



Oregon

Kate Brown, Governor

Public Utility Commission

201 High St SE Suite 100

Salem, OR 97301

Mailing Address: PO Box 1088

Salem, OR 97308-1088

Consumer Services

1-800-522-2404

Local: 503-378-6600

Administrative Services

503-373-7394

September 28, 2017

Via Electronic Filing

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
PO BOX: 1088
SALEM OR 97308-1088

**RE: UM 1818-In the Matter of the Complaint of COLUMBIA BASIN
ELECTRIC COOPERATIVE, INC., against UMATILLA ELECTRIC
COOPERATIVE.**

Attached is staff reply testimony (Exhibits 100-105) in UM 1818.

/s/ Kay Barnes

Kay Barnes

PUC- Utility Program

(503) 378-5763

kay.barnes@state.or.us

CASE: UM 1818
JOINT WITNESSES: SCOTT GIBBENS & PAUL ROSSOW

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 100

Reply Testimony

September 28, 2017

1 **Q. Please state your names, occupations, and business address.**

2 A. My name is Scott Gibbens. I am a Senior Utility Analyst employed in the
3 Energy Rates, Finance and Audit Division of the Public Utility Commission of
4 Oregon (OPUC). My business address is 201 High Street SE, Suite 100,
5 Salem, Oregon 97301.

6 My name is Paul Rossow. I am a Utility Analyst employed in the Energy
7 Resources and Planning Division of the Public Utility Commission of Oregon
8 (OPUC). My business address is 201 High Street SE, Suite 100, Salem,
9 Oregon 97301.

10 **Q. Please describe your educational background and work experience.**

11 A. Scott Gibbens' educational background and work experience is set forth in a
12 witness qualification statement, attached as Exhibit Staff/101.

13 Paul Rossow's educational background and work experience is set forth
14 in a witness qualification statement, attached as Exhibit Staff/102.

15 **Q. What is the purpose of your testimony?**

16 A. The purpose of our testimony is to analyze the complaint filed in this docket
17 and supporting documentation, and to make a recommendation to the
18 Commission on the merits of the complaint.

19 **Q. Did you prepare any exhibits for this docket?**

20 A. Yes. We prepared the following exhibits:

21 Staff/103: Excerpt from Willow Creek Dairy's data responses;

22 Staff/104: Excerpt from Columbia Basin Electric Inc.'s data responses; and

23 Staff/105: Excerpt from Umatilla Electric Cooperative's data responses.

1 **Q. How is your testimony organized?**

2 A. This testimony is organized as follows:

3
4 Background..... 3
5 Basis for Complaint..... 6
6 Customer Impact..... 11
7 Staff's Recommendation 13

Q. Please summarize Staff's recommendation.

8 A. We recommend that the Commission dismiss the Complaint and take no action
9 against Umatilla Electric Cooperative (UEC).

BACKGROUND**Q. Please explain the basis of the Complaint filed in this docket.**

A. On January 13, 2017, Columbia Basin Electric Cooperative, Inc. (CBEC) filed a complaint with the Commission under ORS 756.500 and OAR 860-001-0170, alleging UEC has violated ORS 758.450(2) in respect to the matter docketed as UM 1818. CBEC alleges UEC is in violation of ORS 758.450(2) because it is “providing utility service to the Willow Creek Dairy irrigation circles that are located entirely in [CBEC’s] territory.”¹

Q. What is the Willow Creek Dairy?

A. For purposes of this docket, Willow Creek Dairy is a dairy operation conducted by Mr. Greg te Velde doing business as Willow Creek Dairy on land in Morrow County, Oregon, that he purchased from the Boardman Tree Farm, LLC in 2015.² Willow Creek Dairy consists of both a large dairy of approximately 5,700 acres of land with a capacity of up to 30,000 head of cattle and a large associated agricultural operation.³ Willow Creek Dairy became a member of UEC soon after Mr. Greg te Velde acquired the property.⁴ In the spring of 2016, UEC installed approximately 2.5 miles of three phase installation to serve six different service locations on the property and at least 1.23 miles of

¹ CBEC Complaint, pages 3-5.

² Exhibit CBEC 104, Wolff/1.

³ Exhibit Staff/105, Gibbens, Rossow/1, Excerpt from UEC response to CBEC DR 19-21 (5-15-2017 version).

⁴ Exhibit CBEC 106, Wolff/1.

1 underground cabling, and upgraded a transformer to support about
2 2.5 Megawatts of new load.⁵

3 **Q. Does the Willow Creek Dairy use another business name?**

4 A. Yes. Since the filing of this complaint, Mr. Greg te Velde has changed the
5 assumed business name to Lost Valley Farm.⁶ For clarity, this testimony refers
6 to Mr. Greg te Velde and the property in question as the Willow Creek Dairy.

7 **Q. Has CBEC filed its complaint under the applicable standard?**

8 A. Yes. The complaint refers to ORS 758.450(2), which states that no person
9 “shall offer, construct or extend utility service in or into” the allocated territory of
10 another person. This statute lists four exceptions to this prohibition.

11 CBEC’s complaint requests that the Commission enjoin a violation of
12 ORS 758.450(2). Another statute, ORS 758.465, states that when an allocated
13 territory is served by a person in violation of ORS 758.450, either that person
14 or the commission may file an action for an injunction against this activity in
15 circuit court.

16 **Q. Do any of the four exceptions under ORS 758.450(4) apply to UEC?**

17 A. None of the exceptions appear to apply.

⁵ Exhibit Staff/105, Gibbens, Rossow/2-3, Excerpt from UEC response to CBEC DR 19-21 (5-31-2017 version).

⁶ Exhibit Staff/103, Gibbens, Rossow/1, Willow Creek Dairy response to CBEC DR No. 1.

1 **Q. Then, what standard applies to determine whether UEC has violated the**
2 **service territory of CBEC?**

3 A. To determine whether UEC has violated ORS 758.450(2), one must consider
4 whether it has offered, constructed or extended utility service in or into another
5 person's allocated territory.

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BASIS FOR COMPLAINT

Q. Is there any indication that UEC has offered utility service in another allocated territory?

A. No. And, CBEC does not allege UEC has offered service in either its complaint or its Opening Testimony.

Q. Is there any indication that UEC has constructed utility service in another allocated territory?

A. No. And, CBEC does not allege UEC has constructed utility service in either its complaint or its Opening Testimony.

Q. Is there any indication that UEC has extended utility service into another allocated territory?

A. No. "Utility service" is defined in ORS 758.400(3). Looking at the portions of this definition describing electric service, "utility service" means service provided by any equipment, plant or facility for the distribution of electricity to users through a connected and interrelated distribution system. In its Opening Testimony, CBEC concedes that none of UEC's electric distribution facilities extend into Columbia Basin's allocated service territory.⁷

Q. Why does CBEC allege its allocated service territory has been violated?

A. Willow Creek Dairy hired an electrical contractor to install electrical wiring connecting the irrigation circles in CBEC's territory with UEC's meter 8465704, a meter located in UEC's service territory.⁸ UEC installed this meter in 2016.⁹

⁷ Exhibit CBEC/100, Wolff/12.
⁸ Exhibit CBEC/108, Wolff/1, Greg te Velde Data Response Numbers 2 and 3 (5-26-2017 version).
⁹ Exhibit CBEC/100, Wolff/9, 22.

1 CBEC, in its Opening Testimony, asks that the irrigation circles in CBEC's
2 territory be treated as a single load separate from service in UEC territory that
3 should be served by CBEC.¹⁰

4 **Q. Has the Commission considered the location of a single service load?**

5 A. Yes, in UM 1670, a docket involving a territory allocation complaint against
6 an investor-owned utility, the Commission issued Order No. 15-110. In that
7 order, the Commission applied a geographic load test to determine which
8 utility may provide service to a customer with property located in adjoining
9 territories. The Commission described this test "as a theoretical point
10 determined by giving consideration to the location of the permanent electric
11 loads which have been or which will be installed within a reasonable time as
12 part of existing plans. In effect this permits the utility which serves a
13 majority of a customer's load to serve the entire load, regardless of the
14 territorial boundaries of a service area."¹¹

15 **Q. Does the geographic load analysis support CBEC's complaint?**

16 A. No. To date, Columbia Basin has not provided evidence that Willow Creek
17 Dairy's six irrigation circles, which reside in Columbia Basin's service
18 territory, warrant being considered a separate user or customer. In looking
19 at the permanent facilities which have been or which will be installed within
20 a reasonable time, it is clear the load center is located in Umatilla's territory.
21 Of the 17 cluster stations, 15 are to be located in Umatilla territory, as well

¹⁰ Exhibit CBEC/100, Wolff/12,14-16.

¹¹ *In the Matter of Columbia Basin Electric Cooperative, Inc. v. PacifiCorp et al*, Docket UM 1670, Order No. 15-110 at 7.

1 as all of the booster stations and pump stations.¹² Approximately 84 percent
2 of the irrigation circles will reside entirely in Umatilla's service territory.¹³

3 The irrigation circle load in Columbia Basin's territory remains part of a
4 single customer's load, who owns and operates one business. A portion of
5 the land is being utilized under a lease, however, this distinction does not
6 change the geographic load center, and performing analysis based on a
7 temporary property user is questionable. Willow Creek Dairy has stated that
8 it is in its best interest to receive power from UEC because of integration
9 issues which would arise across the farm if it received power from two
10 separate sources.¹⁴ These are reasons that Tommy Wolff of Columbia
11 Basin responded to as being "very reasonable business needs and
12 practices."¹⁵

13 **Q. Should the Commission be concerned that Willow Creek Dairy connected**
14 **the irrigation circles in CBEC territory with UEC service in UEC territory?**

15 A. Not under these circumstances. In Order No. 15-110, the Commission notes
16 that the geographic load test "precludes a customer from manipulating delivery
17 points and running transmission lines across boundaries to obtain service from
18 a neighboring utility." Willow Creek Dairy was an existing member of UEC
19 when it built the service connector, not a customer of CBEC or another utility,

¹² Exhibit Staff/105, Gibbens, Rossow/4. Excerpt from UEC response to CBEC DR No. 19-21 (5-26-2017 version).

¹³ *Ibid.*

¹⁴ Exhibit Staff/104, Gibbens, Rossow/1. Excerpt from CBEC response to UEC DR No. 7(c).

¹⁵ Exhibit Staff/105, Gibbens, Rossow/5. Excerpt from UEC response to CBEC DR No. 19-21 (5-26-2017 version).

1 who chose to obtain service elsewhere. Under the geographic load test, UEC is
2 the utility that may service Willow Creek Dairy's entire load.

3 **Q. Did Columbia Basin mention this as a concern?**

4 A. Yes. In Columbia Basin's Opening Testimony, It states that a Commission
5 decision against CBEC's complaint could potentially result in customers
6 circumventing territory allocation laws by building electrical facilities to the
7 supplier of their choice.¹⁶ Specifically, PacifiCorp and PGE's territories are
8 brought up as a potential location for this occurrence.¹⁷

9 **Q. Does Staff believe that this concern should inform the Commission's**
10 **decision?**

11 A. No. While Staff takes the protection of each utility's allocated service territory
12 seriously, the future possibility of customer action is not a major concern which
13 should inform the Commission's decision on the matter. The potential risk is
14 first limited by the geographic requirements, by which a load is located within a
15 short distance to a "utility of choice". The main deterrent to those customers
16 from building their own facilities is economics. Any potential customer would
17 be required to pay for the new facilities, maintain the new facilities, and assume
18 new risks by building the new facilities. In circumstances where safe and
19 reliable power is already being provided by a utility, the opportunity for
20 economic gain will be limited. The facts of this case are unique, given the
21 single owner and use of the land, the geographic make up, and ability to cost-

¹⁶ CBEC/100, Wolff/18.

¹⁷ *Ibid.*

1 effectively receive service to the territory from a point inside of Umatilla's
2 territory.

3 **Q. Is there any indication that UEC duplicated utility facilities?**

4 A. Not under these circumstances. UEC constructed distribution facilities within
5 its allocated service territory and CBEC has pre-existing facilities within its own
6 allocated service territory. Neither UEC nor CBEC has duplicated facilities
7 within their respective territories as a result of Willow Creek Dairy's
8 construction of service lines to its irrigation circles.

9 **Q. Should the Commission be concerned with the duplication of utility**
10 **facilities?**

11 A. No. Whether Willow Creek Dairy has duplicated utility facilities is not relevant
12 here as the complaint is directed at UEC.

CUSTOMER IMPACT**Q. Please discuss Staff's consideration of customer impact.**

A. Staff believes it is also important to consider what is in the best interest of any customer) directly affected by the territory allocation dispute, as well as more broadly the customer bases of each utility. Staff notes that the only customer directly affected prefers to receive power from a single utility.

Both utilities have the ability to serve the load without burden to their other customer base. Safety is not a concern if either utility were to serve the load. Willow Creek Dairy had the wiring from the UEC meter installed by electricians.¹⁸

Both customer bases would receive the same gross benefit from an increase in load and revenue to the utility based on the assumption of cost of service rates. On a percentage terms, CBEC's customer base would benefit more as it is the smaller of the two utilities. However, Columbia Basin customer's would not be harmed beyond their current state should UEC continue to serve the load, while UEC customers would be required to deal with stranded costs it would otherwise not have to bear. Finally, Staff notes that all customers are harmed by the extensive regulatory process engaged to settle this dispute to date. Staff believes that ORS 758.410, which outlines the ability for utilities to make contracts for territory and customer allocation, describes the optimal outcome for all customers involved. Staff encourages the Commission to recommend the utilities seek

¹⁸Exhibit Staff/103, Gibbens, Rossow/2. Willow Creek Response to CBEC DR No. 2.

1 agreement between themselves to address situations in which a customer's
2 facilities cross the service line boundary.

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STAFF'S RECOMMENDATION

Q. What is Staff's recommended action for the Commission?

A. Staff believes that the Commission should dismiss Columbia Basin's complaint and take no further action.

Q. Why does Staff make this recommendation?

A. In Staff's review of this complaint, Staff finds that UEC has provided service to a single customer using facilities completely within its own allocated territory. Moreover, this single user's irrigation circle load has its geographic center in Umatilla's allocated service territory. The customer has stated that service from Umatilla is in its best interest, and while both customer bases are not better off, neither customer base is worse off from its current state. There is insufficient evidence to support further Commission action on the complaint.

Q. Does this conclude your testimony?

A. Yes.

CASE: UM 1818
WITNESS: SCOTT GIBBENS

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 101

Witness Qualifications Statement

September 28, 2017

WITNESS QUALIFICATION STATEMENT

NAME: Scott Gibbens

EMPLOYER: Public Utility Commission of Oregon

TITLE: Senior Economist
Energy Rates, Finance and Audit

ADDRESS: 201 High St. SE Ste. 100
Salem, OR 97301-3612

EDUCATION: Bachelor of Science, Economics, University of Oregon
Masters of Science, Economics, University of Oregon

EXPERIENCE: I have been employed at the Oregon Public Utility Commission (Commission) since August of 2015. My current responsibilities include analysis and technical support for electric power cost recovery proceedings with a focus in model evaluation. I also handle analysis and decision making of affiliated interest and property sale filings, rate spread and rate design, as well as operational auditing and evaluation. Prior to working for the OPUC I was the operations director at Bracket LLC. My responsibilities at Bracket included quarterly financial analysis, product pricing, cost study analysis, and production streamlining. Previous to working for Bracket, I was a manager for US Bank in San Francisco where my responsibilities included coaching and team leadership, branch sales and campaign oversight, and customer experience management.

CASE: UM 1818
WITNESS: PAUL ROSSOW

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 102

Witness Qualifications Statement

September 28, 2017

WITNESS QUALIFICATIONS STATEMENT

NAME: Paul Rossow

EMPLOYER: Public Utility Commission of Oregon

TITLE: Utility Analyst
Energy Resources & Planning Division

ADDRESS: 201 High Street SE Suite 100
Salem OR 97301

EDUCATION: Professional Accounting and Computer Application
Diplomas, Trend College of Business 1987

EXPERIENCE: I have been employed with the Public Utility Commission of Oregon as a Utility Analyst since October of 2002. Current responsibilities include research issues relating to energy utilities. I have actively participated in regulatory proceedings in Oregon, including UE 147, UE 167, UE 170, UE 179, UE 180, UE 197, UE 210, UE 213, UE 215, UE 217, UE 233, UE 246, UE 262, UE 263, UE 283, UG 152, UG 153, UG 181, UG 186, UG 201, UG 221, UG 246, and UG 284.

I have attended the Utility Rate School sponsored by the Committee on Water of the National Association of Regulatory Utility Commissioners in May of 2005 and the Institute of Public Utilities sponsored by the National Association of Regulatory Utility Commissioners at Michigan State University in August of 2005.

CASE: UM 1818
JOINT WITNESSES: SCOTT GIBBENS & PAUL ROSSOW

**PUBLIC UTILITY COMMISSION
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STAFF EXHIBIT 103

**Exhibits in Support
Of Reply Testimony**

September 28, 2017

DATA REQUESTS

CBEC DR TO WILLOW CREEK DAIRY NO. 1: Please identify who or which entity or organization owns the real property where the Willow Creek Dairy's irrigation circles are located in Columbia Basin's service territory. Please provide all Documents that support Willow Creek Dairy's response.

RESPONSE: Greg te Velde owns the real property. A Special Warranty Deed will be provided. Greg te Velde is in the process of changing the Willow Creek Dairy assumed business name to a new business name: "Lost Valley Farm".

CBEC DR TO WILLOW CREEK DAIRY NO. 2: Please identify who or which entity or organization(s) trenched, installed, laid and/or buried the electrical lines between Umatilla Electric Cooperative, Inc. (UEC) meters and each of the Willow Creek Dairy irrigation circles located in Columbia Basin's service territory.

RESPONSE: Valmont Northwest, Inc.; Gordon's Electric, Inc.; Shelco Electric, Inc.; Sineco Construction, LLC.

CASE: UM 1818
JOINT WITNESSES: SCOTT GIBBENS & PAUL ROSSOW

**PUBLIC UTILITY COMMISSION
OF
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STAFF EXHIBIT 104

**Exhibits in Support
Of Reply Testimony**

September 28, 2017

From: aylettjeddie@yahoo.com [mailto:aylettjeddie@yahoo.com]
Sent: Thursday, July 28, 2016 10:32 PM
To: Brian Kollman <BrianK@columbiabasin.cc>
Subject: Re: Willow Creek southern circles

After reviewing all the facts it is in Willow Creek Dairy's best interest that we stay with UEC power. There is several issues if we have two power sources. For instance, if the power goes down on Columbia Basin side, but not UEC side or vice versa. This loss of power either way can cause expensive damage to Willow Creek Dairy's irrigation system. The power work load is in UEC districted, which houses two VFD's, radio controls for the telemetry system, digital flow meter, RTU that controls the pumps to turn on or off pumps as pressure changes. Willow Creeks Dairy VFD building in UEC district contains the UEC meter, transformer, and disconnect. This building also controls three pumps: 150 HRS, 125 HRS, and later as trees are removed will have an additional 100 HRS pump. After looking over Columbia Basin power quote it would cost too much for Willow Creek Dairy to put power to the circles. The circles use very little power compared to the overall system. The lack of control with two power sources would have a negative impact for the irrigation system and operations. I hope you can understand my issues and the problems it can cause to our system.

Jeddie Aylett
WCD Farm Manager
(541) 571-2477

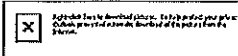
CASE: UM 1818
JOINT WITNESSES: SCOTT GIBBENS & PAUL ROSSOW

**PUBLIC UTILITY COMMISSION
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STAFF EXHIBIT 105

**Exhibits in Support
Of Reply Testimony**

September 28, 2017



Lost Valley Ranch: FAQ Sheet CAFO Permit (English & Spanish)

Details of the proposed dairy:

Lost Valley Ranch is proposed to be located on approximately 5,700 acres of land on Homestead Lane 1.5 miles east of Poleline Road near Hermiston, Oregon 97838. The proposal has requested a total capacity of 30,000 head of cattle (15,000 mature milking cows and 15,000 dairy heifers and calves).

Monitoring and recordkeeping:

What type of monitoring will be done?

- **Lagoon leak detection:** System that notifies the Dairy of any potential leaks in the lagoons.
- **Soil testing:** The Dairy is required to collect annual soil samples on all fields that receive manure or processed wastewater.
- Monitoring for irrigation water leaching below the root zone
- **Wells:** There will be groundwater monitoring wells to test for potential pollutants including bacteria and nitrates on a quarterly basis (every three months).
- **Recordkeeping:** The permit requires strict record keeping and reporting requirements to ensure permit conditions are met.

Regulations:

The Oregon Department of Agriculture (ODA) and the Department of Environmental Quality (DEQ) require the Dairy to get a permit, which is jointly issued by the two agencies.

ODA regulates the permit requirements that the Dairy must

REDACTED

Willow Creek Dairy

The Willow Creek Dairy will include about 2.5 miles of three phase installation to serve 6 different service locations. Expected new loads will be nearly 2.5 MW with start-up in May of 2016. Temporary service will be connected in March to serve construction power and a temporary batch plant that is expected to produce about 58,000 yards of concrete for the dairy. UEC will be working very closely with the dairies electrical designers to ensure that our services meet their needs for grounding.

From: Mike Irving
Sent: Monday, March 14, 2016 11:42 AM
To: Joshua Lankford
Subject: RE: Willow Creek Dairy

Willow Creek Dairy (WCD) summary:

- Dairy site:
 - 0.03 miles 3phase OH new construction
 - 2.22 miles 3phase UG new construction
 - 6 new 3phase 277/480 v services
 - (3) 800 amp
 - (1) 1200 amp
 - (2) 1600 amp
 - HDPE continuous conduit to be delivered on-site on March 17th with installation on the conduit to begin possibly the following week dependent on payment of unpaid WO's
 - Installation of conductors and equipment is depended on mutual agreement between WCD and UEC on grounding method to be used on WCD property as it pertains to avoiding stray voltage
- Farm ground:
 - Upgrade transformer at 3N26E211900 to feed batch plant and RV park – Completed
 - Rem 1-phase service and install 3-phase service to new cluster
 - Staked – Waiting for payment.
 - Install 3-phase service for 400 hp pump and circle controls 6000' west of switchgear 3N26E346700
 - Install 1.23 miles new UG cable to cluster/pump site
 - Provide rough estimate for this site for member approval before beginning design.

The dairy is to be at full production by the end of the year with testing and commissioning beginning around June 2016. The farm side of WCD as of now is asking for their services to be energized as soon as possible, this includes two of the 800 amp dairy site services as they will serve irrigation loads also.

From: Joshua Lankford
Sent: Monday, March 14, 2016 11:02 AM
To: Mike Irving <mike.irving@umatillaelectric.com>
Subject: Willow Creek Dairy

Mike,

Can you please provide me a real general summary of the WCD project for the board report?

How many miles, how many services, timing, etc.

Thanks,

Joshua D. Lankford
Distribution Engineer

From: Tommy Wolff <tommyw@columbiabasin.cc>
Sent: Thursday, August 04, 2016 9:32 AM
To: Robert Echenrode
Subject: Willow Creek Dairy Circles (nka Lost Valley Dairy?)

Good Morning Robert:

I appreciate your phone message of yesterday.

Jeddie Aylett (WCD Farm Manager) has replied to our inquiry, and indicated he wishes to stay with UEC power for his circles. He does state some very reasonable business needs and practices for doing so.

I would like to propose a written agreement between UEC and CBEC whereby we both acknowledge that these loads are within CBEC's exclusive Service Territory, but for the needs and convenience of the consumer, we both agree to terms where UEC will serve the load.

Under the agreement, UEC would reimburse CBEC for the revenue we would have received had we been serving the load.

Similar agreements have been used in the past by other utilities with similar circumstances.

I will draft the agreement, load value calculations, and send it your way by Tuesday of next week. Please consider this alternative, which I believe is in the best interests of the consumer and both utilities.

I am out of my office for the remainder of today, but will be able to work on the document tomorrow or Monday.

Regards,

Tommy



Thomas Wolff, CPA
CEO / General Manager
P.O. Box 398
Heppner, Oregon 97836-0398
Office = 541-676-9146