

**IN THE STATE OF OREGON
BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY &
DEPARTMENT OF AGRICULTURE**

ANIMAL LEGAL DEFENSE FUND;
CENTER FOR BIOLOGICAL
DIVERSITY; CENTER FOR FOOD
SAFETY; COLUMBIA RIVERKEEPER;
FOOD & WATER WATCH; FRIENDS
OF FAMILY FARMERS; HUMANE
OREGON; HUMANE SOCIETY OF
THE UNITED STATES; OREGON
PHYSICIANS FOR SOCIAL
RESPONSIBILITY; AND OREGON
RURAL ACTION,

Petitioners,

v.

OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY, and
OREGON DEPARTMENT OF
AGRICULTURE,

Respondents.

NPDES Permit No. OR995129

**PETITION FOR
RECONSIDERATION**

The Animal Legal Defense Fund, Center for Biological Diversity, Center for Food Safety, Columbia Riverkeeper, Food & Water Watch, Friends of Family Farmers, Humane Oregon, Humane Society of the United States, Oregon Physicians for Social Responsibility, and Oregon Rural Action (collectively, Petitioners) hereby petition the Oregon Department of Environmental Quality (DEQ) and the Oregon Department of Agriculture (ODA) (collectively, the Agencies) to review and reconsider the issuance, requirements, and conditions of National

**PETITION FOR RECONSIDERATION
NPDES PERMIT NUMBER OR995129**

Pollutant Discharge Elimination System (NPDES) individual permit number OR995129 (the permit), a final agency order in other than a contested case. This Petition for Reconsideration is brought pursuant to ORS 183.480, ORS 183.484, and OAR 137-004-0080.

The Agencies issued the permit to Greg te Velde, a California businessman doing business as the Lost Valley Farm (Lost Valley), on March 31, 2017, and it became effective on April 20, 2017. The permit authorizes Lost Valley to operate a 30,000-head industrial dairy concentrated animal feeding operation (CAFO) in the highly sensitive Lower Umatilla Basin Groundwater Management Area. The permit further authorizes Lost Valley to collect, store, and dispose of massive quantities of livestock waste and other pollutants.

Petitioners request reconsideration and a stay because the Lost Valley permit is inconsistent with state and federal laws, regulations, and standards designed to protect water quality and beneficial uses. Petitioners retain the right to request judicial review pursuant to ORS 183.484.

Petitioners allege as follows:

PARTIES

1.

Petitioner Animal Legal Defense Fund (ALDF) is a national non-profit organization headquartered in Cotati, California, with more than 200,000 members and supporters, 2,784 of whom live in Oregon. ALDF pursues its purpose of

safeguarding animal welfare by persistently advocating for the protection of animals used and sold in commercial enterprises, including agriculture and agribusiness. ALDF frequently focuses on pollution to the environment caused by the inhumane confinement of farmed animals and has expended significant organizational resources on advocacy and public education efforts to improve environmental and animal welfare conditions for animals confined in CAFOs like the facility at issue here. ALDF has an organizational interest in ensuring that the Agencies' implementation of the Clean Water Act (CWA) thoroughly accounts for the environmental, animal welfare, and human health risks posed by Lost Valley. Moreover, ALDF's members have an aesthetic interest in keeping the areas where they live and farm free from water pollution, antibiotic contamination, and unnecessary animal suffering.

2.

Petitioner Center for Biological Diversity (CBD) is a national non-profit, 501(c)(3) organization with members and an office in Oregon. With more than 1.3 million members and supporters, CBD is dedicated to the protection of native species and their habitats through science, policy, and environmental law. With its more than one million members and supporters, CBD is concerned about the fate of imperiled species and the increasing rate of extinction and loss of biological diversity in the United States. To further this objective, CBD has designed programs and campaigns to address the plight of imperiled species in this country,

including from the impacts of agriculture – and animal agriculture in particular – on biodiversity, public health, and sustainable food systems. Through its efforts, CBD has developed outreach, education, and policy materials on the negative effects of industrial agricultural systems on our environment, including as a result of pesticide use, greenhouse gas emissions, pollution from animal waste, and overuse of water resources.

3.

Petitioner Center for Food Safety (CFS) is national, non-profit 501(c)(3) organization with over 830,000 members and supporters nationally and tens of thousands in Oregon. CFS's mission is to empower people, support farmers, and protect the environment from industrial agriculture. CFS promotes truly sustainable agriculture, like organic and ecological farming. For 20 years, CFS has furthered this mission through legal actions, groundbreaking scientific and policy reports, books and other educational materials, and market pressure and grassroots campaigns through our True Food Network. CFS has an office in Oregon and has worked for years on Pacific Northwest issues, including factory farming, genetically engineered crops, and organic integrity, among other issues.

4.

Petitioner Columbia Riverkeeper (Riverkeeper) is a 501(c)(3) non-profit corporation with over 12,000 members in Oregon and Washington. Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life

connected to it, from the headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific, educational, and legal programs aimed at protecting water quality, air quality, and habitat in the Columbia River Basin. Riverkeeper's members swim, drink water from, and fish in the Columbia River and its tributaries. Riverkeeper comments routinely on NPDES permits that regulate pollution discharges to ground and surface water.

5.

Petitioner Food & Water Watch (FWW) is a national 501(c)(3) non-profit organization with thousands of members and an office in Oregon. FWW works to ensure that the food, water, and fish we consume is safe, accessible, and sustainably produced. So that all consumers can enjoy and trust in the food and drink they eat and drink, FWW helps people take charge of where food comes from; keep clean, affordable, public tap water flowing freely to homes; protect the environmental quality of oceans; ensure that the government does its job protecting citizens; and educate about the importance of keeping the global commons – shared resources – under public control. FWW uses research, reports, organizing, policy advocacy, media, and litigation to achieve these goals. FWW has significant expertise on the CAFO industry and CAFO regulation, and routinely comments on NPDES permits for CAFOs and other sources of water pollution.

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6.

Petitioner Friends of Family Farmers is an Oregon 501(c)(3) non-profit organization that advocates for policies, programs, and regulations that protect and expand the ability of Oregon's family farmers to run successful land-based enterprises while providing safe and nutritious food. Friends of Family Farmers supports socially and environmentally responsible family-scale agriculture and works with both farmers and consumers to shape healthy rural and urban communities.

7.

Humane Oregon is a non-profit Oregon corporation formed in 2014 to help advocate for animal welfare in Oregon. Humane Oregon has participated in a number of regulatory reviews for the proposed dairy at issue in this proceeding, primarily to express concern for the welfare of dairy cows in large industrial facilities such as the one that would be enabled by the Lost Valley's permit.

8.

Petitioner Humane Society of the United States (HSUS) is a 501(c)(3) non-profit organization with millions of members and supporters whose mission is "to create a humane and sustainable world for all animals, including people, through education [and] advocacy." HSUS advocates against unsustainable agricultural practices and the inhumane treatment of animals raised for food. To that end, HSUS engages in state and federal-level actions related to CAFO regulations,

including commenting on state permits granted to individual operations. HSUS has an Oregon state director, who, among other things, works toward ensuring more sustainable animal agriculture practices in the state.

9.

Petitioner Oregon Physicians for Social Responsibility (PSR) is a 501(c)(3) nonprofit organization with more than 2,000 members, including health professionals and public health advocates statewide. Guided by the values and expertise of medicine and public health, Oregon PSR works to protect human life from the gravest threats to health and survival by striving to end the nuclear threat, advance environmental health, protect our climate, and promote peace. We work collaboratively with community partners to educate and advocate for societal and policy change that protects human health at the local, state, national, and international level.

10.

Petitioner Oregon Rural Action (ORA) is a 501(c)(3) nonprofit located in Eastern Oregon. ORA is a grassroots, member-led community organization that brings people together to build strong communities by providing information and tools for local people to use in addressing the issues affecting their communities. ORA's mission is to promote social justice, agricultural and economic sustainability, and stewardship of the region's land, air, and water.

11.

Petitioners are adversely affected and aggrieved by the Agencies' issuance of the Lost Valley permit because the permit violates state and federal statutes and regulations, including requirements designed to protect public health and clean water. For the reasons explained below, the Lost Valley permit will negatively affect the Petitioners because the permit fails to protect ground and surface water quality.

12.

The Lost Valley permit will cause a number of additional adverse effects to Petitioners, who are comprised of non-profit organizations that are organized for the purpose of protecting water quality, species health and diversity, public health, food safety, sustainable agriculture, animal welfare, and vital rural communities. All Petitioners share the goal of ensuring that any permit issued to a CAFO facility in Oregon complies with state and federal laws, and protects water quality, environmental health, communities, and native species, all of which rely on a safe and livable environment. In failing to comply with state and federal water protection laws, the Lost Valley permit adversely affects the ability of Petitioners to achieve these goals.

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BACKGROUND FACTS

13.

Lost Valley is a new dairy CAFO in Morrow County in the Lower Umatilla Groundwater Management Area (GWMA), an area characterized by significant groundwater depletion, a shallow aquifer, and elevated groundwater nitrate concentrations. In 2015, Greg te Velde, then doing business as Lost Valley Ranch, applied to ODA for a CAFO NPDES permit. Pursuant to a Memorandum of Understanding between the Agencies, DEQ and ODA share joint authority to issue NPDES permits to CAFOs in Oregon. ORS 468B.217.

14.

In 2016, the Agencies determined that the proposed CAFO requires an individual NPDES permit because “of the large size of [the] CAFO operation, location in the Lower Umatilla Basin Groundwater Management Area, and responsibilities for storage of manure and wastewater and land application of its own CAFO wastes.” Lost Valley Ranch National Pollutant Discharge Elimination System Permit Registration Fact Sheet and Permit Evaluation Report, Public Notice Version at 1 (June 28, 2016) (hereafter, Fact Sheet). An individual NPDES permit must address specific design and water quality concerns related to the permitted operation. *See* OAR-340-045-0033(a).

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15.

On June 28, 2016, the Agencies opened a public notice and comment period for the Lost Valley permit. On July 28, 2016, a single public hearing was held on the proposed permit in Boardman, Oregon. The initial public comment period closed on August 4, 2016. On October 3, 2016, the agencies re-opened the comment period as the result of a request from the State Environmental Justice Task Force. The second public comment period subsequently closed on November 4, 2016. In all, the Agencies received 4,147 comments on the Lost Valley permit, including detailed comments from Petitioners; of those, a majority opposed issuance of the permit because of concerns about water quality degradation and harm to public health and the environment.

16.

The Agencies issued an individual CAFO NPDES permit to Lost Valley on March 31, 2017. The permit authorizes Lost Valley to operate a 30,000-head dairy CAFO in the GWMA, and covers the storage, treatment, disposal, and discharge of pollutants into waters of the state. The Fact Sheet states that the permit authorizes Lost Valley to collect and store the approximately 13,145,840 cubic feet of excreted waste and 10,001,730 cubic feet of wastewater generated per year in six on-site open-air waste impoundments, as well as three “smaller cells” and a “manure handling pond,” and dispose of the accumulated effluent through land application practices that include center pivot spraying devices, “big guns,” and slurry wagons.

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17.

The waste and wastewater collected in CAFO impoundments and later disposed of through land application practices can contain numerous pollutants that pose substantial threats to human health and the environment. Specifically, these collected wastes can include nutrients such as nitrogen, phosphorus, and potassium; pathogens and parasites such as *Salmonella*, *Escherichia coli*, and *Giardia*; salts; heavy metals and trace elements; pesticides; and pharmaceuticals including medically important antibiotic residues. The minimal treatment process that these wastes undergo before land application is not designed to address or remove many of these pollutants from the waste stream, including pesticides, pharmaceuticals, and pharmaceutical residues. See National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule; Proposed Rule, 76 Fed. Reg. 65431, 65433-34 (Oct. 21, 2011); U.S. Environmental Protection Agency (EPA), Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality, EPA-820-R-13-002, 5 (July 2013) (hereinafter, Literature Review) (Exhibit 1).

18.

Heavy metals, pesticides, pharmaceuticals, and pharmaceutical residues from these wastes are not considered agronomically beneficial to crops or the conditioning of land application fields at CAFO facilities, and can run off or leach into waterways due to CAFO waste application on crop fields. See Draft Animal

Waste Management Plan for Lost Valley Ranch;¹ Literature Review at 1-2, 35-36, 42-45; EPA, NPDES Permit Writers Manual for Concentrated Animal Feeding Operations, EPA-833-F-12-001, 4-27, 6-7 (Feb. 2012) (Exhibit 2).

19.

The EPA has determined that “[m]ore than 150 pathogens associated with industrial livestock production are also associated with risks to humans, including the six human pathogens that account for more than 90% of food and waterborne diseases.” National Pollutant Discharge Elimination System Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 Fed. Reg. 7179, 7236 (Feb. 12, 2003) (codified at 40 C.F.R. pts. 9, 122, 123, 412). Pathogens in CAFO waste can cause symptoms such as diarrhea and an increased risk for severe illness or death. Carrie Hribar, Nat’l Ass’n of Local Bds. of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities*, 8-9 (2010), available at http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf (Exhibit 3).

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¹ The final Animal Waste Management Plan (AWMP) for Lost Valley was not available for public review at the time Petitioners submitted this Petition for Reconsideration. The documents that were provided to the public with the final permit, however, indicate that the factors used to set the agronomic rates for land application at this operation will not be amended in the final AWMP to consider any parameters other than available nutrients. See ODA and DEQ, CAFO NPDES Proposed CAFO Individual Permit for Lost Valley Farm, Greg teVelde, Response to Public Comments, 12-13 (2017).

20.

DEQ requires waste impoundments to be “designed to criteria of less than 10^{-6} cm/s leakage rate.” ODA and DEQ, Confined Animal Feeding Operation (CAFO) NPDES Proposed CAFO Individual Permit for Lost Valley Farm, Greg deValde, Response to Public Comments, 20 (2017) (hereafter, Response to Comments). The waste impoundments that will be used to store Lost Valley’s wastes—designated by Lost Valley as its “lagoon complex”—will be double-lined with synthetic material, but in the event of a liner failure, the lagoons may leak at an estimated rate of up to 1,480 gallons per day from the large impoundments and up to 456 gallons per day from the smaller cells. Letter from John Fazio, Engineer of Record, to Kevin Coughlin, ODA, on behalf of Greg de Valde re: Lost Valley Ranch, Updated Lagoon Design (Dec. 27, 2016) (Exhibit 4).

21.

Lost Valley will be the second largest dairy CAFO in Oregon, and one of the largest dairy CAFOs in the country. Threemile Canyon Farms, which, at 70,000 total animals, is the largest dairy CAFO in Oregon and likely the largest in the United States, is located approximately 15 miles west of the Lost Valley site. Both CAFOs, adding up to approximately 100,000 total animals and their waste products, will be located in the GWMA.

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REQUEST FOR STAY

22.

Pursuant to OAR 137-004-0080(3), Petitioners request the Agencies stay the final order pending the determination on this petition for reconsideration. The petition satisfies the criteria for a stay, as set out in OAR 137-004-0090(2):

- (a) The names, addresses and telephone numbers of the persons filing the request are provided at the end of this petition for reconsideration;
- (b) The agency decision is in writing, titled “Oregon Confined Animal Feeding Operation National Pollutant Discharge Elimination System Individual Permit #OR995120, Final Version,” issued March 31, 2017, effective April 20, 2017;
- (c) The Agencies’ final order authorizes Lost Valley, a large dairy CAFO, to discharge pollutants to waters of the state in accordance with the terms of its final NPDES permit;
- (d) The name, address, and telephone number of each party to the agency proceeding are provided herein:
 - a. Greg te Velde, dba Lost Valley Farm, 73956 Homestead Ln.,
Hermiston, OR 97818;
- (e) All persons listed in (d) may participate in the stay proceeding before the Agencies if they file a response in accordance with OAR 137-004-0095

within ten calendar days from delivery or mailing of the stay request to the agency;

(f) The Agencies should grant the stay request for the following reasons:

a. Petitioners will suffer irreparable injury if the order is not stayed.

As described in paragraphs 1 through 12 and throughout this petition, Petitioners have invested significant resources in ensuring that Oregon properly administers the NPDES permit program and that CAFOs do not discharge pollution into ground or surface water, harm public health, damage habitat or imperil wildlife, or otherwise run afoul of state or federal law. Petitioners have thousands of members in Oregon who are concerned about Lost Valley's potential to harm water quality if the Agencies do not reconsider the order and instead allow the facility to begin feeding and storing and disposing of the waste generated by 30,000 dairy cows. Once the facility begins operating pursuant to its NPDES permit, it will have authority to engage in practices that Petitioners allege will lead to violations of state and federal law and threaten to contaminate ground and surface waters. Such pollution would constitute irreparable harm.

b. Petitioners have made a colorable claim of error in the order. As explained herein, there are several grounds for reconsideration of

the permit, based in state and federal law. The issuance of the order, which finalizes a permit that petitioners allege does not comply with state and federal law, was in error.

c. Granting the stay will not result in substantial public harm. To the contrary, it will not result in any public harm, and may result in public benefit by preventing the operation of a large CAFO that will generate and dispose of incredible amounts of waste containing pathogens, pharmaceuticals, heavy metals, and nitrates, all of which threaten public health and welfare.

(g) If the stay is granted, Greg te Velde, the operator of the facility and permit applicant, may suffer economic injury due to a delay in receipt of the NPDES permit for Lost Valley. Petitioners are not aware of any other persons who may suffer injury if the stay is granted.

(h) Petitioners are not aware of other procedures the Agencies should follow in evaluating this petition for reconsideration.

(i) Petitioners attach to this petition for reconsideration “[a]n appendix containing evidence relied upon in support of the statement required under subsections (2)(f) and (g)” of OAR 137-004-0090.

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GROUNDS FOR RECONSIDERATION

23.

Pursuant to state and federal laws, the State of Oregon is legally required to protect water quality by preventing the discharge of animal waste to waters of the State, including groundwater. ORS 468B.200; OAR 340-051-0010(8); 33 U.S.C. § 1311(a). In compliance with these limitations, the state may issue a NPDES permit to a CAFO if the operation can establish that it will not discharge or propose to discharge pollutants to waters of the state, except in very limited circumstances. ORS 468B.050; OAR 340-051-0010; OAR 603-074-0010; *see also* 33 U.S.C. § 1342(a)(1); 40 C.F.R. §§ 122.23, 122.42, 412.

Indeed, Congress specifically included “concentrated animal feeding operations” in the CWA's definition of “point source,” demonstrating an unambiguous intent to control and continuously reduce discharges of pollution from CAFOs through the NPDES program. 33 U.S.C. § 1362(14). The importance of strong and consistent implementation of the NPDES permitting program to water quality, both within the state and nationally, cannot be overstated. *Northwest Env'tl. Def. Ctr. v. Grabhorn, Inc.*, 2009 U.S. Dist. LEXIS 101359, *9 (D. Or. 2009) (“The NPDES permitting scheme is the primary means by which discharges of pollutants are controlled.”).

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24.

Concerned members of the public, including but not limited to Petitioners, filed comments on the Lost Valley permit. Many Petitioners submitted joint written comments on the permit to the Agencies on August 4, 2016 (Exhibit 5), and/or November 4, 2016 (Exhibit 6), the deadlines for each of the public comment periods for the draft permit. Petitioner ALDF separately submitted timely written comments on the draft permit to the Agencies on November 4, 2016. While DEQ and ODA provided a written response to public comment at the time the permit was issued, the terms of the final Lost Valley permit do not address many of the issues raised by Petitioners. In general, Petitioners allege that the Agencies have not adequately addressed many of the legal deficiencies detailed in their public comments.

25.

Specifically, the Lost Valley permit fails to meet the following requirements of state and federal water quality laws:

I. The Lost Valley Permit Fails to Prevent Pollution to Waters of the State.

The Lost Valley permit does not ensure the use of “all available and reasonable methods necessary” to meet the policy goals expressed in ORS 468B.015, and will not prevent the discharge of pollutants into waters, as required by state and federal laws and their implementing regulations. *See* ORS 468B.020; ORS

468B.025; ORS 468B.215(3); 33 U.S.C. §§ 1251(a), 1342; 40 C.F.R. §§ 122.23(d)–(e), 122.42(e); 40 C.F.R. § 122.4(d) (“No permit shall be issued ... [w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States”).

A. Groundwater Contamination

The Lost Valley permit will not prevent the discharge of pollutants into sensitive groundwater resources. Under OAR 340-041-0007(1), the Agencies must impose “the highest and best practicable treatment and/or control of wastes and activities.” *See also* ORS 468B.015; OAR 340-041-0007(15)(a)(B). DEQ regulations provide that, “[i]n regulating point source activities that could result in the disposal of wastes onto or into the ground in a manner which allows potential movement of pollutants to groundwater, the Department shall utilize all available and appropriate statutory and administrative authorities, including but not limited to: permits, fines, EQC orders, compliance schedules, moratoriums, Department orders, and geographic area rules.” OAR 340-040-0020(12). The Lost Valley CAFO is such a point source and threatens groundwater contamination, so the Agencies must use all available authorities to prevent contamination through strict permit terms or, if that proves insufficiently protective, denial of the permit.

The permit fails to adequately protect groundwater for several reasons. First, the Agencies cannot ensure zero discharge to groundwater from the manure lagoons

based on the shallow aquifer discovered during construction. Second, the land application of wastes, even at agronomic rates, will not prevent groundwater discharges of pathogens, heavy metals, and pharmaceuticals, which have no acknowledged agronomic value, to the extent necessary to comply with state law. Third, despite best efforts to apply waste at agronomic rates, the land application of Lost Valley's manure will lead to nitrate leaching below the root zone and add to already-high nitrate levels in the GWMA.

1. The permit fails to prevent groundwater contamination from the manure lagoons.

Petitioners recognize and strongly support the Agencies' requirement in the final Lost Valley permit that "applicant must remove any reference to any allowed lagoon liner leakage." Response to Comments at 13. But the permit still fails to ensure Lost Valley's six manure lagoons, three holding cells, and manure pond (collectively, manure lagoons) will not contaminate groundwater.

The Agencies go to great lengths in an effort to explain away the instability inherent in the design of Lost Valley's manure lagoon. The permit states: "All surface liquid impoundments must be designed and lined to prevent leakage." Permit at S2.E.3. The Response to Comments further states that the double synthetic liner and leak detection system Lost Valley will have in place will ensure that these impoundments will not discharge, and that any failures that do occur will be addressed before any leak reaches groundwater. Response to Comments at

20 (“If a leak is detected, the permittee must report that to the agencies and repair the liner to restore it so that no leakage occurs so that any leak will be detected and repaired so that waste from storage facilities cannot enter into groundwater.”). The Agencies further characterize the Engineer of Record’s estimates of potential leakage as a hypothetical exercise, essentially stating that because leaks to groundwater “are not allowed” there will not be any liner failures. *Id.* As described above, however, these assertions and provisions are logically flawed, and do not adequately address the fact that liners leak, even state-of-the-art synthetic ones.

While the leak detection system in the permit may facilitate an emergency response and is an improvement on many CAFO NPDES permits, damage to lagoon liners and other liner failures are common, and the hydrogeology of the site indicates that by the time a leak is detected, it will be too late to prevent discharges to groundwater. Upon information and belief, the Animal Waste Management Plan (AWMP), which the permit incorporates by reference, will authorize manure lagoons above a shallow groundwater table.

According to public records obtained from the Oregon Water Resources Department (OWRD), Lost Valley discovered groundwater at a depth of 10 feet below the lagoons, which requires groundwater pumping to ensure the lagoon liner does not “float.” *See* OWRD field notes from site visit to Lost Valley (Jan. 12, 2016) (Exhibit 7). Indeed, according to one of Mr. te Velde’s Limited Water Use License applications:

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When we initiated construction we encountered shallow water at 10 ft that was hampering construction. We propose under the guidance of OWRD to install 1000 foot drain tile and pump basin to maintain this to maintain this shallow ground water level below our proposed effluent ponds.

Application for Limited Water Use License LL-1626 at 1 (Jan. 25, 2016) (Exhibit 8).

For the reasons explained below, Lost Valley has not and cannot secure permanent groundwater rights to prevent shallow groundwater from comingling with waste in the manure lagoons.

First, Lost Valley has not yet secured the groundwater permit necessary to maintain ongoing operations. To temporarily drain the shallow alluvial groundwater below the level of its waste lagoons, Lost Valley has obtained or is currently awaiting a series of limited water use licenses. *See* Lost Valley Application for Limited License LL-1626 at 1 (Exhibit 8); Petition for Judicial Review, *Columbia Riverkeeper et al. v. Oregon Water Resources Dept.*, [Docket No. 17CV19513] (Or. Cir. Ct. Marion Cnty, May 11, 2017) (Exhibit 9); Letter from WaterWatch of Oregon to OWRD (May 12, 2017) (Exhibit 10). Beyond those licenses, to continue to permanently drain the shallow groundwater, Lost Valley will need a new groundwater permit, but it has yet to apply for, let alone be granted, such a permit. ORS 537.535; ORS 537.615(1).²

² Lost Valley cannot continue to drain the shallow groundwater with limited licenses because only uses of “short-term or fixed duration” are “eligible” for a limited license. ORS 537.143(1). Moreover, “the Department may not issue a limited license for the same use for more than five consecutive years.” ORS 537.143(8).

Moreover, Lost Valley is extremely unlikely to obtain the permanent groundwater permit necessary to pump groundwater under the manure lagoons because the facility is located up-gradient, and within a mile, of the Ordnance Gravel Critical Groundwater Area. *See e.g.*, Public Interest Review for Groundwater Applications, Limited License Application LL-1645 (May 24, 2016) (Exhibit 11). Because of the sensitivity of the groundwater area, Lost Valley would be unlikely to satisfy the requirement that it not “injure” existing water rights. ORS 537.621(2).³ Thus, the Agencies' reconsideration of the NPDES permit must necessarily assume against the issuance of a permanent groundwater permit, and that the liner of Lost Valley's waste lagoons will ultimately be forced to float continuously on the surface of an alluvial groundwater aquifer that is connected to a critical groundwater area and a groundwater management area for water quality. With that degree of volatility, even the slightest leak could rapidly contaminate the entire aquifer system.

³ OWRD's Public Interest Review for Lost Valley's Limited License LL-1645 states: “The sedimentary aquifer is sensitive to overdraft and fully appropriated within the boundaries of the CGWA. The proposed use will likely intercept groundwater that would otherwise flow into the critical area, so new long-term uses are not likely feasible without injury to other users. The temporary, limited duration proposed use by this application is likely within capacity of the resources based on the large distance to nearby sedimentary wells, but site specific monitoring is required to document the impact to the resource locally.” Public Interest Review for Groundwater Applications, Limited License Application LL-1645 at 2 (May 24, 2016) (Exhibit 11).

Similarly, the Agencies cannot assume that Lost Valley can pump groundwater without any OWRD permit and “waste” (i.e., not put the water to beneficial use). First, beneficial use is not the test for whether a permit is required. ORS 537.535(1) provides: “No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with [groundwater permitting requirements].” This points out that any “use” requires a permit, as does construction of a “well or other means of developing or securing groundwater.” ORS 537.535(2) reiterates: “Except for those uses exempted under ORS 537.545, the use of ground water *for any purpose*, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an *unlawful appropriation* of ground water.” (emphasis added).

Second, draining water under the lagoons to allow Lost Valley to operate a CAFO qualifies as a “beneficial use” under the water laws. *See* ORS 537.625(3)(c) (referring to “control of the waters of this state for all beneficial purposes, including drainage . . .”).

Third, taking groundwater from the alluvial aquifer (an aquifer in critical status a mile away) and dumping it somewhere would be “waste.” Wasting water is against the law. ORS 540.720 (“No person shall . . . willfully waste water to the detriment of another”). Indeed, it is criminal. ORS 540.990(2).

Fourth, any interpretation of the water laws that allows a person to avoid permit requirements by appropriating water and wasting it instead of using it would lead to absurd results.

For the reasons stated above, the Agencies cannot permit Lost Valley to operate manure lagoons that require groundwater pumping when Lost Valley has not secured permanent water rights to pump groundwater.

2. Land application of agronomically unnecessary pollutants will pollute groundwater.

Land application of manure and process wastewater is allowed in the permit at agronomic application rates and in accordance with the AWMP. Response to Comments at 6. The agronomic application rates around which this entire waste disposal method relies is built on the theory that: (1) crops require nutrients for growth, and (2) the Agencies consider the nutrient content in the CAFO waste when calculating agronomic application rates. However, the agronomic application rates contained in Lost Valley's AWMP do not take into consideration the additional pollutants contained in the operation's waste stream.

The Agencies respond to Petitioners' comment, stating: "the permit limits on application rates (wastewater, manure and water), the prohibition against effluent leaching below the root zone, and mandatory soil and ground water monitoring should protect the ground water resources from any discharges of wastewater that may contain pharmaceuticals." Response to Comments at 5.

The Agencies' response fails to adequately address Petitioners' comment: the agronomic rates at which the waste will be applied do not take into consideration or otherwise limit pollutants in the waste stream beyond nitrogen and phosphorus. First, the permit fails to regulate pollutants such as pesticides, heavy metals, pharmaceuticals, and pharmaceutical residues. In fact, the permit does not even acknowledge the presence of these pollutants. Second, the prohibition against the leaching of pollutants below the root zone is unenforceable for pesticides, heavy metals, pharmaceuticals, and pharmaceutical residues. Third, the monitoring protocol proves the leaching prohibition is unenforceable because it is intermittent and, with the exception of bacteria, does not include parameters to monitor for these non-agronomic pollutants of concern. *See, e.g.,* Response to Comments at 7 ("Concentration limits are established for nitrate, total kjeldahl nitrogen (TKN), total phosphorus and bacteria.").

Lost Valley has not indicated which pharmaceuticals, including antibiotics, it plans to use at its operation. Petitioners Coalition Comment at 15 (Aug. 4, 2016). The Agencies failed to gather information on pharmaceuticals necessary to meaningfully assess the impacts to water quality from Lost Valley's proposed land application activities. Such information is crucial to evaluate the risks to groundwater posed by land application of manure.

The Agencies fail to demonstrate the Permit complies with OAR 340-041-0007(1). The Permit should require Lost Valley to treat its waste before application

to ensure that heavy metals, pharmaceuticals, and pharmaceutical residues do not remain in the waste stream when Lost Valley applies the waste to fields. *See* OAR 340-041-0007(1) (Statewide Narrative Criteria). The Permit should also require monitoring of these pollutants to ensure zero discharge to ground and surface water.

3. Land Application Will Exacerbate Existing Groundwater Contamination by Nitrates.

Seepage from the waste impoundments and land application areas into the GWMA will further contribute to the area's water quality impairment, and pose a significant threat to both water quality and drinking water resources. For example, "[t]here are 81 public water supply systems in the GWMA, and five of those are within a [sic] 10 miles of the Dairy. Three of those systems are within a six-mile radius of the dairy In addition to these public systems, there are many more private drinking water systems located in the GWMA." Response to Comments at 11. Further, "[a]s the dairy is upgradient of a large part of the GWMA, any groundwater pollutants emanating from the dairy could potentially impact a broad area of the shallow aquifer within the GWMA." *Id.*

Further, the Agencies acknowledge that Lost Valley will add a new pollution burden to the existing GWMA. Response to Comments at 6. In replacing farmed

poplar trees, which are known to *remediate* groundwater nitrate pollution,⁴ with waste manure lagoon, with Lost Valley this property will become a significant new generator of pollutants. Specifically, the replacement of a nitrate sink with a nitrate source will inevitably increase nitrate levels in an already polluted area. As noted in Petitioners' November 4, 2016, comments, 15 years after the state declared the GWMA, it remains contaminated with high levels of nitrate and the trend is increasing. Third Four-Year Evaluation of Action Plan Success For the Lower Umatilla Basin Groundwater Management Area at v (Jan. 17, 2013), <http://www.deq.state.or.us/wq/groundwater/docs/lubgwma/EvalActionPlanSuccess.pdf>.

CAFOs in the GWMA are already responsible for half of all nitrogen generated, and that is without even taking into account 50 percent of the nitrogen created at these CAFOs that is “lost to the atmosphere during handling and storage,” unpermitted CAFOs, or spills and leaks that “sometimes occur” at the permitted CAFOs supposedly “built with the goal of being zero discharge facilities.” DEQ, *Estimation of Nitrogen Sources, Nitrogen Applied, and Nitrogen Leached to*

⁴ See, e.g., Castro-Rodriguez et al., *Poplar trees for phytoremediation of high levels of nitrate and applications in bioenergy*, 14 *Plant Biotechnology Journal* 299-312 (2016), <http://onlinelibrary.wiley.com/doi/10.1111/pbi.12384/pdf>; Pilipovic et al., *Investigating potential of some poplar (Populus sp.) clones for phytoremediation of nitrates through biomass production*, *Environmental Applications of Poplar and Willow Working Party* 18-20 (May 2006), <http://www.fao.org/forestry/10720-0e35704feccf003b18624d9e69301dac.pdf>.

Groundwater in the Lower Umatilla Basin Groundwater Management Area at 7, 11, 15, Figure 1 (June 13, 2011), <https://www.oregon.gov/deq/FilterDocs/gw-lubgwma-nitrogen.pdf> (Exhibit 12). Land irrigation of crops is responsible for an estimated 81.6 percent of the nitrogen leached to groundwater in the GWMA, and more than a third of the nitrogen applied through irrigation is from CAFO waste. *Id.* at Figure 3. The Threemile Canyon Farms complex, for example—which includes the Willow Creek Dairy currently operated by applicant Greg te Velde—generates 5,327,486 pounds of nitrogen available for crops in the GWMA and more than half of all CAFO waste generated in GWMA. *Id.* at Table 4, p.19. It defies reason to believe that adding another 30,000-animal operation to this area, even with the requirements in the current permit, will not cause an increase in the nitrate concentrations in the GWMA, much less that such a facility could replace a poplar farm and somehow allow the impaired GWMA to “*improve.*” Response to Comments at 6.

Indeed, the Agencies acknowledge that “[t]he dairy would be a potential source of nitrates, thus contributing to groundwater contamination in the GWMA. The dairy poses a potential threat to both public and private drinking water supplies,” including the 81 public drinking water supply systems in the GWMA, five of which are close to Lost Valley, and numerous private drinking water wells. Response to Comments at 11. Given the high likelihood that Lost Valley will exacerbate the high nitrate concentrations in the GWMA, the Agencies should reconsider issuance of the permit.

B. Surface Water Contamination

1. Deposition.

Lost Valley will discharge nitrogen pollution to surface waters via deposition from its substantial ammonia emissions. In this case, the discharge is likely to occur in the surface water body adjacent to the facility, as well as to the Columbia River and its tributaries.

Dairy CAFOs generate ammonia at a number of stages of production, including within the confinement buildings, from open waste impoundment structures, and during and after the application of wastes onto fields. Detailed ammonia release estimates for Lost Valley have yet to be performed, but the AWMP appears to assume a nitrogen retention rate of approximately 50 percent after storage and land application, which necessarily means that the other 50 percent will be lost from the waste stream, largely in the form of ammonia gas, and will not be available for crop uptake. AWMP at 87 (estimating nutrient retention rates after storage and land application); *see also supra* n.3 at 7.

While Lost Valley's release of ammonia causes atmospheric pollution, it can also degrade surface water quality as a result of deposition, both wet and dry. Indeed, the problem of ammonia nitrogen deposition from CAFO facilities like Lost Valley to nearby surface waters is well established. *See generally* W.H. Asman, *et al.*, Ammonia: emission, atmospheric transport and deposition, 139 *New Phytol.* 27 (1998) (Exhibit 13); D. Fowler, *et al.*, The mass budget of atmospheric ammonia in

woodland within 1 km of livestock buildings, 102 (S1) *Environ. Pollution* 343-348, 346-47 (1998) (Exhibit 14). While ammonia fate and transport is variable, some studies have found that as much as twenty percent of ammonia emitted by CAFOs will deposit nearby. *Id.*; see also J.K. Costanza *et al.*, Potential geographic distribution of atmospheric deposition from intensive livestock production in North Carolina, USA, 398 *Science of the Total Env't* 76 (2008) (Exhibit 15). In the case of Lost Valley, twenty percent of the facility's ammonia emissions, which constitute an estimated fifty percent of total nitrogen lost prior to crop uptake, would be approximately ten percent of the total nitrogen produced by the facility.

The Agencies do not refute the possibility of water quality degradation as a result of ammonia deposition. Instead they merely assert that this waste stream is outside the scope of the permit because the "there are no over land flow paths from the production area and land application areas to . . . any . . . surface waters," Response to Comments at 8, and "there are no state or federal air quality requirements for dairy farms to control or regulate air emissions of nitrogen," *Id.* at 16. This cursory explanation ignores pertinent facts and misstates relevant law.

Nitrogen in Lost Valley's ammonia releases is a pollutant that will be discharged into surface waters from a statutorily-defined point source. Specifically, "[d]ischarge of a pollutant" is defined as "[1] any addition of [2] any pollutant [3] to navigable waters [4] from any point source." 33 U.S.C. § 1362(12). The term "pollutant" is defined to include "biological materials," "chemical wastes," and

“agricultural waste.” *Id.* § 1362(6). Navigable waters are “waters of the United States,” *id.* § 1362(7), which includes the Columbia River and other surface waters around the Lost Valley operation. CAFOs are specifically defined as CWA “point sources,” so there is no question that Lost Valley facility is a point source. *See id.* § 1362(14). Therefore, all four elements that comprise a discharge subject to the NPDES program—(1) the addition of (2) a pollutant (3) to navigable waters (4) from a point source—are present here. As a result, these discharges are subject to regulation under the CWA NPDES permitting program.

Upon judicial review of similar factual circumstances, courts have routinely agreed that these prohibitions should be read broadly, such that the CWA prohibits the unpermitted discharge of pollutants that travel through the air before reaching waters. *See, e.g., Nat'l Cotton Council of Am. v. United States EPA*, 553 F.3d 927, 939 (6th Cir. 2009) (“Injecting a temporal requirement to the ‘discharge of a pollutant’ is not only unsupported by the Act, but it is also contrary to the purpose of the permitting program, which is ‘to prevent harmful discharges into the Nation's waters.’ If the EPA’s interpretation were allowed to stand, discharges that are innocuous at the time they are made but extremely harmful at a later point would not be subject to the permitting program. Further, the EPA’s interpretation ignores the directive given to it by Congress in the CWA, which is to protect water quality.”) (citation omitted); *Peconic Baykeeper, Inc. v. Suffolk County*, 600 F.3d 180, 188-89 (2d Cir. 2010) (finding that the spraying of pesticides using ultra-low volume

aerosol mists through apparatuses attached to trucks and helicopters, which were deposited on surface waters, were jurisdictional discharges); *see generally League of Wilderness Defenders v. Forsgren*, 309 F.3d 1181 (9th Cir. 2002) (finding that aerial spraying of insecticides from aircraft over national forest lands, including streams, requires a NPDES permit); *Long Island Soundkeeper Fund v. New York Athletic Club*, 1996 U.S. Dist. LEXIS 3383, 1996 WL 131863 (S.D.N.Y. Mar. 20, 1996) (finding that the Defendant was required to obtain a NPDES permit to operate a trap shooting range, where machines launched clay targets over Long Island Sound and individuals fired at the targets as the targets flew through the air over the Sound). Therefore, “[f]or an addition of pollutants to be from a point source, the relevant inquiry is whether—but for the point source—the pollutants would have been added to the receiving body of water.” *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95, 103 (2004) (quoting *Florida Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 280 F.3d 1364, 1368 (11th Cir. 2002)). Here, Lost Valley’s waste generation activities and resulting ammonia emissions, will be the direct cause of the addition of nutrient pollution into nearby surface waters. Consequently, the Permit does not ensure “zero discharge” from the production area, nor does it “minimize . . . nitrogen transport from the [land application] field to surface waters.” 40 C.F.R. §§ 412.31(a); 412.4(c)(2).

On reconsideration, if the Agencies still decide to issue the permit, a revised version of that permit should require regulation of ammonia deposition from Lost

Valley, including by utilizing the following methods. ORS 468B.020 (DEQ shall “requir[e] the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048”). First, the facility can cap the waste impoundments to stop gases from directly escaping. Second, the facility can install air pollution control technologies in confinement and milking barns to control the amount and type of air pollution being released from those facilities. Third, the AWMP can prohibit land application practices such as spraying, which increase the volatilization of ammonia from wastes as they are applied, and can require that land-applied manure be incorporated into soils rather than being allowed to pool on the surface of the land. *See, e.g.,* AWMP at 3-4 (indicating that Lost Valley Ranch will spread and spray irrigate waste, but will not incorporate it into the soil or otherwise act to reduce volatilization.)

2. Discharge to Surface Waters from Groundwaters.

The Agencies concede that Lost Valley will likely discharge to surface water via groundwater. Response to Comments at 16. Indeed, the Agencies stated that “[u]ndoubtedly, nitrate from the surrounding GWMA will enter the Columbia and Umatilla Rivers.” *Id.* Given that discharges to jurisdictional surface water via direct hydrologic connection *is* a jurisdictional discharge, *see* 66 Fed. Reg. 2960, 3015-18 (Jan. 12, 2001), the Agencies here have issued a NPDES permit allows discharges to

surface water. The fiction that this is a “zero” discharge permit cannot be squared with this admission by the Agencies.

The Agencies disregard this discharge because the levels of nitrate in the Umatilla and Columbia rivers are currently below the EPA drinking water threshold (10 mg/l), *id.* at 16, but fails to address any tributaries that are smaller and less able to dilute heavy concentrations of nitrates (for example, Butter Creek is a 57-mile tributary of the Umatilla). Further, under the CWA, the Agencies are not permitted to allow a discharge to jurisdictional waters merely because they believe it will not change the levels of one pollutant in those waters. To the contrary, discharges of pollutants to jurisdictional waters is not allowed, 33 U.S.C. § 1311(a), except under the limited circumstances outlined in 33 U.S.C. § 1342(a)(1) and 40 C.F.R. § 122.23; 412.31. The CWA regulations prohibit any discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the production area, with the exception of overflow caused by rainfall events, only when the “production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25–year, 24–hour rainfall event.” 40 C.F.R. § 412.31(a). This exception to the prohibition on discharge of CAFO waste to U.S. waters does not include discharges through a direct hydrologic connection of groundwater to surface water. The Agencies cannot ignore this discharge route.

II. The Lost Valley Permit Fails to Require Mandatory Surface Water Monitoring.

The Permit is deficient because it lacks surface water monitoring required in every NPDES permit. The federal CWA “requires every NPDES permittee to monitor its discharges into the navigable waters of the United States in a manner sufficient to determine whether it is in compliance with the relevant NPDES permit.” *Natural Res. Defense Council v. Los Angeles Cnty Dep’t of Pub. Works*, 725 F.3d 1194, 1707 (9th Cir. 2013) (emphasis in original). This universal requirement derives from Section 402 of the CWA, which requires that all NPDES permits contain conditions to “assure compliance” with NPDES permit effluent limitations, water quality standards, and other requirements of the Act. 33 U.S.C. § 1342. EPA regulations specify that “each NPDES permit shall include” monitoring requirements “[t]o assure compliance with permit limitations,” including “[t]he mass (or other measurement specified in the permit) for each pollutant limited in the permit; [t]he volume of effluent discharged from each outfall; or [o]ther measurements as appropriate.” 40 C.F.R. § 122.44(i). Federal CWA regulations also state that permitting requirements must specify the “type, intervals, and frequency [of sampling] sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.” 40 C.F.R. §§ 122.48(b), 122.44(i)(1). Permittees must report monitoring results “on a frequency dependent on the nature and effect of the discharge, but in no case less than once a

year.” 40 C.F.R. § 122.44(i)(2). The federal regulations also set out the required monitoring methodology. *See* 40 C.F.R. Part 136.

The applicable regulations provide no general exemptions from these compliance monitoring requirements. Although 40 C.F.R. § 122.44(a)(2) provides that pollutant monitoring waivers can be granted for certain pollutants referred to as 40 C.F.R. Subchapter N pollutants, which include fecal coliform and biochemical oxygen demand, such waivers can only be granted on a case-by-case basis where “the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.” The Permit lacks any discussion or requirement related to Lost Valley making such a demonstration, and as a result the Agencies cannot waive monitoring requirements even for Subchapter N pollutants.

The CWA does not authorize the Agencies to exempt Lost Valley from the requirement to monitor surface water quality based on the “intermittent” and “unlikely” discharge of pollutants to surface waters. The Agencies attempt to justify the monitoring exemption based on “low probability of wastewater runoff to surface water.” The Agencies state:

Regardless of the low probability of such an event occurring, if the facility were to experience a discharge that did enter any surface water, it would be a permit violation. The numeric effluent limit for any surface water discharge is zero or the lab quantification limit based of the method of analysis. In the event of a surface water

discharge, the facility would have to sample and monitor the discharge according to conditions in Sections S4.A(1) and S4.D.(1)(2) of the permit.

Response to Comments at 12. First, for the reasons discussed above, the Agencies lack the legal authority to waive the monitoring requirement based on a low probability of discharge. Second, absent the monitoring required under the CWA, the Agencies—and the public—have no way of determining when and how much pollution the facility discharges to surface waters. Third, to the extent groundwater influences surface water quality, surface water monitoring will support the Agencies’ assessment of whether the facility complies with the “zero discharge to groundwater” permit. Fourth, the monitoring required in the event of a reported discharge does not take the place of the monitoring required in all NPDES permits; EPA’s regulations require monitoring to demonstrate compliance, not only in the event of non-compliance. Petitioners request that the Agencies revise the Permit to require representative surface water quality monitoring to demonstrate compliance and show that Lost Valley is not discharging via groundwater or deposition.

III. The Permit Violates the State’s Antidegradation Policy.

The Lost Valley permit violates Oregon’s antidegradation policy. OAR 340-041-0004; *see also* OAR 340-040-0020. This policy prohibits the degradation of existing water quality from new or increased sources of point or non-point pollution. OAR 340-041-0004(1) (“The purpose of the Antidegradation Policy is to guide

decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses.”). OAR 340-040 further prohibits degradation of groundwater.

The Agencies should have completed a thorough, realistic antidegradation review of the permit because, contrary to their assertions, it is not designed as a zero discharge permit and the facility will lead to ground and surface water discharges via deposition, seeping, and likely lagoon leakage. The analysis must consider all existing uses and all pollutant discharges that may adversely affect them, including non-point source “agricultural stormwater” discharges that may occur from land application areas or non-point source pollution that may occur as a result of transfer of waste off-site for land application a non-CAFO farm.

IV. The Agencies Failed to Conduct a Reasonable Potential Analysis.

For similar reasons, the permit warranted a reasonable potential analysis to ensure that the facility’s discharges do not have a reasonable potential to cause or contribute to exceedances of water quality standards in receiving surface waters. Because the Agencies incorrectly assume throughout their permit documents that Lost Valley will be a zero discharge facility, they failed to properly consider its inevitable point source discharges via deposition and likely point source discharges via hydrologic discharges to surface waters, and the potential impacts these would

have on receiving water quality standards. In the Response to Comments, the Agencies assert that because ORS 468B.050(1)(d) prohibits such point source discharges here, there is no need for an analysis. Response to Comments at 16. But this general statutory prohibition does not trump the specific provisions of the permit that clearly will result in, and allow, point source discharges.

V. The Agencies Failure to Modify the Permit will Result in Deficiencies in the Revised AWMP.

Although the Petitioners are generally supportive of the permit and AWMP modifications made in response to public comments, such as removing references to application on frozen or snow covered soil and to stockpiling manure in circle corners, available information indicates that the AWMP still suffers from several legal deficiencies. Although the Agencies required the applicant to submit a revised AWMP, Response to Comments at 16-17, the revised AWMP has not been made available to the Petitioners for review prior to the deadline for this petition for reconsideration. Upon information and belief, the required amendments will not address all of the legal deficiencies noted in Petitioners' comments on the draft permit.

The AWMP must account for all sources of nutrients generated at the facility, and these nutrients must be applied at agronomic rates. 40 C.F.R. § 122.42(e)(1). The Response to Comments does not indicate that the revised AWMP will address the failure to adequately account for silage leachate nutrients, in particular. The

draft AWMP “Animal Waste Management System Production” spreadsheets account for the storage volume contribution from the silage area stormwater runoff, but do not include or attempt to quantify any silage leachate nutrients in the accounting for daily nutrient production. Silage leachate “is typically very high in nutrients that can harm surface water and groundwater,” and as a result “is a *worse potential pollutant than manure or sewage.*” Purdue Extension, Silage Leachate: Use Caution and Protect the Environment (Nov. 2014), <https://extension.purdue.edu/extmedia/AS/AS-625-W.pdf> (Exhibit 16) (emphasis added).

Similarly, the AWMP must provide a more detailed plan for the best management practices Lost Valley will implement to prevent any discharges due to mortality management. 40 C.F.R. § 122.42(e)(1)(ii). The Response to Comments does not indicate that the revised AWMP will provide more detail than the draft, which lacked the required specificity as to the procedures that the facility will use. A failure to account for all sources of nutrients in the AWMP could affect the facility’s nutrient budgeting, the adequacy of its storage facilities and land base, and the rate at which waste is applied. The lack of specificity provided violates both the federal regulations cited and OAR 340-051-0015.

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REQUEST FOR RECONSIDERATION

26.

Pursuant to ORS 183.480 and 183.484, Petitioners hereby request that DEQ and ODA stay and reconsider the Lost Valley permit as issued and (1) deny the permit in full, or (2) in the alternative, prepare a new draft permit that is consistent with state and federal laws.

DATED: May 26, 2017

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APPENDIX

Exhibit No.	Document
1	U.S. Environmental Protection Agency (EPA), Literature Review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality, EPA-820-R-13-002 (July 2013)
2	EPA, NPDES Permit Writers Manual for Concentrated Animal Feeding Operations, EPA-833-F-12-001 (Feb. 2012)
3	Carrie Hribar, Nat'l Ass'n of Local Bds. of Health, <i>Understanding Concentrated Animal Feeding Operations and Their Impact on Communities</i> (2010), available at http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf
4	Letter from John Fazio, Engineer of Record, to Kevin Coughlin, ODA, on behalf of Greg de Valde re: Lost Valley Ranch, Updated Lagoon Design (Dec. 27, 2016)
5	Food & Water Watch <i>et al.</i> , Public Comments on Lost Valley Ranch NPDES Permit (Aug. 4, 2016)
6	Food & Water Watch <i>et al.</i> , Public Comments on Lost Valley Ranch NPDES Permit (Nov. 4, 2016)
7	Oregon Water Resources Department, field notes from site visit to Lost Valley (Jan. 12, 2016)
8	Application for Limited Water Use License LL 1626 (Jan. 25, 2016)
9	Petition for Judicial Review, <i>Columbia Riverkeeper et al. v. Oregon Water Resources Dept.</i> , [Docket No. 17CV19513] (Or. Cir. Ct. Marion Cnty., May 11, 2017)
10	Letter from WaterWatch of Oregon to Oregon Dept. of Water Resources (May 12, 2017)

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Exhibit No.	Document
11	Public Interest Review for Groundwater Applications, Limited License Application LL-1645 (May 24, 2016)
12	DEQ, <i>Estimation of Nitrogen Sources, Nitrogen Applied, and Nitrogen Leached to Groundwater in the Lower Umatilla Basin Groundwater Management Area</i> (June 13, 2011), https://www.oregon.gov/deq/FilterDocs/gw-lubgwma-nitrogen.pdf
13	W.H. Asman, <i>et al.</i> , Ammonia: emission, atmospheric transport and deposition, 139 <i>New Phytol.</i> 27 (1998)
14	D. Fowler, <i>et al.</i> , The mass budget of atmospheric ammonia in woodland within 1 km of livestock buildings, 102 (S1) <i>Environ. Pollution</i> 343 (1998)
15	J.K. Costanza <i>et al.</i> , Potential geographic distribution of atmospheric deposition from intensive livestock production in North Carolina, USA, 398 <i>Science of the Total Env't</i> 76 (2008)
16	Purdue Extension, Silage Leachate: Use Caution and Protect the Environment (Nov. 2014), https://extension.purdue.edu/extmedia/AS/AS-625-W.pdf