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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
SOUTHERN NEVADA BRANCH OFFICE
400 Shadow Lane, Room 201
Las Vegas, Nevada 89106
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February 8, 2008

Mr. Gregory J. Walch
Santoro, Driggs, Walch, Kearney,
Holley & Thompson
400 S Fourth St, 3rd Floor
Las Vegas, NV 89101-6201
Certified Mail No. 71067808063000343657

Re: Ponderosa Dairy Groundwater Pumpage Reporting

Dear Mr. Walch:

This office is in receipt of your letter dated December 21, 2007, in which you incorrectly state that my only specific concerns with regard to the Ponderosa Dairy, were a spreadsheet tabulation error and missing data for the Haybale well. You also state that you have been trying for some time to make an appointment with me to determine whether I have any other concerns regarding the Ponderosa filings or dairy operations in general, that on several occasions you have been unable to get a return call and you assume that the Division is now satisfied with Ponderosa's filing and that the dairy is viewed as being in substantial compliance.

Subsequent to the September 2007 hearing regarding the Ponderosa Dairy filings, this office has record of receiving two phone calls from you, copies attached, one dated October 10, 2007, which was not returned but was responded to by personal email. The other is dated December 6, 2007, with no message left as to the purpose of the call. I do not have voice mail or a State issued cell phone, therefore, there are no other mechanisms to leave a message other than as described. Since November 2005, the point of contact with your law firm regarding the Ponderosa Dairy has been Mr. Tom

Driggs, see attached letter dated November 10, 2005, which established the date of first contact. Previously there had been email correspondence regarding the Burson issue, being the purpose of your previous call and since I had not corresponded with anyone in your firm except Mr. Driggs regarding the Ponderosa Dairy, there was no indication that your call was regarding said matter.

During this same time period, Mr. Driggs has been in this office a minimum of ten (10) times, see attached logs, and to my recollection I only spoke to Mr. Driggs once concerning the Ponderosa Dairy during this time period. On or about November 2, 2007, I informed Mr. Driggs of the discrepancy between the groundwater pumpage figures submitted as an exhibit at the September 2007 Hearing regarding the Ponderosa Dairy filings and the groundwater pumpage figures submitted for the filing of the Proof of Beneficial Use for the Ponderosa Dairy, Champion and Monster wells. Additionally, reports of Proof of Beneficial Use field investigations were written on September 28, 2007, and filed in the pertinent files and are readily available had anyone from your law firm researched the files after being notified of the discrepancies, copies attached.

On December 9, 2006, a joint onsite inspection was conducted and attended by myself and Tracy Geter of the Division of Water Resources, yourself, Tom Driggs of your law firm and David Hall of the Ponderosa Dairy. During this field inspection, each well site was visited and the discrepancies of each site were discussed with you and Mr. Driggs. Mr. Driggs maintained notes of these discrepancies and you personally assured me that these discrepancies would be addressed. Thirteen months have elapsed since the December 9, 2006, field inspection and to date; some of the discrepancies have yet to be addressed.

After receiving your letter on the afternoon of December 21, 2007, I spoke with Mr. Driggs of your law firm via telephone later that same day. I questioned Mr. Driggs on whether I had informed him of the discrepancies regarding the Ponderosa Dairy, Champion and Monster wells. Mr. Driggs confirmed that I had discussed the issue with him and he also stated that he had advised you of the discrepancies. Mr. Driggs also stated that Mr. Lisle Lowe, the Ponderosa Dairy's Water Right Surveyor, had been to your office. Mr. Driggs did not state the purpose of Mr. Lowe's visit to your office; however, the context in which Mr. Driggs made the statement regarding Mr. Lowe was interpreted to mean that Mr. Lowe was in your office regarding the discrepancy in groundwater pumpage from said wells.

With regards to the missing data from the Haybale well, this office requested groundwater pumpage from the Haybale well - not the power meter records for the Haybale well. It must be noted that the requests for pumpage information from the Haybale well or other unpermitted and/or undocumented wells does not in any way condone, authorize the use from or imply a favorable decision from the State Engineer regarding pending or future applications. When I initially informed Mr. Driggs that the October 3, 2006, letter from the State Engineer also included the Haybale well (i.e. all),

Mr. Driggs voiced his concern that the well meter had only been recently installed. I recommended to Mr. Driggs that he establish a correlation based on gallons of water per kWh used and obtain the power meter records and use the historic power meter records to establish the historic groundwater pumpage, which can be done with a relatively high degree of accuracy. This process was confirmed in a letter dated May 24, 2007, from you and signed by Mr. Driggs in which you state "We are currently in the process of using electric meter readings to supplement the pumpage records for those wells that until recently did not have a water meter installed. We will forward this data to you as soon as possible and hope to have it to you by June 15."

I take exception with your inference that you have been unable to get a return phone call on several occasions, that the only specific concern with the groundwater pumpage reports was the accuracy of the groundwater reports and data missing for the Haybale well. When in fact there was one non-descript phone call over a three and one half month period which went unanswered. When in fact Mr. Driggs, an employee of your law firm, had been advised of the discrepancies regarding the Ponderosa Dairy, Champion and Monster wells and Mr. Driggs had informed you of these discrepancies. When in fact all of the discrepancies discussed with you in person during the December 9, 2006, field inspection have still not been addressed. When in fact, insufficient power records in lieu of groundwater pumpage data were submitted six months after your own approximate stated delivery date.

It is misrepresentations such as these that leave me no alternative but to require all future correspondence or requests between this office and your law firm or clients be made in writing with original signature of the responsible party be submitted to this office for proper recordation. No emails will be accepted to ensure proper recordation and filing.

This office has been attempting to get complete and accurate groundwater pumpage records for the Ponderosa Dairy and bring the Ponderosa Dairy into compliance since October 2005, see copy of letter dated October 26, 2005. This office has also attempted to clarify some of these issues with Mr. Lowe; however, Mr. Lowe informed me that he has been directed to not answer any questions from this office regarding the Ponderosa Dairy. When asked who directed him to not answer any questions from this office, Mr. Lowe refused to answer.

Unfortunately, to date, compliance with existing permit terms and Nevada Revised Statutes (NRS) has not been achieved. In addition to not being in compliance this office is also concerned that the operators of the Ponderosa Dairy have continued to pump groundwater from unpermitted wells located upon the Ponderosa Dairy for a beneficial use within the dairy after your law firm and the operator of the Ponderosa Dairy were advised during the December 9, 2006, field inspection that certain wells did not have valid water rights appurtenant to them.

The records of this office indicate that the Ponderosa Dairy has not been in substantial compliance since October 2005 and over a year has passed since the State Engineer's deadline of November 15, 2006, and to date, this office has not received a complete and accurate accounting of the Ponderosa Dairy's groundwater pumpage nor have all the discrepancies from the December 9, 2006, onsite inspection been addressed. To clarify any confusion there may be, the following is a list of items which need to be addressed by the Ponderosa Dairy to obtain compliance with existing NRS, Regulations and permit requirements:

- o Comply with the options addressed in the November 14, 2005, letter regarding the improperly abandoned wells located within the NE1/4 NW1/4, Section 9, Township 17 South, Range 49 East. Note there has been partial compliance but the abandonment of one well remains improperly documented.
- o Two substantially different pumpage reports have been submitted to the State Engineer's office for the Champion and Monster wells. Based on the information submitted this office has not been able to determine which of the pumpage reports are accurate. Therefore, corrected ground water pumpage reports for the Champion and Monster wells are required. Said reports shall include copies of the appropriate log book with meter readings and other documentation to support which of the previously submitted pumpage reports were accurate.
- o File water right applications appurtenant to the Wind Jammer irrigation well and G-Ranch domestic well for the proper use and appropriate annual duty. It must be noted that the requests to file application for unpermitted wells do not in any way condone, authorize the use from or imply a favorable decision from the State Engineer regarding pending or future applications.
- o Convert the Haybale well power readings into an actual groundwater usage report.
- o Cease and desist groundwater pumpage from all unpermitted wells for any purpose or use on the Ponderosa Dairy.

Furthermore, the power meter reading print out appurtenant to the Haybale well which was emailed to this office on December 20, 2007, is dated August 3, 2007. In lieu of the State Engineer approving a discovery motion request by the National Park Service for the September 2007 Evidentiary Hearing before the State Engineer, your law firm agreed during a conference call with the State Engineer and Hearings Officer and referenced by subsequent letter dated May 24, 2007, to submit all groundwater pumpage data appurtenant to the Ponderosa Dairy. It is evident that this information was available prior to the September 2007 Evidentiary Hearing regarding the Ponderosa Dairy, an explanation is required as to why this information was not submitted as an exhibit in said Evidentiary Hearing as agreed upon by your law firm.

As stated in the State Engineer's letter dated October 3, 2006, the requested pumpage records will be an integral part of the groundwater impact analysis for the Hearing under Change Application No.'s 69836, 69837, 70383 and 72197. The Hearing has been completed by this office, cannot conduct an impact analysis nor make a ruling until complete and verifiable groundwater pumpage records have been received by this office. Failure to submit all of the requested data within 30 days will result in DENIAL of said applications.

Additionally, while preparing this response, this office was unable to locate an Intent to Drill card or Well Log from a Nevada licensed well driller for the well commonly referred to as the Haybale well located within the NW ¼ NE ¼ of Section 09, Township 17 South, Range 49 East.

NRS § 534.050, subsection 1 and 2 states:

"Except as otherwise provided in subsection 2 and NRS § 534.180, every person desiring to sink or bore a well in any basin or portion therein in the State designated by the State Engineer, as provided for in this chapter, must first make application to and obtain from the State Engineer a permit to appropriate the water, pursuant to the provisions of chapter 533 of NRS relating to the appropriation of the public waters, before performing any work in connection with the boring or sinking of the well.

1. Upon written application and showing of good cause, the State Engineer may issue a written waiver of the requirements of subsection 1:
 - (a) For exploratory wells to be drilled to determine the availability of water or the quality of available water;
 - (b) To allow temporary use of the water in constructing a highway or exploring for oil, gas, minerals or geothermal resources; or
 - (c) For wells to be drilled in shallow ground water systems and pumped to alleviate potential hazards to persons and property resulting from the rise of ground water caused by secondary recharge. If practical, approved by the State Engineer and consistent with this chapter and chapter 533 of NRS, the withdrawn water must be used for some other beneficial use".

State Engineer Order No. 724 designated the Amargosa Basin on May 14, 1979. With the issuance of designation Order No. 724, a valid permit, temporary permit or combination application and waiver was required prior to the drilling of the heretofore-mentioned Haybale well. An inspection of this office's records could not locate a permit, temporary permit or combination application and waiver appurtenant to said well to permit the drilling of the Haybale well in compliance with NRS.

Furthermore, NRS § 534.160, subsection 5 states:

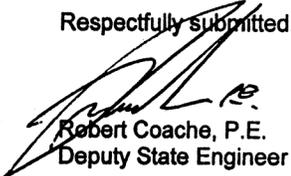
The State Engineer shall order any person who drills a well without a license to plug that well. If the well is not plugged within 30 days after the order, the State Engineer shall plug the well at the expense of the person who owned or drilled the well.

Please provide a valid well log from a licensed well driller and appurtenant permit, temporary permit or waiver and application combination to substantiate that the Haybale well was drilled in compliance with the Division of Water Resources "Regulations for Water Well and Related Drilling" and NRS chapter 534. The well log and appurtenant permit or waiver information is to be submitted prior to March 31, 2008.

You will note that NRS § 534.160 subsection 5 is unforgiving and does not provide the State Engineer with any discretion as to its enforcement, i.e. shall means shall; therefore, it is imperative that this information be submitted to this office within the designated time frame. A separate letter dated the same as this letter with the same time frame, copy attached has been sent to the Owner of Record of the parcel of land appurtenant to the Haybale well to comply with our noticing policy prior to the issuance of an order.

If you prefer to discuss any of these issues in person, you can contact Mr. Bryan Stockton of the Attorney General's Office to establish a time in which we can meet with legal counsel present.

Respectfully submitted,



Robert Coache, P.E.
Deputy State Engineer

RC/bk
Enclosures (copies mentioned in this letter)

cc: Tracy Taylor, P.E., State Engineer
Jason King, P.E., Deputy State Engineer
Rockview Dairies, Inc.
Peter Fahmy, Solicitor General Office, w/o enclosures
Charles Pettee, U.S. Department of Interior, National Park Service, w/o enclosures