



Senator Michael E. Dembrow
Senate District 23

March 6, 2023

Chair Golden, Vice-Chair Girod, Colleagues, I'm Michael Dembrow, and I'm the Senator for District 23.

Colleagues, during the summer Chair Golden asked me to head up a work group on proposals to locate some extremely large, new Tier 2 broiler chicken CAFOs in the Willamette Valley. I had a fair amount of experience with CAFOs from my time chairing this committee, including during the period that the Lost Valley dairy debacle occurred in Morrow County. A work group that I led at the time ultimately led to the two-step permitting process for the extremely large facilities that you heard about in last week's informational hearing.

This summer's work group had five meetings over several months and included legislators from both chambers, rural county commissioners, neighbors, poultry industry reps, broader ag industry reps, environmentalists, and agency reps to support our work. It was a blend of information from the agencies similar to what you heard in last week's info session, information from the poultry industry, and concerns raised by neighbors.

As you heard last week, there are 233 Dairy CAFO permits in the state, but only 14 of them fall into the Tier 2 category that is the focus of the bill that's before you. To be Tier 2, you have to have more than 2,500 milking cows for a general permit and 10,000 or more for an individual permit at any one time. For poultry, there are just 4 out of the 24 total permits, but that involves having 350,000 birds



onsite at any one time for a general permit and 500,000 birds onsite at any one time for an individual permit.

We learned a lot but didn't necessarily agree on a lot. Advocates expressed concern that Oregon was likely to become the West Coast home for industrial farming operations. Industry countered that the new poultry operations were merely replacing existing family-held chicken ranches, with little or no net increase in the number of birds in production. That may be true, but the difference is that small family operations scattered around the region and the state are being concentrated into a few extremely large operations. Concerns around the potential, inevitable impacts of these unanticipated industrial farming operations on existing farms and other neighbors became a real focus of the work group.

As I reported to this committee back in September, their concerns really fell into three categories:

The first had to do with the impact on available water. The proposed chicken operation only had water rights to a portion of the operation. It was going to come in and use tens of thousands of gallons of groundwater for the chickens' drinking water every day, superseding the senior water rights of all the neighboring farms via the stockwater exemption. The neighbors had very legitimate fears about the impact of these withdrawals on the aquifer and on their wells, which they needed for their crops and their animals, especially in late summer and early fall. But under current interpretation of the stockwater exemption, there was nothing they could do about it, not even have access to a public hearing. As I mentioned to the committee, it does appear that under our current law they have real cause for concern, especially as we experience increasing warming and drought. But under our current law, there is nothing these neighboring family farms can do.

And that leads to the second major cause of concern that we heard. We heard concern that the operations would be located without appropriate setbacks and buffers, that birds would be transported in the middle of the night, and that the barns would be fire hazards and lack appropriate sprinkler systems. We heard from the rural county commissioners on the work group that they would like to be allowed to play a role in setting the conditions under which the very largest of

the CAFOs could function with respect to time, place, and manner. They were hearing constantly from their constituents that something needed to be done, but their hands were tied. Under current Oregon law and practice, local government generally cannot do anything if a new operation, even a very huge one, is deemed to be a farming operation. The one exception to that is cannabis operations, where the Legislature has given local governments the ability to set conditions regarding time, place, and manner of operation once an operation has been approved. But until we legislators extend the same authority to county commissioners with respect to Tier 2 CAFOs, the commissioners' hands do remain tied and their constituents remain frustrated.

The third concern that we heard was around air quality and the presence of dangerous pollutants potentially coming from the barns, blown out to neighboring areas by the ever-present fans needed to get them out of the barns. The impact of CAFOs on air quality has been an area of concern for the federal EPA for many years now. As we heard from DEQ in last week's information session, the EPA has been working on a set of regulations for more than a decade and appears ready to release them by the end of this year.

In sum, colleagues, we heard calls to hold off on any new permits until these new rules were released, the abusive use of the stockwater exemption was addressed, and the legitimate role for local governments in setting appropriate usage conditions was articulated and allowed.

I believe that that's the purpose of the committee bill that's before you today.

Finally, colleagues, I want to remind you that the bill that is before you is not focused on the entirety of the CAFOs that you heard about last week. The focus is those extremely large Tier 2 CAFOs.

This bill doesn't touch existing or new CAFOs that are small, medium, or even Tier 1 large. To be affected by this bill, the operations needs to be Tier 2 and newly-proposed.

Colleagues, I know that you're going to hear a lot of passionate testimony during this public hearing. These good people are worried about their livelihoods and in some cases their lives. Based on what we learned this summer, even when the CAFO operation is modern and well-run, their worries are well-founded. The right

to farm in Oregon is not a constitutional right, nor is it without limit. It is subject to statutory oversight and modification. Colleagues, I would argue that the right to farm statute is focused on a different set of conditions: as you heard last week, it's designed to keep people from moving into a rural area and then suing the neighboring farm or timber operation for doing their work. Similarly, the stockwater exemption was designed to allow existing farming operations to access groundwater at time of need. Here we have a very different situation: extremely large industrial farming operations entering areas with long-standing, sustainable family farms and taking advantage of rules designed for very different circumstances.

Colleagues, it's up to the Legislature, and us legislators, to find the right balance of economic opportunity, environmental protection, and the safety and quality of life of rural Oregonians. That needs to be the basis of our work going forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Dembrow". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

Michael E. Dembrow

Senator, SD 23