

Friday, March 5, 2010

# Legal challenge to livestock owners threatens Washington state's dairies

Showdown at water trough

Puget Sound Business Journal (Seattle) - by [Steve Wilhelm](#) Staff Writer

Environmentalists are challenging Washington livestock owners' traditional free access to well water in a legal fight that dairy farmers fear could put many of the state's 450 dairies out of business.

The conflict was sparked by alarm over a proposed 30,000-head feedlot near Pasco, which spurred the Sierra Club and other groups, along with nearby wheat growers, to file a lawsuit that challenges the unlimited water rights enjoyed by livestock operations throughout the state.

The environmentalists are asking the court to reverse the long-held interpretation of the state's 65-year-old water law that exempts livestock owners from having to apply for water permits. The two sides are set to argue April 2 in Franklin County Superior Court. The judge, who has not yet been selected, could issue a summary judgment or decide to set a trial date.

The outcome could have huge implications for natural resources and farming statewide. Nine Indian tribes filed a "friend of the court" brief on March 1, taking the environmentalists' side.

But dairy farmers fear any crimp in their right to pump water could undermine their ability to keep operating, said Jay Gordon, executive director of the Washington State Dairy Federation and co-owner of a seventh-generation dairy farm in Elma, Grays Harbor County. Forcing dairy farmers to apply for water rights could, he said, plunge them into a lengthy and uncertain process.

"A dairy farm without water doesn't appraise very well," Gordon said. "You can't finance new equipment."

The legal issue pivots around the real meaning of a 65-year-old clause in state water law, which awards water rights for "stock watering purposes."

The state and livestock industry contend that means livestock owners don't need to file permits to draw unlimited water from their wells. But the environmentalists and a group of 20 dryland farmers near the Pasco-area feedlot don't believe the 1945 legislation was intended to exempt large livestock operations from the water permitting process. They dispute a 2005 state attorney general's opinion supporting the livestock owners.

“That’s what the lawsuit is about — we don’t believe he interpreted the law right,” said Scott Collin, secretary of Five Corners Family Farms, a group of dryland farmers that are party to the suit.

“We’re worried the water is going to go away,” Collin said. “Looking at it from a small-farmer standpoint, it’s a point of fairness.”

Last week, parties to the suit were filing motions to meet a deadline set by the court.

“I have a stack of papers you can’t believe in briefs,” said John Stuhlmiller, director of government relations for the Washington Farm Bureau, one of eight farming and livestock associations siding with the livestock owners in the case.

With access to water tightened across the state and new water rights nearly unavailable, the Odessa aquifer being drawn down, and climate change experts predicting smaller snowpacks and drier summers, struggling dairy farmers say they could be forced out of the state entirely if the rules they’ve been operating under are changed.

“There’s a lot of infrastructure that’s been built around this provision, a lot of livestock producers are built around this provision — and if you lose access to your water, you’re done,” Stuhlmiller said.

But environmental groups, including the Sierra Club and the Center for Environmental Law and Policy, in Spokane, say the current practice is an example of how the state has lost control of a key facet of the burgeoning demand for water.

“It’s no secret that water use and population growth and climate change are on collision courses,” said Janette Brimmer, staff attorney for Earthjustice in Seattle, which is providing legal support to plaintiff Five Corners Family Farms. “Things like these huge exemptions from regulatory oversight, like this stock water is, will blow a hole in the ability to really control and make good decisions about water use.”

The lightning rod for the dispute is Easterday Ranches Inc, the Pasco farming company that is building the 165-acre feedlot slated to open later this month about 20 miles north of town.

Cody Easterday, the company president, said he feels persecuted by the way his operation has been picked out for the focus of the legal action.

“Everything we’re doing is exactly how the law reads,” he said, adding that the feedlot operation will employ about 40 people and will purchase \$20 million in feed from neighboring farmers.

Easterday disputes the neighboring farmers’ claim that his feedlot will drain away water from their wells, which often are only a few hundred feet deep. He said his operation’s single

well is 1,650 feet deep into the Grand Ronde aquifer, which is below a layer of basalt and apart from the surface water supply.

“We added another \$500,000 to our well,” he said, “to protect the very people who are suing us.”

The state Department of Ecology, which is listed as a defendant along with Easterday, as a matter of policy is increasingly concerned about limited state water supply and has been pushing for more controls. But the wording of the 1945 state law controlling animal farmers’ access to water is a separate question to be decided by the Legislature, said Maia Bellon, assistant attorney general for Ecology.

“A plain reading of the statute, the way it was written, provides for ability to draw water for stock water purposes,” she said, “without any further limitations.”