



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 12, 2008

Mr. Bill Easterday
Easterday Ranches, Inc.
1816 North 20th Avenue
Pasco, WA 99301

Dear Mr. Easterday,

In late October 2008, the Department of Ecology (Ecology) received a Columbia-Snake River Irrigators Association Documentation Packet regarding the proposed Easterday Ranches cattle feedlot in Franklin County. The packet included:

- A cover memo dated October 13, 2008;
- A “Declaration of Appropriation of Groundwater for Beneficial Use and Plan of Development”, dated October 13, 2008;
- Washington Attorney General’s opinion AGO 2005 No. 17, issued November 18, 2005;
- Franklin County Planning and Building Department’s documents regarding their State Environmental Policy Act (SEPA) decision on the proposed Easterday Ranches project, including an Environmental Checklist dated July 28, 2008, a notification of Lead Agency status and project summary issued August 4, 2008, and a Mitigated Determination of Non-Significance (MDNS) issued August 29, 2008; and
- Two versions of an “Easterday Feedlot Exempt Well Impairment Analysis”, dated August 30, 2008, and October 7, 2008, respectively.

Taken together, these documents indicate Easterday Ranches intends to operate a modern 30,000-head cattle feedlot on approximately 960 acres within Sections 13 and 24, T. 12 N., R. 31 E.W.M., in Franklin County, Washington. The documents indicate the project will require the use of approximately 480 acre-feet of groundwater each year, which Easterday intends to withdraw from one well constructed in the SW1/4 SW1/4 of Section 13, T. 12N, R. 31 E.

The Declaration indicates the appropriation of groundwater for this project will be conducted in accordance with the Attorney General's interpretation of statutory language exempting withdrawals of groundwater for stockwatering from permitting requirements, cited as AGO 2005 No. 17, and "consistent with the definition of 'stock watering purposes' given in *DeVries v. Dept. of Ecology, Pollution Control Hearings Board* (PCHB) No. 01-073 (2001)". We understand you interpret these as authorizing the withdrawal of an unlimited quantity of groundwater for two purposes: (1) stock watering and (2) other ancillary uses required for operation of the cattle feedlot.

It is the state's position that the stockwatering exemption in RCW 90.44.050 does not limit the quantity of water beneficially used for stockwatering (see Attorney General's Opinion AGO 2005, No. 17, issued November 18, 2005). However, it is Ecology's position that use of water for operations of a feedlot, such as dust suppression, cleaning of barns, and watering of vegetation, is not "stockwatering" but "industrial use" under the exemption. Industrial use is limited to 5,000 gallons per day under the exemption.

The language of the exemption refers to "stockwatering purposes," and we interpret the reference to the plural "purposes" to mean potential use for different kinds of stock, such as cattle, pigs, sheep, chickens, horses, etc. The exemption does not state "stockwatering and related purposes", but rather "stockwatering purposes." Since the exemption is an exception to the permit requirement, any ambiguity in the exemption must be narrowly construed to promote the purposes of the permit requirement, which is the protection of existing water rights and the public interest. *R.D. Merrill v. PCHB*, 137 Wn.2d 118, 140 (1997).

The water code does not define "stockwatering" and the plain language meaning of that term is for the watering of stock. Use of water to control dust, clean barns, or maintain wind rows is clearly not watering of stock in any literal sense of the term. Indeed, livestock water duties are almost always based upon animal intake and do not include components for operations such as dust suppression connected with a stock operation.

The 2001 PCHB decision in *DeVries v. Ecology* did recognize that general stock operation uses may be considered "stockwatering" and not "industrial use" of water. However, the PCHB's narrow interpretation of "industrial" as limited to "manufacturing" was later rejected by the Court of Appeals in *Kim v. Ecology*, 115 Wash. App. 157 (2003). Further, the underlying premise of the PCHB's decision that stockwatering itself was limited to 5,000 gpd was also later rejected by the Attorney General in AGO 2005, No. 17.

An additional factor to consider is the junior nature of any exempt water right you may establish. Such a water right would, in the event of regulation or proven impairment of a more senior water right, be subject to curtailment.

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These are not purely academic or legal concerns. Your proposed well is located near the southern boundary of the Odessa Ground Water Management Subarea, established by rule (Chapters 173-128A and 173-130A WAC). The water table in the Odessa Subarea is steadily declining. This may be the most critical water supply shortage in the state, and while we are actively working towards bringing new water supplies to the Odessa, we are not likely to reverse the situation in the near future.

If your withdrawal impairs a senior water right, you will be subject to curtailment and in that context, the validity of your water right will likely become an issue. The large size of your proposed withdrawal increases the potential for such a conflict to arise at some time in the future.

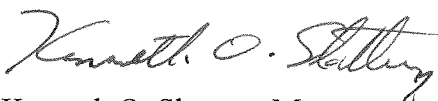
In summary, we believe your proposed use of groundwater would require a water right for industrial use (including dust suppression, barn washing, and vegetative maintenance) since your operations would use over 5,000 gallons per day for that purpose. A new water right would not be possible to obtain in a short period of time, and at best, would be very difficult to acquire in the long term.

We believe there is a substantially safer path forward: acquisition and transfer of a valid water right, which would avoid the uncertainties described above. Please be aware however, that Ecology's decision to approve or deny the transfer of an existing water right to the proposed feedlot location would still be subject to an analysis by the department, to ensure that existing water rights would not be impaired.

RCW 90.44.050 authorizes the department to require persons making withdrawals under the groundwater permit exemption "...to furnish information as to the means for and the quantity of that withdrawal". Therefore, we are notifying you that Ecology intends to issue an administrative order to Easterday Ranches, requiring metering of the quantities of water used for each category of exempt uses at the feedlot: stockwatering, industrial, and domestic.

If you have any questions or concerns regarding issues raised in this letter, please contact Keith Stoffel in Ecology's Eastern Regional Office at 509-329-3464. If you wish to pursue transfer of an existing water right for your project, that office would be most willing to assist you in locating a suitable water right.

Sincerely,



Kenneth O. Slattery, Manager
Water Resources Program

cc: Darryll Olson, CSRIA, 3030 W. Clearwater, Suite 205-A, Kennewick, WA 99336
Representative Steve Hailey
Keith Stoffel, Ecology/Water Resources/ERO