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BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

In Re: Appeal of NDEP’s NPDES)
Permit NV0023027 (Ponderosa Dairy))
)

APPELLANTS’ OPPOSITION TO DAIRY’S MOTION TO DISMISS

I. Introduction

Amargosa Citizens for the Environment (“ACE”), John F. Bosta, Antonio Guerra Martinez (collectively “Appellants”) submit this brief in opposition to the Motion to Dismiss filed by the Rockview Farms (Ponderosa Dairy) (“Dairy”). The Dairy seeks to dismiss Appellants’ appeals by arguing that residents of Amargosa Valley are not “aggrieved” by the renewal and expansion of the NPDES permit for the Dairy issued by the Nevada Department of Environmental Protection (“NDEP”). To the contrary, as demonstrated herein and at testimony at hearing, Appellants will be aggrieved by the Dairy’s existence and more so by its expansion. As a consequence, they have standing to prosecute this appeal. It is important to note that only the Dairy contends that Appellants lack standing to challenge NDEP permit, not NDEP.

II. Factual Background

The Ponderosa Dairy is a large confined animal feeding operation (“CAFO”) that generates enormous amounts of animal urine and feces and then discharges this raw waste to settling ponds and then flooded or sprayed on nearby fields for disposal. Through the renewal and expansion permit, the Dairy seeks not only to continue operating but also to increase the amount of sewage discharged to 1,000,000 gallons per day – more than four times the amount of wastes generated by all of the residents of Nye County.

The presence of the Dairy in Amargosa Valley presents a range of effects on local residents, some more pernicious than others. For example, the Dairy foul odors from the sewage and thousands of cows waft over the valley as the wind shifts. The stench of the produced by concentration of so many animals, their urine and feces, and decaying deceased cows is disgusting and disrupts those who happened to be in the path that day. The Dairy also generates huge numbers of flies, not only at the site of Dairy but also where the Dairy deposits its manure wastes. Flies are ever-present and invade homes, cars, and places of business. Flies from Dairy wastes have even made their way into packages of organic products produced in the valley.

The Dairy’s production and disposal of nitrogen and pathogens also plague residents of Amargosa Valley through the air and water. Appellants depend on clean air and water for their health and livelihoods. Nitrogen discharged to the ground can pollute the groundwater not only through normal Dairy operations but also through spills and illegal discharges – as have happened in the past with this Dairy. The Dairy also discharges hundreds of tons of nitrogen in the form of ammonia into the air. Ammonia

discharges generate particulate matter, odors and greenhouse gases. These constituents adverse affect those downwind. In short, the presence of a 8,000 plus cow mega-dairy operation produces a broad range of adverse affects on the daily lives of residents in Amargosa Valley.

III. Legal Framework

NRS 445A.605 controls who may appeal to the SEC. In broad straightforward language, the Legislature decreed that “[a]ny person aggrieved by [] [t]he issuance, denial, renewal, suspension or revocation of a permit . . .” may prosecute an appeal. NRS 445A.605(1), (1)(a). “Aggrieved” is the key word in the provision to establish standing to bring an administrative appeal. In general, the concept of standing is to ensure that the person bringing an appeal or action will be affected by the challenged action so that the dispute is real and concrete, as opposed to abstract or theoretical. Massachusetts v. EPA, 549 U.S. 497 (2007). The Nevada Supreme Court has interpreted various standing provisions liberally to ensure that protective purposes of the underlying statute will be met. See Hantges v. City of Henderson, 121 Nev. 319 (2005); Citizens for Cold Springs v. City of Reno, 125 Nev. Adv. Rep. 48, 218 P.3d 897 (2009). The question for the SEC therefore, therefore, is whether the Appellants are adversely affected by the decision of the NDEP to renew and expand the permit to operate the Dairy.

IV. Application of Law to Facts

The Appellants are aggrieved by the decision of NDEP to renew and expand the permit for the Dairy. As set forth above, the Dairy creates a range of adverse effects on Appellants. The Dairy creates four odors. The Dairy produces copious flies. The Dairy produces hundreds and hundreds of tons per year of sewage that constituents of which are

released to the air and groundwater. As Appellants will testify at the January 19, 2010 hearing, all of these effects adversely affect them in their daily personal and/or professional lives. Indeed, it is not too difficult to conceive that the presence of such a massive dairy operation with its attendant enormous production of animal urine and feces will adversely affect those living and working within the range of wind, water and flies. See Attachment A (“Health Ills Abound As Farm Runoff Fouls Wells,” New York Times, September 18, 2009).

Finally, the Dairy contends in a one-sentence argument without citation to authority, that Appellants must demonstrate that they are aggrieved not just by the “action” of the NDEP but more specifically only by discharges of pollutants to water. Dairy’s Motion to Dismiss at 5. NRS 445A.605, however, contains no such requirement. It speaks only of being “aggrieved” by the issuance or renewal of a permit. Here, but for the renewed and expanded permit issued by the NDEP, Appellants would not be suffering the adverse affects listed above.

IV. Conclusion

Appellants will be adversely affected by the presence of the Dairy. Therefore, the Appellants are “aggrieved” and may properly bring this appeal pursuant to NRS 445A.605.

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