

Controversial Oregon dairy retains bankruptcy protections

Decision effectively forestalls a forced liquidation sale of cattle herd

By MATEUSZ PERKOWSKI
Capital Press



EO Media Group

The Lost Valley Dairy outside Boardman, Ore. A judge has decided against lifting bankruptcy protections for the controversial dairy farm, which means it won't be forced to liquidate the herd.

A controversial Oregon dairy won't be forced to auction off its cattle and will instead seek to sell the animals together with the facility and land.

U.S. Bankruptcy Judge Fredrick Clement has decided against lifting bankruptcy protections for Lost Valley Farm of Boardman, Ore., effectively forestalling a liquidation sale sought by Rabobank, the dairy's main creditor.

Rabobank sought to foreclose on the herd to repay some of the \$67 million it had loaned to the dairy, but owner Greg te Velde filed for Chapter 11 bankruptcy, automatically protecting against such actions while he restructures debt.

His bankruptcy filing canceled a liquidation auction of Lost Valley Farm's cattle in April, but Rabobank has since argued the dairy shouldn't be shielded from foreclosure because it's being mismanaged.

Rabobank argued that Columbia River Processing, a subsidiary of the Tillamook County Creamery Cooperative, had terminated its contract to buy milk from the dairy and would cease accepting it after May 31.

Patrick Criteser, Tillamook's CEO, submitted a declaration the contract was

terminated because the dairy wasn't paying its debts and had violated quality standards more than 60 times by supplying milk with high bacteria levels.

The bank also claimed that Lost Valley Farm is out of compliance with its "confined animal feeding operation" permit, which regulates wastewater, despite a settlement with the Oregon Department of Agriculture.

Correcting wastewater management problems at the dairy will require expensive remediation, such as emptying and rebuilding manure lagoons, at a cost of nearly \$400,000 that's not in the company's budget, according to Rabobank.

Te Velde's "substance abuse problem" also weighs against his continued operation of the dairy, since his "half-baked, slapdash approach" to complying with wastewater regulations is "just the latest manifestation of his drug problem," the bank said in court papers.

In court documents, te Velde disputed the contract with Columbia River Processing was terminated, saying that

"my special counsel and I continue to assert there is a scheduled, valid, executory contract and we are prepared to litigate any act by CRP to discontinue receiving our milk product."

It's true that ODA has threatened to "hold a contempt hearing" due to alleged violations of the dairy's wastewater settlement, but the facility will comply with regulations by spreading wastewater on a forage crop to increase open capacity in its manure lagoon, he said.

Te Velde also claimed he will soon begin work on lining another lagoon and upgrading a wastewater conveyance system but "there is no immediate danger of the lagoons overflowing."

While acknowledging his drug problem, te Velde said he's enrolled in a "recovery program" and will return to residential treatment for up to three months once his business operations are stabilized.

"It should be noted that while Rabobank has pointed out my substance abuse problem, it does not contend that I have cheated, lied or stolen," he said.

Capital Press was unable to reach an attorney for Rabobank.

Riley Walter, an attorney representing te Velde, said he wouldn't characterize the judge's decision as a victory but simply a recognition that lifting bankruptcy protections now would be premature.

"It's the way Chapter 11 should work," Walter said. "The debtor is entitled to a reasonable breathing spell to get his house in order."

Rising milk prices bode well for the dairy's finances, as every \$1 increase in price per hundredweight translates to a \$130,000 boost in its monthly revenues, he said.

Te Velde's request to hire a real estate broker to market the Lost Valley Farm property is still pending, but he continues to believe the operation is worth more if it's not sold piecemeal, Walter said.

The broker would try to sell the property and cattle for \$109 million, according to a court document.

"I don't think it's true he will sell at any price, but he will sell if he gets his price," Walter said.

Rapid snowmelt causes stream forecasts to drop

By DAN WHEAT
Capital Press

YAKIMA, Wash. — Rapid snowmelt in Washington's mountains and lowland flooding in May have switched streamflow forecasts for the rest of the summer from a surplus to a deficit.

A month ago, above-normal streamflows were forecast for May through September. Now below-normal flows are forecast for June through September by the National Weather Service River Forecast Center in Portland.

The upper Yakima Basin is expected to be at 62 to 72 percent of normal flow for June through September and the lower Yakima at 59 to 71 percent.

"That's not good news, but everyone should be fine because of full Yakima reservoirs and soil moisture is good," said Scott Pattee, water supply specialist of the Washington Snow Survey Office of the USDA Natural Resources Conservation Service in Mount Vernon.

While the National Weather Service Climate Prediction Center estimates above normal temperatures and below normal precipitation — hot and dry — for Washington for June, July and August, there should be enough water for irrigators and everyone else, Pattee said.

Basins with no reservoir storage, such as the Wenatchee and Entiat, should be OK unless the summer becomes excessively hot and dry, he said.

The five mountain reservoirs serving 464,000 acres in and around the Yakima Basin were at 99 percent of capacity and 111 percent of average on

June 5, according to the U.S. Bureau of Reclamation.

Chris Lynch, a bureau hydrologist, said he anticipates full water supply for junior and senior water right holders in the Yakima Basin.

May's rapid snowmelt has pushed the "storage control date" forward to between June 11 and 20, he said. That's when outflows from the five reservoirs, totaling 1,065,400 acre-feet of water, are greater than inflows to the point that drawdowns start. It was June 29 last year.

Yakima River flow at Park-er, below Union Gap, was at 11,000 cubic feet per second through May 21 but dropped to 900 by June 3, he said.

"That's a steady decline showing we've lost most of the snow. Flow is now stabilizing," he said.

Pattee said statewide snowpack is now 97 percent of normal. But he said the number is almost meaningless since there's virtually no snow left below 5,000 feet elevation.

Peak flooding is over and the Okanogan and Columbia rivers will begin dropping in the next couple of weeks, he said.

Other June through September streamflow forecasts: Columbia River at Grand Coulee Dam, 93 percent of normal; Columbia River at The Dalles, 89 percent of normal; Snake River below Lower Granite Dam, 83 percent of normal; upper Columbia (Kettle, Colville, Similkameen, Okanogan and Methow rivers) range from 68 on the Kettle to 104 percent of normal on the Coville; central Columbia (Chelan, Entiat and Wenatchee rivers) 80 percent of normal.



Capital Press File

Bob's Red Mill founder Bob Moore describes testing procedures in the company's gluten-free production area.

Flour mill files 'gluten-free' lawsuit

By MATEUSZ PERKOWSKI
Capital Press

A well-known Oregon flour mill wants a federal judge to declare it can use a gluten-free label without paying a nonprofit group for certification.

Gluten is a protein found in wheat and other grains to which some people have an intolerance that causes digestive problems.

Bob's Red Mill Natural Foods of Milwaukie, Ore., has filed a lawsuit claiming the Gluten Intolerance Group of North America asserted trademark rights in a "GF" gluten-free symbol that's similar to a logo used by the company.

The nonprofit sent a letter to Bob's Red Mill alleging consumers may be "confused into thinking GIG has certified your product as satisfying its gluten-free standards, even though GIG has not," the complaint said.

Bob's Red Mill should either stop using the logo or become certified by the nonprofit, the letter said.

The lawsuit claims it's "somewhat puzzling" that GIG has taken this position because the U.S. Patent and Trademark Office considers the GF symbol as "merely descriptive," which means the nonprofit "has no right to exclusive use of that mark."

More than 100 gluten-free products are sold by Bob's Red Mill, which has "built a separate facility with specialized machinery" for such products and targeted consumers seeking

to avoid gluten for three decades, the complaint said.

While there is no federal standard for "gluten-free," the company only uses such labels for products containing fewer than 19 parts per million of the substance, according to the lawsuit.

Bob's Red Mill is seeking a "declaratory judgment" that it's not required to pay for certification or cease using the GF logo, which would "require the withholding from store shelves of millions of dollars' worth of product," the complaint said. "At a minimum, complying with GIG's demand would require a significant redesign and marketing process."

The company has also asked the judge to declare the GF trademark unenforceable and to enter an injunction prohibiting GIG from claiming that others may not use a similar symbol.

Capital Press was unable to reach Sarah Bottorf, the nonprofit's executive director who sent the letter, for comment.

Gluten Intolerance Group of North America took in about \$3 million, most of it derived from "program service revenue," during 2016, the most recent year for which its tax information is available.

In 2017, the nonprofit filed a lawsuit over the GF trademark against organizations affiliated with Jamie Oliver, a famous chef, which was dismissed earlier this year subject to an undisclosed agreement.

Intermodal shipping facility plan moves ahead in Nyssa

By BRAD CARLSON
Capital Press

Malheur County Development Corp. recently signed an initial contract with the Oregon Department of Transportation, enabling the county to access up to 5 percent of \$26 million earmarked for a long-planned intermodal, truck-to-rail loading facility north of Nyssa.

"That is a start, and it gets us on the map for intermodal movement," Malheur County Economic Development Director Greg Smith said. "No doubt we are going to be making investments for years to come, but this gets us started."

Called the Treasure Valley Reload Center in planning documents filed last December with the Oregon Transportation Commission, it's viewed as benefiting farmers. Many of the area's onion shippers, for example, pay to truck their products more than 200 miles to a Wallula, Wash., reload facility.

"It's heaven-sent," said Paul Skeen, president of the Malheur County Onion Growers Association.

Having multiple transportation modes available nearby will be a big benefit, he said. Truck availability has been tight partly because of new rules for drivers, he said.

Planned intermodal facility gets funding

Malheur County Development Corp. secured access to some state funding for the long-planned Treasure Valley Reload Center. Construction could begin as soon as spring 2019 on the truck-to-rail loading facility north of Nyssa, Ore. The project is seen as a major financial benefit to local onion farmers.



Alan Kenaga/Capital Press

"We are going to measure our success by how well this serves our local industry," Smith said.

State funding is from Oregon Lottery-backed bonds. Malheur County must spend it on project-specific planning, engineering, construction and equipment. The funding was part of the Oregon Legislature's 2017 transportation package.

Smith said having initial state money in hand bodes well as the county competes for other funding sources such as discretionary grants through the U.S. Department of Transportation's Better Utilizing Investments to Leverage Development program.

State Sen. Cliff Bentz,

R-Ontario, said getting the initial funding is "very important" because it reflects ODOT's finding that the project is meeting requirements. It was one of four projects funded in 2017 using the state's Connect Oregon program requiring projects move through a step-by-step process showing they are properly managed and progressing.

The state funding is "a huge vote for Oregon's eastern edge," he said.

Bentz said the reload facility would save significant expense for local onion growers while making eastern Oregon more competitive with onion-growing areas such as eastern Washington and parts of South America. The rail in-

dustry also stands to gain local cargo volume.

Smith said another milestone for the reload center will be submitting a final proposal to ODOT for approval. That is due Sept. 27. Final engineering planning, construction budgeting and contractor hiring will follow the department's final approval.

Construction could begin as soon as spring 2019, he said.

The facility will be designed to match demand with affordability requirements, yet accommodate expansion as needed later, Smith said.

The three-parcel, 400-acre site on the east side of Highway 201 includes a planned industrial park and room for connecting to a Union Pacific Railroad main line via easements for rail spurs and sidings.

Smith said the reload facility could consist of a tilt-up concrete structure with a truck staging area, and bays and cross docks set to enable incoming product to go directly onto rail cars or stored temporarily.

"We are designing the facility in such a way to where private industry could locate adjacent to our facility and be able to utilize rail service and/or temporary storage from their building into ours," he said.

Weekly fieldwork report

	Ore.	Wash.	Idaho	Calif.
Item/description (Source: USDA, NASS; NOAA)				
• Days suitable for fieldwork (As of June 5)	6.9	6.7	4.9	6.8
• Topsoil moisture, surplus	0	3%	37%	0
• Topsoil moisture, percent short	56%	19%	5%	75%
• Subsoil moisture, surplus	0	3%	31%	0
• Subsoil moisture, percent short	51%	14%	8%	55%
• Precipitation probability (6-10 day outlook as of June 5)	Normal/ 33-40% below	33% above/ Normal	Normal/ 33-40% below	40% below/ Normal

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