



## Farmer v. farmer: Future of Oregon water at center of fight over new dam in Silverton

By Molly Harbarger

SILVERTON -- Bruce Jaquet took over management of his 193-acre farm from his father. He bought the land from his great-aunt, passed down from her father, who originally bought the land after emigrating from Switzerland in 1900.

Jaquet doesn't want to sell, and he doesn't want four generations of Jaquet work to be drowned. But he might not have a choice.

About 100 acres of Jaquet's farm sit in the flood zone of a proposed dam. The dam would be 70 feet tall and create a reservoir of 384 acres, flooding a valley that includes a dozen farms in all.

Drift Creek runs through Jaquet's land, the only tributary to the Pudding River that isn't already dammed. Jaquet and his neighbors say they have seen Coho salmon and lamprey in its waters -- both protected by federal and state laws.

The dam plan, a decade in the making, is pitting farmer against farmer in an area where they are used to supporting each other. It has also attracted the attention of environmentalists who say the dam would destroy fish habitat.

"I don't want to sell my land. It's very simple for me," Jaquet said. "When they say they need the water to save family farmers, they are going to flood and ruin family farms."

Jaquet and his neighbors are dryland farmers, meaning they grow their crops - mostly grass seed - with rain and the groundwater available to them. But about 10 miles away in the Mount Angel area, the farmers in the East Valley Water District who would use the reservoir to irrigate their nursery, vegetable and grass-seed crops, say this is their only viable option to maintain their livelihood.

By late summer, most run out of water, and this year looks to be even worse. Low snowpack in the mountains and a relatively warm winter have most anticipating an earlier water cutoff than possibly ever before.

The skirmish, an hour south of Portland, could be the first in a resurgence of water wars as groundwater dries up across the west. Agricultural interests use about 85 percent of Oregon's water, which is used to generate significant income for the state.

Onlookers both in and outside of the Silverton area hope this political and legal fight

becomes an impetus for Oregonians to start thinking about how water in the state is allocated and stored.

### Environmental opposition to dam

Joel Rue likes to watch elk in the canyon from his house. The elk do some damage to the grass fields when they gather to graze in the canyon, but the farmers in the area would miss them. Bruce Jaquet also likes to watch coho salmon spawning in the creek, which are listed as threatened under the federal Endangered Species Act.

Oregon has listed the pacific lamprey that swim in the creek's waters as sensitive as well.

The creek is often too warm for ideal fish conditions, and runs low in the summer. But, it is the only tributary to the Pudding River without a dam on it, and the Oregon Department of Fish and Wildlife consider it a possible home to steelhead trout, which come with protections that make disrupting their habitat pretty tough.

The East Valley Water District board has told ODFW that they are considering asking for a waiver from state requirements that ensure fish can continue their normal migration up and down the creek.

"With climate change, there has been a lot of attention in the last few years on new storage around state," said Kimberley Priestly, a senior policy analyst with nonprofit WaterWatch, who is also protesting East Valley's request for water rights to Drift Creek. "The challenge will be making sure we're protecting flows needed for fish in rivers."

She also takes issue with how the dam would store water in winter months, when the creek flows stronger than the rest of the year. Getting that rush of cold water downstream is important for fish and the general health of the stream, which is why Priestley said that the kind of dams that East Valley is proposing have largely been abandoned in the state. Water quality and fish advocates prefer water storage that sits off to the side and pulls from the creek, rather than directly on it, stopping the flow.

### The view from Victor Point

The Rue family's farm logo is barely noticeable from the road, overshadowed by a nearly-billboard-sized "Not In Our Backyard" sign drawing attention away from the grid of grass and flowering crops in the Victor Point area between Salem and Silverton.

Joel Rue first learned about the dam proposal in November 2005 when members of the East Valley district drove up to his house, which sits at the top of the canyon, and showed him plans for the reservoir. Rue is longtime friends with several of the board members of the district, but those relationships started to sour once he asked what happens if he and the other farmers in the flood zone don't want to sell.

"We don't think it's right they steal our property so they can benefit financially," Rue said.

The legal term is "eminent domain," a right given to governmental entities to condemn property and take it over in the interest of the greater good, such as a new highway. Rue and the other farmers would be compensated at supposed fair market value for their land,

if it comes down to eminent domain, but Rue had hoped to pass the land his boys grew up on into their hands someday.

The East Valley Water District is considered a special district under Oregon law, and is given the power of eminent domain. But what gets Rue and Jaquet really heated is that the proposed reservoir is outside of the district's boundaries.

Rue's attorney, Janet Neuman, said she hasn't found an instance in Oregon history of a special district using condemnation that way before.

"We don't think it's appropriate to condemn property up here for farms in the Mount Angel area," Rue said.

Jaquet rents out his 193 acres now that he is retired. As with much of that part of Marion County, the farm almost appears abandoned, with grass growing well past the top of a boot. But those who know, know better. Grass seed is one of Oregon's premier crops.

Timber, in various stages of growth, climb up the hills of the canyon. Most of it isn't likely to ever be harvested if the dam gets built. The landowners maintained the trees as long-term investments, whereas the grass seed provides yearly income to the dozen farmers whose land would be underwater if the East Valley Water District gets the necessary permissions to build the dam.

Jaquet would also lose a house at the bottom of the canyon. And while he'd have a couple fields left higher up the slopes, they are only accessible from a dirt road that could be 30 feet underwater if the dam were built.

Jaquet and Rue tried to keep East Valley farmers from surveying their land and taking samples, but lost in Marion County Circuit court. Because the district has the right of eminent domain, the board members can authorize the legwork that might lead to using it.

The judge, though, sympathized with the farmers. In a state that has experienced water wars before, things could get ugly.

"And there's no question that this construction of the statute sooner or later, whether it's in this case or at some other point, is going to be a recipe for political disaster," said Judge Claudia Burton, imagining a scenario where an irrigation district in Medford reaches to Mount Hood for water. "So the defendants are definitely right, that there are problems here... However, I happen to agree with the plaintiff that that's something for the legislature to fix, not for me as a trial court judge to fix."

So, the dozen growers in the path of the proposed dam went to the legislature. The farmers wrote a bill for 2015 that would have stopped condemnation outside of a special district's boundaries. It went nowhere.

The East Valley Water District, meanwhile, has received nearly \$1 million in state funding and public grants, in addition to the rates the farmers in the district pay, to cover the permitting phases of the project.

Some of the money also went for public outreach. Rue considers that an insult, using taxpayer money to try to convince him to give up land where his sons hunted crawdads as

kids and where he and his wife watch elk from their back porch.

### **The view from East Valley**

Duane Eder doesn't want to upset his friends, the people he goes to church with and that his kids grew up playing with. He doesn't want to use eminent domain.

But he, and the rest of the East Valley Water District, don't know what else to do. The only other plan that would work for farmers in the water district - converting a former dairy site within its borders to a reservoir - costs four times as much as the dam.

"We would rather communicate with them and make it work, but I don't know if that is ever going to happen," Eder said.

The East Valley Water District is in a groundwater-limited area, which means farmers run the risk of extracting too much water from below the surface, so the state caps how much they can take.

Eder has two sites where he can pump straight from the Pudding River. Backing his truck down the narrow dirt rut to the river, the site looks like it might be a local fishing spot if not for the dirt-caked pump protruding near the water.

Eder says his river water supply has been cut off four of the past 10 years by state water officials. So he and the two sons he farms with scrape together water from their four wells to get through late summer. His latest well cost \$75,000 and only pumps 108 gallons a minute. Not even close to the 300 gallons per minute of his others - and even those are mediocre compared to other parts of the Willamette Valley that can get 1,000 gallons per minute.

Eder sits on the East Valley board, which formed in the 1990s to start securing additional water storage. The hunt started as far back as the '60s, though.

Tom Fessler is a fourth-generation farmer who runs the Woodburn Nursery & Azaleas and farms. His father was involved in the first push to establish a reservoir ages ago, but they let it drop after a few false starts.

"They should've kept going 50 years ago," Fessler said. "If we don't do it now, what happens then?"

The need is more pressing than ever.

There is almost no snowpack left in the West. The latest outlook from the federal Natural Resources Conservation Service is grim. Streams won't flow with the power they usually do, and wells are emptying.

Fessler has had to let fields go dry by late July or August. He has water rights to draw from the Pudding River, but he's regularly shut off before the growing season ends.

Not all water rights are created equally. Some have higher priority than others, usually corresponding to how old the right is. So, when there is not enough water for everyone, Fessler and others with lower-priority rights are out of luck.

He has invested in conservation technology. In the '80s, the family installed a system that collects the water sprayed on his plants into pipes that deposit it into ponds, where it is pumped back out to be sprayed again.

For shrubs, a small black tube snakes over the side of the pot and pumps water directly into the soil. Otherwise, he'd have to use an overhead sprayer, which wastes water on unplanted ground and loses water to evaporation.

Fessler wants to be more sustainable, but he's also willing to spend the money on expensive new water-saving techniques because he wants to pass the operation on to his kids. If they don't have enough water, or if the reservoir isn't built, they will likely have to stop growing lucrative nursery and vegetable crops and switch to lower-value crops that require less irrigation.

"This project is really for the future generations in the area," Fessler said.

### **A future solution for everyone?**

The discussion the proposed Drift Creek reservoir is creating is important for future generations statewide, says April Snell of the Oregon Water Resources Congress, which supports the dam project.

"As difficult as it is for folks locally who are either for or against the East Valley project, it's a conversation that needs to happen more broadly," Snell said. I'm hopeful we can have the conversation, because that water just isn't going to be there."

Snell hopes 2015, with more counties asking for emergency drought funding every month, is a wakeup call for policymakers.

Naseem Rakha lives in the middle of this fight. She just moved to Silverton after 25 years on property within the East Valley boundaries. She knows the farmers and likes them, but can't stand the idea that to meet their needs, they must take land away from other growers.

She wants the East Valley district to go with the more expensive plan that would rehabilitate the old dairy within the district's boundaries to install a reservoir. The current proposal's price is still moving, but is pegged around the \$50 to \$60 million range. Converting the dairy would likely run \$240 million - a price that seems untenable to East Valley board members.

"It's an expensive plan," concedes Rakha, "but it would not take away farms from other people."

Besides, she said, what if everyone starts trying to quench their thirst? "The fact of the matter is, the same thing could happen to them," said Rakha.

