



State of Oregon Department of Agriculture
State of Oregon Department of Environmental Quality



**Confined Animal Feeding Operation (CAFO)
Proposed Registration to NPDES CAFO General
Permit for Silver Sage Heifer Feedlot (SSHF),
#1000262**

Response to Public Comments

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I. SUMMARY

The Oregon Department of Agriculture (ODA) provided a public notice and comment period on the proposed registration of a new, large dairy heifer CAFO to the Confined Animal Feeding Operation (CAFO) Permit. The Notice period was from November 13, 2019 To December 21, 2019. A public hearing was held on December 16, 2019 in Burns Oregon. The proposed CAFO Permit Registration is for a proposed dairy heifer feedlot in Area 5. ODA received 13 comments on the proposed substantial changes to the permit registration.

- Twelve (12) people provided individual written comments, four (4) in favor and eight (8) opposing the proposed permit registration.
- One (1) additional comment received represented two (2) groups of more than 10 individuals. Comments were provided on behalf of the groups. Two (2) groups were opposed.

Non-Responsive Comments:

Many of the written comments, addressed three areas of concern: 1) Air Quality; 2) Worker Safety, and 3) Animal Health/Welfare. ODA and DEQ acknowledge these concerns, but they are not within ODA and DEQ's authority. However, a summary addressing each concern is found below.

1. Air Quality

The comments regarding air quality and nuisance odor are beyond the scope of the proposed NPDES CAFO Permit. The proposed Permit can only regulate discharges to surface and ground waters of Oregon. DEQ is the Oregon Agency responsible for implementing the Clean Air Act (CAA) and issuing air quality permits where required. ORS 468A.020(1)(a) exempts agricultural operations from most air quality laws. Currently, the only requirement for CAFOs in Oregon to obtain an air permit from DEQ is for engine stack emissions to combust biogas from a digester. The applicant has informed the agencies that he does not plan to implement a digester at this time. If a digester was added as part of the waste treatment facilities at a future date, the agencies would review the proposal and require the appropriate air permit if an internal combustion engine driven generator was part of the proposal.

GHG and Criteria Air Pollutants: DEQ Air Programs monitors air quality statewide for criteria air pollutants and have found that measurements are within acceptable levels.

2. Worker Legal Status

Employee legal status to work comments are beyond the scope of the proposed NPDES CAFO Permit Registration. The proposed Permit can only regulate discharges to surface and ground waters of Oregon and can only contain provisions that protect surface and groundwater quality. (ORS 468B 215(3))

3. Animal Health and Welfare

Animal health and welfare concern comments are beyond the scope of the proposed NPDES CAFO Permit Registration. The proposed Permit can only regulate discharges to surface and ground waters of Oregon and can only contain provisions that protect surface and groundwater quality. (ORS 468B 215(3)) Any animal welfare concerns would be handled by the local sheriff's office or the Oregon Humane Society. <http://www.oregonhumane.org>.

Miscellaneous Non-responsive Comments

No More Dairies

The proposed facility is not a dairy.

These comments are beyond the scope of the proposed NPDES CAFO Permit.

II. Water Quality NPDES Permit Registration comments

Provided below are ODA's response to the specific comments for the proposed permit registration. The persons or organizations that provided comments are listed in **bold** followed by a summary of their comments. The Agencies' response is provided in *italics* immediately following each comment.

- 1. The Agencies should not approve the Application unless Silver Sage demonstrates that it, and/or the owner of other lands proposed to receive animal waste, have permanent, reliable, economical and legally approved sources for all water necessary to carry out the NMP and comply with the general permit. The Agencies also should ensure that Silver Sage will not rely on the "stock watering" exemption to supply drinking water for its 2,000 cows.**

The agencies coordinated the Permit registration and AWMP review with the Oregon Water Resources Department (OWRD) to ensure that the amount of water necessary to operate the facility and provide irrigation water for the crop system was available.

The proposed NPDES CAFO Permit registration does not regulate water withdrawals or water rights. The operation of the proposed facility and crop system is very dependent on having the legal right to adequate water. ODA has consulted with OWRD who reviewed SSHF proposed water usage and confirmed that existing agricultural water rights have been obtained by SSHF in an amount that satisfy the proposed water use requirements of the proposed CAFO. SSHF is in the process of obtaining water rights to irrigate 277 acres of crop land and that process is currently the subject of an appeal. WRD confirmed that SSHF currently has 12 water right certificates that provide sufficient water rights for 3,739.92 acres of crop land (Certificate list on page 4). All of the water usage to irrigate 3,739.92 acres comes from these existing

agricultural water rights. 3,739.92 acres of irrigated crop land is sufficient for all of the manure nutrients generated by SSHF to be land applied at or below agronomic rates following the ODA-approved AWMP.

All water use at the proposed facility is subject to OWRD regulatory authority and state legislative or federal drought declarations that may impact water use. SSHF must maintain compliance with any OWRD rules. Any changes that OWRD required, that would make SSHF unable to comply with conditions of the Permit or AWMP because of changes in water availability, would require SSHF to inform ODA of the changes. The agencies would consider the impact to Permit compliance activities and could require Permit modifications as a result.

The Weaver Springs area of the Harney Basin where this proposed facility would be located is currently undergoing 'Place-Based water planning' with OWRD and multiple stakeholders including ODA and SSHF. This planning effort is to allow for current and future management of the water resources in the Harney Basin and Weaver Springs area.

Silver Sage water right certificates

Permit or Certificate	Acres	Priority Date	Max Rate cfs	Duty Acre-feet
C - 93885	486.4	7/20/95	4.81	3
C - 94527	276.6	1/13/06	3.38	3
G - 17990	355.9	6/7/12	5.9	3
G - 17989	400	12/17/07	5	3
G - 17991	37.6	11/24/08	0.47	3
G - 17992	434.62	3/10/11	7.26	3
G - 17650	291.2	3/17/09	3.6	3
G - 16150	237.8	2/21/06	3.42	3
G - 16165	393.6	5/16/05	4.92	3
G - 12841	393.5	7/20/95	4.92	3
G - 9419	304.6	4/10/81	10.82	3
G - 5287	128.1	10/21/70	1.88	3

III. Summary of changes to the Proposed NPDES Permit Registration.

ODA will issue an Order on Permit Modification imposing an additional monitoring condition on the CAFO General Permit #1. (S4.E) The additional requirement is that the permit registrant inform ODA within 10 days of being informed by OWRD of any change to the water quantity available to Silver Sage for irrigation or stock watering uses. Upon receipt of such a notification, ODA would consult with OWRD to determine if the existing CAFO operation could legally continue to operate and irrigate enough acres sufficiently to utilize the manure nutrients land applied by the CAFO. ODA would review the Silver Sage AWMP/NMP and CAFO Permit registration and require Silver Sage to review and potentially modify the ODA-approved AWMP/NMP to be able to deliver the required environmental protections to surface and ground waters with the water quantity changes administered by OWRD.

IV. Index of Commenters

- **Letters or Emails**

1. Donnie Jenck
2. Waggin On Wiggle Butt Aussies LLC
3. Melodi Molt
4. Ann Watters
5. Michael Glassey
6. Steve Reed
7. Cherrie Stonerock
8. Millie Millis
9. Harney County Court
10. Ben McCanna
11. Jim Parr
12. Waterwatch of Oregon and Center For Biological Diversity
13. Barbara Cannady

- **Oral Commenters during the December 16, 2019 Hearing** – Recording available upon request
 - Louie Molt