

# Oregon

## Judge refuses to dismiss oysterman's suit against state over dairy pollution

By MATEUSZ PERKOWSKI  
Capital Press

TILLAMOOK, Ore. — An Oregon judge has refused to dismiss a lawsuit that alleges state environmental regulators allow pollution from dairies to harm oyster harvests in Tillamook Bay.

Attorneys for the Oregon Department of Environmental Quality argued the agency cannot be held liable for the adverse effects suffered by Jesse Hayes, president of the Hayes Oyster Co.

According to Hayes' lawsuit, the DEQ incorrectly assumes that local dairies aren't discharging fecal coliform bacteria into rivers that flow into Tillamook Bay.

Nonetheless, bacteria levels in the bay are so high that Hayes is entirely prohibited from harvesting oysters from 250 acres of his plats and faces frequent shutdowns on 350 acres, according to his complaint.

Hayes argues that insufficient regulation by DEQ constitutes a public nuisance and an unjust taking of his property due to lost profits and reduced plat values.

The complaint seeks \$100,000 in damages and an order requiring DEQ to strengthen its pollution regulations in the area.

Without deciding the

merits of the case, Tillamook County Circuit Judge Mari Garric Trevino denied DEQ's motion to throw out the lawsuit and ordered the agency to answer Hayes' allegations.

The ruling means that Hayes has cleared an important first hurdle and may proceed with the litigation.

"We get to prove what's in our complaint," said Thomas Benke, his attorney.

During oral arguments on Sept. 29, DEQ claimed that Hayes incorrectly targeted the agency rather than the dairy farmers who are alleged to be the underlying source of the problem.

Hayes makes the "erroneous assumption" that Oregon unjustly deprived him of property by failing to regulate his neighbors strictly enough, but inadequate regulation isn't recognized as a government "taking" under legal precedents, according to DEQ.

"The government is not responsible for inaction," said Christina Beatty-Walters, DEQ's attorney. "That's not a situation the government is responsible for."

According to Hayes, the complaint against DEQ is valid because it's challenging the adverse impacts that insufficient TMDL rules have imposed on his oyster

operation, rather than attacking the validity of the regulations themselves.

"The agency made the decision to take away the use of 250 acres of tideland from the Hayes Oyster Company perpetually," said Benke.

Hayes argues that DEQ has unlawfully sanctioned pollution, which is a form of government taking.

The agency could restrict pollution from dairies with confined animal feeding operations or from municipal wastewater, but it's the act of allowing excessive pollution that Hayes is challenging in court, Benke said.

The Oregon Dairy Farmers Association is watching the case closely because it involves Total Maximum Daily Load regulations affecting farmers, said Tami Kerr, the executive director.

The lawsuit also implies that dairies are polluters, she said. "I'm frankly tired of that."

Oregon is a national leader in manure management, with dairy farmers being regularly inspected by the Oregon Department of Agriculture, Kerr said.

Faulty septic tanks, municipal wastewater and wildlife feces all contribute to fecal coliform bacteria in water, which has been confirmed by DEQ, she said.

## College bets the FARM on agricultural education

By GEORGE PLAVERN  
EO Media Group

PENDLETON, Ore. — Inside the livestock lab at Blue Mountain Community College's new Facility for Agricultural Resource Management, or FARM, instructor Nick Nelson beamed as he showcased the high-tech Silencer hydraulic cattle chute.

Not only is the latest piece of equipment better for animal welfare and handling, but it is more likely what students can expect to find working on a large ranch operation, Nelson said during the FARM grand opening ceremony Sept. 29.

"It means easier employment when they know how to operate these things safely," Nelson explained.

FARM is the third and final construction project to be completed after voters in Umatilla and Morrow counties passed a \$23 million capital bond for BMCC in 2015. Earlier this year, the college also debuted its new Workforce Training Center in Boardman and Precision Irrigated Agriculture Center in Hermiston.

The FARM building in Pendleton combines classroom and lab space for the agriculture department, replacing an older, smaller shop building. It is surrounded by a 100-acre working farm where BMCC students learn hands-on how to manage cattle and grow prominent local crops — such as alfalfa to feed those hungry cows.

"We essentially buy very little feed for the livestock here," Nelson said.

Though classes officially began Monday, guests gathered Thursday afternoon for a ribbon cutting and dedication by school leaders. BMCC President Cam Preus said it



E.J. Harris/EO Media Group

Guests mingle in a shop area of the Facility for Agricultural Resource Management building during an open house on the Blue Mountain Community College campus in Pendleton.

was a long road building the facility, and thanked voters for their support on the bond.

"This is a wonderful way to celebrate BMCC's nationally recognized agriculture program," Preus said.

Chris Brown, chairman of the BMCC Board of Education, said the school has fulfilled its promise to voters.

"This is certainly a special day," Brown said. "Today, we really unveil a facility that matches the caliber of our program."

Preston Winn, chairman of the BMCC agriculture department, talked about how the building will help instructors better educate the next generation of farmers, ranchers and agriculture professionals.

"I'm overwhelmed because of thanksgiving," Winn said. "Community college means just that: community."

FARM cost \$6.3 million to build, including \$2.1 million of state match and lottery funds.

While FARM is less than a week old, BMCC is already thinking expansion. The school has partnered with the Pendleton Round-Up Associ-

ation and city of Pendleton on FARM Phase II, which would expand animal science and veterinary classes and provide a new arena for the BMCC rodeo team. Together, they are working to raise money for the \$10 million proposal.

In addition, BMCC timed the grand opening of FARM to coincide with the opening reception for the annual "Art About Agriculture" exhibit, organized by the Oregon State University College of Agricultural Sciences and hosted this year by the Betty Feves Memorial Gallery.

Nine Northwest artists are featured in the exhibit, with pieces inspired by this year's theme, "Places to Thrive." Lori Sams, gallery director, said the timing between the two events was intentional.

"I definitely wanted the gallery to have a show related to agriculture," Sams said. "I think it is interesting to draw that connection between art and agriculture."

The exhibit runs through Oct. 26. The gallery is open Monday through Thursday from 9:30 a.m. to 1:30 p.m., or by appointment.

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