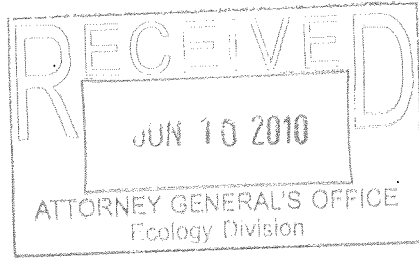


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MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK



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SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

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.

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

EASTERDAY RANCHES, INC.'S
NOTICE OF CROSS APPEAL

COPY

LEE SMART.

1 TO: MICHAEL J. KILLIAN, Clerk of the Court

2 AND TO: FIVE CORNERS FAMILY FARMERS; SCOTT
3 COLLIN; THE CENTER FOR ENVIRONMENTAL LAW AND
POLICY; and SIERRA CLUB, Plaintiffs

4 AND TO: KRISTEN BOYLES and JANETTE K. BRIMMER,
5 Attorneys for Plaintiffs

6 EACH OF YOU WILL PLEASE TAKE NOTICE that defendant EASTERDAY
7 RANCHES, INC. seeks review by the Washington State Court of Appeals, Division III of the
8 following orders of the Superior Court:

9 1. The Thurston County Superior Court's failure grant Easterday Ranches its
10 reasonable attorneys' fees for obtaining a change of venue in accord with RCW 4.26.090
11 entered September 25, 2009;

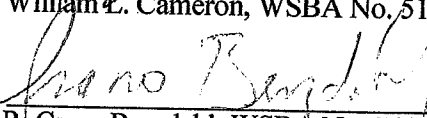
12 2. The Franklin County Superior Court's failure to dismiss the plaintiffs for want
13 of standing and for their failure to appeal adverse decisions under the Land Use Petition Act
14 and failure to strike the declarations proposed by the plaintiffs entered December 4, 2009; and

15 3. The Franklin County Superior Court's failure to grant Easterday reasonable
16 attorneys' fees and actual costs and expenses under the Right to Farm Statute and parallel
17 Franklin County Ordinance and failure to strike the declarations proposed by the plaintiffs
18 entered May 5, 2010.

19 RESPECTFULLY submitted this 7th day of June 2010.

20 LEE SMART, P.S., INC.

21 By: 
22 William L. Cameron, WSBA No. 5108

23 By: 
24 R. Crane Bergdahl, WSBA No. 741
25 Of Attorneys for Defendant
Easterday Ranches, Inc.

1 EXPEDITE (if filing within 5 court days of hearing)
2 Hearing is set:
3 Date: September 25, 2009
4 Time: 9:00
5 Judge/Calendar: Richard D. Hicks
6

7 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

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

12 Plaintiffs,

13 vs.

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

18 Defendants.

NO. 09-2-01622-1

ORDER CHANGING VENUE

CLERK'S ACTION REQUIRED

17 WHEREAS this matter came on for hearing on the motion of
18 Easterday Ranches, Inc. for a change of venue to Franklin County, and The
19 Court having heard the argument of counsel for the parties and reviewed the
20 pleadings and files in this matter. Specifically the Court has reviewed the
21 Declaration of R. Crane Bergdahl concerning the witnesses proposed to be
22 called and the Declaration of William L. Cameron concerning publicity of
23 this matter. Based upon the arguments of counsel and the evidence
24 presented, the court makes the following findings of fact:

25 1. This matter concerns water rights and claims of injury to property

1 rights;

2 2. The seventeen potential witnesses proposed by 'Easterday
3 Ranches, all would be more inconvenienced by traveling to
4 Olympia than Pasco;

5 3. The other parties have submitted no witnesses by affidavit or
6 declaration;

7 4. The nature of the controversy is of local importance to Franklin
8 County and involves issues and facts particular to that County; and

9 ~~5. The plaintiffs could have determined the county of proper venue
10 was Franklin County with reasonable diligence;~~

11 THE COURT CONCLUDES:

12 1. This court has jurisdiction to determine this motion for change of
13 venue;

14 2. This is a local action that must first be commenced in Franklin
15 County as required by RCW 4.16.010;

16 3. Even if this were not a local action, the convenience of witnesses
17 and the interests of justice require that this case be transferred to
18 Franklin County RCW 4.16.030;

19 4. The Plaintiffs must pay the costs of transferring the case to
20 Franklin County in accord with RCW 4.16.090; and

21 ~~5. The Plaintiffs must pay the reasonable attorney's fee of the
22 Defendants for the changing of venue to the proper county in
23 accord with RCW 4.16.090.~~

24 NOW THEREFORE
25

AA
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RDY
RDY

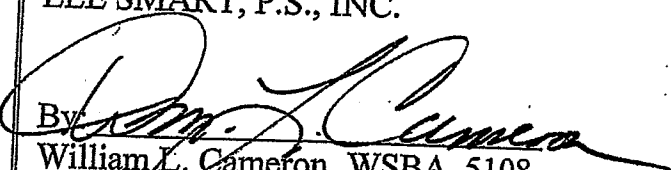
1
2 IT IS HEREBY ORDERED that this case is moved to Franklin County
3 Superior Court. ~~The defendants Easterday Ranches and Department of Ecology~~
4 ~~shall recover their costs and disbursements in this action against the Plaintiffs and~~
5 ~~shall submit their bills for costs and reasonable attorneys' fees to this court in~~
6 ~~accord with CR 54(d)(2).~~ The plaintiffs shall pay the costs of transfer in accord
7 with RCW 4.12.090(1).
8

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DONE IN OPEN COURT this 25th day of September 2009.

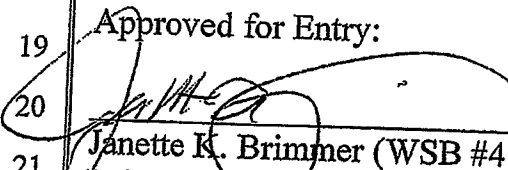

RICHARD D. HICKS
SUPERIOR COURT JUDGE

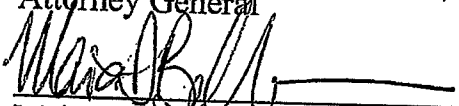
Presented by:

LEE SMART, P.S., INC.

By: 
William L. Cameron, WSBA 5108
Of Attorneys for Defendant
Easterday Ranches, Inc

Approved for Entry:


Janette K. Brimmer (WSB #41271)
Kristen L. Boyles (WSB #23806)
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340
(206) 343-1526

ROBERT M. MCKENNA
Attorney General

Maia D. Bellon, WSBA #24777
Assistant Attorney General
Attorneys for Defendants
State of Washington and
Washington State Department of
Ecology
(360) 586-6750

1 EXPEDITE (if filing within 5 court days of hearing)
2 Hearing is set:
3 Date: November 23, 2009
4 Time: 2:00 p.m.
5 Judge: Honorable Carrie L. Runge

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MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

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)
10 ENVIRONMENTAL LAW AND POLICY, and)
11 SIERRA CLUB,)

NO. 09-2-51185-6

Plaintiffs,

ORDER DENYING MOTION TO
DISMISS AND MOTION TO STRIKE
[PROPOSED]

vs.

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

Defendants.

16 Before the Court are the Motion to Dismiss and Motion to Strike of defendant Easterday
17 Ranches Inc. ("Easterday Ranches"). On November 23, 2009, the Court heard the oral
18 arguments of counsel and considered the pleadings filed in this action and the following
19 evidence:

- 20 1. Defendant Easterday Ranches' Memorandum and Reply Memorandum in
21 Support of Motion to Dismiss; Declaration of William L. Cameron in Support of
22 Motion to Dismiss.
- 23 2. Plaintiffs Five Corners Family Farmers' et al. Memorandum in Opposition to
24 Motion to Dismiss.
- 25 3. Defendant Washington State Department of Ecology's Memorandum in
26 Response to Motion to Dismiss.

COPY

ORDER DENYING MOTION TO DISMISS
AND MOTION TO STRIKE [PROPOSED] (No. 09-2-51185-6) - 1 -

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- 4. Defendant Easterday Ranches' Memorandum and Reply Memorandum in Support of Motion to Strike.
- 5. Plaintiffs Five Corners Family Farmers' Memorandum in Opposition to Motion to Strike.
- 6. The declarations of Scott J. Collin, John Osborn, MD, Janette K. Brimmer, Patricia A. Sumption, Sheila R. Poe, Randolph Allen Jones and the exhibits attached thereto.

Based on the argument of counsel and the evidence presented, the Court

(1) DENIES Easterday Ranches' Motion to Dismiss in its entirety. This case presents a legal question of statutory interpretation; as such, it is appropriate for this Court to determine the scope and applicability of RCW 90.44.050 as it relates to the unlimited use of groundwater for watering livestock. The issues before this Court do not involve permits issued by any agency.

(2) DENIES Easterday Ranches' Motion to Strike in its entirety. The Court has reviewed the declarations and can keep in mind the appropriate weight to be accorded those declarations as this case proceeds.

DATED this 3rd day of December, 2009.

Carrie L. Runge

THE HONORABLE CARRIE L. RUNGE

Presented by:

[Signature]

JANETTE K. BRIMMER (WSB #41271)
KRISTEN L. BOYLES (WSB #23806)
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340
(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

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

1

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
(360) 586-6770

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
10/27/2009	Easterday's Motion to Dismiss
10/27/2009	Easterday's Memorandum in Support of Motion to Dismiss
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 Mael
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	03/30/2010	State Defendants' Response to Joint Tribal <i>Amicus Curiae</i> Brief

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.

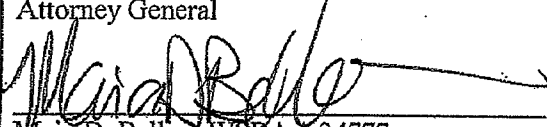
12 6. The Court finds that this Order is a final judgment, disposes of all claims and
13 causes of action asserted in the pleadings, is final for purposes of appeal, and there is no just reason
14 for delay.

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


16
17 Carrie Runge
18 Judge Carrie L. Runge
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1 Presented by:

2 ROBERT M. MCKENNA
3 Attorney General

4 
5 Maia D. Bellon, WSBA # 24777
6 Assistant Attorney General
7 Attorneys for Defendants
8 State of Washington and
9 Washington State Department of Ecology
10 (360) 586-6750

11 LATHROP, WINBAUER, HARREL,
12 SLOTHOWER & DENISON L.L.P.

13 
14 Jeff Slothower, WSBA #14526
15 Attorney for Washington State Dairy
16 Federation, Northwest Dairy Association,
17 Washington Cattle Feeders Association, Cattle
18 Producers of Washington, Washington State
19 Sheep Producers, Washington Farm Bureau,
20 together the "Agricultural Association
21 Intervenor"
22 (509) 925-6916

23 Agreed as to Form
24 Notice of Presentation Waived:

25 EARTHJUSTICE

LEE SMART, P.S., INC.

26 Janette K. Brimmer, WSBA # 41271
Kristen L. Boyles, WSBA No. 23806
Attorneys for Plaintiffs
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William L. Cameron, WSBA # 5108
Attorneys for Defendant Easterday Ranches, Inc.
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Attorney for Defendant Easterday Ranches, Inc.
(509) 545-4950

1 MURPHY & BUCHAL LLP

2

3 James Buchal, WSBA # 31369
4 Attorney for Intervenor Washington
5 Cattlemen's Association
6 (503) 227-1011

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