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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF LINN

6 CHRISTINA EASTMAN, in her individual
7 capacity, FARMERS AGAINST FOSTER
8 FARMS, an Oregon nonprofit corporation.,
9 FRIENDS OF FAMILY FARMERS, an
10 Oregon nonprofit corporation, AND
11 WILLAMETTE RIVERKEEPER, an Oregon
12 nonprofit corporation;

13 Plaintiffs,

14 v.

15 OREGON DEPARTMENT OF
16 AGRICULTURE, an agency of the State of
17 Oregon, OREGON DEPARTMENT OF
18 ENVIRONMENTAL QUALITY, an agency
19 of the State of Oregon;

20 Defendants.

Case No.

PETITION FOR JUDICIAL REVIEW

(Administrative Procedure Act - ORS
183.484 – Review of Order in Other Than
Contested Case)

Fee Authority: ORS 21.135(2)(g)

Not Subject to Mandatory Arbitration

21 Petitioners Christina Eastman, Farmers Against Foster Farms, Friends of Family Farmers,
22 and Willamette Riverkeeper (collectively, “Petitioners”) bring this petition for judicial review
23 pursuant to ORS 183.484 to challenge a final order in an other than contested case issued by
24 Respondents Oregon Department of Agriculture (“ODA”) and Oregon Department of
25 Environmental Quality (“DEQ”). Specifically, Petitioners seek judicial review of the Water
26 Pollution Control Facilities (“WPCF”) permit issued by the agencies on May 26, 2022, to Eric
Simon, owner of J-S Ranch, for the operation of a large, confined animal feeding operation for
broiler chickens, also referred to as a “mega-chicken” facility. The agencies issued the permit

1 despite its failure to comply with state and federal laws, regulations, and standards designed to
2 protect water quality and beneficial uses. In support of this petition, Petitioners allege as
3 follows:

4 **PARTIES**

5 1.

6 Petitioner Christina Eastman is a resident of Scio, Oregon, and a third-generation farmer
7 in the area. Her family owns three fifth-generation farms, which over the years have cultivated
8 wheat, beans, squash, carrots, strawberries, sugar beets, and grass seed. One of Petitioner
9 Eastman’s farms sits at 37231 Jefferson-Scio Dr., or 350 yards from J-S Ranch. She has spent
10 her life protecting the delicate ecosystem of the North Santiam River by using sustainable
11 farming practices. She and her family routinely recreate on the North Santiam, boating,
12 swimming, and floating the river whenever possible. They intend to continue to do so in future
13 years.

14 2.

15 Farmers Against Foster Farms (“FAFF”) is an Oregon domestic nonprofit corporation
16 whose members are independent ranchers, farmers, and rural residents who aim to prevent Foster
17 Farms’ mega-chicken operations and their negative impacts within the state of Oregon. Many
18 FAFF members have been farming in the Marion and Linn County area for generations and rely
19 on the North Santiam River as a source for water and for recreation.

20 3.

21 Friends of Family Farmers (“FOFF”) is an Oregon domestic nonprofit corporation that
22 advocates on behalf of Oregon’s family-owned farms. FOFF advocates for policies, programs,
23 and regulations that support family farmers and ensure they can provide safe and nutritious food
24 to communities across the state using environmentally responsible agriculture.

25

26

1 4.

2 Willamette Riverkeeper (“Riverkeeper”) is an Oregon domestic nonprofit corporation
3 with thousands of members across the Pacific Northwest. Riverkeeper focuses on protecting the
4 water quality and ecosystem of the Willamette River and its tributaries. Riverkeeper’s work
5 focuses on habitat restoration, Clean Water Act compliance, Superfund cleanup, and river
6 education. It advocates for keeping the river clean and safe, ensuring public access for
7 recreation, protecting wildlife, and ensuring a clean drinking water supply.

8 5.

9 DEQ is an administrative agency of the State of Oregon. Pursuant to ORS chapter 468B,
10 its implementing regulations, and OAR chapter 340, division 45 (“Regulations Pertaining to
11 NPDES and WPCF Permits”), DEQ is authorized to issue permits, including WPCF permits,
12 which allow for the construction and operation of disposal systems with no discharge to
13 navigable waters, *see* OAR 340-045-0010(32), and NPDES permits, waste discharge permits
14 issued under the National Pollutant Discharge Elimination System, *see* OAR 340-045-0010(13).

15 6.

16 ODA is an administrative agency of the State of Oregon. Pursuant to ORS chapter 468B,
17 its implementing regulations, the EQC and ODA Memorandum of Understanding Relating to the
18 Confined Animal Feeding Operation Program, and OAR chapter 603, division 74 (“Confined
19 Animal Feeding Operation Program”), ODA is authorized to issue permits, including WPCF and
20 NPDES permits.

21 7.

22 Water Pollution Control Facilities (WPCF) General Permit No. 01-2015 for
23 ATR#995343, which is the WPCF permit issued to Eric Simon for J-S Ranch, authorizes J-S
24 Ranch, a concentrated animal feeding operation (“CAFO”), to raise nearly 3.5 million broiler
25 chickens per year and collect, store, and export enormous quantities of livestock waste in the
26 form of chicken litter (a combination of animal waste, feathers, and bedding) into the highly

1 sensitive and special area of the Wiseman Island reach in the North Santiam River. *See* Water
2 Pollution Control Facilities (WPCF) General Permit No. 01-2015 for ATR#995343. The permit
3 will become effective when several conditions are met. *See* ODA Notice of Permit Registration
4 Modification #2231032.

5 8.

6 Petitioners are adversely affected and aggrieved by the J-S Ranch WPCF permit because
7 it will lead to the degradation of the North Santiam River, a water body all petitioners have an
8 interest in protecting. Petitioner Eastman has for decades used the river for recreational
9 purposes, including boating, swimming, floating, and wildlife observation. Her farm relies on
10 the groundwater sources that J-S Ranch will pollute and deplete if it is allowed to proceed as
11 currently permitted. Petitioners have opposed ODA’s issuance of the WPCF permit to J-S Ranch
12 from the start and submitted comprehensive written comments to ODA on the proposed WPCF
13 permit on October 25, 2021. Petitioners also petitioned ODA and DEQ for reconsideration of
14 the WPCF permit pursuant to ORS 183.484(2), which the agencies denied.

15 **JURISDICTION AND VENUE**

16 9.

17 This Court has jurisdiction to review this petition pursuant to ORS 183.480 and ORS
18 183.484. The Final Order for judicial review, encompassing the WPCF permit registration to J-S
19 Ranch and the subsequent Order on Request for Reconsideration, constitutes a final agency order
20 in an other than contested case because nothing about its determination is preliminary or
21 tentative, and because it constitutes “final agency action expressed in writing” not arising from
22 any of the four categories described in ORS 183.310(2)(a). *See* ORS 183.310(6)(b). For the
23 same reason, the WPCF permit itself constitutes a final agency order in an other than contested
24 case.

25

26

1 This petition is timely. It is filed within 60 days of August 5, 2022, when ODA and DEQ
2 issued their Order on Request for Reconsideration denying Petitioners’ Petition for
3 Reconsideration of the WPCF permit, which itself was timely submitted on June 9, 2022. *See*
4 ORS 183.484(2).

5 10.

6 Venue is proper in the Linn County Circuit Court pursuant to ORS 183.484(1), because
7 Petitioner Eastman resides in Linn County.

8 **FACTUAL BACKGROUND**

9 ***J-S Ranch and the Surrounding Area***

10 11.

11 J-S Ranch is a Foster Farms integrator mega-chicken operation that is proposed to be
12 located at 37225 Jefferson-Scio Dr. in Scio, Oregon, just 483 yards from the North Santiam
13 River. Foster Farms was recently acquired by Atlas Holdings, a private equity group. The
14 permitted facility will consist of eleven barns capable of housing over 580,000 broiler chickens
15 at a time, with an estimated annual production output of 3.5 million chickens. Approximately
16 4,500 tons of chicken manure will be produced each year and stored in two manure sheds on site.
17 If it is built, J-S Ranch will be the largest poultry operation in the state of Oregon.

18 12.

19 J-S Ranch’s proposed site is situated in the highly sensitive area of the Wiseman Island
20 reach of the North Santiam River, a spectacular section of the North Santiam that is home to a
21 multitude of native fish species, unique river features, and at least two federally threatened
22 species under the Endangered Species Act (“ESA”), winter steelhead and spring Chinook
23 salmon, that spawn and rear in the river.

1 13.

2 Many of the families and individuals residing near the proposed J-S Ranch operation
3 have lived in the area for generations and cherish the pristine portion of the North Santiam that
4 abuts their properties. Many rely on the river as a source of drinking water and for recreation.

5 14.

6 The impact that the proposed J-S Ranch mega-chicken operation will have on the
7 residents of Scio cannot be overstated. Foul odors will permeate the air, water sources will be
8 contaminated and depleted, traffic to the area will increase (and, in turn, the risk of car accidents
9 will also increase), popular swimming areas and float routes downstream of the operation will be
10 diminished by nitrogen and/or phosphorus pollution, and tourism will lessen as the area
11 transforms from a cherished rural area spotted with renowned covered bridges to an industrial
12 animal center plagued by water and air pollution.

13 15.

14 The residents of Scio are not the only ones who stand to lose if J-S Ranch becomes
15 operational. The delicate ecosystem of the North Santiam River and watershed will be equally
16 impacted. In the stretch of the North Santiam where J-S Ranch plans to locate, between 90 to 95
17 percent of the fish species are native to the river. Additionally, many key species inhabit the
18 lower reach of the river, including a variety of riparian birds, Oregon chub (recently delisted),
19 Western Meadowlarks, and plant species such as Bradshaw’s Lomatium, Oregon Larkspur,
20 White-topped Aster, and the Willamette Valley Daisy. All stand to be impacted.

21 For the reasons that follow, this is a wholly inappropriate site for a CAFO.

22 16.

23 The operation, as slated, is in or adjacent to a floodplain and is elevated only 5 feet above
24 the bank of the North Santiam. Under such conditions, the North Santiam poses a direct flood
25 risk to the entire operation.

1 17.

2 Further, neighbors who have lived along the North Santiam River for generations have
3 recounted that the river has migrated over the years. One farmer attested that, in their lifetime
4 alone, the North Santiam has moved one mile south. Such southerly migration puts J-S Ranch
5 directly in the path of the North Santiam’s natural riverbed movement—movement that is
6 anticipated to occur before a 10-year WPCF permit is even expired.

7 18.

8 Scio, Oregon averages 50 to 57 inches of precipitation per year, a reality that will
9 inevitably lead to the generation of significant stormwater. Flow accumulation lines cut across
10 much of the J-S Ranch property, and various structures required for the operation are proposed to
11 be built directly over these established flow accumulation lines. Given how low the property
12 lies, the natural lines of water flow already risk overflowing and flooding the area; the proposed
13 operation will only introduce additional concerns about flooding on other properties and flooding
14 of the poultry houses, manure sheds, and stormwater detention pond. Any flooding on the
15 property will spread contamination across the local area and into the adjacent North Santiam
16 River.

17 19.

18 In addition to the area’s naturally wet climate, climate change poses a risk of extreme and
19 varied weather events, including increased precipitation, thereby exacerbating the flooding
20 concerns the property already faces.

21 20.

22 J-S Ranch’s current plan for stormwater management is to channel stormwater into
23 unlined retention ponds. Preliminary calculations reveal these ponds will not be equipped to
24 handle the anticipated stormwater, much less a potential increase due to a changing climate. The
25 result will be that contaminated runoff will flow directly into the North Santiam River. The
26 unlined nature of the ponds also poses a risk of contaminated water infiltrating groundwater.

1 21.

2 Groundwater is also endangered by the current plans for the barn floors. The base of the
3 eleven proposed barns is to be composed of only 4 inches of compacted native soil, as opposed
4 to an impermeable protection or the 12 inches routinely required by other states in similar
5 situations. In contrast, the proposed shed housing removed chicken litter will have a 6-inch
6 concrete floor. However, for all intents and purposes the chicken barns will act as temporary
7 manure sheds between litter cleanouts. Poultry waste exits birds in liquid form. Further, as is
8 noted above, the barns are not without risk of flooding due to stormwater. Such quantities of
9 liquid on an earthen floor pose a risk of leaching into and contaminating groundwater. The
10 groundwater at the site of the proposed operation lies a mere 12.2-25 inches below ground.

11 22.

12 J-S Ranch will produce approximately 4,500 tons of chicken litter each year and
13 according to its plans intends to export 100 percent of the litter as compost, rather than apply any
14 to crop fields (or land application). Yet, its permit application indicates their storage capacity
15 will be maxed out before export occurs and it has provided no guarantee that contracts for
16 exports have been secured. Further, despite a prohibition on land application of waste, ODA still
17 required recordkeeping for land applications of waste in the WPCF permit it granted J-S Ranch.
18 In all events, chicken litter is not helpful as a compost to many farmers in the area, particularly
19 grass seed farmers, because it is prone to infestation by symphylans, a pest that is impossible to
20 eradicate without the use of expensive pesticides. Litter will therefore need to be disposed of
21 using alternative methods, including the possibility of land application, which in turn raises
22 additional concerns about surface and groundwater contamination.

23 23.

24 The eleven proposed poultry barns are to be equipped with industrial fans to ensure
25 adequate air circulation for the birds. Chicken litter produces enormous quantities of ammonia
26 as a byproduct. The fans will cause the ammonia from the litter to exit the barns and make its

1 way into the North Santiam River by aerial deposition. Given its projected flock sizes, J-S
2 Ranch will discharge between 850 and 1,190 pounds of ammonia per day, translating to
3 approximately 357,000 pounds per year.

4 24.

5 Two other proposed facilities—one along Thomas Creek between Scio and Lyons, and
6 another on Porter Road outside of Stayton—also propose to raise millions of chickens for Foster
7 Farms in very close proximity to J-S Ranch, threatening to compound the risks posed to the area
8 and the North Santiam River.

9 ***CAFO Permitting Requirements***

10 25.

11 CAFOs in Oregon are regulated pursuant to state and federal laws that aim to protect
12 water quality. ORS 468B.200; OAR 340-051-0010(8); 33 U.S.C. § 1311(a).

13 26.

14 The Clean Water Act prohibits the discharge of pollutants into waters of the United
15 States, except when in compliance with a NPDES permit. 33 U.S.C. § 1251. “Discharge of a
16 pollutant” is defined as any addition of any pollutant to navigable waters from any point source.
17 33 U.S.C. § 1362(12). “Concentrated animal feeding operations” is in the CWA’s definition of
18 “point source,” demonstrating Congress’s intent to control and reduce discharges of pollution
19 from CAFOs through the NPDES program. 33 U.S.C. § 1362(14).

20 27.

21 The CWA does not require a person to obtain an NPDES permit when discharges only
22 occur to waters of the state. *See* 33 U.S.C §§ 1311(a), 1342, 1362. Oregon state law regulates
23 such discharges through WPCF permits. ORS 468B.020; ORS 468B.025; OAR 340-045-
24 0010(32); OAR 340-045-0015. A person must hold a WPCF permit to operate a CAFO that will
25 discharge to waters of the state, including groundwater. ORS 468B.050. A WPCF prohibits
26 discharges to surface waters.

1 28.

2 When agencies determine that an operation to be permitted under a WPCF permit has the
3 potential to adversely impact groundwater quality, groundwater rules mandate that at a minimum
4 a groundwater monitoring plan be in place and contaminant concentration limits be established.
5 OAR 340-040-0030(2)-(3).

6 29.

7 The North Santiam River Basin is additionally subject to the Three Basin Rule, meaning
8 “new or increased waste discharges must be prohibited” to the waters of North Santiam River
9 Subbasin. OAR 340-041-0350(1)(c). The rule applies to all permits, including WPCF permits.
10 OAR 340-041-0350(2). Exceptions to this rule apply only when there is no discharge to surface
11 water and all groundwater quality protections of OAR 340-0040-0030 are met. OAR 340-041-
12 0350(8)(b).

13 ***J-S Ranch’s WPCF Permit***

14 30.

15 Eric Simon applied for a WPCF permit for J-S Ranch in 2020. The agencies held a
16 public hearing on October 20, 2021, and a public comment period, which concluded on October
17 25, 2021. Petitioners submitted comments and attended the public hearing. ODA received a
18 total of 130 comments, the vast majority of which opposed the permit.

19 31.

20 Despite the marked opposition, the agencies conditionally granted the WPCF permit on
21 May 26, 2022. The following conditions must be met prior to construction:

- 22 (a) Follow ODA approved AWMP#21002 and the additional monitoring, reporting,
23 and recordkeeping listed in order on Notice of Permit Registration Modification
24 #2231032.
- 25 (b) Before starting construction, permittee must obtain a DEQ 1200-C Construction
26 Stormwater Permit and provide a copy to ODA.

1 (c) Before starting construction, permittee must obtain a Linn County Road Access
2 Permit and provide a copy to ODA.

3 (d) Before starting construction, permittee must submit a copy of the site plan that
4 was submitted to DEQ for the 1200-C Construction Stormwater Permit. ODA
5 will include that site plan in the AWMP # 21002. Permittee must update his copy
6 of the AWMP #21002 with the DEQ approved site plan.

7 32.

8 The agencies did not issue an individual permit as Petitioners urged, but conditioned the
9 general permit authorization as follows:

10 (a) Install at least two static ground water monitoring level wells with monthly
11 monitoring to maintain 2-foot separation from high water level and compacted
12 floor of chicken buildings;

13 (b) For each drinking water well on the property, conduct semi-annual drinking water
14 well surveillance monitoring for nitrate-nitrogen; and

15 (c) Compact all poultry barn floors to a soil compaction standard of at least 1.0 X 10-
16 5 cm/sec permeability with in-place compaction tests, to be recertified every ten
17 years.

18 33.

19 When ODA issued the permit, the agency provided a written response to public comment
20 but failed to address many of the issues that Petitioners raised, including the need for a NPDES
21 permit, rather than a WPCF, to address discharges of ammonia to surface water.

22 34.

23 ODA also failed to address these legal deficiencies when Petitioners sought
24 reconsideration. Rather, ODA summarily dismissed any risk to groundwater on the basis that the
25 conditions imposed were adequate to safeguard waters of the State, and specifically groundwater,
26

1 from pollution, and concluded no discharges to surface water will occur, a NPDES permit is
2 therefore unnecessary, and the Three Basin Rule does not apply.

3 ***The Deficiencies in the J-S Ranch Permit***

4 **Failure to Prevent Pollution to Waters of the State**

5 35.

6 In issuing the WPCF permit to J-S Ranch, the agencies recognized the danger the CAFO
7 poses to groundwater and thus imposed additional conditions, noted in paragraph 33, to the
8 general WPCF permit. *See* OAR 340-040-0030(2). These conditions, however, are inadequate
9 to protect groundwater given the hydrology of the area and J-S Ranch’s current plans. Further,
10 while ODA claims it set numeric effluent limitations in its response to comments, it remains
11 unclear where they are set in the permit documents and at exactly what levels they’ve been set.

12 36.

13 Groundwater is located a mere 1-2 feet below the chicken barn floors, yet the floors
14 consist of only 4 inches of compacted native soil, not an impermeable surface such as concrete.
15 Although ODA imposes a soil compaction standard of at least 1.0×10^{-5} cm/sec permeability
16 for the barn floors, that standard comes nowhere near the impermeability of a truly impermeable
17 surface like concrete and thus offers no real assurance that it will be adequate to prevent
18 percolation of contaminated water into the groundwater in such a wet region. *See Permeability*
19 *of Concrete*, Aberdeen Group (1989), [https://www.concreteconstruction.net/_view-](https://www.concreteconstruction.net/_view-object?id=00000153-8baf-dbf3-a177-9fbf010c0000)
20 [object?id=00000153-8baf-dbf3-a177-9fbf010c0000](https://www.concreteconstruction.net/_view-object?id=00000153-8baf-dbf3-a177-9fbf010c0000) (“The permeability of mature, good-quality
21 concrete is about 1×10^{-10} centimeters per second.”). These conditions virtually ensure that
22 discharge to groundwater will occur through the barn’s earthen foundations.

23 37.

24 Despite that fact, ODA requires no groundwater monitoring for pollutant discharge to
25 ensure compliance with the effluent limitations of the permit; it imposes only annual monitoring
26 of drinking water wells for nitrate and E. coli and monitoring of groundwater levels. While the

1 drinking water monitoring may benefit workers consuming water onsite, it does nothing to
2 ensure compliance with the permit’s effluent limitation standard. Further, ODA’s condition
3 requiring groundwater levels to be monitored requires only two wells on a 60-acre property (with
4 eleven enormous barns) and fails to explain how the groundwater possibly can be maintained at
5 two feet below the barn floors, where groundwater levels previously have been reported at levels
6 just 1 foot below the surface, and where neighbors have experienced water bubbling up onto the
7 surface in the winter.

8 38.

9 ODA also fails to properly account for operational stormwater and its possible impacts on
10 ground and surface waters. This failure—coupled with earthen floors prone to infiltration by
11 stormwater and an unlined detention pond—fail to safeguard against possible surface and
12 groundwater pollution by contaminated stormwater.

13 **Failure to Prevent Pollution to Waters of the United States**

14 39.

15 J-S Ranch’s general WPCF permit covers only discharges to groundwater of the state, it
16 prohibits any discharge of litter, compost, or wastewater to surface water. But given the
17 proximity of the operation to the North Santiam River, the topography of the area, the fast-
18 changing course of the Santiam River, the characteristically wet nature of the area, the likely
19 possibility of land application of litter, and the reality of aerial deposition, surface water
20 discharges are inevitable.

21 40.

22 Most notably, J-S Ranch will discharge nitrogen pollution to the North Santiam River
23 through aerial deposition of ammonia. As noted in paragraph 24, once in operation, the mega-
24 chicken facility will be capable of discharging up to 357,000 pounds of ammonia per year, as
25 much as 20 percent of which will deposit nearby. *See* D. Fowler et al., *The mass budget of*
26 *atmospheric ammonia in woodland within 1 km of livestock buildings*, 102 (S1) Env’t. Pollution

1 343–48, 346–47 (1998); *see also* J.K. Costanza et al., *Potential geographic distribution of*
2 *atmospheric deposition from intensive livestock production in North Carolina, USA*, 398 *Sci. of*
3 *Total Env't* 76 (2008). Nearby is relative, as ammonia can travel between ½ mile to 6 miles in
4 its gaseous form, and over 100 times that if it converts to PM 2.5. *See generally* W.H. Asman et
5 al., *Ammonia: emission, atmospheric transport and deposition*, 139 *New Phytol.* 27 (1998).
6 Nitrogen in J-S Ranch’s ammonia release is a pollutant that will be discharged into waters of the
7 United States from a point source.

8 41.

9 “Discharge of a pollutant” is defined as “[1] any addition of [2] any pollutant [3] to
10 navigable waters [4] from any point source.” 33 U.S.C. § 1362(12).

11 42.

12 The term “pollutant” is defined to include “biological materials,” “chemical wastes,” and
13 “agricultural waste,” and thus includes ammonia emissions from the CAFO. 33 U.S.C.
14 § 1362(6). Navigable waters are “waters of the United States,” *id.* § 1362(7), which includes the
15 North Santiam River and other surface waters around the operation. CAFOs are defined as
16 CWA “point sources,” so the J-S Ranch facility is by definition a point source. *See id.*
17 § 1362(14). While not statutorily prescribed, caselaw confirms that ammonia emissions should
18 be considered “additions” under the CWA.

19 **FIRST CLAIM FOR RELIEF**

20 **(Petition for Judicial Review Under ORS 183.484)**

21 43.

22 Petitioners incorporate paragraphs 1 through 43 by reference as if fully stated herein.

23 ***Count 1: The WPCF is inconsistent with the CWA.***

24 44.

25 The Clean Water Act prohibits the discharge of pollutants into waters of the United
26 States, except when in compliance with a NPDES permit. 33 U.S.C. § 1251. “Discharge of a

1 pollutant” is any addition of any pollutant to navigable waters from any point source. 33 U.S.C.
2 § 1362(12). “Concentrated animal feeding operations” is in the CWA’s definition of “point
3 source.” *Id.* § 1362(14).

4 45.

5 Upon commencement of operation, J-S Ranch, a point source, will discharge nitrogen
6 pollutants, in the form of ammonia emissions, into waters of the United States, specifically the
7 North Santiam River, without the required NPDES permit. It will therefore be in violation of the
8 Clean Water Act.

9 46.

10 The agencies’ issuance of the WPCF permit, instead of a NPDES permit, is thus
11 inconsistent with § 301(a) of the CWA. *See* 33 U.S.C. § 1311(a). On that basis, Petitioners are
12 entitled to an order remanding the WPCF permit pursuant to ORS 183.484(5)(b)(C).

13 ***Count 2: The WPCF permit is inconsistent with the Three Basin Rule.***

14 47.

15 The North Santiam River Basin is subject to the Three Basin Rule, meaning “new or
16 increased waste discharges must be prohibited” to the waters of North Santiam River Subbasin.
17 OAR 340-041-0350(1)(c). Exceptions to this rule apply only when there is no discharge to
18 surface water and all groundwater quality protections of OAR 340-0040-0030 are met. OAR
19 340-041-0350(8)(b).

20 48.

21 Because of the above outlined surface water discharges in the form of nitrogen pollutants
22 and the failure to implement necessary groundwater protections, the exception cannot apply.
23 The agencies have not ensured that all groundwater quality protections will be met. The Three
24 Basin Rule bars the issuance of a WPCF permit.

1 49.

2 The WPCF permit is thus inconsistent with an agency rule and petitioners are thereby
3 entitled to an order remanding the WPCF permit pursuant to ORS 183.484(5)(b)(B).

4 ***Count 3: The agencies' decision to issue the WPCF permit is not supported by substantial***
5 ***evidence in the record.***

6 50.

7 The issuance of the WPCF permit is not supported by substantial evidence in the record.
8 First, the agencies have failed to establish that 4 inches of compacted soil with a soil compaction
9 standard of at least 1.0×10^{-5} cm/sec permeability will be adequate to prevent groundwater
10 contamination from occurring in the extremely wet area.

11 51.

12 Second, ODA claims groundwater will stay at least 2 feet below the barn floors, but fails
13 entirely to explain how, especially because the applicant disclosed the groundwater depth as
14 being 12.2-25 inches.

15 52.

16 Third, the agencies fail to explain how stormwater during operation of the CAFO will be
17 controlled and how failing to account for such variable will not significantly affect the chance of
18 groundwater and surface water contamination.

19 53.

20 Fourth, the agencies claim the permit prohibits the land application of produced chicken
21 litter, however, the agencies have not required any proof of export contracts to ensure as much.
22 Rather, they have included recordkeeping requirements for land application of litter in the Notice
23 of Permit Registration Modification, implying such application is expected.

24 54.

25 Finally, ODA cursorily concludes that because the North Santiam River is a quarter of a
26 mile away from the J-S Ranch operation, ammonia will not reach the waterbody via aerial

1 deposition and thus any issues around ammonia present air quality concerns and are beyond the
2 scope of the water quality permit at issue. That conclusion fails to explain why it is impossible
3 for ammonia to travel the short distance of one-quarter of a mile.

4 55.

5 Because the WPCF permit is not supported by substantial evidence, Petitioners are
6 entitled to an order setting aside or remanding the WPCF permit pursuant to 183.484(5)(c).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners respectfully request that the Court, exercising its authority
9 under ORS 183.484, 183.486, and 183.497:

- 10 (a) Reverse, set aside, or modify the WPCF permit to the extent it is inconsistent with
11 Oregon law and the CWA and its implementing regulations;
12 (b) Award Petitioners attorneys' fees and costs incurred in this matter, pursuant to
13 ORS 183.497(1)(a); and
14 (c) Grant such other relief that the court deems just and equitable.

15 DATED this 4th day of October, 2022.

16
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