



Kate Brown
Governor

Meeting Briefing Memo

Name of Meeting: Briefing on Lost Valley Ranch Permit Process

Date of Meeting: March 6, 2017

Time & Length of Meeting: 2:00 – 2:30 pm

Location of Meeting: Governor's Conference Room
254 State Capitol, Salem, Oregon

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Meeting description

The purpose of this meeting is to provide a briefing on the permit process for Lost Valley Ranch (LVR), and identify policy issues related to upcoming agency decisions.

Background

LVR is a 30,000-head dairy proposed on the site of the former poplar plantation along I-84 near Hermiston in Morrow County. The site is located in a Critical Groundwater Area (designated by Water Resources Commission for excessive groundwater level declines) and in a Groundwater Management Area (designated by DEQ for groundwater pollution). Morrow County, local businesses and labor organizations have recently written letters of support for the dairy, which has indicated it expects to provide 125 jobs. State agencies are working as quickly as possible to process applications, assist LVR in working through issues, and protect the area's critical groundwater resources.

LVR has the following applications pending with the state:

- Applications to Oregon Water Resources Dept. (WRD) for water rights transfers, asking to "swap" existing water rights between LVR and Sage Hollow Ranch. Without the transfers, LVR does not have enough water for its proposed dairy operations. Because the project is located in a Critical Groundwater Area, WRD does not issue new groundwater rights, making transfers of existing water rights very important to economic development and community needs. In addition, existing water right holders have had their groundwater use curtailed in order to restabilize the

resource. WRD has reviewed the proposed transfers to determine whether the “swap” would injure other water right holders or increase the use of water. The transfers do not propose using more water than allowed under existing water rights.

- Application to Oregon Department of Agriculture (ODA) for a Confined Animal Feeding Operation (CAFO) permit under the Clean Water Act. ODA issues CAFO permits to livestock owners to protect ground and surface water from pollution. ODA has worked closely with DEQ on this permit application.

At the request of the Environmental Justice Task Force, ODA and DEQ extended the CAFO public comment period and conducted specific outreach to underrepresented communities in the area. ODA and DEQ met with the Hispanic Advisory Council, PCUN (Northwest Tree Planters and Farm Workers United), United Farm Workers, other community groups, and the Umatilla and Warm Springs Tribes. All public comment periods are now closed, and the agencies will need to make decisions on the applications.

Water Right Transfer Applications:

- Adjacent landowners commented they are worried that the dairy’s water use could reduce water available to them under their existing water rights.
- WRD reviewed groundwater data and concluded that the transfers can be approved, with conditions to address potential injury to other water rights and to avoid enlargement of the use of water. On Feb. 28, WRD gave notice of its Preliminary Determinations (PDs) approving the transfers with conditions. Publishing the PDs opened a protest period that expires on April 7, 2017. If the transfers are protested, WRD will hold a contested case hearing before an administrative law judge. Final orders can be appealed to the Court of Appeals. We believe it’s likely the transfers will be protested.
- LVR and its attorneys are aware that the transfers might be delayed by protest and litigation, and have indicated they are working on alternative, short-term water authorizations to support dairy operations. If the transfers are protested and alternative water authorizations are not obtained, it is not clear how the dairy would function.

CAFO application: ODA and DEQ are working with DOJ to review, evaluate and respond to more than 4,200 comments from environmental advocates, local governments, the US Forest Service, and tribes. Public comments included:

- This would be the second largest dairy in Oregon, located near the largest dairy (Three Mile Canyon), and risks additional nitrate contamination of groundwater.
- Concern that groundwater, already in decline, will be further depleted.
- Air emissions include methane (greenhouse gas), ammonia and hydrogen sulphide, contributing to regional haze and acid deposition on Columbia Gorge plants and cultural resources, as well as concern for odors.
- Concerns that CAFOs of this size harm animal health.
- Concerns about worker safety related to dust and gas inhalation.

ODA and DEQ agree it’s highly unlikely the dairy would cause runoff to surface water. The agencies have coordinated on how to address potential discharge to groundwater. Under the draft permit, waste will go into double-lined lagoons with a leak detection system. The management of animal waste must prevent nutrient movement to groundwater. ODA will monitor pollution concentration limits through monitoring wells. DEQ will review the data

from these wells. It's expected that the permit will be the most protective CAFO permit issued by Oregon. ODA anticipates a permit may be ready for issuance by the end of March at the earliest.

LVR and its attorneys have asked ODA to issue the CAFO permit as soon as possible. LVR's lease with Threemile Canyon Farms has expired and apparently will not be renewed. In addition, LVR has indicated it needs the permit for financing reasons.

LVR garnered significant media attention in 2016. We expect environmental advocates will cite LVR as a reason the legislature should pass SB 197 (requires the Environmental Quality Commission to adopt new air regulations for dairies). SB 197 has a hearing on March 9.

Oregon does not require air quality permits for dairies. Washington, California and Idaho all have air quality programs associated with dairies. In Oregon, the dairy industry has promoted voluntary best practices that help address air emissions. ODA and DEQ are reviewing LVR's Animal Waste Management Plan against Idaho's best practices for ammonia air emissions. It's estimated that greenhouse gas emissions from LVR's proposed 30,000 cows would represent 0.2% of the annual greenhouse gasses generated in Oregon.

Regarding worker health, a 2005 NIOSH study of 56 Threemile Canyon Farm employees found:

- The concentration of ammonia was within recommended levels.
- The concentration of hydrogen sulfide was within recommended levels.
- Some employees had irritation symptoms such as tearing eyes, coughing, and sneezing, which were attributed to road dust. Employees did not always use personal protective equipment.

Regarding public health, data about how dairy air emissions travel is limited. EPA's still-unreleased national study was expected to fill that gap. OHA is reviewing available data, but given the sparsely populated, rural, and open landscape, a preliminary assessment is that worker safety would likely be a more significant consideration than community health impacts from air toxics and particulates. Emissions of methane are a longer term health concern because of their role as a potent greenhouse gas that will accelerate climate change-related health impacts. While methane is not particularly toxic, when it displaces air in a confined area (e.g. manure pool a worker is cleaning), it can displace oxygen and lead to harm.

Questions

1. Should Oregon issue the CAFO permit if LVR has not secured the water it needs for dairy operations? If the CAFO 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.
2. Are there concerns about the lack of air quality regulations for dairy air emissions?

Attending: Alexis Taylor, ODA, Lisa Hanson, ODA, Leah Feldon, DEQ, Tom Byler, WRD
Governor's staff: Nik Blosser, Jason Miner, Lauri Aunan, Ivo Trummer, Kate Sinner, Bryan Hockaday

Geo. Brown -

Water -

Transfer → surface to ground on LVI

→ ground to surface - from Neighbor

Need year around use

- basalt are critical Groundwater

Job creation 125-

- Use Regional Solutions -

- desire to work out with water
before we issue -

- Talk to them about digester credit
Smith's reduce EAC by 25%