



**Written Testimony of Gary Burke, Chairman, Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
Before the Senate Interim Committee On Environment and Natural Resources
September 25, 2018**

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) offer this testimony today regarding the Confined Animal Feeding Operation (CAFO) known as Lost Valley Farm. The CTUIR and many others raised significant concerns regarding the issuance of the permit for Lost Valley. We were alarmed that upon issuance of the permit the operation was almost immediately in violation of that permit and never came into compliance. Our testimony today provides observations of the process that allowed Lost Valley to occur and recommendations for improvement of that process so that it does recur.

The CTUIR is a federally recognized tribe with rights reserved and secured by the Treaty of 1855, 12 Stat. 945, with the United States. Those rights are protected as the “supreme law of the land” under Article VI of the United States Constitution. The CTUIR is a confederation of the Cayuse, Umatilla and Walla Walla tribes which have inhabited northeast Oregon and southeast Washington since time immemorial. Our tribes have also traveled far and wide to hunt, fish, gather, graze and trade throughout our history and those practices are protected under treaty. Two central issues impacted by this project are air quality and water quality, each of which directly bear on the Treaty Rights of the CTUIR.

The CTUIR has met with staff from Oregon Department of Agriculture (ODA), the Oregon Department of Environmental Quality (ODEQ) and the Oregon Water Resources Department (OWRD) to discuss Lost Valley Farm. Our comments today are based on those conversations and our work on this over the last two years.

In 2015, Mr. Gregory te Velde filed a permit to the ODA and ODEQ for the operation of a CAFO to include a maximum of 30,000 cows. The National Pollution Discharge Elimination System (NPDES) permit for Lost Valley Farm was issued on March 31, 2017. A month and a half later, on May 11, 2017, the operator of Lost Valley farm signed the Animal Waste Management Plan (AWMP). On June 28, 2017, Lost Valley Farm was cited for violating the permit governing the proper storage of waste. Thereafter ODA documented over 50 individual violations of the permit and AWMP and Lost Valley self-reported over 15 violations of the permit. On February 23, 2018, ODA filed a lawsuit in Oregon State Court in Multnomah County seeking an injunction to compel permit compliance. On June 27, 2018, sixteen months after issue, ODA and ODEQ terminated the Lost Valley Farm NPDES Permit.

The CTUIR has attached the permit revocation for Lost Valley Farm¹. It is a well drafted document that documents the history, process and ultimate termination of the NPDES Permit by ODA and ODEQ.

¹ <http://bit.ly/LostValleyRevokeNotice>

There are four distinct areas regarding the issuance and implementation of the Lost Valley Farm NPDES permit that the CTUIR have concerns. They are:

1. The lack of agricultural air quality rules regarding emissions;
2. The lack of an upper limit on the stockwatering exemption under Oregon law;
3. The lack of effective enforcement measures to bring agricultural operations into permit compliance; and
4. The need of additional measures to protect water quality;

Agricultural Air Quality:

In 2007, the Oregon Legislature passed Senate Bill 235 to address agricultural air quality issues. It established a Task Force to study air emissions from agricultural operations including CAFOs and dairies and evaluate alternatives for reducing those emissions. Under the law, the Task Force presented its findings and recommendations to the Oregon Departments of Agriculture and Environmental Quality. The Final Report from the Task Force was issued in July, 2008. It contained dozens of recommendations in response to the nearly-complete lack of air quality regulations for CAFOs. Since then almost no further actions have been taken. A reasonable starting point now would be to re-visit the Task Force Report and its recommendations. The legislature authorized the Environmental Quality Commission to implement the recommendations of the Task Force in ORS 468A.020(2)(c), however funding is needed at the agency level to fully implement the program. The state should begin to take the steps to implement the recommendations described a decade ago, and identify any new measures that are needed.

Stockwatering Exemption:

ORS § 537.545 lists the seven uses of groundwater under Oregon law which are exempt from permit application, registration or groundwater right certification. Among these exemptions, only stockwatering has no substantive limitation on the amount of water that can be used for the exempt use. This means that a farm with 100,000 cows may withdraw water from an aquifer without a certificated water right, an amount of water that can be millions of gallons of water a day. While it is unclear whether Lost Valley Farm or any of the neighboring CAFOs currently avail themselves of this exemption, the fact that this exemption exists with no upper limit is greatly alarming, particularly in areas where groundwater is either contaminated or declining due to overuse, such as the area around Boardman, Oregon. The CTUIR proposes that stockwatering operations such as CAFO's be limited like any other industrial use of water under the statute, see ORS § 537.545(1)(f), capping daily use at 5,000 gallons per day, which is enough water for approximately 250 cows assuming each cow consumes 20 gallons per day. This is certainly closer to the intention of the legislature when the initial stockwatering exemption was enacted, which was largely present in the 1955 Oregon Revised Statutes.

Effective Permit Enforcement:

The current permitting process for CAFO's does not have effective enforcement mechanisms. Lost Valley Farm was the subject multiple violations resulting in thousands of dollars of fines, however each were subject to appeal while violations continued. While the initial fine of \$10,640 against Lost Valley Farm of January 25, 2018 was not appealed, neither was it paid. Even after ODA went to court to get an injunction to prevent continued violations, violations continued. Ultimately, ODA

+terminated the license on June 27, 2018, but even that is subject to an ongoing appeal. There must be a more effective mechanism to allow ODA and ODEQ to effectively enforce the permit requirements and recover enforcement costs. All the agencies involved, ODA, OWRD and ODEQ have either expended the entirety of their enforcement budgets or have severely depleted those budgets.

The CTUIR recommends the legislature examine bonding requirements for CAFO operations to encourage compliance and potentially cover costs if enforcement problems arise. Additional measures should be explored including the possibility of state decertification of the agricultural product to motivate agricultural operations to comply with permit conditions expeditiously. If a dairy cannot sell its product, there is significant motivation to resolve issues.

Measures to Protect Water Quality:

This particular case has demonstrated that the current regulations authorizing agricultural operations such as Lost Valley are not sufficient to protect groundwater. Operations like this should not be sited in groundwater management areas which are already controlled for nitrate pollution or in areas of shallow, depleted or declining groundwater which could aggravate groundwater pollution. Because of the geology around Boardman, the area is uniquely vulnerable to groundwater contamination from surface contaminants. This instance demonstrates the need to adopt rules to ensure baseline conditions like groundwater and geology are thoroughly analyzed in the permitting process as well as examining cumulative impacts from existing agricultural operations, including CAFOs, before any new permit is issued. Finally, agricultural operations should only be allowed where secure, sustainable sources of water are available. ODA, ODEQ and OWRD should have the explicit authority to deny permits if any of these circumstances dictate it.

The CTUIR appreciates the opportunity to provide comments to the Senate Interim Committee on Environment and Natural Resources and stands ready to provide any additional assistance requested.