

# Oregon regulators vote against curtailing stockwater exemption

By **MATEUSZ PERKOWSKI**  
Capital Press

Oregon water regulators have rejected a petition to restrict groundwater pumping by large dairies within a 257-square-mile area in Umatilla and Morrow counties.

The Oregon Water Resources Commission voted unanimously Dec. 15 to deny the request by Stand Up to Factory Farms, a coalition of environmental groups and others, to establish a 5,000-gallon daily limit on water withdrawals by new or expanded “concentrated animal feeding operations” in the region.

Under the state’s stockwatering exemption, water can be diverted or pumped for livestock without a water rights permit from the Oregon Water Resources Department, which is overseen by the commission.

Stand Up to Factory Farms contended that “mega dairies” and other CAFOs should be stopped from relying on this exemption to use “unlimited amounts of water” in the two groundwater critical areas in Northeastern Oregon.

Members of the commission agreed the petition wasn’t the right way to resolve problems



Mateusz Perkowski/Capital Press File

**A worker at a dairy milks cows on a carousel system. Oregon water regulators have rejected a petition to limit the stockwatering exemption in two critical groundwater areas.**

with declining groundwater in the area, which should involve a more wide-ranging approach than targeting the stockwatering exemption alone.

“I don’t think this is the right venue or the vehicle to do that,” said Katherine Kihara, commission member and retired civil engineer with the U.S. Bureau of Reclamation.

A better approach would be to coordinate with other state agencies that oversee CAFOs, which wouldn’t be accomplished under the regulation proposed by the petition, she said.

Bruce Corn, a commission member and row crop farmer, said he’d prefer a more inclusive strategy instead of the narrow focus of the petition, which seemed “punitive” to a particular industry.

“It’s more complex than implied by the request in the petition,” said Bob Baumgartner, a commission member and official with the Clean Water Services agency.

Instead of dismissing the petition outright, however, the commission directed OWRD to continue discussing the issue as it considers its policy priorities.

“It certainly raises issues that

are important and we should consider going forward,” said Meg Reeves, commission chair and retired attorney from Oregon State University.

Tom Byler, OWRD’s director, said he’s made clear to potential CAFO operators that they should look at more sustainable alternatives than relying on the stockwatering exemption.

“It’s not something we want to promote,” Byler said.

While the agency has competing policy considerations and limited resources, the problem of aquifer decline is a significant concern statewide, he said.

“Groundwater is a big priority for us and has been for some time,” Byler said. “I think these issues will continue to percolate out there, whether it’s the Umatilla Basin or another part of the state.”

While proponents of the petition continue to believe the stockwatering exemption should be restricted in the region, they’re encouraged that OWRD will consider the issue in its priority planning, said Brian Posewitz, staff attorney for the WaterWatch of Oregon nonprofit, a member of the coalition.

It’s heartening that OWRD would discourage CAFO operators from relying on the stockwa-

tering exemption, but that may not be enough to dissuade someone who’s determined to rely on it, he said.

The regulation proposed in the petition would provide a simple way to stop such water usage without OWRD having to invoke a complicated administrative process, Posewitz said.

“We’re disappointed they didn’t move forward with the rule-making, but we’re happy the petition brought more attention to this issue,” he said.

Cities, counties and others in the region are “invested and committed” to fixing the groundwater problem, but the petition represents an attempt by “obstructionists” to exploit it for their own purposes, said JR Cook, executive director of the Northeast Oregon Water Association nonprofit.

“It’s not our job to attack specific industries that use water,” Cook said.

Groups involved in Stand Up to Factory Farms, meanwhile, have stood in the way of projects intended to prevent groundwater declines, he said.

“Every time we propose something to fix it, they oppose it,” Cook said. “It doesn’t pass the straight face test, for sure.”

# Dean Foods issue appears resolved, but farmers need to respond

By **CAROL RYAN DUMAS**  
Capital Press

Pennsylvania officials are confident they have resolved a contentious issue with the Dean Foods estate, which sent letters to dairy farmers and milk haulers demanding they repay money they received for their milk prior to the company’s bankruptcy in November 2019.

But farmers and haulers still need to respond to the attorneys by the assigned deadlines this month.

Letters in the thousands went out across the country, Carol Hardbarger, executive secretary of the Pennsylvania Milk Marketing Board, said during a conference call on the issue.

The bankruptcy code allows debtors to recover, or claw back, payments made during the so-called prefer-

ence period 90 days prior to bankruptcy, if creditors received preferential treatment, Doug Eberly, chief counsel for the marketing board, said.

Those recovered funds would be used to pay other creditors, he said.

Dean Foods estate attorneys, the ASK law firm of St. Paul, Minn., sent the letters and settlement agreements in November.

“The defenses, which ... for a dairy farmer and milk hauler are pretty airtight and ironclad, are that you received these payments from Dean in the ordinary course of your business with Dean,” Eberly said.

That is because milk was picked up on a regular schedule and paid for on dates specified by federal or state regulations, he said.

Officials of the marketing



Associated Press File

**Jugs of McArthur Dairy milk, a Dean Foods brand, at a grocery store. The law firm handling the company’s estate threatened dairy farmers with litigation if they don’t return money paid to them prior to the company’s bankruptcy.**

board explained that to ASK attorneys, and it is the marketing board’s understand-

ing that a declaration letter stating that will suffice to resolve the claim, Eberly said.

“ASK needs some kind of documentation because they have an obligation to the bankruptcy court to show that the things that are supposed to be done pursuant to the bankruptcy code have been done,” he said.

ASK also has to demonstrate to the unsecured creditors’ committee that farmers and haulers do not owe money because they weren’t treated in a preferential manner, Eberly said.

The law firm has the authority to release farmers and haulers from the claim, and it will do that if farmers and haulers send the dec-

laration, said Rob Barley, chairman of the marketing board.

“I’m not saying they’re going to come after you otherwise, but you will complicate matters if you do not send that back,” he said.

State Rep. Frank Ryan, an accountant, said demand letters that go out for repayment in a bankruptcy are common.

But he cautions farmers and haulers against ignoring a letter. Absent the declaration, the matter will be in the hands of the court and the trustee’s recommendation, he said.

“If you ignore it and they determine that you owe it (repayment), you’ll get an immediate judgment

against you for that. And the U.S. Trustee’s office has an incredibly powerful way of getting the funds that they’re owed,” he said.

In the unlikely event Dean Foods estate attorneys find money is owed, people should keep in mind the amount is negotiable and counteroffers are typically accepted, he said.

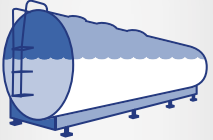
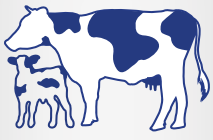
If farmers or haulers have already remitted payment, he might be able to get that money back with an attorney’s help, he said.

The declaration documents can be found at [www.mmb.pa.gov](http://www.mmb.pa.gov) and apply to any farmer and hauler in the country. They should be sent to the ASK paralegal assigned to the file.

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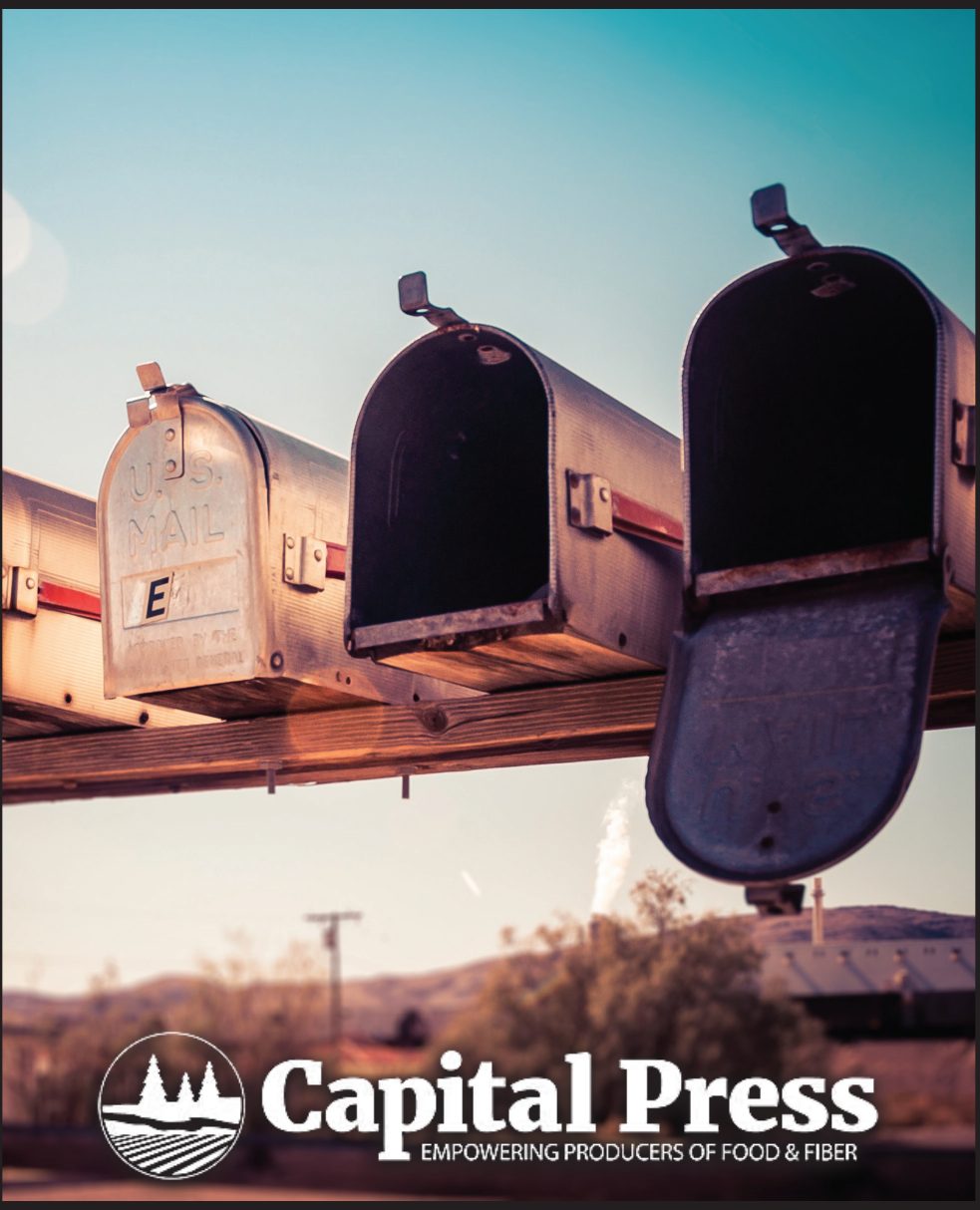
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