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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINN

CHRISTINA EASTMAN, in her individual capacity, FARMERS AGAINST FOSTER FARMS, FRIENDS OF FAMILY FARMERS, an Oregon nonprofit corporation, AND WILLAMETTE RIVERKEEPER, an Oregon nonprofit corporation;

Plaintiffs,

v.

OREGON DEPARTMENT OF AGRICULTURE, an agency of the State of Oregon, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, an agency of the State of Oregon;

Defendants.

Case No. 22CV34340

SECOND AMENDED 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

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Petitioners Christina Eastman, Farmers Against Foster Farms, Friends of Family Farmers, and Willamette Riverkeeper (collectively, “Petitioners”) bring this petition for judicial review pursuant to ORS 183.484 to challenge a final order in an other than contested case issued by Respondents Oregon Department of Agriculture (“ODA”) and Oregon Department of Environmental Quality (“DEQ” and, collectively with ODA, “Respondents” or “the agencies”). Specifically, Petitioners seek judicial review of the individual National Pollution Discharge Elimination System (“NPDES”) permit issued by the agencies on October 31, 2024, to Eric Simon, owner of J-S Ranch, for the operation of a broiler chicken Tier 2 large confined animal feeding operation (“CAFO”) (“2024 NPDES Permit”). This permit was issued after the agencies

1 previously withdrew J-S Ranch’s general Water Pollution Control Facilities (“WCPF”) permit
2 for reconsideration. The agencies held public notice and comment, before issuing this new,
3 NPDES individual permit (INV-ORI010828) to J-S Ranch. Petitioners now challenge the
4 individual NPDES permit due to its failure to comply with state and federal laws, regulations,
5 and standards designed to protect water quality and beneficial uses. In support of this second
6 amended petition, Petitioners allege as follows:

7 **PARTIES**

8 1.

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

16 2.

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

23 3.

24 Friends of Family Farmers (“FOFF”) is an Oregon domestic nonprofit corporation that
25 advocates on behalf of Oregon’s family-owned farms. FOFF advocates for policies, programs,
26

1 and regulations that support family farmers and ensure they can provide safe and nutritious food
2 to communities across the state using environmentally responsible agriculture.

3 4.

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

10 5.

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

17 6.

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

23 7.

24 On May 26, 2022, Respondent agencies issued WPCF General Permit No. 01-2015 for
25 ATR#995343 to Eric Simon for J-S Ranch. It authorized J-S Ranch to raise nearly 3.5 million
26 broiler chickens per year as well as to collect, store, and export enormous quantities of livestock

1 waste in the form of chicken litter (a combination of animal waste, feathers, and bedding) in the
2 highly sensitive and special area of the Wiseman Island reach of the North Santiam River. *See*
3 Water Pollution Control Facilities General Permit No. 01-2015 for ATR#995343. The agencies
4 withdrew this permit for reconsideration on April 19, 2024, and gave themselves until October
5 31, 2024, to affirm, modify, or reverse the order. Notice of Withdrawal for Reconsideration
6 (filed Apr. 19, 2024) (citing ORS 183.484(4)).

7 8.

8 On August 16, 2024, the agencies issued a Notice of Public Participation Opportunity on
9 its Proposal for an individual NPDES permit for J-S Ranch. ODA and DEQ proposed what it
10 called a “modified permit for J-S Ranch * * * that will be a National Pollution Discharge
11 Elimination Systems (NPDES) individual permit,” instead of the previously issued WPCF
12 general permit. A virtual hearing was held on September 16, 2024, and the comment period
13 closed on September 23, 2024. ODA and DEQ issued the final NPDES Individual Permit No.
14 INV-ORI010828 on October 31, 2024.

15 9.

16 Petitioners are adversely affected and aggrieved by the 2024 NPDES Permit because it
17 will lead to the degradation of the North Santiam River and other nearby waterways, including
18 the South Santiam River, which all Petitioners have an interest in protecting. Petitioner Eastman
19 has for decades used the North Santiam for recreational purposes, including boating, swimming,
20 floating, and wildlife observation. Her farm and family residences rely on the groundwater and
21 surface water sources that J-S Ranch will pollute if it is allowed to proceed as currently
22 permitted.

23 10.

24 Petitioners have opposed ODA’s issuance of a permit to J-S Ranch from the start.
25 Petitioners submitted comprehensive written comments to ODA on the initial proposed WPCF
26 permit on October 25, 2021. *See* Petitioners’ Comments Opposing J-S Ranch WPCF Permit

1 Application (Oct. 25, 2021). Following ODA’s issuance of the WPCF permit, Petitioners
2 petitioned for reconsideration of the WPCF permit pursuant to ORS 183.484(2), which the
3 agencies then denied. *See* Petitioners’ Petition for Reconsideration (June 9, 2022); ODA’s Order
4 on Request for Reconsideration (Aug. 5, 2022). Petitioners submitted the first petition for
5 judicial review on October 10, 2022. The parties were preparing for trial when, on April 19,
6 2024, the agencies withdrew the WPCF permit for reconsideration. The agencies then issued
7 notice of a proposed individual NPDES permit for J-S Ranch on August 16, 2024. Petitioners
8 submitted comments to ODA and DEQ on September 23, 2024, opposing ODA and DEQ’s
9 issuance of a NPDES Permit. ODA and DEQ issued the 2024 NPDES Permit to J-S Ranch on
10 October 31, 2024.

11 JURISDICTION AND VENUE

12 11.

13 This Court has jurisdiction to review this petition pursuant to ORS 183.480 and ORS
14 183.484. The final order for purposes of judicial review encompasses the J-S Ranch’s 2024
15 NPDES Permit and the agencies’ “modified final order on reconsideration” (both dated Oct. 31,
16 2024). These constitute a final agency order because it is a “final agency action expressed in
17 writing,” not arising from any of the four categories described in ORS 183.310(2)(a). *See* ORS
18 183.310(6)(b). Nothing about the agencies’ determination is preliminary or tentative.

19 12.

20 The petition is timely. It was originally filed within 60 days of August 5, 2022—the date
21 ODA and DEQ issued their Order on Request for Reconsideration denying Petitioners’ Petition
22 for Reconsideration of the WPCF permit. The petition for reconsideration was timely and
23 submitted on June 9, 2022. *See* ORS 183.484(2). Petitioners now submit this amended petition
24 within 60 days of October 31, 2024, the date ODA and DEQ’s issued the 2024 NPDES Permit.

25
26

1 13.

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

4 **FACTUAL BACKGROUND**

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

6 14.

7 J-S Ranch is permitted as a Tier 2 Large chicken CAFO, contracted to grow broiler
8 chickens for Foster Farms (owned by Atlas Holdings). It will be located at 37225 Jefferson-Scio
9 Dr. in Scio, Oregon, just 483 yards from the North Santiam River. The permitted facility will
10 consist of eleven houses capable of keeping at least 580,000 broiler chickens at a time or nearly
11 3.5 million per year, with an estimated annual production of 3.4 million chickens (based on the
12 proposal to house 566,400 birds at a time, with six flocks per year). Approximately 4,500 tons of
13 chicken manure will be produced each year (or 941,680 cubic feet) and stored in a manure shed
14 on site. If it is built, J-S Ranch will be one of the largest broiler operations in the state of Oregon.

15 15.

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

21 16.

22 Many of the families and individuals residing near the proposed J-S Ranch operation
23 have lived in the area for generations and cherish the pristine portion of the North Santiam that
24 abuts their properties. Many rely on the river as a source of drinking water and for recreation. J-S
25 Ranch also has the potential to discharge to water bodies that lead to the South Santiam River,
26

1 including Thomas Creek and/or the Helms Reservoir. Impacts to these waterbodies would also
2 harm community members, including members of Petitioners' organizations.

3 17.

4 The impact that the proposed J-S Ranch mega-chicken operation will have on the
5 residents of Scio cannot be overstated. J-S Ranch threatens to pollute ground and surface water
6 quality, including the North Santiam River, with nitrogen, phosphorus, and/or other
7 contaminants. Such discharges contaminate drinking water sources, including wells and
8 downstream use of the North and South Santiam Rivers, and diminish popular recreation, such as
9 swimming areas, float routes downstream of the operation, and wildlife viewing.

10 18.

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

19 19.

20 The South Santiam River and its tributaries, such as Thomas Creek, are also precious to
21 the community for recreation and water. Sadly, the South Santiam River is already on the State's
22 303(d) list of impaired waterways due to temperature. Thomas Creek is popular for recreation
23 like swimming and rock hounding, as well as for its historic covered bridges. Helms Reservoir is
24 a 15-acre lake and a popular fishing spot. On information and belief, the irrigation ditch on the
25 south side of the J-S Ranch property flows to Helms Reservoir, which then flows to the South
26 Santiam River.

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

2 20.

3 On information and belief, the operation, as slated, is in or adjacent to a floodplain and is
4 only elevated 5 feet above the bank of the North Santiam and only 2 feet above the seasonal
5 high-water table. Under such close proximity and *de minimis* elevation, the North Santiam
6 creates a direct flood risk to the entire operation.

7 21.

8 Further, neighbors who have lived along the North Santiam River for generations have
9 recounted that the river has migrated over the years. Petitioner Eastman attests that, in her
10 lifetime alone, the North Santiam has shifted approximately one mile south. Such southerly
11 migration puts J-S Ranch directly in the path of the North Santiam’s natural riverbed
12 movement—movement that, on Petitioners’ information and belief, is anticipated to occur within
13 one or two permit cycles of the 5-year NPDES permit.

14 22.

15 Scio, Oregon averages 50 to 57 inches of precipitation per year, a reality that will
16 inevitably generate significant stormwater runoff from the proposed J-S Ranch operation. Flow
17 accumulation lines cut across much of the J-S Ranch property, and various structures required
18 for the operation are proposed to be built directly over these established flow accumulation lines.
19 Given how low the property lies, the natural lines of water flow already risk overflowing and
20 flooding the area. This proposed operation, with its additional impermeable roof area, will only
21 introduce additional concerns about flooding on other properties, of the poultry houses, manure
22 shed, and anywhere stormwater is diverted, like the irrigation ditch on the southern edge of the
23 property. Any flooding on the property will spread contamination across the local area and into
24 surface and shallow groundwaters.

1 23.

2 In addition to the area’s naturally wet climate, climate change creates a greater risk of
3 extreme and varied weather events—including increased precipitation—hereby exacerbating the
4 flooding and pollution concerns the property already faces.

5 24.

6 Given the level of precipitation, the amount of stormwater generated will be significant:
7 on information and belief, in millions of gallons a month during the wet season. This stormwater
8 will hit J-S Ranch’s buildings and the grounds of its production area, and will become
9 contaminated with manure and litter, including contaminated litter dust blown from the chicken
10 barn ventilation fans. This contaminated stormwater may then flow over land to the North
11 Santiam or be channeled to other surface waters, such as irrigation ditch(es) that ultimately flow
12 to the South Santiam River or other surface waters of the state and/or United States. Defendants
13 admit in their Fact Sheet for the 2024 NPDES Permit that this operation has the potential to
14 discharge a variety of pollutants to Thomas Creek, a tributary of the South Santiam River, which
15 is listed as water quality limited for temperature. On information and belief, the irrigation ditch
16 may also flow to the Helms Reservoir. Further, this contaminated water will leach into shallow
17 groundwater, which will ultimately and relatively quickly flow into the same surface waters.

18 25.

19 Based on the 2024 Nutrient Management Plan (NMP) for the 2024 NPDES Permit, J-S
20 Ranch’s current plan for stormwater management is to grade the facility such that a stormwater
21 discharge in violation of the NPDES permit would flow into the South Santiam sub-basin,
22 allegedly eliminating any potential for such discharges to enter the North Santiam. According to
23 its 2024 NWP, stormwater from poultry house roofs will be directed to “a ditch on the south end
24 of the property.” The NMP’s single paragraph on stormwater management does not indicate how
25 stormwater runoff from other parts of the production area (other buildings, grounds between
26

1 buildings) will be managed. Nor does the NMP explain how the operation will avoid sending
2 *contaminated* stormwater to the ditch leading away from the property and to waters of the U.S.

3 26.

4 The 2024 NMP also states that process wastewater—used to clean the cool cell systems
5 and fans—will be transferred to a trailer on the back of pickup or collected into a plastic catch
6 basin, respectively. J-S Ranch estimates a total of 25,740 gallons of process wastewater per year,
7 all of which it is required to export via use on composted litter.

8 27.

9 Groundwater is also endangered by J-S Ranch as permitted in the 2024 NPDES Permit.
10 First, as to the eleven barns housing the chickens, the floor will be composed of only earth with a
11 2-inch “soil pad,” as opposed to an impermeable protection or the 12 inches routinely required
12 by other states in similar situations. The proposed manure shed—which will store chicken
13 litter—will have only a 4–6-inch concrete floor. However, the chicken barns themselves—with
14 only 2 inches of soil padding—will effectively be temporary manure sheds between litter
15 cleanouts, which is currently scheduled to happen only six times per year with each new flock.
16 Importantly, poultry waste exits the birds in liquid form. And, as noted above, the barns are not
17 without risk of flooding due to stormwater. Therefore, such quantities of liquid on a thin, earthen
18 floor pose a risk of leaching into and contaminating groundwater. The groundwater at the site of
19 the proposed operation lies a mere 12.2-25 inches below ground.

20 28.

21 The only new condition required by the 2024 NPDES Permit as compared to the 2022
22 WPCF permit is to install moisture sensors at 2, 8, and 12 inches below the soil pad surface in
23 each chicken house to monitor groundwater discharges. These sensors do not *prevent*
24 groundwater discharges; rather, they only provide monitoring for moisture that seeps downwards
25 or groundwater coming up. The only change from the proposed NPDES Permit and the issued
26

1 2024 NPDES Permit is the requirement to monitor these moisture sensors daily rather than
2 weekly.

3 29.

4 J-S Ranch will produce approximately 4,500 tons of chicken litter each year. Because the
5 2024 NPDES Permit prohibits application of waste to the crop fields (land application), J-S must
6 store and then export 100 percent of the litter as compost.

7 30.

8 The eleven proposed poultry houses are to be equipped with industrial fans to ensure
9 adequate air circulation for the birds and to remove toxic levels of ammonia to avoid suffocation.
10 Chicken litter produces enormous quantities of ammonia as a byproduct. The fans will blow the
11 ammonia from the litter, causing the gaseous ammonia to exit the barns and make its way into
12 the North Santiam River via aerial deposition. Given its projected flock sizes, on information and
13 belief, J-S Ranch will discharge around 123-127 tons of ammonia per year. This calculation does
14 not include the manure shed for composting litter, and therefore is a conservative estimate.

15 31.

16 Chickens and their litter also form dust, or particulate matter (PM 10). This dust contains
17 the same materials as the litter, including feces, feather and skin fragments, feed particles,
18 microorganisms, and chemicals. Another even smaller form of particulate matter (PM 2.5) is a
19 less visible byproduct of broiler chicken operations. This dust and particulate matter will be
20 blown from the ventilation fans. Some will land more immediately on the J-S Ranch production
21 area, and some will be transported to the nearby North Santiam River and its surrounding
22 vegetation. Aerial deposition of dust (including PM 10 and PM 2.5) is a discharge of a pollutant
23 into the river.

24

25

26

1 **CAFO Permitting Requirements**

2 32.

3 CAFOs in Oregon are regulated pursuant to state and federal laws that aim to protect
4 water quality. *See* ORS 468B.200; OAR 340-051-0010(8); 33 U.S.C. § 1311(a). Oregon
5 prohibits water pollution unless permitted; specifically, no person shall “cause pollution of any
6 waters of the state or place or cause to be placed any wastes in a location where such wastes are
7 likely to escape or be carried into the waters of the state by any means,” or “discharge any wastes
8 into the waters of the state if the discharge reduces the quality of such waters below the water
9 quality standards established by rule for such waters by the Environmental Quality
10 Commission.” ORS 468B.025(1). Waste discharge permits issued under ORS 468B.050 shall not
11 be violated. ORS 468B.025(2).

12 33.

13 Under Oregon state law, unless they hold a permit from the DEQ or ODA, a person may
14 not “[c]onstruct, install, operate or conduct any industrial, commercial, confined animal feeding
15 operation or other establishment or activity or any extension or modification thereof or addition
16 thereto, the operation or conduct of which would cause an increase in the discharge of wastes
17 into the waters of the state or which would otherwise alter the physical, chemical or biological
18 properties of any waters of the state in any manner not already lawfully authorized.” ORS
19 468B.050(1). Permits may be individual or general in nature. ORS 468B.050(2).

20 34.

21 Oregon defines “waters of the state” to include lakes, bays, ponds, impounding
22 reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific
23 Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or
24 underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except
25 those private waters which do not combine or effect a junction with natural surface or
26

1 underground waters), which are wholly or partially within or bordering the state or within its
2 jurisdiction. ORS 468B.005(10); OAR 340-051-0010(8).

3 35.

4 Oregon statutes define “pollution” as “such alteration of the physical, chemical or
5 biological properties of any waters of the state, including change in temperature, taste, color,
6 turbidity, silt or odor of the waters, or such discharge of any liquid, *gaseous*, solid, radioactive or
7 other substance into any waters of the state, which will or tends to, either by itself or in
8 connection with any other substance, create a public nuisance or which will or tends to render
9 such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic,
10 commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to
11 livestock, wildlife, fish or other aquatic life or the habitat thereof.” ORS 468B.005(5) (emphasis
12 added). Oregon statutes further define “wastes” “industrial wastes, and all other liquid, *gaseous*,
13 solid, radioactive, or other substances, that will or may cause or tend to cause pollution of any
14 waters of the state.” ORS 468B.005(9) (emphasis added); OAR 340-045-0010(10) (“industrial
15 waste” is gaseous waste from “any process of industry, manufacturing, trade, or business.”).

16 36.

17 The federal Clean Water Act prohibits the discharge of pollutants into waters of the
18 United States, except when in compliance with a NPDES permit. 33 U.S.C. § 1251. “Discharge
19 of a pollutant” is defined as any addition of any pollutant to navigable waters from any point
20 source. 33 U.S.C. § 1362(12). “Concentrated animal feeding operations” is in the CWA’s
21 definition of “point source,” demonstrating Congress’s intent to control and reduce discharges of
22 pollution from CAFOs through the NPDES program. 33 U.S.C. § 1362(14). The term “pollutant”
23 is defined to include “biological materials,” “chemical wastes,” and “agricultural waste,” and
24 thus includes ammonia emissions from the CAFO. *Id.* § 1362(6). Navigable waters are “waters
25 of the United States,” *id.* § 1362(7), which includes the North Santiam River and other surface
26

1 waters around the operation. CAFOs are defined as CWA “point sources,” so the J-S Ranch
2 facility is, by definition, a point source. *See id.* § 1362(14).

3 37.

4 The federal CWA also applies to discharges to surface waters through hydrologically
5 connected groundwater. The Supreme Court has held that if discharge to groundwater is “the
6 functional equivalent of a direct discharge” then the CWA applies. Time and distance from the
7 point source are the most important factors in determining whether a functional equivalent
8 discharge has occurred in most cases, but not necessarily every case. Other factors to look at
9 include the nature of the material through which the pollutant travels, the extent to which the
10 pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the
11 navigable waters relative to the amount of the pollutant that leaves the point source, the manner
12 by or area in which the pollutant enters the navigable waters, and the degree to which the
13 pollution has maintained its specific identity.

14 38.

15 Like most states, Oregon is delegated to implement the federal CWA in accordance with
16 its own laws. The CWA provides a federal floor above which states are free to regulate water
17 pollution more strictly. Oregon state law also mirrors the federal “point source” definition and
18 includes “concentrated animal feeding operation.” ORS 468B.005(4). Oregon state regulations
19 further define a discharge as “placing wastes into public waters, on land, or otherwise into the
20 environment in a manner that affects or may tend to affect the quality of public waters,” OAR
21 340-045-0010(5), and “pollutant” as “industrial, municipal, and agricultural waste discharged
22 into water.” OAR 340-045-0010(18).

23 39.

24 The last Oregon general permit under both federal and state law was issued in 2016 and
25 expired in February 2021. CAFO NPDES General Permit #01-2016. The CWA does not require
26 a person to obtain an NPDES permit when discharges occur only to waters of the state and not to

1 the waters of the U.S. *See* 33 U.S.C §§ 1311(a), 1342, 1362. Oregon state law regulates such
2 discharges through WPCF permits. ORS 468B.020; ORS 468B.025; OAR 340-045-0010(32);
3 OAR 340-045-0015. A person must hold a WPCF permit to operate a CAFO that will discharge
4 to waters of the state, including groundwater. ORS 468B.050. A WPCF prohibits discharges to
5 surface waters.

6 40.

7 The North Santiam River Basin is additionally subject to the Three Basin Rule, which
8 prohibits “new or increased waste discharges” to the waters of North Santiam River Subbasin.
9 OAR 340-041-0350(1)(c). The rule applies to all permits, including NPDES and WPCF permits.
10 OAR 340-041-0350(3)(a). The rule states that for confined animal feeding operations, “No
11 NPDES permits for new industrial or new confined animal feeding operation waste discharges,
12 or new domestic sewage treatment facilities may be issued, except” for limited circumstances.
13 OAR 340-041-0350(8)(a). Such limited circumstances include “[t]o respond to emergencies or to
14 otherwise avoid imminent serious danger to public health or welfare,” OAR 340-041-0350(4), to
15 “renew or transfer NPDES and WPCF permits for existing facilities,” OAR 340-041-0350(5), or
16 to issue a limited set of general permits and certifications. OAR 340-041-0350(6). None of these
17 limited circumstances applies here.

18 ***J-S Ranch’s 2022 WPCF Permit***

19 41.

20 Eric Simon first applied for a WPCF permit for J-S Ranch in 2020. The agencies held a
21 public hearing on October 20, 2021, and a public comment period, which concluded on October
22 25, 2021. Petitioners submitted comments and attended the public hearing. ODA received a total
23 of 130 comments, the vast majority of which opposed the permit.

24 42.

25 Despite the marked opposition, the agencies conditionally granted the WPCF permit on
26 May 26, 2022. The WPCF permit required the following conditions be met before construction:

- 1 (a) Follow ODA approved Animal Waste Management Plan (AWMP) #21002 and
2 the additional monitoring, reporting and recordkeeping listed in order on Notice
3 of Permit Registration Modification #2231032.
- 4 (b) Prior to starting construction, permittee must obtain a DEQ 1200-C Construction
5 Stormwater Permit and provide a copy to ODA.
- 6 (c) Prior to starting construction, permittee must obtain a Linn County Road Access
7 Permit and provide a copy to ODA.
- 8 (d) Prior to starting construction permittee must submit a copy of the site plan that
9 was submitted to DEQ for the 1200-C Construction Stormwater Permit. ODA will
10 include that site plan in the AWMP #21002. Permittee must update his copy of
11 the AWMP #21002 with the DEQ approved site plan.

12 43.

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

- 15 (a) Install at least two static groundwater monitoring level wells with monthly
16 monitoring to maintain 2-foot separation from high water level and compacted
17 floor of chicken buildings;
- 18 (b) For each drinking water well on the property, conduct semi-annual drinking water
19 well surveillance monitoring for nitrate-nitrogen;
- 20 (c) Compact all poultry house floors to a soil compaction standard of at least 1.0 X
21 10-5 cm/sec permeability with in-place compaction tests, to be recertified every
22 ten years.

23 44.

24 When ODA issued the permit, the agency provided a written response to public comment
25 but failed to address many of the issues that Petitioners raised, including the need for a NPDES
26

1 permit, rather than a WPCF, to address discharges of ammonia and other pollution to surface
2 waters.

3 45.

4 ODA also failed to address these legal deficiencies when Petitioners sought
5 reconsideration. Rather, ODA summarily dismissed any risk to groundwater on the basis that the
6 conditions imposed were adequate to safeguard waters of the State, and specifically groundwater,
7 from pollution, and concluded no discharges to surface water will occur, a NPDES permit is
8 therefore unnecessary, and the Three Basin Rule does not apply.

9 ***Judicial Review, Withdrawal, & J-S Ranch 2024 NPDES Permit***

10 46.

11 Petitioners filed the first petition for judicial review on October 4, 2022, following
12 ODA’s denial of Petitioner’s request for reconsideration. On April 19, 2024, ODA withdrew the
13 WPCF Permit for reconsideration pursuant to ORS 183.484(4), allowing itself “to affirm, modify
14 or reverse the order and file the order on reconsideration with the Court on or before October 31,
15 2024.” Notice of Withdrawal for Reconsideration (filed Apr. 19, 2024).

16 47.

17 On August 16, 2024, ODA issued a “Notice of Public Participation Opportunity” for a
18 proposed individual NPDES permit for J-S Ranch. In the notice, ODA acknowledged that “J-S
19 Ranch was previously permitted under a general WPCF permit,” but claimed that this “modified
20 permit is the ODA and DEQ’s decision on reconsideration.” The notice states that “there has not
21 been a change in the storage, discharge, or emission of the permitted substances since the last
22 permitting action;” rather, the change is that ODA has now issued an individual NPDES permit
23 instead of a general WPCF permit.

24 48.

25 ODA held a virtual hearing on September 16, 2024, for the proposed individual NPDES
26 permit. During the hearing, ten oral comments and one written comment were made. Only one

1 oral comment was in favor of granting the individual NPDES permit—a comment made by Eric
2 Simon, the permittee himself. All other comments opposed the proposed NPDES permit,
3 expressing concerns that because the NPDES Permit is a *new* permit for a *new* CAFO, it must
4 comply with the Linn County one-mile setback requirement as well as the water supply
5 requirements of Senate Bill 85 (SB 85). ODA accepted written comments on the proposed
6 NPDES permit until September 23, 2024, and received a total of 557 written comments,
7 including from Petitioners.

8 49.

9 Again, despite overwhelming opposition, ODA issued the final individual NPDES Permit
10 on October 31, 2024. The only change from the proposed to the final NPDES Permit was that
11 ODA now requires J-S Ranch to monitor the soil moisture sensors daily instead of weekly. The
12 final individual NPDES Permit includes an updated Nutrient Management Plan (NMP), although
13 it is almost entirely the same as the 2022 NMP. ODA also provided the old J-S Ranch Water
14 Supply Plan dated September 2022, with an approval by OWRD dated August 14, 2024. The
15 final Fact Sheet for the permit does not specify how the operation *now* has the “potential to
16 discharge to surface waters of the state,” when the state previously concluded no such discharges
17 would occur under the WPCF permit, and without addressing the potential for discharges of
18 contaminated stormwater, process wastewater, and aerial deposition of pollutants in the North
19 Santiam River and other surface waters or hydrologically connect groundwater.

20 50.

21 Unlike the updated NMP and Water Supply Plan, ODA did not require an updated Land
22 Use Compatibility Statement (LUCS), despite the recently adopted one-mile setback from
23 residential property enacted by the Linn County Commission.

24 51.

25 Respondents did not require J-S Ranch to comply with ORS 468B.215(4), requiring a
26 permit for a new large CAFO to notify “the governing bodies of all federally recognized Indian

1 tribes in this state” and “consult with the governing bodies, upon request by the governing
2 bodies.” ORS 468B.215(4)(b). Nor is there evidence that a preliminary consultation with all
3 “relevant state agencies” was conducted per ORS 468B.215(4)(c). On information and belief,
4 Respondents did not require J-S Ranch to comply with ORS 468B.215(5), requiring both a water
5 supply plan *and* individual notice of the public comment period “by mail, to all persons on
6 record as owning property within one-half mile of the parcel of land on which the new large
7 confined animal feeding operation is proposed to be located.”

8 52.

9 Although the 2024 NPDES Permit is accompanied by an old water supply plan, signed by
10 OWRD in August 2024, Respondents did not impose on the permit conditions necessary to
11 ensure that “[t]he quantity of water necessary to supply the level and duration of the water needs
12 of the confined animal feeding operation, including any ancillary operations of the confined
13 animal feeding operation described in the permit, is legally authorized.” ORS 468B.215(6); ORS
14 468B.216. Under SB 85, exemption from a permit or water right for stockwatering purposes at a
15 new CAFO is limited to 12,000 gallons per day. ORS 537.545(1)(a). On information and belief,
16 J-S Ranch will require more than 12,000 gals/day of exempt groundwater to water its broiler
17 flocks, particularly when the chickens are older in age.

18 53.

19 In its response to comments, ODA characterized concerns regarding aerial depositions as
20 “beyond the scope of the proposed CAFO individual NPDES permit” because it is solely an air
21 pollution issue and thus would be regulated by an air quality permit.¹ ODA also repeatedly
22 reiterated its position that because the individual NPDES Permit is a “zero discharge permit,”
23 commenters concerns regarding contaminated stormwater, antidegradation of water ways, and
24

25

26

¹ However, agricultural operations are entirely exempted from compliance with Oregon’s
air quality laws and the federal Clean Air Act is not enforced against CAFOs in Oregon.

1 proximity to the North Santiam are resolved by this prohibition of any discharge. In response to
2 commenters' concerns that merely prohibiting any discharge is insufficient to *prevent* discharges,
3 ODA stated that such violations are handled by compliance and enforcement.

4 ***The Deficiencies in the Current J-S Ranch Permit***

5 **Surface Water**

6 54.

7 J-S Ranch's 2024 NPDES Permit claims that it allows zero discharge to surface waters.
8 However, given the proximity of the operation to the North Santiam River, the topography of the
9 area, the fast-changing course of the Santiam River, the characteristically wet nature of the area,
10 and the reality of aerial deposition and runoff of contaminated stormwater, surface water
11 discharges are inevitable. Further, the admitted possibility of discharge to the South Santiam
12 River, already water quality impaired, is not mitigated by the permit conditions. These surface
13 water discharges will implicate both state waters and waters of the United States protected by the
14 Clean Water Act.

15 55.

16 ODA also fails to properly account for impacts to surface waters and groundwater from
17 aerial deposition of ammonia and particulate matter and contaminated stormwater. As explained
18 above, ammonia and particulate matter from ventilation fans will be deposited into the North
19 Santiam River. Additionally, contaminated runoff stormwater from J-S Ranch production areas
20 may seep into groundwater or flow overland to the North Santiam River, and/or be channeled
21 into irrigation ditches and make its way to the South Santiam or other surface waters of the state.
22 This failure, coupled with earthen floors prone to infiltration by stormwater, do not safeguard
23 against possible surface and groundwater pollution by aerial deposition of contaminants and
24 contaminated stormwater.

1 56.

2 Most notably, J-S Ranch will discharge nitrogen and phosphorous pollution into the
3 North Santiam River through aerial deposition of gaseous ammonia and particulate matter (dust
4 and PM 2.5). As noted in paragraph 30 once in operation, J-S Ranch will be capable of
5 discharging up to 127 tons of ammonia per year, an amount of which will be deposited nearby.²
6 Nearby is relative, as ammonia can travel between ½ mile to 6 miles in its gaseous form, and
7 over 100 times that if it converts to PM 2.5.³ Nitrogen in J-S Ranch’s ammonia release is a
8 pollutant that will be discharged into waters of the United States from a point source. As
9 explained in paragraph 31, dust and particulate matter is a pollutant that will be discharged into
10 water of the United States from a point source.

11 57.

12 As explained in paragraphs 21–30, J-S Ranch will also generate contaminated
13 stormwater, which will runoff from its production area or be channeled into waters of the United
14 States from a point source. 40 CFR § 122.23(b)(8) (defining “production area”).

15 58.

16 Finally, J-S Ranch has the potential to discharge to surface waters, including the North
17 Santiam River, via hydrologically connected groundwater. On information and belief, pollutants
18 leached from contaminated stormwater or process wastewater into groundwater below the CAFO
19 production area will be transported relatively quickly through groundwater to the North Santiam
20 River in a matter of days or weeks. Such pollution will have to travel only 400 yards from the
21 production area to the North Santiam River. Such a short time and distance is the functional
22 equivalent of a direct discharge to waters of the U.S. and surface waters of the State.

23 _____

24 ² See Env’t Integrity Project, *Ammonia Emissions from Broiler Operations Higher than*
25 *Previously Thought* (Jan 22, 2018), available at [https://environmentalintegrity.org/](https://environmentalintegrity.org/reports/ammonia-emissions/)
26 reports/ammonia-emissions/ (last visited Dec 29, 2024).

³ See generally W.H. Asman et al., Ammonia: emission, atmospheric transport and
deposition, 139 *New Phytol.* 27 (1998).

1 Groundwater

2 59.

3 In issuing the 2024 NPDES Permit, the agencies recognized the danger posed to
4 groundwater by this CAFO and thus imposed a monitoring condition of moisture sensors under
5 the poultry houses, as noted in paragraph 28. *See* OAR 340-040-0030(2). These conditions,
6 however, are inadequate to protect groundwater given the hydrology of the area and J-S Ranch’s
7 current plans.

8 60.

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

19 ***OAR 603-074-0010(21) Is An Impermissible Interpretation of the Statute***

20 61.

21 On its face, and as applied to this matter, ODA’s regulation interpreting ORS
22 468B.215(1)(d) is an impermissible interpretation of the statute and invalid under the Oregon
23 APA. The legislature in 2023 (in SB 85) defined a “[n]ew confined animal feeding operation” as
24 “a confined animal feeding operation that is seeking a permit under ORS 468B.050 to *operate* on
25 a parcel of land on which no confined animal feeding operation has *previously operated*.” *Id.*
26 (emphasis added). In promulgating its regulations to implement this new definition, ODA added

1 an extra-statutory and illogical caveat to this definition, defining “operated” to mean having
2 “been issued a * * * permit.” OAR 603-074-0010(21). Operation and having “been issued a
3 permit” are two distinct states, and ODA’s unlawful narrowing of the legislature’s definition of
4 “new CAFO” must be held invalid under ORS 183.400(2).

5 62.

6 In its response to comments, ODA states that the 2024 NPDES Permit need not comply
7 with SB 85 because it is not a “new CAFO” within the meaning of its regulations. Under OAR
8 603-074-0010(21), a “new CAFO” is “a CAFO that is seeking a permit under ORS 468B.050 to
9 operate on a parcel of land on which no CAFO has previously operated,” and importantly, “[a]
10 CAFO is considered to have previously operated *when it has been issued a WPCF or NPDES*
11 *Permit.*” (emphasis added). This definition is an “erroneous[s] interpret[ation of] a provision of
12 law,” and thus is impermissible. ORS 183.484(5)(a).

13 63.

14 Under ODA’s definition of “new CAFO,” J-S Ranch is not considered a “new CAFO,”
15 merely because ODA previously issued a WPCF permit to J-S Ranch. Under ODA’s erroneous
16 definition, J-S Ranch is an existing CAFO, despite it never being built, much less populated with
17 animals. This definition is at odds with ORS 468B.215(1)(d), which defines a “[n]ew confined
18 animal feeding operation” as one that “is seeking a permit under ORS 468B.050 to *operate* on a
19 parcel of land on which no confined animal feeding operation has previously *operated.*” ORS
20 468B.215 (1)(d) (emphasis added).

21 64.

22 ODA’s interpretation is contrary to the plain text of the statute. To have “operated,” the
23 CAFO needs to have “performed a function.”⁴ A CAFO that has *not* been built cannot have been
24

25
26 ⁴ Merriam Webster Online, “operate,” <https://www.merriam-webster.com/dictionary/operate> (defining “operate” as “to perform a function”).

1 “active” or have “functioned,” and thus cannot have previously “operated” within the meaning of
2 statute’s plain language. ODA impermissibly qualifies the meaning of “previously operated,”
3 conflating previously *operated* with previously *permitted*. On its face, this conflicts with the
4 requirement that a new CAFO is one that has not “operated.”

5 65.

6 ODA’s interpretation also runs contrary to the purpose of differentiating between a new
7 CAFO and one that has previously operated for purposes of SB 85, which provided different
8 times for compliance for CAFOs that have *already been built*, and therefore have immovable
9 permanent structures. This common-sense measure balances the significant costs of altering a
10 previously built CAFO with the important water protection goals of SB 85.

11 66.

12 Further, ODA’s definition of “new CAFO” conflicts with the legislative intent behind SB
13 85. In passing SB 85, the legislature intended to address the proposed new (*i.e.*, not yet built)
14 chicken operations that would supply Foster Farms in the Willamette Valley. The legislative
15 record confirms that these not-yet-built operations were a major reason that SB 85 was amended
16 and passed.

17 67.

18 A proposed CAFO that has not begun construction and has only been issued a permit—
19 that was later terminated—cannot be said to have “operated.” Thus, OAR 603-074-0010 (21),
20 and ODA’s reliance on its language here, is at odds with ORS 468B.215(1)(d), defining a “new
21 CAFO.” According, it must be held invalid as inconsistent with the statute and beyond ODA’s
22 statutory authority.

23 ***J-S Ranch is a New CAFO***

24 68.

25 As stated above, having previously been issued a permit cannot, by itself, mean that a
26 CAFO is not “new.” Despite this plain reading, ODA contends that the “individual NPDES

1 permit * * * was the agencies’ decision on reconsideration,” and “because * * * [J-S Ranch] had
2 been permitted under a WPCF permit, it is not a new CAFO.”

3 69.

4 By arguing that a previously permitted CAFO—one that has not even broken ground and
5 therefore cannot have “operated” —is not a new CAFO, ODA attempts to impermissibly allow J-
6 S Ranch to evade the requirements of Oregon law.

7 70.

8 SB 85 became effective on July 27, 2023, amending and creating new provisions for
9 CAFOs. Importantly here, after SB 85, Oregon law now requires new CAFO permit applicants to
10 submit a water supply plan (WSP) identifying the sources of water and determine whether water
11 uses are “legally authorized and allowable.” SB 85 also amended the stockwatering exception,
12 limiting use to 12,000 gallons per day or less. ORS 537.545(1)(a). Also relevant here, after SB
13 85, Oregon law provides that “a city or county in which a new large confined animal feeding
14 operation * * * is proposed to be located may require the new large confined animal feeding
15 operation to include a setback or buffer.”

16 71.

17 In December 2023, following the passage of SB 85, Linn County—where J-S Ranch is
18 proposed to be located—became the first county to require a one-mile setback for new poultry
19 CAFOs. Linn County noted that “[t]he regulations will only apply to new large CAFO permit
20 applications and are not retroactive. Specifically, the issue is the proposed development of large-
21 scale chicken farms that produce millions of birds per year in confined buildings.”⁵

22

23

24

25 ⁵ Linn County, Board of Comm’rs, *Commissioners OK 1-Mile CAFO Setbacks*,
26 <https://www.linncountyor.gov/commissioners/page/commissioners-ok-1-mile-cafo-setbacks> (last
visited Dec 29, 2024); Linn County Code § 928.310(b)(18); § 934.530(C).

1 **FIRST CLAIM FOR RELIEF**

2 **(Petition for Judicial Review Under ORS 183.400, 183.480, and 183.484)**

3 72.

4 Petitioners incorporate paragraphs 1 through 71 by reference.

5 73.

6 ODA’s regulation defining “new CAFO” as being previously *permitted*, without regard to
7 whether it was ever *operated*, see OAR 603-074-0010(21), is impermissible on its face. The
8 statutory definition uses “operation” as the standard by which a former CAFO is determined.
9 ODA’s regulation erroneously defines “operated” as having been permitted, even though an
10 operation may have been permitted but never been built or operated in the ordinary sense of the
11 word.

12 74.

13 ODA’s application of its regulation defining “new CAFO” as being previously permitted,
14 without regard to whether it was ever operated, is impermissible as applied to J-S Ranch. Indeed,
15 J-S Ranch is a perfect example of why ODA’s regulation is impermissible: despite being
16 permitted (unlawfully), the operation has not been built, much less populated with chickens and
17 operated in the ordinary sense of the word.

18 75.

19 Because the regulation is invalid as exceeding ODA’s statutory authority under ORS
20 468B.215, it must be declared invalid under ORS 183.400.

21 **SECOND CLAIM FOR RELIEF**

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

23 76.

24 Petitioners incorporate paragraphs 1 through 75 by reference.

1 77.

2 The 2024 NPDES Permit does not comply with current statutes and regulations for new
3 large CAFOs in Oregon. ORS 468B.215. J-S Ranch is a “new large CAFO” under the statute,
4 ORS 468B.215(1)(d) but did not comply with the requirements of ORS 468B.215(4)–(6).

5 78.

6 As described above, Defendants did not require J-S Ranch to notify Tribes or neighbors
7 within one-half mile, and did not require J-S Ranch to show it had legal access to sufficient water
8 for the level and duration of the needs of the CAFO. ORS 468B.215(4) – (6). A new or
9 expanding large CAFO must include a signed declaration of the preliminary consultation and a
10 water supply plan after July 27, 2023. OAR 603-074-0012(4)(b).

11 79.

12 The 2024 NPDES Permit also fails to comply with current Linn County code, namely, the
13 one-mile setbacks required for new large poultry CAFOs. To be permitted, a CAFO must supply
14 a Land Use Compatibility Statements (LUCS) under OAR 603-074-0012(4). The LUCS
15 requirement is not dependent on a CAFO being new, but as described above, J-S Ranch is a
16 “new CAFO” under ORS 468B.215 and Linn County Code.

17 80.

18 For “[a] new large confined animal feeding operation, as defined in ORS 468B.215,”
19 Linn County Code states:

20 If the parcel of land on which a new large chicken confined animal feeding
21 operation is proposed to be located is adjacent to a property on which (1) a
22 residential structure is lawfully sited or (2) a structure associated with a lawfully
23 established pre-existing or non-conforming use is sited, a new large confined
24 animal feeding operation may be established *subject the setback standard*
25 *described in LCC 934.530(C).*

26 Linn County Code 928.310(b)(18) (emphasis added). As noted above, ORS 468B.215 defines a
“new” CAFO as one on a parcel of land where a CAFO has not previously operated. In turn,
Linn County Code 934.530(C) states:

1 New Large Confined Animal Feeding Operation Structural Setback Standards.

2 (1) The minimum structural setback from any property line of a property that
3 contains a new large chicken confined animal feeding operation, as defined in
4 ORS 468B.215, if the property is adjacent to a property that contains a residential
structure or structure associated with a lawfully established pre-existing or non-
conforming use, is *one (1) mile*.

5 (2) This setback does not apply to a residential structure or a structure lawfully
6 established as part of a pre-existing or non-conforming use that is located on the
same unit of land as a new large chicken confined animal feeding operation.

7 81.

8 Because the 2024 NPDES Permit was issued without complying with ORS
9 468B.215 (new provisions per SB 85, and regulations thereto) or Linn County Code, the
10 Permit was issued contrary to statute and regulation and must therefore be reversed and
11 remanded under ORS 183.484(5)(a) and (b).

12 **THIRD CLAIM FOR RELIEF**

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

14 82.

15 Petitioners incorporate paragraphs 1 through 81 by reference.

16 ***Count 1: The 2024 NPDES Permit is inconsistent with the CWA and Oregon state law.***

17 83.

18 The Clean Water Act prohibits the discharge of pollutants into waters of the United
19 States, except when in compliance with a NPDES permit. 33 U.S.C. § 1251. “Discharge of a
20 pollutant” is any addition of any pollutant to navigable waters from any point source. 33 U.S.C.
21 § 1362(12). “Concentrated animal feeding operations” is in the CWA’s definition of “point
22 source.” 33 U.S.C. § 1362(14). Oregon law prohibits the pollution of any waters of the state,
23 including all surface and groundwaters, ORS 468B.025; ORS 468B.005(10), absent a lawful
24 permit. ORS 468B.050. Oregon also defines “point source” as including “concentrated animal
25 feeding operation[s].” Oregon administers both its own water quality protection laws and the
26

1 federal Clean Water Act, and this intertwined scheme prohibits the discharge of wastes from
2 point sources like J-S Ranch into waters of either the state or the United States.

3 84.

4 Both Oregon and federal law prohibit the aerial discharge of pollutants (both ammonia
5 gas and dust or particulate matter) from a point source like J-S Ranch, as well as the discharge of
6 contaminated stormwater from a point source (like J-S Ranch) to surface waters without a
7 permit. 33 USC § 1362(6); ORS 468B.005(5); *See, e.g., Md. Dep't of the Env't v. Assateague*
8 *Coastal Trust*, 299 A 3d 619, 624, 484 Md 399, 408 (2023); *Cnty. of Maui v. Haw. Wildlife*
9 *Fund*, 590 US 165, 140 S Ct 1462 (2019). Oregon law explicitly includes “gaseous” wastes in its
10 definition of pollution, wastes, and industrial wastes. ORS 468B.005(5); ORS 468B.005(9);
11 OAR 340-045-0010(10). Thus, ammonia gas is a pollutant under Oregon law and its discharge
12 into surface waters violates state law as it expands the federal CWA.

13 85.

14 Upon commencement of operation, J-S Ranch, a point source, will discharge pollutants
15 into waters of the U.S., specifically the South and North Santiam Rivers. It will therefore be in
16 violation of the Clean Water Act and Oregon state law as it expands the Clean Water Act to
17 include discharge of gaseous pollutants into waters. It will also discharge ammonia (nitrogen in
18 gas form), dust, and particulate matter pollutants (including particles of feces, feathers, skin,
19 feed, chemicals, microorganisms, etc.) from the chicken house ventilation fans into waters of the
20 U.S.

21 86.

22 J-S Ranch will also generate a large amount of stormwater, and contaminated stormwater
23 will be discharged to waters of the United States, either by runoff to the North Santiam River, or
24 channeling to another water of the U.S., like the South Santiam River. This contaminated
25 stormwater will also leach into groundwater that flows to the North Santiam River, amounting to
26 the functional equivalent of a direct discharge, in violation of the CWA and Oregon law.

1 87.

2 Defendants' decision to issue the 2024 NPDES Permit, despite direct and functionally
3 equivalent indirect discharges to surface waters of the state and United States, is based on an
4 incorrect interpretation of Oregon law and is a violation of state and federal law, and therefore
5 the order must be set aside. ORS 183.484(5)(a), (b).

6 ***Count 2: The 2024 NPDES Permit is inconsistent with the Three Basin Rule.***

7 88.

8 The North Santiam River Basin is subject to the Three Basin Rule, meaning that in the
9 North Santiam River Subbasin, “[n]o NPDES permits for new industrial or *new confined animal*
10 *feeding operation waste discharges*, or new domestic sewage treatment facilities may be issued,
11 except as allowed under sections (3), (4), (5), and (6) of this rule.” OAR 340-041-0350(8)(a).

12 89.

13 Because none of the exceptions from Sections (3), (4), (5), and (6) applies to the new
14 NPDES Permit for J-S Ranch, the Three Basin Rule bars the issuance of the 2024 NPDES
15 Permit. Petitioners are thereby entitled to an Order reversing and remanding the 2024 NPDES
16 Permit pursuant to ORS 183.484(5)(b)(B).

17 ***Count 3: The agencies' decision to issue the 2024 NPDES Permit is not supported by***
18 ***substantial evidence in the record.***

19 90.

20 The issuance of the 2024 NPDES Permit is not supported by substantial evidence in the
21 record. First, the agencies have failed to establish that the operation will be able to comply with
22 the “zero discharge” requirement for groundwater, including that a 2-inch soil pad with a soil
23 compaction standard of at least 1.0 X 10⁻⁵ cm/sec permeability will be adequate to prevent
24 groundwater contamination from occurring in the extremely wet area.

1 91.

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

5 92.

6 Third, Respondents have not provided substantial evidence for the conclusion that this
7 operation, as proposed, will comply with the prohibition on discharge of contaminated
8 stormwater and be a “zero discharge” permit. The agencies and permit documents fail to explain
9 how the operation will control contaminated stormwater and prevent it from discharging to
10 waters of the state and United States, or how failing to account for such variable will not
11 significantly affect the chance of groundwater and surface water contamination. The Nutrient
12 Management Plan for the permit states that stormwater will be channeled to an irrigation ditch
13 that runs to Thomas Creek, a tributary of the South Santiam River. On information and belief,
14 this irrigation ditch may instead or additionally run to the Helms Reservoir. Given this and other
15 evidence stated above, the Defendants cannot show with substantial evidence that discharges to
16 surface waters will be prevented.

17 93.

18 Finally, ODA cursorily concludes that because the North Santiam River is a quarter of a
19 mile away from the J-S Ranch operation, ammonia and dust/particulate matter will not reach the
20 waterbody via aerial deposition and thus any issues around ammonia or other air contaminants
21 present air quality concerns and are beyond the scope of the water quality permit at issue. That
22 conclusion fails to explain why it is impossible for ammonia and dust/particulate matter to travel
23 the short distance of one-quarter of a mile. ODA fails to support with substantial evidence its
24 conclusion that aerial deposition pollution will not violate the laws and regulations protecting
25 Oregon’s water quality.

Because the 2024 NPDES Permit is not supported by substantial evidence, Petitioners are entitled to an Order setting aside the permit pursuant to ORS 183.484(5)(c).

PRAYER FOR RELIEF

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

- (a) Declare OAR 603-074-0010(21) invalid to the extent that it is inconsistent with, and therefore exceeded the agency’s authority under, ORS 468B.215;
- (b) Reverse, set aside, or modify the 2024 NPDES Permit to the extent it is inconsistent with Oregon law and the CWA and its implementing regulations;
- (c) Award Petitioners attorney’s fees and costs incurred in this matter, pursuant to ORS 183.497(1)(a); and
- (d) Grant such other relief that the court deems just and equitable.

DATED this 30th day of December, 2024.

By: /s/ Nadia H. Dahab
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Attorneys for Petitioners

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused to be served the foregoing **SECOND AMENDED**
3 **PETITION FOR JUDICIAL REVIEW** on the following named person(s) on the date
4 indicated below:

5 Sadie Forzley
6 Shaunee Morgan
7 Assistant Attorney General
8 OREGON DEPARTMENT OF JUSTICE
9 1000 SW Market St.
10 Portland, OR 97201
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by Overnight Delivery
 by Facsimile
 by U.S. Mail with postage prepaid
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9 Attorneys for Respondents

12 DATED this 30th day of December, 2024.

13 By: /s/ Nadia H. Dahab
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