denied in its entirety.

12 6. The Court finds that this Order is a final judgment, disposes of all claims and
13 causes of action asserted in the pleadings, is final for purposes of appeal, and there is no just reason
14 for delay.

15 DONE IN OPEN COURT this 5 day of May, 2010.

16
17 
18 Judge Carrie L. Runge


1 Presented by:

2 ROBERT M. MCKENNA
Attorney General

3 

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5 Assistant Attorney General
6 Attorneys for Defendants
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11 Jeff Slothower, WSBA #14526
12 Attorney for Washington State Dairy
13 Federation, Northwest Dairy Association,
14 Washington Cattle Feeders Association, Cattle
15 Producers of Washington, Washington State
16 Sheep Producers, Washington Farm Bureau,
17 together the "Agricultural Association
18 Intervenors"
19 (509) 925-6916

20 Agreed as to Form
21 Notice of Presentation Waived:

22 EARTHJUSTICE

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25 Attorneys for Plaintiffs
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F:\Slothower\Five Corners Lawsuit Intervenor Group\OrderCrossMotionsSJ 4-19-10 FINAL(Revised Using Plifs List of Docs).doc

1 EXPEDITE (if filing within 5 court days of hearing)

2 Hearing is set:

3 Date:

4 Time:

5 Judge:

6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 IN AND FOR THE COUNTY OF FRANKLIN

8 FIVE CORNERS FAMILY FARMERS,)
9 SCOTT COLLIN, THE CENTER FOR)
10 ENVIRONMENTAL LAW AND POLICY,) NO. 09-2-51185-6
11 and SIERRA CLUB,)

12 Plaintiffs,) CERTIFICATE OF SERVICE

13 vs.)

14 STATE OF WASHINGTON,)
15 WASHINGTON DEPARTMENT OF)
16 ECOLOGY, and EASTERDAY RANCHES,)
17 INC.,)

18 Defendants,)

19 and)

20 WASHINGTON CATTLEMEN'S)
21 ASSOCIATION, COLUMBIA SNAKE)
22 RIVER IRRIGATORS ASSOCIATION,)
23 WASHINGTON STATE DAIRY)
24 FEDERATION, NORTHWEST DAIRY)
25 ASSOCIATION, WASHINGTON CATTLE)
26 FEEDERS ASSOCIATION, CATTLE)
PRODUCERS OF WASHINGTON,)
WASHINGTON STATE SHEEP)
PRODUCERS and WASHINGTON FARM)
BUREAU,)

Intervenor-Defendants.)

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1 I am a citizen of the United States and a resident of the State of Washington. I am over
2 18 years of age and not a party to this action. My business address is 705 Second Avenue, Suite
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4 On May 27, 2010, I served a true and correct copy of the following documents on the
5 parties listed below:

- 6 1. Notice of Appeal to Washington Supreme Court
7 5. Certificate of Service.

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10 Washington State Attorney General's Office
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Producers of Washington, Washington State Sheep
20 Producers, and Washington Farm Bureau*

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12 *Co-Counsel for the Amicus Curiae Lummi Nation*

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- via first-class U.S. mail
- via e-mail

10 I, Cheryl McEvoy, declare under penalty of perjury that the foregoing is true and correct.

11 Executed on this 27th day of May, 2010, at Seattle, Washington.

12 
13 Cheryl McEvoy

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