

## BOARDMAN

# Lost Valley allowed to tap into off-limits aquifer

State officials aware dairy was using loophole

By TRACY LOEW  
Statesman Journal

A year after it opened, Oregon's second-largest dairy has not secured rights to the nearly 1 million gallons of water per day it needs for its thousands of cows and to process milk.

Instead, Lost Valley Farm near Boardman moved ahead without the necessary permits, using a loophole in Oregon law to pull water out of an underground aquifer that's been off limits to new wells for 42 years, alarming neighboring farmers who say their water supplies are now at risk.

Documents obtained by the *Statesman Journal* show Gov. Kate Brown, her staff and the directors of three state agencies knew the dairy would fall back on the loophole if a proposed water trade was challenged.

But with dairy owner Greg te Velde rushing to meet a deadline to receive bank financing and move his 8,000 cows — and with the promise of 150 jobs for rural Morrow County — state officials allowed the dairy to open anyway.

"The proposed dairy is in the best economic interests of the region," the Oregon Department of Agriculture, Department of Environmental Quality, Water Resources Department and governor's office wrote in a joint memo before announcing they were giving the dairy the go-ahead on March 31, 2017, the same day te Velde's previous lease expired.

The state's approval came after a year of violations by the Tipton, California-based businessman, who is supplying milk to the Tillamook County Creamery Association.

In 2016, the dairy drilled three wells into the already-dwindling aquifer without telling the state, as required by law, and refused to register them for months after state officials found out.

When conservationists challenged a proposed water rights transfer on March 30 — the day before the state approved the dairy — te Velde told state officials he would truck in water while pursuing other options.

But records show he brought in little water.



Conditions at the Lost Valley Dairy near Boardman, some time around June 2017.

Photo courtesy Oregon Department of Agriculture

Instead, Water Resources officials discovered months later that te Velde actually drew most of the water from one of the wells, claiming an exemption for watering stock — just as the earlier memos among the governor's staff and state agencies had predicted.

And when ordered to install a monitoring device on the well, te Velde put in one with an unauthorized reset button, according to Water Resources officials.

Now, the state's water officials say they have no idea how much water the dairy is taking out of the aquifer, which was protected in 1976 as a "critical groundwater area" because pumping levels were declining so rapidly.

Oregon law allows exempt wells for uses such as: less than a half-acre of lawn and garden watering; industrial use of up to 5,000 gallons per day; or domestic and drinking uses of up to 15,000 gallons per day.

There is no gallon limit for stock watering.

Water Resources officials said Oregon law only requires that the water is put to a beneficial use. "Live-stock watering is considered a beneficial use," spokeswoman Diana Enright told the *Statesman Journal*.

But Brian Posewitz, a lawyer for the water protection group WaterWatch Oregon, says the exemption should be allowed only for small-scale uses that don't

impact water resources.

"Allowing Lost Valley Farm to use the stock watering exemption in a critical groundwater area for what is expected to be up to 30,000 cows illustrates an abuse of the exemption, a need to change it, or both," he said.

Gov. Brown's press secretary, Bryan Hockaday, refused to answer the *Statesman Journal's* questions about the staff memos and emails describing the state's concerns about approving the dairy before it had water rights.

One of those memos was drafted by the governor's natural resources adviser, Lauri Aunan, who also communicated directly with the dairy's lawyers about the timeline for approving the water rights transfer. Hockaday said Aunan's only role was to ensure state agencies coordinated with each other.

"This is not a situation where the governor can intervene on a permitting process, nor did she," Hockaday said. "It's not a matter of politics."

Yet documents obtained by the *Statesman Journal* show several members of Brown's staff were directly involved in discussions about ways to allow Lost Valley Farm to operate and the possible consequences if such actions were challenged by opponents.

As governor, Brown oversees all three agencies and has sole authority to hire and fire the directors.

Brown and Aunan did not respond to the *Statesman Journal's* requests for comment. Te Velde declined to comment.

## Maneuvering for water

Lost Valley Farm's property came with rights to Columbia River water, but that water can only be used for crop irrigation and only in the summer. The dairy needs potable water year-round for cows' drinking water and for processing milk.

Since no new wells are allowed in the area, the dairy came up with a plan to trade some of its Columbia River rights for some of a neighboring dairy's groundwater rights. The neighbor would stop using his wells, and Lost Valley would drill wells on its property.

Internal communications show the governor's office and state agency heads questioned whether they should give the dairy the go-ahead by issuing the wastewater permit before water rights were secured.

"Should Oregon issue the (operating) permit if (Lost Valley) has not secured the water it needs for dairy operations?" Aunan wrote in a March 6, 2017, briefing memo. "If the permit is issued but the dairy does not secure the water it needs, this puts the dairy at risk and may intensify pressure to allow new groundwater withdrawals."

If the public got wind of the water transfer and filed objections before it was final, the Water Resources Department noted, the deal could get held up in the courts for as long as five years.

That's exactly what happened.

A coalition of conservation groups filed an objection the day before the state issued the wastewater permit.

Nearby Meenderink Dairy, worried about its water supply being harmed, filed a second objection a week later.

But Lost Valley Farm had a backup plan.

It applied for two limited well licenses, meant for short-term uses such as construction, and good for five years. The state granted one license that was challenged. In September 2017 the dairy said it stopped using the water, and withdrew its application for the other license.

The dairy had a third plan. In March 2017 te Velde told the state that until the water rights swap was approved, or he received limited licenses, he would buy water from the Port of Morrow and truck it to the dairy. He provided the state with a copy of a contract with the port, signed March 21, showing it would purchase up to 926,041 gallons per day.

That works out to about nearly 28 million gallons per month, although use would fluctuate slightly with seasons.

But purchase receipts from the port show the dairy bought a small and declining amount each month, ranging from 4.3 million gallons in May to 346,800 gallons in October.

In November 2017, the Oregon Water Resources Department learned the dairy was operating with water pumped from the protected aquifer using one of the wells it illegally drilled in 2016.

As the dairy was drilling the first well, Mike Ladd, the Water Resources Department's eastern region manager, wrote te Velde saying it was uncertain whether a water rights transfer would be approved. He also warned that even if it was, a state hydrogeologist would specify construction standards to ensure the wells were accessing the same aquifer.

"Any new appropriation from the basalts, such as stock water for 30,000 head of cattle, will represent a significant new use within the critical groundwater area that will likely injure senior users," Ladd wrote.

Ivan Maluski, policy director for the statewide independent agriculture advocacy group Friends of Family Farmers, said the state "seemed to be bending over backward to get this operation up and running despite all the warning signs."

"The next time a big mega-dairy wants to come to Oregon," Maluski said, "we should seriously scrutinize the proposal and protect our groundwater, instead of trying to find a way to say yes at any cost."

Rep. Greg Smith, who represents Morrow County, said he backed the dairy because his goal is to create jobs in his district.

"I was a huge advocate of trying to advance this project," Smith said. "That was based upon the assumption they would follow the rules."

An internal document dated two weeks before the dairy's approval is titled, "Weekly update to Rep. Smith," and lays out the approval timeline.

But Smith said he does not remember getting weekly updates, was not involved in the approval timeline and did not weigh in on whether the dairy should open before it secured water rights.

"My role as a legislator was to get the company and the agencies together to communicate," Smith said.

## \$321M contract awarded to replace McNary Dam turbines

East Oregonian

UMATILLA — A subsidiary of General Electric has been awarded the \$321 million contract to build and install 14 turbines at McNary Lock and Dam, a process that will take about 14 years to complete.

The U.S. Army Corps of Engineers announced the contract Wednesday, naming Alstom Renewable US LLC after three years of "research, planning, design and acquisition" to replace the current turbines and other equipment. The 14 generators create 980 megawatts of power capacity, according to the release. One megawatt supports about 700 homes, and at full power the dam supplies power for about 686,000 homes.

The dam was commissioned in 1954 and the current turbines have been in operation for more than 62 years.

The modernized equipment is hoped to increase fish survival, hydraulic capacity and turbine efficiency and durability.

The replacement will be funded with capital investment money from Bonneville Power Administration, which receives between \$150-\$300 million in revenue from power generated at the facility each year.

"This contract award is a significant accomplishment for our district and the region," said Walla Walla District Commander Lt. Col. Damon Delarosa in the press release. "The re-capitalization effort at McNary Lock and Dam is one of my top priorities for 2018 ... Once completed, the improvements recognized from this project for reliability, operational flexibility and fish passage will be substantial and measurable."

## Bank of EO debit cards support schools

HEPPNER — Bank of Eastern Oregon is proud to announce its school mascot debit card program contributed over \$11,000 to Morrow County high school associated student body organizations in 2017.

Initiated in September 2013, the Bank of Eastern Oregon mascot debit card program serves the Heppner, Riverside, Irrigon, and Lone high school associate student body programs, and in 2018

the service is expanding to support the ASB programs of Weston-McEwen High School in Athena.

Since inception the school mascot debit card program has contributed over \$27,000 to these ASB programs.

The program generates \$0.05 per transaction performed with each school mascot card to that schools program, and the \$10 annual renewal fee for each card also goes directly to the ASB.

EAST OREGONIAN Hermiston

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