

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Transfer Application T-12248, Morrow County)	Protest of Columbia Riverkeeper, Center for Biological Diversity, Center for Food Safety,
(Application by Sage Hollow Ranch LLC))	Food & Water Watch, Humane Oregon, and WaterWatch of Oregon
)	
)	

The parties identified herein as the protestants (“Protestants”) hereby protest the application and preliminary determination (“Preliminary Determination”) of the Oregon Water Resources Department (“Department”) in the above matter. Pursuant to OAR 690-380-4030 and OAR 690-002-0030, Protestants state as follows:

A. Facts Showing Protestants Are Entitled to Relief.

Through evidence presently available, and/or through a reasonable opportunity for further investigation and discovery, Protestants will show:

1. Sage Hollow Ranch LLC (“Sage Hollow”) is the holder of groundwater rights reflected in certificates 49726, 49727, 55317 and 55316 (“Water Rights”). Sage Hollow has used the Water Rights to irrigate crops during an irrigation season from March 10 through October 15 of each year. On average, Sage Hollow has used a total of approximately 1,000 acre feet of water per year under the Water Rights.

2. The wells used under the Water Rights draw water from underground basalt formations. The formations hold water in distinct layers that may or may not be hydrologically connected. In 1976, based on declining groundwater levels, the Department closed the basalt formations to further groundwater appropriations and designated the area as the Ordnance Basalt Critical Groundwater Area.

3. The Preliminary Determination would allow Greg te Velde, dba Willow Creek Dairy and/or Lost Valley Farm. (“Willow Creek”) to use the Water Rights at a new location.

with new wells, for year-round operation of a dairy. The water would be used as drinking water for approximately 9,000 cows initially and, eventually, for as many as 30,000 cows. The water also would be used in dairy operations for such things as cooling milk and washing animal waste from the barns. Under the Preliminary Determination, Willow Creek could use as much as 1,036.72 acre feet of water per year.

4. The wells currently used for the Water Rights are such that the Department cannot determine which distinct layers of groundwater the wells are getting water from or how much water is coming from which layers. The Department cannot determine either whether or at what depths water is present in the same layers as the proposed new well locations. Therefore, the Department cannot determine whether use of water from the proposed new wells would draw from the same sources of water. A reasonable opportunity for discovery and further investigation may show that the proposed new wells will in fact draw water from a different source than the current wells.

5. The proposed transfer will constitute an enlargement. The area on which the Water Rights would be used by Willow Creek is smaller than the area on which Sage Hollow has used the Water Rights. Therefore, the Preliminary Determination would result in use of more water per acre than has occurred under the Water Rights in the past.

6. Sage Hollow's use of water under the Water Rights fluctuated from year to year based on factors such as the acreage and crops planted, temperatures during the growing season, and precipitation during the growing season. Willow Creek's use will not fluctuate as much. For this and other reasons, Willow Creek will use more water per year, on average, than Sage Hollow did.

7. Willow Creek will divert more water at the new point of appropriation, on an average annual basis, than Sage Hollow could put to beneficial use under the Water Rights. Therefore, Willow Creek will divert more water at the new point of appropriation than has been legally available to Sage Hollow at the original point of appropriation.

8. Willow Creek's use under the proposed transfer also will constitute an enlargement because water appropriated and used will be reused, sometimes many different times, for uses including drinking water for cows (perhaps after use in operations), washing pens, flushing barns and, even irrigation after several other uses.

9. Use of water by Willow Creek as proposed in the Preliminary Determination will result in another, existing water right not receiving previously available water to which it is legally entitled. This will happen because the new wells will be closer to other, existing water rights, because Willow Creek will use water year-round, and because Willow Creek will, in fact, use more water per year on average than Sage Hollow did.

10. Use of water by Willow Creek as proposed in the Preliminary Determination also will injure existing water rights by diminishing the quality of groundwater and/or surface water, through return flows and/or otherwise, such that one or more existing water right no longer is able to receive previously available water to which it is legally entitled because the diminished quality of the water impairs the beneficial use and/or reduces the amount and/or timing of water suitable for the beneficial use.

11. A reasonable opportunity for discovery and further investigation may show that changes to the Water Rights as proposed to be allowed under the Preliminary Determination will affect the quantity of return flows to surface and/or groundwater in way that injures one or more other existing water rights.

12. Although Willow Creek will eventually use more water per year, on average, than Sage Hollow has, Willow Creek originally will use less. Willow Creek cannot make beneficial use of the full amount of the Water Rights within the time contemplated by Oregon water law. In any event, Willow Creek cannot make beneficial use of the full amount of the Water Rights by the first October 1 that is one year after the transfer would be approved. Willow Creek cannot make beneficial use of the full amount of the Water Rights until approximately 2031.

13. A reasonable opportunity for discovery and further investigation may show that the original place of use will continue to receive water from the same source after any transfer is approved.

14. A reasonable opportunity for discovery and further investigation may show that some portion of the Water Rights have not been put to beneficial use for a period of five successive years before the proposed transfer.

15. A reasonable opportunity for discovery and further investigation may show that Sage Hollow is not ready, willing and able to use the full amount of water allowed under the Water Rights.

B. How the Preliminary Determination Is in Error and Deficient (Not Required but Set Forth for Further Identification of Issues).

The Preliminary Determination is in error and deficient for reasons including the following:

1. The Preliminary Determination would result in water being taken from a new source, in a critical groundwater area where new appropriations are prohibited, under existing Water Rights.

2. The Preliminary Determination would result in enlargement of the use under the Water Rights.

3. The Preliminary Determination would result in injury to other existing water rights.

4. The Preliminary Determination would change the season of use, which is not an authorized change to a water right.

5. The Preliminary Determination approves a transfer for more water than can be put to beneficial use within one year plus the time until the next October 1, or otherwise within a reasonable time as contemplated by Oregon water law.

6. A reasonable opportunity for discovery and further investigation may show that the Preliminary Determination will fail to keep the original place of use from receiving water from the same source.

7. A reasonable opportunity for discovery and further investigation may show that the Preliminary Determination will allow transfer of Water Rights forfeited through non-use for five or more successive years.

8. A reasonable opportunity for discovery and further investigation may show that the Preliminary Determination would allow Sage Hollow to transfer the Water Rights even though it is not ready, willing and able to use the full amount of water allowed under the Water Rights.

C. Specific Relief or Action Requested.

Protestants request a final order denying the application.

D. Name, Address and Telephone Number of Protestants.

The names and addresses of the Protestants are as follows:

Center for Biological Diversity PO Box 11374 Portland, Oregon 97211	Center for Food Safety 917 SW Oak St. Suite 300 Portland, OR 97205
Columbia Riverkeeper 111 Third St. Hood River, OR 97031	Food & Water Watch 1028 SE Water Ave. Suite 245 Portland, OR 97214
Humane Oregon 8508 SE Eleventh Avenue Portland, OR 97202	WaterWatch of Oregon 213 SW Ash Street, Suite 208 Portland, OR 97204

Protestants will designate one party as the primary contact at a later date.

E. Name and address of other person or persons necessary to, or having a direct interest in, the proceeding.

The following other persons are necessary to, or have a direct interest in, the proceeding:

SAGE HOLLOW RANCH LLC 3620 INDEPENDENCE RD SUNNYSIDE, WA 98944	WILLOW CREEK DAIRY PO BOX 1210 BOARDMAN, OR 97818
--	---

F. Citation of Legal Authority.

Protestants rely on legal authorities including the following:

1. ORS 537.705
2. ORS 540.505 through ORS 540.580, including: ORS 540.510; ORS 540.520 and ORS 540.530.
3. ORS 540.610 and ORS 540.631.
4. OAR Chapter 690 Division 380, including: OAR 690-380-0100(2), (3); OAR 690-380-2110; OAR 690-380-2200; OAR 690-380-2300; OAR 690-380-4010; OAR 690-380-5140; OAR 690-380-6010.

G. Protest Fee.

Pursuant to ORS 536.050, the required fee of \$700 is included with this protest.

H. Request for Hearing.

Protestants request a contested case hearing.

Dated: March 30, 2017

Respectfully submitted.



Maura C. Fahey, OSB No. 133549
Emma A. O. Bruden, OSB No. 163525
Crag Law Center
917 SW Oak Street, Suite 417
Portland, Oregon 97205
(503) 525-2722

Of Attorneys for Protestants

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing protest was served by regular first-class mail, on the date indicated below, as follows:

SAGE HOLLOW RANCH LLC 3620 INDEPENDENCE RD SUNNYSIDE, WA 98944	WILLOW CREEK DAIRY PO BOX 1210 BOARDMAN, OR 97818
WILLIAM PORFILY PO BOX 643 STANFIELD, OR 97875 (Agent for Applicant)	MARTHA O. PAGEL SHONEE D LANGFORD SCHWABE WILLIAMSON & WYATT PC 530 CENTER ST NE STE 400 SALEM OR 97301 (Attorney for Willow Creek Dairy)

Dated: March 30, 2017


Maura Fahey