

## Introduction

In Oregon, with some exceptions, cities, irrigators, businesses, and other water users must obtain authorization from the Water Resources Department to use water from any source - whether it is underground, or from lakes or streams. Depending on their location, individuals seeking to use water may be able to: (1) utilize existing water rights associated with the property; (2) apply for a new water right; (3) apply for a transfer to change an existing right; (4) purchase water from a legal source; or (5) utilize an exemption in the statute that does not require the user to obtain a water right.

## Lost Valley Water Options

Lost Valley Farm is a dairy located near Boardman in Morrow County within the Ordnance Basalt Critical Groundwater Area and partially within the Ordnance Gravels Critical Groundwater Area. The Ordnance Critical Groundwater Area Order prohibits new groundwater rights, but does not prohibit new exempt groundwater uses under ORS 537.545.

Lost Valley Farm has utilized a number of different options for meeting water needs, which are described below.

### A. Existing water rights

Existing water rights for the Lost Valley Farm allow use of water from the Columbia Improvement District from March 10 through October 15 for irrigation and incidental agricultural purposes. However, Lost Valley also needed water year-round for certain purposes, including washing its facilities, as well as for drinking water for the cows.

### B. Limited Licenses for Construction

*Background on Limited Licenses:* Oregon law provides a method for obtaining permission to divert and use water for a short-term or fixed duration (e.g. construction, emergency uses, etc.) by obtaining a limited license. Certain types of uses can be allowed, provided that water is available, the proposed use is in the public interest, and the proposed use will not injure other water rights. Limited licenses are junior to all other uses and subject to revocation at any time. The Department provides an opportunity for the public to comment on a proposed limited license. The license includes terms and conditions, specifying a date when it expires.

*Lost Valley:* Between January of 2016 and June of 2016, five limited licenses were issued. While the uses for each license varied, they were related to construction of the dairy, dust abatement, and/or road construction.

## C. Permanent Transfers

*Background on Transfers:* The use of water under a water right is restricted to the terms and conditions described in the water right certificate: place of use, point of diversion or appropriation, and type of use. A water right holder must file a transfer application with the Department to change a point of diversion/appropriation, type of use, place of use, or any combination of these. Transfer applications are reviewed through a public process; they are posted to the Department's website, publicly noticed, and subject to public comments and protest. To approve a transfer application, the Department must determine that the proposed change will not injure other water rights, or lead to enlargement of the right. Transfers may be permanent or temporary; however, in general temporary transfers are only allowed for changes in the place of use, and in some instances, the point of diversion associated with the new place of use.

District transfers allow irrigation districts and certain other districts that deliver water to apply for a specific kind of transfer that allows the district to make several transfers in a single annual application and to begin using water as proposed upon filing.

*Lost Valley:* Lost Valley made arrangements with another water right holder, Sage Hollow Ranch, to permanently transfer a portion of Lost Valley's surface water irrigation rights to Sage Hollow. In return, Sage Hollow would permanently transfer a portion of their basalt groundwater rights to Lost Valley for year-round dairy operations. The transfers were initially filed in January 2016; however, the transfer of the groundwater to Lost Valley was protested. The transfer awaits a contested case hearing.

## D. Limited Licenses for Operations; Forbearance Agreement and Temporary Transfer

*Background:* See above description of limited licenses and transfers.

### *Lost Valley:*

*Limited License Applications:* In 2017, the Department received an application for a limited license for use of alluvial wells outside of the Ordnance Gravels Critical Groundwater area for dairy operations and construction. The application was later followed by an application for a limited license for use of basalt wells within the Ordnance Basalt Critical Groundwater Area.

*Temporary District Transfer and Forbearance:* To offset the new uses proposed by the limited licenses, in 2017, Lost Valley entered into an agreement with Sage Hollow to forbear Sage Hollow's groundwater use, so there would be no net increase of water withdrawal from the basalt aquifer. In return, Lost Valley temporarily transferred a portion of their Columbia River surface water rights, delivered by the Columbia Improvement District, to Sage Hollow for the 2017 irrigation season.

*Status of Limited Licenses:* A final order approving the alluvial limited license was issued; however, a petition for judicial review was filed. The basalt limited license was never issued. Both applications were withdrawn.

## E. Purchase of Water to Truck

*Lost Valley:* On March 21, 2017, the Port of Morrow entered into a water sale agreement with Lost Valley for the purchase of 1,037 acre feet of water per year as needed for potable water and, if requested, non-potable water for dairy operations. Lost Valley would truck the water from the Port to the dairy.

## F. Exempt Uses for Stock Watering; Temporary Transfer and Forbearance; Installation of Measuring Devices

*Background on Exempt Uses:* There are several statutes (e.g., ORS 537.141, 537.142, etc.) that provide exemptions from the need to obtain a water right. ORS 537.545 provides several exemptions for use of groundwater, such as for single or group domestic up to 15,000 gallons per day; commercial and industrial uses up to 5,000 gallons per day; up to ½ an acre for a non-commercial lawn and garden; and stock watering purposes. ORS 537.545 provides that use under the listed exemptions are a right to appropriate groundwater without needing a water right, and that if regulation of the exempt use is necessary, the department shall use as a priority date the date indicated in the log for the well. There is no approval process or registration for exempt uses; however, there is a recording process for new wells.

*Lost Valley:* In 2016, after Department staff became aware of the proposed operation, staff met with the construction manager. The Department then sent a letter to Lost Valley explaining the groundwater limits of the area, and cautioning that the amount of water the dairy would likely need for stock watering would not be a sustainable new use of the aquifer. The Department warned that it would likely consider taking actions to regulate junior uses, including exempt uses. Initially, Lost Valley opted to take other actions as outlined above.

The Department's watermaster regularly visited Lost Valley to check on water use. In November 2017, the Department became aware that a basalt well was being used for exempt stock watering purposes. In 2017, the dairy offset the groundwater use via a temporary district transfer and forbearance agreement as discussed in Section D above. The same arrangement has been proposed for 2018; however, comments urging denial have been received on the temporary district transfer.

In early February of 2018, the Department issued an order requiring the installation of an approved measuring device. After the device was installed, the watermaster discovered that a reset button was included on the meter and the totalizer would roll over every few weeks. The watermaster requested that it be disabled or a new meter be installed. The reset button was disabled; however, on another visit, the watermaster checked the reset button and found that it was enabled. The Department issued an order prohibiting use of the well until a proper measuring device was installed, and the valve was locked. A later visit to Lost Valley found that although the valve had been locked, the meter showed water use. On May 16, staff again visited Lost Valley and found no additional water use from the well.