

# Easterday wants \$14M+ to get out of dairy

BY CORY MCCOY

Tri-City Herald

**BOARDMAN** — Easterday Dairy has been trying to reopen a Boardman dairy plant for several years, but new documents show that after repeated setbacks and water quality violations the company may be ready to throw in the towel.

In February the company was cited for failing to bring nitrate levels in water under control, even with the cattle long gone from the property.

The site is the former home of Lost Valley Farms dairy. Now Easterday is suing the former owners for breach of contract, saying it's their fault they have been unable to clean the site up.

Easterday Dairy is asking for millions in damages or to be released from the purchase agreement.

Since his father's arrest the dairy portion of the Easterday family businesses is being spearheaded by Cole Easterday. Their other businesses Easterday Farms and Easterday Ranches, based in the Tri-Cities area, are in the midst of a massive bankruptcy lawsuit after Cody Easterday was prosecuted on federal wire fraud charges in a "ghost cattle" scheme that defrauded Tyson Foods and other businesses out of hundreds of millions of dollars.

Cody Easterday's sentencing has been delayed while he helps manage the bankruptcy settlement. His next court date is set for September.

Cody Easterday is the son of long-time Easterday head Gale Easterday, who died in a wrong-way traffic accident in Pasco after leaving work in December 2020.

## WATER QUALITY ISSUES

At the crux of the conflict over the dairy plant is a permit that would allow Cole Easterday to reopen the dairy facility.

That permit was suspended during Lost Valley's bankruptcy.

The Oregon Department of Agriculture has so far refused to issue Easterday a permit for Confined Animal Feeding Operations until the nitrate levels in the ground water are brought back into compliance and a plan for maintaining safe levels is approved. That means the company cannot resume dairy operations until then.

According to the National Institute for Health, nitrate contamination in ground water has been linked to increased risk of cancer, thyroid disease and birth defects.



George Plaven/Capital Press, File

**Cody Easterday, president of Easterday Farms, is shown in this file photo at the Easterday Dairy outside of Boardman. He faces time in federal prison for wire fraud in a ghost cattle scam involving Tyson Foods. His 24-year-old son has applied to run the Oregon dairy.**

Boiling water does not make nitrate contaminated water safer to drink, in fact it does the opposite by increasing the nitrate concentrations in the water.

Over the course of the past two years, documents show that the state has repeatedly inspected the site and recommended courses of action, which Easterday Dairy failed to implement quickly enough.

That led to inspections showing they were in violation of nitrate levels monthly from November 2020 through November 2021.

The Department of Agriculture documents show that they were finally able to bring the nitrate levels within acceptable range by December 2021.

In the February 2022 letter, the department ordered Easterday to continue to submit water samples until they can show the nitrate levels are within acceptable range for nine consecutive months.

In a lawsuit filed this month, Easterday appears to be placing the blame for the poor water quality on the previous owners, and a farm currently leasing the adjoining property.

Lawyers for Easterday claim that ongoing and deliberate action by the two groups has prevented them from meeting state standards.

Tarah Heinzen, the legal director for

Food and Water Watch, said she hopes the state will continue to hold Easterday accountable because the water source for the dairy is an aquifer that is at particularly high risk for contamination. According to a 2018 Statesman Journal article, the aquifer was classified as protected in 1976 due to dwindling water levels.

Food and Water Watch is a nonprofit that focuses on corporate and governmental accountability relating to food and water.

Heinzen said mega dairies are huge contributors to nitrate contamination, noting that even without a single animal on site for the past few years, Easterday struggled to meet acceptable ranges.

She said the new lawsuit could provide Easterday an exit from the dairy, but the risk of water contamination remains high and the state will need to continue to press Easterday or any future owners to protect the water source. "It looks to me like if Easterday can't have the dairy it wants, it doesn't want the dairy parcel (at all)," Heinzen said.

## LAND USE

Easterday is suing Fall Line Capital and Canyon Farm, which bought the property after Lost Valley's bankruptcy.

The nearly 7,300-acre site was parti-

tioned into two parcels — 736 acres for the dairy and the remaining 6,542 for farm land.

In January 2019, Easterday Dairy entered into a \$16 million self-financed agreement to buy the dairy facility portion. Later that year they signed a commercial lease for the farm portion, but did not buy it.

Easterday was to pay \$2.67 million plus interest annually for the purchase of the dairy. To date they have paid \$10.5 million, leaving a balance owing of \$8 million including interest.

Easterday intended to secure a new Confined Animal Feeding Operations permit and resume dairy operations.

Easterday's lawyers said in the lawsuit that the purchase contract included clauses that would render the purchase ineffective under several instances if Easterday was unable to obtain a new permit. At the time, they moved forward under the impression that Easterday would be able to get that on or before Dec. 31, 2022.

In March 2021, Easterday ended the commercial lease on the farm portion and Michigan-based Walther Farms took over the land. At that time Easterday signed an amended easement guaranteeing access in order to comply with Department of Agriculture requirements.

## EASTERDAY SUES

Lawyers for Easterday claim that at this point, Walther Farms refused to provide Easterday with the necessary reporting under the state's orders, and then denied Easterday access to the farm parcel in order to perform testing.

Separate bankruptcy filings in the Easterday Farms and Ranches cases show Canyon Farms paid Easterday \$2 million to terminate the farm parcel lease.

That agreement included language to ensure Easterday was granted access to certain areas, such as a storage complex and feed storage area.

Canyon Farms and Walther then sued Easterday in March 2022 to have the easement thrown out, according to the filings.

Lawyers for Easterday claim this is a bad faith attempt to hinder or prevent the company from obtaining a new feeding operations permit, at the direction of Canyon Farm parent company Fall Line.

With that lawsuit open, the department put the permit application on pause. Easterday claims that a lawyer named Jonathan Septor then filed an unauthorized "Notice and Termination of Amended and Restate Easement" with Morrow County property records on behalf of Fall Line. They then filed a notice of dismissal in the easement proceedings.

Easterday claims that together these actions amount to Fall Line preventing them from obtaining a new feeding operations permit by denying their access to the farm parcel.

They are asking the judge to:

- Reinstatement of the easement and access requirements that guarantees that Easterday will have access and authority over any irrigation or nutrients used at the farm.

- Declare the easement termination was made in bad faith and payment for damages for both slander and the delays caused.

In the event the court does not agree to those terms, Easterday is asking to be paid out of the purchase agreement.

They want payment for the money paid toward the purchase so far, and for improvements and work done on the land. Easterday is asking for the \$10.5 million paid to be returned and up to \$4 million in addition to offset their investment. That path would ultimately result in Easterday abandoning plans to bring the dairy back online.

Fall Line has not yet filed a response.

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