



CLEAN, FLOWING WATERS FOR THE WEST

The Center for
Environmental Law & Policy

Jerrold MacPherson, Director
Franklin County Planning & Building Dept.
1016 N. 4th Ave.
Pasco, Washington 99301

October 14, 2008
VIA Fax: 509-546-3367

Re: Easterday Ranches, Franklin County CUP No. 2008-11

Dear Mr. MacPherson,

The Center for Environmental Law & Policy (CELP) is a non-profit organization dedicated to protecting public interests in the rivers and aquifers of Washington state. For fifteen years, CELP has advocated for limitations on the use of exempt wells through litigation, public policy research, and public education. We are writing to urge Franklin County to reconsider its approval of a conditional use permit for Easterday Ranches based on its proposed use of an exempt well for water supply.

Easterday Ranches proposes to build and operate a 30,000-head cattle feedlot near Eltopia. According to documents in County files, the feedlot will require 158 million gallons of water per year, or up to 600 gpm instantaneous during summer months. Easterday plans to drill one or more wells, and use groundwater from the Grande Ronde Aquifer to supply the feedlot, but does not have a water use permit. Instead, Easterday claims the statutory well exemption as a basis for its right to withdraw water.

Franklin County has explicitly approved the use of unpermitted wells as a basis for supplying water to the proposed feedlot. For example, Franklin County documents state:

"Applicant is required to comply with the. . . 2005 Attorney General's Office's formal opinion regarding water exemptions for watering livestock, and State law." Letter, Franklin County Planning & Building Dept to Cody Easterday, Easterday Ranches, Inc. (9/3/08).

"The applicant, according to Washington State Law, and the Department of Ecology, is entitled to the exempt ground water withdrawal for livestock watering (unlimited)." Letter, Franklin County Planning & Building Dept to Scott Collin (10/3/08).

We are writing to suggest that your offices should be very cautious in its processing of the Easterday Ranches application. Substantial questions surround the legality of using exempt wells in unlimited quantities for industrial feedlots. With all respect to the Attorney General, the 2005 opinion relied on by your offices is not a reliable basis for finding that Easterday Ranches need not obtain a water use permit.

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The AG Opinion regarding exempt wells and stockwatering is erroneous for several reasons. First, it is a strained interpretation of the applicable statute, RCW 90.44.050, which authorizes the use of exempt wells for up to 5,000 gallons per day for domestic uses, including stockwatering. The AG opinion relies on arguments about comma placement in statutes, but fails to analyze the legislative history of RCW 90.44.050, as well as the larger context of the water code of which this particular statutory provision is a part. As the Washington Supreme Court has noted, exceptions to the requirements of the water code should be construed narrowly. Even if supplying water to an industrial cattle feedlot could be construed to be fall within the definition of "stockwatering," the proposed use of at least 600 gpm per day from an exempt well pushes the statute far beyond its original purposes.

In addition, Attorney General Opinions are not law. They are opinions. In the hierarchy of legal precedent, AG Opinions are not equated with court decisions that interpret the laws, particularly when they involve statutory interpretation. If challenged, the 2005 AG opinion will have little if any value.

If water resources were infinite the Easterday proposal might not be so significant. But, as you no doubt know, groundwater resources in eastern Franklin County are in a precarious state. In the Odessa Subarea to the north and west, groundwater levels are declining at the rate of several feet per year. In Whitman County to the east, groundwater levels are also declining at the rate of 1.5 feet per year. In the Eltopia area, there is evidence that groundwater levels decline when heavily pumped. Given that the basalt aquifer hydrogeology targeted for the Easterday feedlot is the same as that in nearby Odessa and Pullman, the potential that feedlot pumping will affect neighboring wells is substantial.

Easterday has provided incomplete information about Eltopia-area groundwater and the proposed use. The "impairment" report prepared by Water Man Consulting does not address all of the wells and pumping in the area, nor does it address historical evidence of declines in regional aquifers. It appears to underestimate proposed water usage. Reports provided by Darryl Olsen are also problematic. Of particular concern, Mr. Olsen's issuance of a "report of examination" creates the misleading impression that his analysis is an official document. Neither Mr. Olsen nor the Columbia Snake River Irrigators Association has authority to issue water use permits. Franklin County should neither tolerate nor be a party to this questionable effort to justify water supply for the project.

Under the circumstances, we urge Franklin County to reconsider CUP 2008-11. CELP would be happy to provide additional information about the status of exempt wells in Washington State.

Sincerely,



Rachael Paschal Osborn
Executive Director

cc: Cody Easterday, Easterday Ranches
Ken Slattery & Keith Stoffel, Department of Ecology
Five Corners Family Farmers
Michael Robinson-Dorn, University of Washington Environmental Law Clinic