

1 [X] Hearing is set:
Date: Friday, April 2, 2010
2 Time: 1:30 p.m.
3 Judge: to be determined
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8 **FRANKLIN COUNTY SUPERIOR COURT**
9 **IN AND FOR THE STATE OF WASHINGTON**

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

12 Plaintiffs,

13 v.

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

17 Defendants.

18 and

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

25 Intervenor-Defendants.
26

No. 09-2-51185-6

SECOND DECLARATION
OF JAY GORDON

1 COMES NOW, JAY GORDON, and states and declares:

2 1. My name is Jay Gordon. I am over the age of 18 and competent to testify hereto.

3 I make this declaration based upon my own personal knowledge.

4 2. I am 48 years old and reside in Elma, Washington.

5 3. In addition to being the Executive Director of the Washington State Dairy
6 Federation, I own and operate our family dairy. The property the dairy is located on was
7 homesteaded by my family in 1872. The dairy was established around 1913. Currently I milk
8 178 cows. Our dairy, like many of our neighbors, converted to organic production of milk and
9 feed ten years ago.

10 4. I am a member of the Washington State Dairy Federation, the Washington Farm
11 Bureau, and the Northwest Dairy Association.

12 5. Our dairy produces approximately 200,000 gallons of milk per year, which along
13 with feed and livestock sales yields a market value of approximately \$600,000 per year.

14 6. We rely on water rights we have acquired through the RCW 90.44.050 permit
15 exemption to provide water for stock-watering purposes. We have an irrigation water right,
16 however, that right does not allow water to be used for stock-watering purposes. We use our
17 stock-water rights acquired pursuant to RCW 90.44.0505 for the dairy cows to drink, to clean up
18 around the dairy, to wash cows, and to cool milk. We use between 15,000 and 18,000 gallons
19 per day.

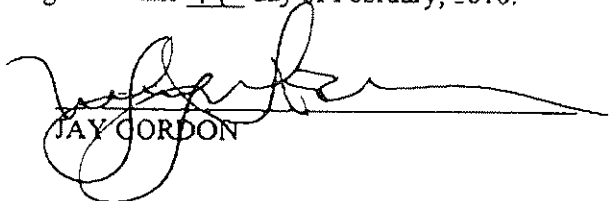
20 7. If we could not use these water rights or if they were limited to 5,000 gallons per
21 day our family farm would face great uncertainty. We do have an irrigation water right that we
22 have explored the possibility of converting in part to a stock-water use. My preliminary
23 investigation of that process reveals that in our part of the State it is an extremely long, uncertain
24 and expensive process with no guarantee at the end that we could be successful in changing the
25 use authorized under our groundwater rights. Additionally, surface water sources are not
26 allowed or only allowed if extensive treatment and sanitizing procedures are followed for dairy

1 cows. The Federal Pasteurized Milk Ordinance (PMO) dictates all requirements including water
2 supplies on Grade "A" dairy farms in the nation.¹ Specifically, surface water "sources are
3 regarded, without exception, to be contaminated, and their use cannot be condoned unless an
4 individually tailored treatment process can be used, which will make them safe and satisfactory.
5 Such treatment may include aeration and the use of suitable filtration or precipitation devices to
6 remove suspended matter, in addition to routine full-time disinfection." These treatment
7 processes are very difficult to put together and very expensive. More importantly, because of
8 these regulations dairies who seek to use them need regulatory approval to use these systems.
9 We do not know of any dairy in the State that has been allowed to use surface water as a source
10 for their dairy cows.

11 8. Without the ability to use stock water rights obtained through the RCW 90.44.050
12 permit exemption, and if we could not find substitute water, we would be out of business and our
13 family farm would have to shut down.

14 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
15 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

16 Signed at ELMA, Washington on this 1st day of February, 2010.

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19 JAY GORDON
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25 PMO Bulletin of the Centers for Disease Control and Prevention 2-19-10.doc

26 ¹ See:
<http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/MilkSafety/NationalConferenceonInterstateMilkShipmentsNCIMSModelDocuments/PasteurizedMilkOrdinance2007/wcm064290.htm>

SECOND DECLARATION
OF JAY GORDON

Ludrop, Winbauer, Herrel, Stothower & Denton L.L.P.
Attorneys at Law
110 Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093
Tel (509) 923-6916