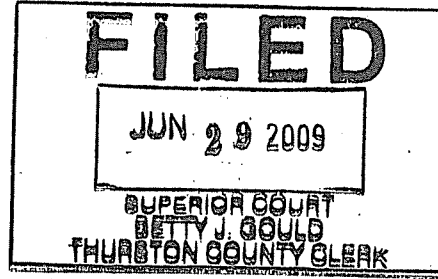


RECEIVED

JUN 30 2009

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

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

NO.

09 2 01622 1

SUMMONS

Plaintiffs,

vs.

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

Defendants.

cc: Enfl. Database Coord.
 Rew/Rec - Cost Recovery
 Don Davidson, Janet Rajala
orig: File - Fax to ATG
 ATG Docket Clerk
 Marc Schuppe (Geo-WR)
Initial: MG 6/30/09

TO THE DEFENDANT: **Washington Department of Ecology, 300 Desmond Drive, S.E.,
Lacey, Washington 98503.**

A lawsuit has been started against you in the above-entitled court by, plaintiffs.

Plaintiffs' claim is stated in the written Complaint, a copy of which is served upon you with this
Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your
defense in writing, and by serving a copy upon the person signing this Summons, within 20 days
after the service of this Summons, excluding the day of service, or a default judgment may be

COPY

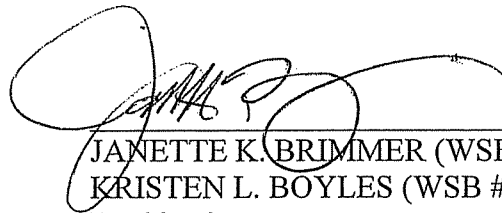
Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
(206) 343-7340

1 entered against you without notice. A default judgment is one where plaintiff is entitled to what
2 he or she asks for because you have not responded. If you serve a notice of appearance on the
3 undersigned person, you are entitled to notice before a default judgment may be entered.

4 You may demand that the plaintiffs file this lawsuit with the court. If you do so, the
5 demand must be in writing and must be served upon the person signing this Summons. Within
6 14 days after you serve the demand, the plaintiffs must file this lawsuit with the court, or the
7 service on you of this Summons and Complaint will be void. If you wish to seek the advice of
8 an attorney in this matter, you should do so promptly so that your written response, if any, may
9 be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
11 of Washington.

12 DATED this 29th day of June, 2009.

13
14 

15 JANETTE K. BRIMMER (WSB #41271)
KRISTEN L. BOYLES (WSB #23806)
16 Earthjustice
705 Second Avenue, Suite 203
17 Seattle, WA 98104
(206) 343-7340
18 (206) 343-1526 [FAX]

19 *Attorneys for Plaintiffs Five Corners Family*
20 *Farmers, Scott Collin, The Center for*
Environmental Law and Policy and the Sierra Club

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JUN 30 2009

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

FILED
JUN 29 2009
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

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

Plaintiffs,)

vs.)

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

Defendants.)

09 2 01622 1
NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. Residents of Washington rely on their streams, rivers, and underground aquifers to provide water for their homes and industries, to support irrigated agriculture, and sustain native salmon runs. Today, due to increased population, changes in precipitation, and different patterns of personal and commercial use, many watersheds in Washington are over-appropriated, and the Washington Department of Ecology has by regulation closed hundreds of streams across the state to new water rights.

2. Surface water rights from river and streams were the first to be regulated, but laws affecting groundwater use became part of Washington's water law over 60 years ago. In 1945, the Washington State legislature enacted a groundwater code to control groundwater use in the

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1 -

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COPY

1 state. The pertinent section of the Groundwater Code, RCW 90.44.050, exempted certain limited
2 groundwater uses, including limited stock-watering , from the permitting requirements.

3 3. After 60 years of interpreting the stock-water exemption provision of RCW
4 90.44.050 as limited, Ecology changed course. While previously interpreting the exemption to
5 apply only to small withdraws for supplying water to personal stock, in 2005, Ecology decided to
6 allow unlimited groundwater use for watering stock without the obligation to obtain a permit.

7 4. This change opened the door to large, unlimited water use by persons or
8 operations contrary to the purpose and intent of the Groundwater Code and the Washington State
9 Legislature, and to the detriment of other senior, permitted water rights and to Washington's
10 aquifers, rivers, streams, and the aquatic life that depends on them.

11 5. This lawsuit seeks a determination of the construction and validity of rights and
12 status of rights under RCW 90.44.050 and application of the Groundwater Code exemption from
13 permitting for unlimited water use by Easterday Ranches, Inc. under the "stock-water
14 exemption."

15 6. Plaintiffs Five Corners Family Farmers, Scott Collin, The Center for
16 Environmental Law and Policy, and Sierra Club seek a declaration that the stock-water
17 exemption from permitting under the Groundwater Code is not unlimited in amount and/or is not
18 available to the industrial livestock operation of Easterday Ranches, Inc.

19 7. This lawsuit further seeks injunctive relief as necessary to ensure the rights and
20 status of the plaintiffs relative to Easterday Ranches, Inc.'s use of water and to ensure that
21 Washington Department of Ecology's interpretation and application of RCW 90.44.050 is
22 consistent with any ruling in plaintiffs' favor.

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PARTIES

8. The plaintiffs in this action are:

A. Five Corners Family Farmers, a non-profit organization of individuals and families in the Five Corners region of Franklin County, Washington (near Eltopia and the Easterday Ranches, Inc. property), duly organized under the laws of the State of Washington, formed for the purpose of protecting existing groundwater rights and resources and whose mission is to educate the public regarding protection of water resources in Franklin County and Washington State. Five Corners Family Farmers' president is rural property owner and family farmer Sheila Poe. Five Corners Family Farmers' address is P.O. Box 3157, Pasco, WA 99302.

B. Scott Collin is a rural property owner, taxpayer, and farmer who lives near Eltopia in Franklin County, P.O. Box 3157, Pasco, WA 99302. Mr. Collin is the Secretary of Five Corners Family Farmers. Mr. Collin's property is within sight of the Easterday Ranches property that is the subject of this action. Mr. Collin's property and well has been in his family and in full use since 1930 at which time Mr. Collin's family acquired the farm property. The well itself has been in constant domestic use since approximately 1900-1905. The well on Mr. Collin's property is used for and has been used for stock-watering, a non-commercial garden, and domestic uses. In 2008, Mr. Collin applied for a new groundwater right for a new well. The new right—and many other pending applications for rights—has not been issued because, according to Ecology's Regional Water Resources Manager, the Department of Ecology does not believe water is available for new water rights in Franklin County.

C. The Center for Environmental Law and Policy ("CELP") is a non-profit corporation registered in the state of Washington. CELP's members live, work, recreate, and use waters in and along Washington's lakes, rivers, and streams. CELP represents its members' and

1 the public's interests in decisions that affect water resources and takes action through research,
2 education, litigation, and the oversight of government activities to leave a legacy of clean,
3 flowing water in Washington for use and enjoyment by all. CELP's principal place of business
4 is located in Spokane, Washington.

5 D. The Sierra Club is a national organization founded in 1892 and devoted to the
6 study and protection of the earth's scenic and ecological resources—mountains, wetlands,
7 woodlands, wild shores and rivers, deserts, plains, and their wild flora and fauna. The Sierra
8 Club has some 60 chapters in the United States and Canada, including the Cascade and Northern
9 Rockies Chapters in Washington. The Sierra Club has its principal place of business in San
10 Francisco, California. The Sierra Club's 3,000 Washington members swim, hike, paddle, fish,
11 and generally use and enjoy the many rivers and streams in Washington. Sierra Club members
12 also rely upon and utilize water resources in their homes, schools, and businesses around the
13 State of Washington. Sierra Club's Cascade Chapter is located in Seattle, Washington and works
14 on issues throughout Washington. The Northern Rockies Chapter is located in Boise, Idaho and
15 works on issues in Idaho and Eastern Washington.

16 9. Plaintiffs have unique rights and interests that have been harmed and will
17 continue to be harmed by Ecology's interpretation and misapplication of the stock-water
18 groundwater permitting exemption. The Five Corners Family Farmers all hold water rights
19 senior to Easterday Ranches, Inc. in a fully-appropriated basin where the Washington
20 Department of Ecology is not granting any more permits or certificates for water rights,
21 presumably because there is no more water available. Scott Collin has a water right application
22 pending that is senior to Easterday Ranches, Inc. and he cannot obtain the right as Ecology is not
23 processing applications for new water rights, apparently due to the lack of water available for
24

1 such rights. The organizational plaintiffs are harmed because the application of an unlimited
2 exemption for pumping of groundwater by Easterday Ranches, Inc. will reduce the water
3 available in Washington aquifers, rivers, and streams, harming native fish populations and the
4 plaintiffs' members domestic, aesthetic, recreational, and fishing interests.

5 10. The defendants in this action are:

6 A. The State of Washington ("State"), a sovereign state which enacted the
7 Groundwater Code, and specifically RCW 90.44.050, in 1945.

8 B. The Washington Department of Ecology ("Ecology"), an agency of the State
9 charged with implementing and administering the Washington Groundwater Code, including the
10 exemption from permitting provision at issue in this case. RCW 43.21A.064 and 90.44.035 et
11 seq.

12 C. Easterday Ranches, Inc., a corporation duly organized and incorporated under the
13 laws of the State of Washington, registered with the Washington Secretary of State, with a
14 registered place of business as 1816 North 20th Avenue, Pasco, Washington, 99301. The
15 Washington Secretary of State lists Cody Easterday of Mesa, Washington as President and lists
16 the corporation itself as the registered agent for service.

17 JURISDICTION AND VENUE

18 11. This Court has jurisdiction over this action under RCW 2.08.010 (general equity
19 jurisdiction), RCW 4.92.010 (actions against state), RCW 7.24.010 (declaratory judgment), and
20 RCW 7.40.010 (injunctive relief).

21 12. Venue is proper in this Court pursuant to RCW 4.92.010 because this action
22 challenges the validity and construction of a state statute. Venue is further proper as the primary
23 defendant to this action is the State of Washington, Department of Ecology with principal offices
24

1 in Olympia, Thurston County, Washington.

2 BACKGROUND

3 Washington Groundwater Law And Permitting Exemption

4 13. The use of water in Washington is governed generally by Title 90, Revised Code
5 of Washington, including the Surface Water Code, Chapter 90.03 RCW, the Minimum Instream
6 Flow Act, Chapter 90.22 RCW, the Ground Water Code, Chapter 90.44 RCW, and the Water
7 Resources Act, Chapter 90.54 RCW.

8 14. Washington, like other western states, has based its water laws primarily on the
9 doctrine of "prior appropriation." The prior appropriation system is based on three fundamental
10 principles: (1) water rights may be exercised only for actual beneficial use; (2) prior
11 appropriators have superior rights against subsequent appropriators; and (3) the maintenance of a
12 water right requires continued beneficial use without waste.

13 15. When there is insufficient water to meet the needs of all users, the person who
14 first appropriated water from the source river or aquifer has priority, a scheme often dubbed
15 "first in time, first in right." In the terminology of water law, the person who earlier gains a right
16 to use water has the "senior" right while the person who later acquires a right has the "junior"
17 right. The priority date of a water right is the date a person: (a) puts water to beneficial use (for
18 persons claiming water rights before 1917 and for "exempt" uses); or (b) files an application for
19 a water right with the Department of Ecology.

20 16. Washington's Groundwater Code provides that there shall be no withdrawal of
21 groundwater in the state, nor any well or other works for such withdrawal constructed, absent an
22 application to and permit from Ecology. RCW 90.44.050. Before a groundwater permit may be
23 issued, Ecology must investigate and affirmatively find (1) that water is available, (2) for a
24

1 beneficial use, and that (3) an appropriation will not impair existing rights or (4) be detrimental
2 to the public welfare. RCW 90.03.290.

3 17. The Groundwater Code exempts certain limited groundwater uses from the
4 permitting requirements. Specifically, RCW 90.44.050 provides:

5 any withdrawal of public ground waters for stock-watering purposes, or for the
6 watering of a lawn or of a noncommercial garden not exceeding one-half acre in
7 area, or for single or group domestic uses in an amount not exceeding five
8 thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial
purpose in an amount not exceeding five thousand gallons a day, is and shall be
exempt from the provisions of this section....

9 RCW 90.44.050 further provides that Ecology may require the person or agency making any
10 such small withdrawal to furnish information regarding the withdrawal and that a party making
11 the withdrawals not exceeding five thousand gallons per day may apply for a permit under the
12 same process followed for nonexempt withdrawals.

13 18. While certain limited uses of groundwater are exempt from permitting, they are
14 not exempt from other provisions of the Water Code such as priority of senior rights and
15 beneficial use requirements. RCW 90.44.050.

16 19. For 60 years, Ecology interpreted the groundwater exemption and provisos as
17 limiting the stock-water exemption to 5,000 gallons per day or less, successfully-defending that
18 interpretation and application in *DeVries v. Dept. of Ecology*, PCHB 01-073 (2001).

19 20. In 2005, Ecology abruptly reversed its interpretation and application of the stock-
20 water exemption contrary to the decision *DeVries*, interpreting the permitting exemption for
21 stock-water as wholly unlimited in quantity, in accordance with a 2005 opinion of the Attorney
22 General.

23 21. That complete reversal is having a dramatic influence over the unpermitted use of
24 groundwater in Washington State.

1 Franklin County and Easterday Ranches, Inc.

2 22. Easterday Ranches, Inc. proposes an large industrial cattle feeding operation in
3 the five corners area of Franklin County. The proposed industrial feedlot property is located on
4 the northwest corner of the intersection of Gertler, Overturf, and Smith Canyon Roads, near
5 and/or adjacent to properties owned and farmed by the Five Corners Family Farmers. The
6 Easterday Ranches, Inc. industrial operation will feed 30,000 head of beef cattle on the property.

7 23. Easterday Ranches, Inc. has acquired an option on the real property for the
8 operation, has drilled and cased a groundwater well for the industrial feedlot operation, and has
9 applied for various permits from Ecology.

10 24. Easterday Ranches, Inc. claims that it does not require a groundwater permit for
11 watering of the stock at its 30,000-head industrial cattle-feeding operation. The amount of water
12 necessary to water 30,000 head of cattle in Franklin County is estimated to be at least 480,000-
13 600,000 gallons per day.

14 25. Ecology has agreed that Easterday Ranches, Inc. is exempt from the groundwater
15 permitting requirement of the Groundwater Code for its industrial cattle-feeding operation.
16 While Ecology has expressed concern that the size of the cattle-feeding operation may adversely
17 affect existing water rights and stream flows and aquifer levels, Ecology has refused and is
18 refusing to regulate Easterday Ranches, Inc.'s industrial groundwater use.

19 26. Proliferation of exempt wells has been identified as a significant contributor to
20 over-appropriation of various basins and to failure to meet in-stream flow requirements for a
21 number of streams and rivers. In Franklin County, the Department of Ecology has ceased
22 issuing new permits for ground water rights, apparently based upon Ecology's belief that there is
23 no further groundwater available.

1 gallons per day.

2 32. Based upon the foregoing, plaintiffs are entitled to declaratory and injunctive
3 relief finding that the stock-water exemption from groundwater permitting is not unlimited and
4 requiring the State of Washington, Department of Ecology to interpret and apply RCW
5 90.44.050 as limited to small quantities or small withdrawals, at most 5,000 gallons per day.

6 33. Based upon the foregoing, plaintiffs are entitled to declaratory and injunctive
7 relief finding that the industrial feedlot operation of Easterday Ranches, Inc. is not exempt from
8 needing a groundwater permit from Ecology, and requiring Easterday Ranches, Inc. and the State
9 of Washington, Department of Ecology to fully comply with all aspects of the Groundwater
10 Code regarding the Easterday Ranches, Inc. industrial feedlot operation in Franklin County.

11
12 COUNT II

13 EASTERDAY RANCHES, INC. IS NOT ENTITLED TO THE STOCKWATER EXEMPTION
14 (RCW 90.44.050; RCW 7.24.020; RCW 7.40.010)

15 34. The provisions of RCW 90.44.050, as a whole and within the context of the
16 Groundwater Code, demonstrate the intent of the legislature to limit the stock-water exemption
17 from groundwater permitting to family subsistence farming and not to large industrial cattle-
18 feeding operations such as Easterday Ranches, Inc.

19 35. Reports and statements before the legislature at the time of, and immediately
20 following, passage of the Groundwater Code and the exemption from permitting, demonstrate
21 the intent of the legislature to limit the stock-water exemption from groundwater permitting to
22 family subsistence farming and not to large industrial cattle-feeding operations such as Easterday
23 Ranches, Inc.

24 36. Based upon the foregoing, plaintiffs are entitled to declaratory and injunctive
25 relief finding that the stock-water exemption from groundwater permitting is not available to

1 industrial animal-operations and requiring the State of Washington, Department of Ecology to
2 interpret and apply RCW 90.44.050 as limited to family subsistence farming.

3 37. Based upon the foregoing, plaintiffs are entitled to declaratory and injunctive
4 relief finding that the industrial feedlot operation of Easterday Ranches, Inc. is not exempt from
5 needing a groundwater permit from Ecology, and requiring Easterday Ranches, Inc. and the State
6 of Washington, Department of Ecology to fully comply with all aspects of the Groundwater
7 Code regarding the Easterday Ranches, Inc. industrial feedlot operation in Franklin County.
8

9 PRAYER FOR RELIEF

10 Based on the foregoing, plaintiffs request the following relief from this court:

11 A. A declaration that the RCW 90.44.050 exemption from groundwater permitting
12 for stock-watering is not unlimited.

13 B. A declaration that the RCW 90.44.050 exemption from groundwater permitting
14 for stock-watering is limited to "small withdrawals" defined as withdrawals necessary to water
15 stock for a family subsistence farm and not industrial cattle-feeding operations, or in the
16 alternative, a declaration that the RCW 90.44.050 exemption from groundwater permitting for
17 stock-watering is limited to 5,000 gallons per day or less.

18 C. An injunction requiring the State of Washington and its agents and employees,
19 including the Department of Ecology, to interpret and apply the stock-watering exemption of
20 RCW 90.44.050 as limited in accordance with this Court's declaration.

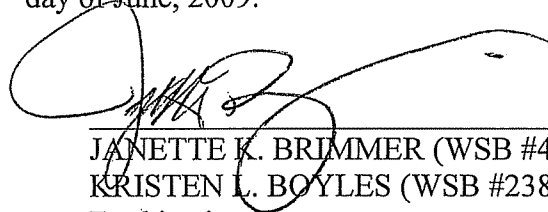
21 D. An injunction requiring Easterday Ranches, Inc. to cease groundwater use for its
22 industrial cattle-feeding operation in Franklin County unless and until Easterday Ranches, Inc.
23 receives a valid water right from the Department of Ecology for any and all water uses associated
24 with its cattle-feeding operation in Franklin County.

1 E. An injunction requiring Easterday Ranches, Inc. to apply to the Department to
2 Ecology for a groundwater permit in accordance with the Groundwater Code and requiring
3 Department of Ecology to process and review the application in accordance with the factors,
4 including water availability and public interest, applicable to all applications for water rights in
5 the State of Washington.

6 F. An award of reasonable costs and other expenses associated with bringing this
7 action.

8 G. Such further relief that this Court deems to be just and reasonable.

9
10 Respectfully submitted this 29th day of June, 2009.

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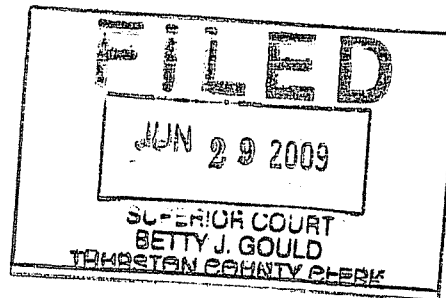
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19 *Attorneys for Plaintiffs Five Corners Family*
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21 *Environmental Law and Policy and the Sierra Club*

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JUN 30 2009

DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR



SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

Plaintiff/Petitioner,

vs.

Defendant/Respondent

NO. 09-2-01622-1

NOTICE OF ASSIGNMENT/ (NTAS)
NOTICE OF STATUS CONFERENCE (NTC)

TO: THURSTON COUNTY CLERK
ATTORNEYS/LITIGANTS

PLEASE TAKE NOTICE:

1. That the above-noted case is assigned to:

The Honorable Carol Murphy

2. That the Status Conference is scheduled for 9:00 a.m. October 02, 2009.

Dated this 29th day of June, 2009.

All parties should be familiar with Local Civil Rule 16(d) which requires in part that parties or lead counsel attend and that the parties or counsel shall communicate with each other concerning the case schedule order before the status conference.

THURSTON COUNTY SUPERIOR COURT
2000 LAKERIDGE DRIVE SW
OLYMPIA WA 98502
(360) 786 - 5560

NOTICE OF ASSIGNMENT/
NOTICE OF STATUS CONFERENCE