September 7, 2022

NOTICE OF DECISION
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
NV0024252

JS LIVESTOCK, INC.
WINNEMUCCA, HUMBOLDT COUNTY, NEVADA

The Nevada Division of Environmental Protection (NDEP) (henceforth the Division) has decided to issue National Pollutant Discharge Elimination System (NPDES) permit NV0024252. This permit authorizes the Permittee to discharge manure and production area runoff from the JS Livestock, Inc. facility to groundwaters of the State or to waters of the U.S. in response to storm events or chronic rainfall events that exceed the 25-year, 24-hour storm design, provided that the production area is operated in accordance with parts B.CO.3 – Concentrated Animal Feeding Operation (CAFO), B.CO.28 – Inspection Frequency, and B.CO.29 – Freeboard, of the permit. This permit is issued in accordance with the provisions of Nevada Revised Statute (NRS) 445A.300 to 445A.730, inclusive.

This Permit will become effective September 1, 2022. The final determination may be appealed to the State Environmental Commission pursuant to NRS 445A.605 and Nevada Administrative Code (NAC) 445A.407. The appeal must be requested within ten (10) days of the date of this Notice of Decision and in accordance with the administrative rules of the Commission.
RESPONSES TO COMMENTS RECEIVED DURING PUBLIC COMMENT PERIOD ENDING JULY 25, 2022 AND DURING THE SEVEN (7) DAY EXTENSION OF THE PUBLIC COMMENT PERIOD ENDING AUGUST 11, 2022:

1. Public Comment:
   - NDEP should deny JS Livestock’s permit application because JS Livestock did not accurately disclose the estimated amount of waste that will be generated and transferred.

   **NDEP Response:**
   - The Division agrees that the manure generation estimate of 36 tons per year listed in the permit application is inaccurate. Upon further investigation, the correct generation estimate for the proposed facility is 37,230 tons per year for 4,000 horses. This estimate was calculated using the United States Department of Agriculture’s Agricultural Waste Management Field Handbook Chapter 4: Agricultural Waste Characteristics. This estimate is conservative as the calculation used mature horses, 18 months of age or older, that have reached their final weight. Furthermore, the proposed facility has stated that no bedding will be added to the corrals; therefore, the calculation did not include a factor for litter.
   - The Division has updated the Fact Sheet to include the estimated manure generation calculation.

2. Public Comment:
   - NDEP should deny JS Livestock’s permit application because the NMP does not ensure adequate storage of waste.
   - All CAFOs with NPDES permits must have a NMP that addresses the maximum capacity for manure storage and ensures adequate storage of manure, litter, and process wastewater.

   **NDEP Response:**
   - As stated in the Nutrient Management Plan (NMP), “This NMP is a very dynamic document as the JS Livestock facility is planning on starting up later this year.” The NMP also states that, “If manure is stored on a temporary basis on the property, the pile [sic] manure will be encircled with a straw wattle berm and covered with roof structure (Lean-to) to control run-off of the manure.” As the proposed facility is constructed and operations begin, they will have a better idea of what type of manure storage structure will work best for their site. A lean-to is just one of many options available.
   - The Division has added Special Approvals / Conditions Item #15 requiring the proposed facility to follow the USDA’s Agricultural Waste Management Field
Handbook Chapter 10 section 651.004 as guidance when designing the manure storage facility. This document also includes information on how to calculate the appropriate manure storage volume.

- The proposed facility will have berms in place to direct any stormwater runoff to the proposed stormwater retention basin. This will assist with capturing manure contaminated water and preventing it from leaving the site. Additionally, calculations for wastewater, defined as water containing waste or contaminated by waste contact, including process-generated and contaminated rainfall runoff, was provided in the proposed facility’s Stormwater Run-off Technical Memorandum dated February 4, 2022.

3. Public Comment:

- NDEP should deny JS Livestock’s permit application because the application is missing important information.
- JS Livestock failed to perform a laboratory profile and failed to explain why those pollutants will not be present in the monitoring well or discharge.

**NDEP Response:**

- Per Title 40 of the Code of Federal Regulation (CFR) Section 122.21(e), “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction.” The Division has determined that the application is completed to its satisfaction.
- The proposed facility has yet to begin operation and as such there is no manure, wastewater, or monitoring wells to take a sample from; hence, why there is no laboratory data included in the application. Furthermore, the Division is confident which pollutants will be produced at this facility based on other similar facilities permitted by the Division.

4. Public Comment:

- NDEP should deny BLMs permit application because the Draft Permit fails to require adequate reporting and effluent monitoring.
- As explained by the Second Circuit, “NPDES permits must contain conditions that require both monitoring and reporting of monitoring results of TBELs [technology-based effluent limitations] and WQBELs [water quality-based effluent limitations] to ensure compliance.”
NDEP Response:

- The technology based effluent limit (TBEL), per 40 CFR Section 412.15, for the production area of a CAFO that confines horses asserts that discharges of manure or process wastewater (which includes horse washdown water) pollutants to waters of the U.S. are prohibited from leaving the CAFO. The only exception to this is an overflow that occurs because of a storm, or chronic rainfall, event from a facility that is designed, constructed, operated, and maintained to contain all process wastewater plus the runoff from a 25-year, 24-hour storm event. The TBEL has been included in the permit. Additionally, water quality-based effluent limitations (WQBEL) only need to be included in permits where TBELs are not sufficient to ensure compliance with state water quality standards or where required to implement a total maximum daily load (TMDL). The Division has made the determination that the TBEL included in the permit is sufficient and is consistent with the requirements of similar facilities in Nevada and meets all the Environmental Protection Agency’s (EPA’s) requirements and guidelines for CAFOs. Furthermore, there are no TMDL’s associated with Big Cottonwood Creek or the Little Humboldt River. Therefore, no WQBELs are needed at this time.

5. Public Comment:

- NDEP should deny BLM’s permit application because the Draft Permit fails to contain adequate safeguards for transfers of CAFO waste to third parties.

NDEP Response:

- It is beyond the scope of the Division’s regulatory authority to implement safeguards for transfers of manure or process wastewater to third parties.
- Per 40 CFR 122.42(e)(3), requirements relating to the transfer of manure or process wastewater to other persons states, “Prior to transferring manure, litter or process wastewater to other persons states, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis.” Additionally, per 40 CFR 412.4(c)(3), “Manure must be analyzed a minimum of once annually for nitrogen and phosphorus content...”. Both requirements are included in the permit.

6. Public Comment:

- NDEP should deny BLMs permit application because the standard for 25-year, 24-hour storm events is outdated and does not adequately reflect the risk of discharge and pollutants.
- The EPA determines the likelihood and magnitude of a 25-year, 24-hour storm event based on an outdated 1961 National Weather Service rainfall atlas, known as Technical Paper No. 4 (TP40).
NDEP Response:

- Per 40 CFR 412.15(b), the current regulation for CAFOs as utilized by the EPA, “Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process-generated wastewaters plus the runoff from a 25-year, 24-hour rainfall event at the location of the point source, any process wastewater pollutants in the overflow may be discharged into U.S. waters.”

- Technical Paper No. 40 (TP40) was replaced by the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 (henceforth Atlas) in 2004. As stated in the introduction of Volume 1, Version 5.0 of the Atlas, “NOAA Atlas 14 Volume 1 provides precipitation frequency estimates for the semiarid southwestern United States which includes Arizona, Nevada, New Mexico, Utah, and Southeastern California...”. Furthermore, it states, “The Atlas provides precipitation frequency estimates for 5-minute through 60-day durations at average recurrence intervals of 1-year through 1,000 years. The estimates are based on the analysis of annual maximum series and then converted to partial duration series results.” Design calculations of the proposed, and Division approved, stormwater retention basin for the proposed facility used Volume 1, Version 5.0 of the Atlas as shown in the Stormwater Run-Off Technical Memorandum dated February 4, 2022.

Public Comment:

- BWPC did not provide Friends of Animals with documents requested.
- BWPC failed to timely respond to Friends of Animals request, hindering Friends of Animals ability to meaningfully comment.
- Friends of Animals requests BWPC to extend the comment period for an additional 30 days starting from the date it has provided all of the requested information.

NDEP Response:

- The Division received a request for public records from the Friends of Animals on June 30, 2022. Per NRS 239.0107, “Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable:... (c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request: (1) Provide to the person, in writing, notice of the fact that it is unable to make the public book or record available by that day and the earliest date and time after which the governmental entity reasonably believes the public book or record will be available for the person to inspect or copy...”. On July 8, 2022, five (5) business days after the
date on which the request was made (excluding July 4th due to the holiday), the Division responded, via e-mail, to Friends of Animals that specified a day (July 13, 2022) that the records would be made available. On July 12, 2022 the Division provided a portion of the records requested via e-mail to Friends of Animals. Not included in that e-mail were records pertaining to internal communications and communications with third parties regarding concerns about flooding at the proposed facility as they were not ‘readily available’ at the time. Per NAC 239.860(3), a public record is ‘readily available’ if, “The nature of the public record is such that an officer, employee or agent of the agency who has legal custody or control of the records is not required to review the record to determine whether the record includes confidential information.” To determine whether the requested records were considered confidential via the Deliberative Process Privilege (Dep’t of Interior v. Klamath Water users Protective Ass’n, 532 U.S. 1, 8 (2001)), the Bureau Chief and the Administrator’s designee had to review the request and subsequent records. Following the review, the additional requested records were provided to Friends of Animals on July 25, 2022.

- The Division provided the public an additional seven (7) days, beginning on August 4, 2022 and ending at 5:00 PM on August 11, 2022, to submit their comments to the Division. Therefore, the Division has determined that ample time has been allotted for public comments.

8. Public Comment:

- The Draft Permit violates the CWA and does not ensure JS Livestock’s CAFO operation will not impair the waters of the United States. Thus, NDEP should deny the permit.
- There is ample evidence demonstrating that flooding is a major problem in Winnemucca and Paradise Valley, and that the terms of the Draft Permit are not strong enough to prevent pollution and discharge caused by flooding.
- NDEP failed to address the fate of the wild horses and burros impacted by flooding and failed to adequately evaluate the impacts of flooding on surface waters.
- NDEP should deny JS Livestock’s permit because BLM failed to adequately consider the flooding concerns in its EA for the Winnemucca ORC.

NDEP Response:

- The Division reviewed all available documents and data which included, but was not limited to, the BLM Environmental Assessment, Humboldt County’s Water Plan, Nevada Flood Risk Portfolio, United States Geological Survey gage data, area depth to groundwater, historic flooding pictures and satellite imagery, and information from the Federal Emergency Management Agency. Furthermore, the Division conducted an onsite survey and assessment of the proposed site. Based on the Division’s review, as well as the United States EPA’s review of the draft permit, the Division does not anticipate negative impacts to groundwater or surface water from
the proposed facility at this time. Additionally, the Division found that the proposed facility meets all federal and State requirements for CAFOs.

- See the Division’s response in the above bullet as well as the responses to Public Comment #4 and #6.
- The regulatory authority delegated to the Division only relates to discharges to waters of the State and does not extend to concerns regarding the welfare of the animals.
- It is beyond the scope of the Division’s regulatory authority to deny a permit based on another entity’s internal procedures.

9. Public Comment:

- The Humboldt County Landfill is not set up to receive the number of mortalities the facility could generate.
- Is there a method for the public to notify NDEP of excess manure or dead animals at the facility?

NDEP Response:

- The Permittee has stated that routine mortalities will be transported, and disposed of, at the Reno Rendering facility instead of at the Humboldt County Landfill. However, should Reno Rendering not be able to accept the mortalities, the Permittee may dispose of them at the Landfill, subject to the County’s policies.
- The public may contact the Division’s spill hotline, 1-800-331-6337, to report concerns with manure or mortalities at the facility.