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BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

In Re:

Appeal of Groundwater Pollution Control
Permit No. NS2014502
Smith Valley Dairy

SOS's REPLY BRIEF

I. Introduction

Neither the Nevada Department of Environmental Protection (NDEP) nor Dirk Vlot (the Operator) of the Smith Valley Dairy (Dairy) dispute that Concentrated Animal Feeding Operations (CAFOs) constitute an industrialization of traditional agricultural practices, which when practiced on such a scale and intensity threaten the environmental and social fabric of rural communities. Study after study document groundwater degradation as a result of CAFO operations. NDEP's task then, when permitting CAFOs, becomes critical to not only protect the waters of the State of Nevada but also the communities that rely upon them. In this case, the necessary protection did not occur.

II. The Operator's Consistent Illegal Conduct Heightens Permit Scrutiny

NDEP's oversight duties become even more important when a particular applicant demonstrates time and again its intent to skirt and outright violate applicable laws adopted to protect the public interest. As documented in SOS's Opening Brief (at 6-9), the Operator

1 willfully ignored NDEP's Cease and Desist Order to stop constructing the Dairy until after the
2 NDEP issued a permit. Both NDEP and the Operator try to minimize this egregious conduct in
3 their Opposition Briefs. Far from being a solitary example, the Operator's pattern and practice,
4 however, is to disregard rules when perceived to be in conflict with its profit. For example,
5 Lyon County has recently found multiple violations of County regulations and "red-tagged" the
6 Dairy. See Exhibits 27-29, attached hereto. Furthermore, the Operator's California Dairy has
7 also been the subject of a Cease and Desist Order from the California Water Resources Control
8 Board. See Exhibit 30, attached hereto.

9
10 The Operator also deceptively misstates his "outreach" efforts at page 7 of its Opposition
11 Brief. In fact, the reference in the Smith Valley Advisory Board (Exhibit F) Meeting Agenda for
12 June 5, 2013 (Exhibit G) item 9 Discussion Item: "Dairy Project: No Action will be taken" is all
13 that has been provided as proof. There was no special advertising or effort to make sure the
14 community knew this important item was on the agenda. In addition the only people on the
15 door-to-door outreach listed that actually spoke with Dirk Vlot or his representative were Frank
16 and Linda Ely.

17 **III. The Dairy As Constructed And Operated Will Not Protect Nevada's Groundwater**

18
19 NDEP's fundamental obligation is to protect groundwater from contamination rather than
20 justify what this aggressive Operator had already built. As set forth in SOS's Opening Brief
21 and un rebutted by NDEP or the Operator, the Dairy as constructed and permitted will not
22 protect Nevada's waters.

23 **A. Sewage Pond Location And Design Will Not Protect Nevada Waters**

24 **1. Operator located ponds in the worst possible location: a natural drainage**

25
26 As shown on Exhibits 31-32 attached hereto, the Operator constructed the Dairy's
27 production center – prior to obtaining the necessary permits – within a natural drainage area.
28

1 The location in the north east corner of the Dairy property is the low spot that collects drainage
2 and flood waters and channels them ultimately into Artesia Lake. In other words, the Operator
3 located the most manure and wastewater production center and sewage holding lagoons in the
4 worst possible location: a natural watercourse that funnels drainage and flood waters with, not
5 surprisingly, seasonal high groundwater just below the surface original surface level.
6

7 In this drainage course, the Operator first **lowered** and then leveled the ground surface and
8 built two sewage lagoons, the lower of which was built with an overflow weir to spill into this
9 area. Around the north and east property boundaries, the Operator mounded dirt into a three-
10 foot berm as the only stormwater containment for the entire Dairy production center – allegedly
11 “engineered” to contain a 24-hour, 25-year storm event. Thus, NDEP authorized the Dairy to
12 collect stormwater that washes the manure and wastewater from the production area into an
13 unlined impoundment behind the berm and then percolate directly into the groundwater just
14 below the surface. The “berm” blocks the natural surface water flow path; the flow path for the
15 drainage of the entire property as it existed prior to construction (see Exhibits 31-32). By
16 building the berm across a known surface discharge path the Operator altered the stormwater
17 contribution to Artesia Lake. For any greater storm, manure and wastewater will wash over,
18 around or through the berm into the remainder of the natural drainage course and into Artesia
19 Lake. Thus in the best of circumstances, NDEP permits uncontrolled discharge directly to a
20 high, unconfined groundwater basin that is used for domestic purposes by adjoining neighbors.
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23 But as SOS will demonstrate at the hearing, the Operator failed to establish that the crude
24 stormwater berm would contain the 24-hour/25-year storm in this location. Instead, the erosive
25 force of rain and floodwaters will likely destroy the berm relatively easily and discharge
26 pollutant to both surface and groundwaters.
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1 2. No consideration of seasonal high groundwater for adequate clearance

2 In order to protect Nevada waters from the inherent threat of industrial CAFO pollution,
3 NDEP requires an adequate clearance between sewage lagoons and seasonal high groundwater.
4 In WTS-38, NDEP provides that a minimum of 4 feet of separation should occur. See Exhibit
5 Opening Brief at 5-6. The Operator did not provide NDEP with adequate information
6 regarding seasonal high groundwater. As a result, NDEP concluded only that “depth to
7 groundwater” at one point in time (summer of a the third year of drought) was 14 feet. *Id.*

8
9 However, as demonstrated in SOS’s Opening Brief, seasonal high groundwater ranges
10 from 6 inches to 4 feet below ground surface (“bgs”), thereby putting the bottom and sides of
11 the ponds substantially below that level and subject to repeated, damaging inundation and
12 flooding. *Id.* Online file research indicates that NDEP has never issued a permit to a CAFO
13 that places sewage lagoons anywhere near the zone of seasonal high groundwater. See e.g.,
14 Exhibit 33 hereto (Ponderosa Dairy fact sheet indicating groundwater 81 to 95 feet below
15 surface); Exhibit 34 hereto (Desert Hills Dairy fact sheet indicating groundwater 77 feet below
16 surface).
17

18 In their Opposition Briefs, NDEP and the Operator completely ignore this critical issue.
19 Indeed, since NDEP fails to respond, it admits the permit was issued in error. The Operator’s
20 Opposition Brief fares no better as it simply concludes without discussion or citation, “[t]here is
21 no evidence to suggest the bottom of the lined ponds is in direct connection with groundwater.”
22 Operator Opposition at 10. However, seasonal high groundwater will likely be **above** the level
23 of bottom of the lagoons. Since no evidence of exists that NDEP even considered this crucial
24 issue, the SEC should remand the permit.
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1 3. NDEP violated its own guidance on floodwaters

2 NDEP's guidance directs that in order for Nevada waters to be protected from stormwater
3 releases from CAFO operations areas, the facility must control the 100 year, 24 hour storm
4 event. See Exhibit 9, WTS-38 (October 2014). Yet in direct conflict, NDEP only required the
5 Operator to control the 25-year, 24-hour storm event. NDEP does not address this
6 disconnection between what its professional engineering staff has determined to be protective of
7 the Sate's waters and the standard for the Dairy permit. NDEP only states that the permit is in
8 compliance with NRCS guidance, without explaining why it departed from its own, more
9 restrictive, guidance. See NDEP Opposition at 10-11; *id.* at 3 (footnote 2).

11 NDEP's failure to apply its own guidance on stormwater protection is particularly
12 troubling in this case. As described above, the Dairy's production area sits in a natural
13 drainage, collecting runoff and floodwaters from not only its property but also those adjacent.
14 As a result, the Dairy's production area containing the greatest concentration of animal wastes
15 will be subject to substantial flows with direct channel access to Artesia Lake. In these
16 circumstances, NDEP should have followed its own guidance and adequately protected Nevada
17 waters, or at least explained why it chose to ignore its own policies on how to best protect
18 groundwater and surface waters and the communities that rely upon them.

20 B. Monitoring Plan Will Not Avoid Groundwater Contamination

21 NDEP and the Operator's Opposition Briefs do not address other problems with the permit
22 identified in SOS's appeal and Opening Brief.

23 1. "Upgradient" well placed below contamination sources

24 The Dairy's upgradient monitoring well for the wastewater lagoons is located directly
25 downgradient from the manure storage area. This monitoring well location fails to consider the
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1 groundwater contamination from manure storage area that would affect upgradient water quality
2 for the wastewater lagoons.

3 2. Reporting concentrations too high to catch accumulating pollutants

4 Smith Valley Permit allows total nitrogen to increase to 7.0mg/L before "an alternative
5 method of process wastewater and/or manure storage must be prepared and submitted to the
6 Division for review and approval." However, no one has identified other alternate methods,
7 beyond a plastic lined lagoon, to fulfill this requirement. Additionally, the source of the
8 nitrogen pollution does not have to be identified and the nearby residents drinking the
9 groundwater do not have to be notified. This only compounds the problem without finding a
10 viable solution.

11
12 3. No pressure testing of wastewater conveyance pipe

13 The Dairy will convey wastewater from the lagoons to irrigated fields through a buried
14 pipe under pressure because the lagoons sit below the fields. The route of the pipe passes
15 adjacent to a number of private properties. However, the pipe, which was constructed and
16 buried before approval of the plan and issuance of the Smith Valley Permit, did not undergo any
17 pressure testing to ensure proper functioning or to check for leaks, blockages, or other failures.
18 The SEC should remand the permit to require pressure testing in order to ensure that no
19 undetected sewage leaks could occur.

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22 **IV. Authorized Discharge Required Clean Water Act NPDES Permit**

23 The Dairy's permit authorizes polluted stormwater discharge to Artesia Lake, which sits
24 within the interstate Walker River Drainage. Despite these facts, NDEP did not issue a National
25 Pollutant Elimination Discharge System (NPDES) permit under the federal Clean Water Act
26 (CWA) for the Dairy. In its Opposition, NDEP argues a radical position: the Walker River
27 drainage and Walker Lake are not "waters of the United States" because they are a "closed,"
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1 terminal basin and lake. See NDEP Opposition at 7 (“Artesia Lake is located in the Walker
2 River basin. The Walker River basin flows from its headwaters in the Sierra Nevada [across a
3 state line] to the terminus at Walker Lake, and is a closed basin with no outflow or discharge
4 except through evaporation. As Artesia Lake is located within a closed basin, it is not a Water
5 of the U.S., and therefore, an NPDES permit is not required.”).

6
7 The test for Waters of the United States, however, is not based on whether a basin is
8 closed, but rather whether the water are “navigable” or tributary thereto. See e.g., *United States*
9 *v. Riverside Bayview Homes*, 474 U.S. 121 (1985) (*Riverside*); *The Montello*, 87 U.S. 430, 441-
10 42 (1874) (waters of the United States determination based on navigability by a canoe).
11 Moreover, in *Utah v. United States*, 403 U.S. 9 (1971), the Supreme Court held that the Great
12 Salt Lake, an intrastate, “closed” water body, was navigable under federal law even though it “is
13 not part of a navigable interstate or international commercial highway.” *Id.* at 10. In doing so,
14 the Supreme Court stated that the fact that the Lake was used for hauling of animals by ranchers
15 rather than for the transportation of “water-borne freight” was an “irrelevant detail.” *Id.* at 11.
16 “The lake was used as a highway and that is the gist of the federal test.” *Ibid.*; see also *Alaska v.*
17 *Ahtna, Inc.*, 891 F.2d 1404 (9th Cir. 1989) (9th Circuit holding that current use of an river for
18 commercial and recreational boating is sufficient evidence of the water’s capacity to carry
19 waterborne commerce). Since the “closed basin” distinction has no basis in law, the SEC
20 should reject it.
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22
23 NDEP also argues that no NPDES permit was required because although it authorized a
24 discharge to jurisdictional waters, the discharge would not occur through a specific pipe. See
25 NDEP Opposition at 9:11-20. EPA considers CAFOs point sources of pollution regardless of
26 the presence of a pipe. See 40 CFR §122.23 (“Concentrated animal feeding operations
27 (CAFOs), as defined in paragraph (b) of this section or designated in accordance with paragraph
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1 (c) of this section, are point sources, subject to NPDES permitting requirements as provided in
2 this section.”) Thus NDEP cannot rely upon the lack of a specific pipe to claim that its
3 authorization to discharge pollutants from a CAFO is not a point source and not subject to
4 NPDES permitting. Since NDEP applied the incorrect legal standards for NPDES applicable,
5 the SEC should remand back to the NDEP for consideration of an NPDES permit.¹
6

7 **V. The SEC Should Grant SOS’s Appeal To Protect The Integrity And Relevancy of
8 Public Participation**

9 In violation of the Nevada Public Records Act, NDEP precluded SOS members and
10 representatives from reviewing the Dairy application file. See Opening Brief. At the same time
11 NDEP allowed the Operator to illegally construct the Dairy prior to issuance of any permit,
12 record inspection and public comment. *Id.* The net result of these actions was to render public
13 participation meaningless in this case as the Dairy was already built and the conforming permit
14 issued in draft form.

15 In their briefs, NDEP and the Operator seek to minimize their respective conduct. For
16 example, while NDEP admits that it refused to allow access to the application file because the
17 permit was in draft form, it asserts that “members of the public visited NDEP to ask questions
18 and review the file and all documents associated with the Smith Valley Dairy.” NDEP
19 Opposition at 13 (citing NDEP Exhibit 16). NDEP’s Exhibit 16, however, is simply a sign-in
20 sheet with a few names highlighted that in and of itself provides no evidence that members of
21 the public were allowed to view the file. Indeed, Marshall Todd, the individual highlighted,
22 was expressly denied access to the file and could only ask questions. See Exhibit 35 hereto
23 (Declaration of Marshall Todd). Thus not only is NDEP’s statement untrue, but even if it were
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28 ¹ Not only is NDEP’s position contrary to U.S. Supreme Court law, it also puts at risk the U.S.
EPA’s delegation of the NPDES program to the agency. Under NDEP’s “closed basin” theory,
no discharge to Lake Tahoe, the Truckee River, the Humboldt River or any of the navigable
waters of the Nevada that do not drain to the ocean, would trigger NPDES permits.

1 it raises the specter that NDEP treats members of the public differently without any explanation
2 of why some members are granted access and some are not.

3 NDEP also attempts to excuse its illegal conduct by claiming that it “was understandably
4 cautious of providing copies of a draft document that would inevitably change numerous times .
5 . . .” Whether or not NDEP’s draft permit changed provides no excuse from allowing the public
6 their right under Nevada law to review public documents (e.g., the Dairy’s application).
7

8 In sum, NDEP refused public access to public records submitted by the Operator at the
9 same time it allowed the Operator to construct the Dairy. By the time the public gained access
10 to the records, the Dairy was essentially complete and NDEP had issued a draft permit
11 conformed to the completed Dairy. The opportunity of the public therefore to have meaningful
12 was undermined by both the illegal conduct of the Operator and the inaction of NDEP.
13

14 **VI. SOS’s Expert Comments Are Relevant And Admissible**

15 NDEP incorrectly argues that the SEC should not consider comment and potential
16 testimony provided by Kathy Martin, a licensed engineer in two states, because she is not
17 licensed in Nevada. However, in *Hanneman v. Downer*, 110 Nev. 167 (1994), the Nevada
18 Supreme Court rejected the notion that expert witnesses must be licensed, much less licensed in
19 Nevada. And in *State of Nevada, Private Investigator’s Licensing Board v. Tatalovich*, 129
20 Nev. __ (2013), the Nevada Supreme Court unanimously held that an expert witness does not
21 violate Nevada state licensure requirements when investigating and formulating expert opinions
22 for trial.
23

24 NDEP similarly errs by relying upon Nevada Rules of Civil Procedure 16.1(a)(2), which
25 applies to expert witness disclosures in civil trials, not the SEC in administrative proceedings.
26 Instead, NRS 233B.123 applies a relaxed evidentiary standard: “Evidence may be admitted,
27 except where precluded by statute, if it is of a type commonly relied upon by reasonable and
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1 prudent persons in the conduct of their affairs.” Since Ms. Martin comment and testimony
2 meets this standard, it is admissible.

3 **VII. Conclusion**

4 Industrial CAFOs produce such prodigious quantities of polluting wastes that great
5 caution must be exercised when permitting such a facility adjacent to residential areas. SOS
6 understands that the SEC rarely, if ever, overturns an NDEP decisions. In this case, however,
7 interjection is necessary as the stakes are so high and the likelihood of serious error so great. As
8 demonstrated above, the siting of the Dairy production area before NDEP permitting led a post-
9 hoc justification process that violated NDEP owns guidance on facility design and location and
10 ultimately deprived the public of a meaningful opportunity to participate in a decision that has
11 an enormous potential to adversely affect their lives and livelihoods. SOS therefore respectfully
12 requests that the SEC remand the Smith Valley Dairy permit to NDEP.
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14

15 Dated: June 25, 2015.

16 Respectfully submitted,

17
18 By _____ /s/
19 John L. Marshall, SBN 6733
20 570 Marsh Avenue
21 Reno, NV 89509
22 775.303.4882

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28 Attorney for Appellant SOS

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRS 239B.030, the undersigned affirms that the preceding document does not
3 contain the social security number of any person. I hereby certify that the foregoing SOS's
4 Opening Brief was served on the parties a copy thereof on the 25th day of June 2015, by
5 electronic mail:

6 Valerie King, Executive Secretary
7 Nevada State Environmental Commission
8 901 South Stewart Street, Suite 4001
9 Carson City, Nevada 89701
vking@ndep.nv.gov

10
11 Katie Armstrong
12 100 North Carson Street
13 Carson City, Nevada 89701
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14 Tom Haren
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18 Greeley, Colorado 80634
tharen@agpros.com
pspaine@agpros.com

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20
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22
23 _____/s/
24 John L. Marshall

REPLY BRIEF EXHIBIT LIST

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- Exhibit 27 Lyon County Letter re Notice of Violation to Dirk Vlot (May 8, 2015)
- Exhibit 28 Lyon County Notice of Violation to Dirk Vlot (May 7, 2015)
- Exhibit 29 Lyon County Stop Work Order (May 7, 2015)
- Exhibit 30 Cal. State Water Resources Cease and Desist Order to Dirk Vlot (2013)
- Exhibit 31 Google Earth Map of Smith Valley Dairy Lagoon Location
- Exhibit 32 Google Earth Map of Smith Valley Dairy Surrounding Area
- Exhibit 33 NDEP Ponderosa Dairy Fact Sheet
- Exhibit 34 NDEP Desert Hills Dairy Fact Sheet
- Exhibit 35 Declaration of Marshall Todd (June 23, 2015)



LYON COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

BUILDING • DEVELOPMENT ENGINEERING • PLANNING

ROBERT G. LOVEBERG
COMMUNITY DEVELOPMENT DIRECTOR

27 S. MAIN STREET
WELLINGTON, NEVADA 89447
(775) 463-6591
FAX: (775) 463-5305

34 LAKES BOULEVARD
DAYTON, NEVADA 89403
(775) 246-6135
FAX: (775) 246-6147

May 8, 2015

Mr. Dirk Vlot
Smith Valley Dairy
P.O. Box 497
Wellington, Nevada 89444-0497

RE: Notice of Violation and Stop Work Order

Smith Valley Dairy, 40 Hunewill Lane, Wellington (APN 10-111-02)

Dear Dirk:

On Thursday, May 7, 2015 I issued and posted a Notice of Violation and Stop Work Order at the Smith Valley Dairy, 40 Day Lane, Wellington, Nevada (APN 10-111-02). The Notice and Order were hand delivered to Sean White at the above address on May 7, 2015. The Notice and Order resulted from a determination that serious violations of the International Building Code (IBC), 2012 edition, and International Fire Code (IFC), 2012 edition, had and were taking place. These violations included immediate life and safety hazards.

On Tuesday, May 5, 2015 I observed that the Smith Valley Dairy at the above referenced address was in operation, and buildings and structures, including the "milking parlor," were in use and being occupied. On Thursday May 7, 2015, I made a site visit to the Dairy and confirmed that buildings and structures were being occupied.

The Dairy currently has active building permits issued by Lyon County to construct structures and facilities. Construction has not been completed and/or final inspections performed and certificates of occupancy have not been issued for the permitted buildings or structures. Occupancy and use of buildings and structures without a certificate of occupancy is a violation of Section 111.1 of the IBC and Lyon County Code. Utilization of buildings, premises or systems regulated by the IFC in conflict or in violation of the IFC is unlawful pursuant to Section 109.1 of the IFC.

On Thursday, May 7, 2015 I observed that the proposed "water room" or pump house partially constructed, and a water tank and associated pumps, pressure tanks, plumbing, controls, etc. installed and in operation. The "water room" or pump house and the associated improvements have been constructed and/or installed without the approval or issuance of a permit from Lyon County or the Smith Valley Fire Protection District. Construction of any building, structure or equipment in violation of Section 105.1 of the IBC and Section 105.1.1 of the IFC is unlawful.

The Smith Valley Fire Protection District observed and documented unsafe conditions pursuant to Section 110.1 of the IFC. These conditions include, but are not limited to, illegal or improper occupancy, no operational fire alarm system, adequate fire flows for fire suppression not available, required fire doors not installed, and penetrations in the required four hour fire wall assembly not sealed. These deficiencies are serious life and safety hazards. The unsafe conditions are a violation of IFC pursuant to Section 109.1 of the IFC.

The Lyon County Community Development Department has not yet received and reviewed plans for mechanical equipment within the "milking parlor," nor has it received or reviewed plans for the "water room" or pump house and related equipment. Equipment has been installed without plan approvals, building permits or approval of plan revisions by Lyon County.

No final inspections have been performed and no certificates of occupancy have been issued. The use and occupancy of a building or structure without the issuance of a certificate of occupancy is a violation of Section 111.1 of the IBC. Pursuant to Section 114.1 of the IBC, it is unlawful to occupy any building or structure regulated by the IBC, or cause the same to be done, in conflict with or in violation of the provisions of the IBC. The IBC was adopted by Lyon County as part of Chapter 10.07.02 and 10.07.03 of the Lyon County Code.

Mr. Dirk Vlot
Smith Valley Dairy
May 8, 2015
Page 2

Pursuant to 10.07.04 of the Lyon County Code:

A. Criminal Penalties:

1. *Any person who violates any provision of the several codes hereby adopted shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by not more than six (6) months' imprisonment in the Lyon County Jail or by a fine of not more than one thousand dollars (\$1,000.00) or by both such fine and imprisonment.*
2. *Any corporation which violates any provision of the several codes hereby adopted shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00).*

B. Civil Penalties:

1. *Abatement Procedures: If the owner of a noncomplying building or structure refuses to obey an abatement order made by the board of county commissioners, the county may proceed with abatement and levy a lien upon the property for the expense thereof.*
2. *Business License Revocation: The Lyon County business license of any person or corporation which, holding such license, violates the provisions hereof, may be terminated or canceled after a duly noticed public hearing and a finding that the person or corporation has violated or caused violation of the provisions hereof.*

Additionally, encroachment permits were issued by the Public Works Department for access to Hunewill Lane, including paved or concrete driveway aprons. Construction has not been completed for the encroachments. I have observed non-construction vehicles using the Hunewill Lane access related to the Dairy's business operations and occupancy of the "milking parlor."

Pursuant to Chapter 10.07 of the Lyon County Code and Sections 111.1 and 114.1 of the International Building Code, 2012 edition, you are hereby notified of violations and ordered to cease occupancy and use of all buildings and structures by May 11, 2015. You are further notified of violations and ordered to stop all work on structures and buildings until plans are approved and valid permits issued for construction of structures and buildings and/or installation of equipment. Re-inspection for compliance with the IBC and IFC is required on Tuesday, May 11, 2015. Failure to comply will result in additional enforcement actions and may result in legal actions by the Lyon County District Attorney's Office.

Please contact me so that we may resolve this matter as expediently as possible.

Sincerely,



Robert G. Loveberg
Community Development Director

Cc: Lon Baptista, Cal Coast Mfg., Inc.
Sean White, Cal Coast Mfg., Inc.
Steve Rye, District Attorney
Joel Brown, Lyon County Building Division
Jeff Page, Lyon County Manager

NOTICE OF VIOLATION

No. 457

DATE 7 MAY 2015 TIME 10:13 HOURS
NAME VLOT, DIRK & VALERIE J. (SMITH VALLEY DAIRY)
ADDRESS PO. BOX 497, WELLINGTON, NV 89444-0497
PROPERTY ADDRESS 40 HUNEXWILL LANE, WELLINGTON, NV (APN 10-111-02)

YOU ARE HEREBY NOTIFIED that you are in violation of the Lyon County

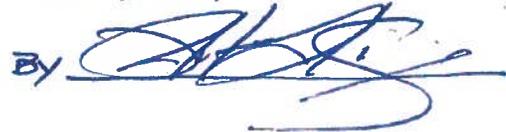
Code, TITLE 10.01.02 AND IBC & IFC 2012 TO-WIT SECTION 116.1 Use and Occupancy, IBC;
Section 114.1 Unlawful acts, IBC; Section 105.3.3 Occupancy prohibited before
approval, IFC; Section 109.1 Unlawful acts, IFC; Section 110.1.1 Unsafe conditions, IFC

You have 5 days to remedy this violation and your failure to comply will result in a misdemeanor complaint being filed against you. Conviction of this offense carries a maximum penalty of \$500 and/or imprisonment in the county jail for a period not exceeding six (6) months.

LYON COUNTY BUILDING DEPARTMENT

By 

SMITH VALLEY FIRE PROTECTION DISTRICT

By 

UNLAWFUL TO REMOVE THIS NOTICE Pursuant to NRS 199.470, to remove, damage or destroy this notice will result in a misdemeanor complaint being filed against you. Penalty is as stated above.

Remarks: USING AND OCCUPYING BUILDINGS AND STRUCTURES
WITHOUT CERTIFICATES OF OCCUPANCY; BUILDINGS WITHOUT PERMITS;
UNSAFE CONDITIONS - LIFE SAFETY HAZARDS: ILLEGAL OCCUPANCY,
NO OPERATING FIRE ALARM, FIRE FLOW REQUIREMENTS NOT MET, REQUIRED
FIRE SEPARATION CONSTRUCTION NOT COMPLETE. RE-INSPECTION
FOR COMPLIANCE WITH IBC AND IFC REQUIRED ON TUESDAY
MAY 5, 2015.

Stop Work

7 MAY 2015 TIME 1020 HOURS

LYON COUNTY No 345
BUILDING DEPARTMENT

NAME WLOT, DIRK & VALERIE J.

JOB ADDRESS 40 HUNNEMILL LANE

APN 10-111-02

You are hereby ordered to stop all construction or dwelling on these premises.

You must receive approval of the LYON COUNTY BUILDING DEPARTMENT prior to continuance of this construction. Persons failing to comply with this order will be subject to:
A fine of \$300 or 3 months imprisonment, or both as prescribed by the LYON COUNTY ORDINANCE.

LYON COUNTY BUILDING
DEPARTMENT

By



Reason: BUILDING WITHOUT VALID PERMITS;
USING AND OCCUPYING BUILDINGS AND
STRUCTURES WITHOUT CERTIFICATES OF
OCCUPANCY; LIFE SAFETY HAZARDS

UNLAWFUL TO REMOVE THIS NOTICE

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2013-0006-DWR

CEASE AND DESIST ORDER

In the Matter of Violation of Annual Use Reporting Requirements by

**Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp. & Valerie Vlot
(Permit 19395, Application 26121)**

SOURCE: Eastside Bypass

COUNTY: Madera

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Dirk Vlot, Marion Pstoresi & Sons Ltd. Ptp. & Valerie Vlot (referred to herein as Permittee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your Permit.

Permittee is alleged to have violated or is threatening to violate California Water Code section 1052 and/or license terms for which section 1831 (d) provides, in part:

The State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.*
- (2) Any term or condition of a permit, license, certification, or registration issued under this division.*

On October 22, 2012, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Permittee for the violation of the terms and conditions of your license and/or Chapter 2, Article 20, section 847 of the California Code of Regulations and the unauthorized diversion or use of water. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831 et seq. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

FACTUAL BASIS FOR ISSUING THE CDO

The facts and information upon which this CDO is based are as follows:

1. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under permits and licenses, and developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual Permittee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, section 929 of the California Code of Regulations.
2. On March 5, 2012, the Division mailed out a notice to the Permittee notifying of the annual use reporting requirements, instructions on how to access the RMS system and

submit their 2011 use report online. The Permittee was also notified that if they had any questions on the reporting process, they could contact the Division by phone or email. The deadline to submit their 2011 use report online was June 30, 2012.

3. As of October 17, 2012, the Division has not received the Permittee's 2011 annual use report.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Permittee shall immediately come into compliance with the terms of the Permit by submitting their 2011 annual use report by accessing the Report Management System at www.waterboards.ca.gov/RMS using the User ID and Password shown on the User Information Sheet accompanying this CDO.

Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact the Division staff noted on the letter accompanying this CDO.

Consequences of Non-Compliance

In the event Permittee fails to comply with the requirements of this Order, Permittee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to Water Code section 1845 (b)(1) of up to \$1,000 for each day in which the violation occurs, or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a).

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

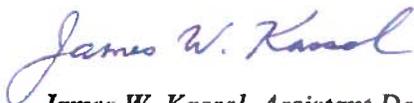
Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Permittee for unauthorized diversion of water in accordance with Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse Permittee from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD



*James W. Kassel, Assistant Deputy Director
Division of Water Rights*

Dated:

JAN 10 2013

elev 4700

elev 4704

elev 4712

elev 4713

waste ponds

elev 4733

elev 4720

© 2015 Google

Google earth

470 ft

1994

Imagery Date: 6/2/2013 32°53'05.42" N 119°22'41.84" W elev 4713 ft eye at 6911 ft

elev 4664

elev 4680

elev 4687

elev 4696

elev 4720

elev 4700

elev 4704

elev 4712

elev 4713

waste ponds

elev 4733

Hunewill Ln

1044 ft

1991

Perrin Reservoir

elev 4720

© 2015 Google

Dennits Dr Google earth

Imagery Date: 6/2/2013 32°53'12.25" N 119°22'43.95" W elev 4704 ft eye alt 9505 ft

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

FACT SHEET

(pursuant to NAC 445A.236)

Permittee: Rockview Farms, Inc.
7011 Stewart & Gray Road
Downey, CA 90241-4347

Permit: NV0023027 – Renewal

Location: Ponderosa Dairy
900 Mecca Road
11 miles south of the junction of US Highway 95 and State Highway 373
Amargosa Valley, Nye County, Nevada 89020

Township 17 S, Range 49 E, Portions of Sections 9, 10 & 15 MDB&M
Dairy 1 - Latitude: 36° 29' 41.3" N; Longitude: 116° 27' 20.2" W
Dairy 2 - Latitude: 36° 29' 42.0" N; Longitude: 116° 26' 01.0" W
Dairy 3 - Latitude: 36° 29' 39.0" N; Longitude: 116° 27' 41.0" W

Flow: 1.000 million gallons per day (MGD) – 7-day Average

General: The Permittee has applied for a National Pollutant Discharge Elimination System (NPDES) permit renewal, NV0023027, to continue to discharge dairy manure and process wastewater to groundwaters and surface waters of the State from the Ponderosa Dairy. The dairy began operation in 1993. This permit was originally issued June 16, 2000 and has been modified several times including a February 28, 2002 major modification that increased the total permitted flow from 0.350 million gallons per day (MGD) to 0.625 MGD. As part of this permit renewal, the Permittee has proposed to further increase the permitted discharge to 1.000 MGD.

The facility is defined as a concentrated animal feeding operation (CAFO) because the dairy has been designed to confine at least 700 mature dairy cows for 30 days or more in a 12-month period in an area devoid of vegetation during the normal growing season. As a CAFO, the facility is required to contain all manure and process wastewater from the production area, except overflow resulting from a storm greater than the 25-year, 24-hour storm event, 1.9 inches. To qualify for this exemption, the production area must be properly designed, constructed, operated, and maintained to contain manure, process wastewater, direct precipitation, and the runoff from the design storm event. CAFOs that land apply manure and/or process wastewater are required to comply with a nutrient management plan (NMP). CAFOs are regulated based primarily on nutrient application rates, NMP compliance, not the number of animals at the facility. Runoff from land application areas where manure and/or process wastewater have been applied in accordance with an NMP is not regulated.

The facility consists of three adjacent dairy facilities, Dairy 1, Dairy 2, and Dairy 3, owned and operated by the Permittee. Each dairy milks twice per day. Process wastewater, approximately 301.13 million gallons (MG) per year, generated at the facility includes liquid manure, cow wash water, barn wash water, and water from washing the lines and milk storage tanks. All three dairies have earthen corrals with concrete feed alleys; animal bedding is not utilized. Based on data from the Natural Resource Conservation Service (NRCS) NV - Dairy Planning Data Sheet, 8,200 milkers, 900 dry cows, 600 heifers, 1,400 pounds average cow weight, 600 pounds average heifer weight, 80 pounds of manure per day per 1,000 pounds for milkers, 82 pounds per day for dry cows, 85 pounds of manure per day per 1,000 pounds for heifers and 365 days per year, the facility generates approximately 190,000 tons of wet manure per year. Per page 4 of the December 2005 Comprehensive Nutrient Management Plan (CNMP), Summary of Plan, the facility includes 220.53 acre-feet, 71.87 MG, of process wastewater storage capacity, operational and non-operational. Microbes are added to all three pond systems to facilitate solids decomposition and to reduce odors. The ponds are also aerated for the same purpose.

Dairy 1 and Dairy 2 are approximately the same size in terms of cows housed, land, and corral areas, Dairy 1 – 64.5 acres, 2,300 milking cows, 200 dry cows, 250 heifers, Dairy 2 – 69.9 acres, 2,700 milking cows, 100 dry cows, 150 heifers, and are operated in a similar manner. The two dairies are proposed to generate a monthly average total flow of approximately 0.560 MGD gallons of process wastewater per day, currently permitted at 0.350 MGD. Each dairy has a 0.08-MG concrete sump that receives process wastewater from the milking barns. The process wastewater is pumped from the sumps to the north end of the corrals to flush the concrete feed lanes. The flush water and any runoff from the corrals due to precipitation is collected in 0.10 MG concrete sumps at

south end of the corrals. The wastewater is pumped from these sumps through static screen separators and sand separators prior to discharge to a series of holding/settling ponds and lagoons for Dairy 1 and a single holding pond for Dairy 2.

Operation of Dairy 3 is essentially the same as Dairies 1 and 2, except the feed lanes at Dairy 3 are not flushed. The Dairy 3 lot size is 69.1 acres with 3,200 milking cows, 600 dry cows, and no heifers. Dairy 3 has a 0.060 MG concrete sump that receives process wastewater from the barn. This water is pumped through static and sand separators prior to discharge to the pond system.

Dairy 1 has two lagoons, 3.49 MG total capacity, and eight evaporation/settling ponds, 11.30 MG total capacity per page 4 of the CNMP Summary of Plan. These compacted soil ponds are used on a rotating basis. Only three or four ponds are used at a time; each of the ponds is equipped with overflow pipes to stabilize fluid levels and to maintain a minimum of two feet of freeboard. Process wastewater from the final pond, the 5.08 MG Pond 7, is used for sprinkler and flood irrigation on the land application areas. Due to the lack of pond liner documentation, the groundwater at this pond system is monitored for process wastewater leakage. Monitoring well MW-1, completed in April 2002 to 95 feet below ground surface (bgs), is located south of the Dairy 1 pond system.

Due to increasing nitrate concentrations in the groundwater at monitoring well MW-2, the three Dairy 2 compacted soil lagoons, 14.5 MG total capacity, were replaced in 2005 by a 10.0 MG, with a 2.75-foot freeboard, 60-mil HDPE lined pond. MW-2, total depth 100 feet bgs, was located south of the original Dairy 2 pond system and reportedly has been abandoned as required by Part I.A.26. of the permit. Process wastewater can be routed from the Dairy 2 lagoon system to the Dairy 1 lagoon system. Process wastewater from Dairies 1 and 2 can be pumped to the 19.87 MG unlined catchment basin for emergency storage.

Construction of Dairy 3 was completed in February 2003. The Dairy 3 pond system consists of two settling lagoons and two large storage ponds with a total operating capacity of 48.79 MG and three feet of freeboard; the 60-mil HDPE lined North First-stage Lagoon, 2.36 MG; and East Holding Pond, 22.77 MG; and the unlined South First-stage Lagoon, 2.89 MG; and West Holding Pond, 20.77 MG. The unlined ponds provide storage capacity above the minimum 25-year, 24-hour storm event requirement. Monitoring wells are not required for pond systems constructed to current lined pond standards. The Dairy 3 process wastewater system is connected to the Dairies 1 and 2 process wastewater system by a pipeline.

Dairy 3 was constructed above the preconstruction grade to minimize the effects of stormwater run-on. Stormwater runoff from the Dairy 3 corrals is directed to one of four concrete sumps located south of the corrals. This process wastewater is pumped with 350-gallon per minute pumps to the North Lagoon. In the event that the pumps cannot keep up with stormwater runoff, the sumps are equipped with overflow pipelines that, when opened, direct stormwater to the West Holding Pond. Due to lack of a liner, the West Holding Pond must be evacuated within 72 hours of receiving process wastewater.

The separated solids, manure removed from the corrals, and solids removed during pond cleaning are composted at one of two composting facilities in accordance with the comprehensive nutrient management plan. The compost facilities must be constructed to NRCS, Conservation Practice Standard Code 317, Composting Facility, specifications and are included in the NV0023027 production area. The Permittee may compost manure transferred from other permitted CAFOs including, but not limited to, Beverly Hills Dairy, NEV2006504, at either compost facility.

The large compost facility, 30 acres, is permitted by the Bureau of Waste Management (BWM), SW289REV01, to accept 115,000 cubic yards (yd³) of compostable feedstock per year and to store a maximum of 27,500 yd³ of intermediate product and 13,750 yd³ of finished product. This facility produces approximately 14,000 tons of compost per year. The large compost facility is reportedly constructed of compacted type 2 gravel with a north to south grade of approximately 0.4 percent and a 4-foot tall berm at the south end but design drawings have not been submitted to the Division. The large compost facility is operated as a windrow operation with multiple windrows of approximately 500 feet long, fifteen feet wide by six feet high. This composting process takes three to four months with the distribution of the finished product regulated by BWM. This compost is transferred off-site for commercial distribution.

According to the Animal Mortality Management Plan (AMMP), the area of the small compost facility is 10 acres. The small compost facility is also reportedly constructed of compacted type 2 gravel and is relatively flat but design drawings have not been submitted to the Division. The small compost facility produces approximately 800

tons of compost per year. The windrows of the small compost facility are limited to five feet high. Due to the lack of turning, the material at the small facility is composted for approximately one year. This compost is not permitted for distribution to the public and currently may only be used at the facility and Beverly Hills Dairy. All compost land applied at the facility or Beverly Hills Dairy will be accounted for in a CNMP or an NMP.

The CNMP was developed based on a population of 8,200 milking cows, 900 dry cows, and 400 heifers and 865 acres of land application area. The NRCS Environmental Assessment and Resource Inventory Checklist states that organic farming will be employed with no pesticide use. The stated goals of the CNMP are to eliminate the need for chemical fertilizers, preclude discharge of pollutants from the 25-year, 24-hour storm event, to minimize groundwater contamination, and to recycle the waste produced through soil and crops to the fullest extent possible. The approved CNMP, including 2007 amendments, exceeds the NMP requirements and is available for public review at the Division's Carson City office. As stated in the CNMP, nutrient management must be revised annually as a minimum. Changes to cropping practices, nutrient application rates, etc. will be authorized by Division approval of revisions to the CNMP.

As part of the CNMP, the Permittee determined that seven fields have a low phosphorus hazard class and the other four fields have a medium phosphorus hazard class, therefore, all nutrient application is based on nitrogen. This analysis was based on the Natural Resources Conservation Service (NRCS), New Mexico Phosphorus Index (NMPI); future phosphorus determinations shall be based on the Nevada Phosphorus Index that was adapted by NRCS from the NMPI in 2006. The annual nitrogen application rate from all sources is limited to the annual crop nitrogen uptake rate.

The following table summarizes the Permittee's proposed crops for the five-year term of the permit:

Field	Area (acres)	Year					
		2007	2008	2009	2010	2011	2012
1	30	a.	a.	a.	a.	a.	a.
2	20	a.	a.	a.	a.	a.	a.
3	120	a.	a.	a.	a.	a.	a.
4	40	a.	a.	a.	a.	a.	a.
5	120	b. or d.	e.	e.	e.	e.	e.
6	85	b.	b.	b.	b.	b.	b.
12	120	a.	a.	a.	a.	a.	a.
15	40	c.	d.	c.	c.	c.	c.
17	125	a.	a.	a.	a.	a.	a.
18	125	a. or b.					
21	40	b.	b.	b.	b.	b.	b.

- a. Pasture Grass-Summer crop/Rye-Winter crop
- b. Winter Forage/Summer fallow
- c. Alfalfa
- d. Alfalfa-Sordan/ Winter Forage-Alfalfa
- e. Winter Forage or Alfalfa

The following table summarizes the Permittee's proposed nutrient application:

Field	Area (acres)	Crop	Design Yield (tons/ac)	P Hazard Class	Liquid Applied (MG)	Nitrogen Applied (lb/A)	Irrigation Method	Other N Sources	Applic. Timing
1	30	a.	Grazed	Low	15.07	507	Flood	Manure ³	S/W
2	20	a.	Grazed	Low	10.05	507	Flood	Manure ³	S/W
3	120 ¹	a.	Grazed	Medium	59.95	504	CP	Manure ³	S/W
4	40	a.	Grazed	Medium	15.53	507	Flood	Manure ³	S/W
5	120 ¹	b.	5 - 6	Low	22.64	198	CP	Compost ⁴	W S/W W or S
		d.	9 - 10		63.63	536			
		e.	5 - 6 or 9		22.64 or 63.63	198 or 536			
6	85	b.	5 - 6	Low	16.03	198	CP	Compost ³	W
12	120	a.	Grazed	Medium	59.62	504	CP	Manure	S/W
15	40	c.	9	Medium	21.18	535	Flood	None	S

Field	Area (acres)	Crop	Design Yield (tons/ac)	P Hazard Class	Liquid Applied (MG)	Nitrogen Applied (lb/A)	Irrigation Method	Other N Sources	Applic. Timing
		d.	9 – 10		21.18	535			S/W
17	125 ²	a.	Grazed	Low	62.11	503	CP	Manure	S/W
18	125	a.	Grazed	Low	63.46	503	CP	Manure Compost ⁴	S/W
		b.	5 - 6		25.21	211			W
21	40	b.	5 – 6	Low	4.34	150	Flood	Compost ³	W

Notes:

1. Listed as 110 acres on Ponderosa Dairy Site Plan Runon/Runoff Control of CNMP.
 2. Area may have to be reduced due to Barn 2 Lagoon construction as shown in 08/03/05 Construction Plan Map and 02/15/05 Telesto Nevada, LLC Technical Memorandum, Figure 1, Barn 2 Lagoon Location Map.
 3. Manure from grazing animals.
 4. Compost from the dead animal compost facility at 2 tons per acre.
- CP: Center pivot lb/A: Pounds per acre.
 MG: Million gallons. ac: Acre.
 S: Summer. W: Winter.

The nitrogen application rates are based on the agronomic rate using nutrient recommendations from NRCS Conservation Practice Standard Code 590, Nutrient Management. The CNMP is based on five years of cropping and may be extended beyond the initial five years, provided that the underlying conditions, phosphorus index, crop yields, etc., have remained constant.

There are three (3) dairy water supply wells and six (6) irrigation wells. The dairy wells are used to supply all of the water that becomes effluent. Backflow prevention devices have been installed on all wells with process wastewater connections. These mechanical devices are inspected and certified annually by an independent contractor.

The AMMP specifies that all dead animals, estimated to be 350 cows per year, will be composted on-site and the finished compost is used on-site on fields producing crops for animal consumption, not sold to third parties. The small composting facility is reportedly 2 to 2.5 miles from the nearest non-dairy residence.

The CNMP also includes a Safety and Emergency Action Plan.

Receiving Water Characteristics: The Permittee uses a combination of evaporation and land application to dispose the process wastewater generated at the facility. The Permittee is discharging to groundwaters, may discharge to surface waters of the State and is requesting authorization to increase the discharge volume. The Permittee is allowed to discharge to surface waters only during storms greater than the 25-year, 24-hour storm event or after a series of chronic events that exceed the total volume of the 25-year, 24-hour storm event. Any surface water discharge would be to an unnamed dry wash tributary to the ephemeral Amargosa River. As an ephemeral water body, only the NAC 445A.118, Water quality criteria for ammonia, and NAC 445A.121, Standards applicable to all surface waters, apply to any surface water discharge from the facility.

The Permittee reports that the depth to groundwater at the Dairy ranges from 81 feet below ground surface (bgs) to 95 feet bgs in the CNMP Inventory Data Sheet. Based on limited September 2001 data from three wells, the groundwater beneath the Dairy is of good quality with a total dissolved solids concentration ranging from 316 mg/L to 328 mg/L, a chloride concentration ranging from 11 mg/L to 14 mg/L, a nitrate as nitrogen concentration ranging from 1.29 mg/L to 1.57 mg/L, and a total nitrogen as nitrogen concentration ranging from 1.79 mg/L to 2.07 mg/L.

The monitoring well data below is from the April 2002 through June 2004 time period:

Parameter	MW-1			MW-2		
	Average	Maximum	Minimum	Average	Maximum	Minimum
Nitrate –N (mg/L)	2.3	7.7	ND	7.0	11.0	2.0
Total Nitrogen–N (mg/L)	3.1	8.54	1.7	7.8	11.98	4.5
TDS (mg/L)	395	732	266	1244	2010	1030
Chloride (mg/L)	46	135	14	231	270	95
pH (SU)	7.95	8.32	7.17	7.46	8.11	7.13
Depth to GW (feet)	85.4	88.0	81.0	89.1	98.8	85.0

The Permittee has identified 21 wells within a 1-mile radius of the property boundary and 12 wells, not including the two monitoring wells, within the property boundary.

Compliance History: The facility has an extensive history of compliance issues due primarily to elevated nitrate concentrations at the Dairy 2 pond system, MW-2, and to exceeding the flow limitations at Dairies 1 & 2 and Dairy 3. Below is a compliance summary from the first quarter of 2004 through the second quarter of 2006, the most recent data available, from the Bureau's Compliance Database:

<u>Year</u>	<u>Quarter</u>	<u>Location</u>	<u>Parameter</u>	<u>Reported Value/Permit Limitation</u>
2004	Q1	Dairies 1 & 2	Flow	0.491/0.350 MGD
		Dairy 3	Flow	0.334/0.275 MGD
		Nitrate	MW-2	9.0 mg/L/7.0, 9.0, 10.0
		TKN	MW -1 & 2	Results not reported
2004	Q2	Dairies 1 & 2	Flow	0.427/0.350 MGD
		Dairy 3	Flow	0.340/0.275 MGD
		Nitrate	MW-2	8.5 mg/L/7.0, 9.0, 10.0
2004	Q3	Dairies 1 & 2	Flow	0.430/0.350 MGD
		Dairy 3	Flow	0.445/0.275 MGD
		Failure to sample		MW 1 & 2
2004	Q4	Dairy 3	Flow	0.409/0.275 MGD
2005	Q1	Dairies 1 & 2	Flow	0.386/0.350 MGD
		Dairy 3	Flow	0.291/ 0.274 MGD
2006	Q1	Dairy 3	Flow	0.297/0.275 MGD

There were no exceedances in the second quarter of 2006 or the quarters since the first quarter of 2004 not listed.

In September 2003, nitrate as nitrogen was detected in MW-2 at a concentration of 11.0 mg/L. This elevated nitrate level triggered the replacement of the unlined Dairy 2 pond system with the current HDPE-lined pond. MW-2 was resampled in October 2003 with a nitrate concentration of 6.7 mg/L.

These flow limit violations are not considered a threat to the environment, because the nitrogen application rates of the approved NMP have not been exceeded. To address this issue, the Permittee has applied for an increase in the total flow effluent discharge limitation to 1.000 MGD and an elimination of the flow limits from Dairies 1 & 2 and Dairy 3.

Proposed Effluent Limitations: During the period beginning on the effective date of this permit and lasting until the permit expires, the Permittee is authorized to discharge to the Amargosa River via a dry wash during qualifying storm events and to groundwater of the State via dairy evaporation/settling ponds and crop irrigation/effluent reuse.

Effluent samples taken in compliance with the monitoring requirements specified below shall be taken:

- a. Process wastewater from each of the three dairies prior to dilution with irrigation water (3), and finished compost from each composting facility (2), minimum five sources total sources (If manure is transferred to any site other than the two compost facilities, the manure must be characterized.);
- b. Storm-related discharge to surface waters of the State from each point of discharge;
- c. Soil from each land application area eligible for land application of compost and/or process wastewater (maximum eleven areas);
- d. Each land application area that has had compost and/or process wastewater applied (maximum eleven areas);
- e. Each irrigation well used during the year (6 wells at permit issuance);

- f. Dairy 1 flow meter, process wastewater only;
- g. Dairy 2 flow meter, process wastewater only; and
- h. Dairy 3 flow meter, process wastewater only.

The discharge shall be limited and monitored by the Permittee as specified below:

TABLE I.1 - Effluent Limitations

PARAMETERS	EFFLUENT DISCHARGE LIMITATIONS	MONITORING REQUIREMENTS		
		Sample Locations	Measurement Frequency	Sample Type
Flow, total (MGD)	1.000	f. + g. + h.	Weekly	Calculation
Dairies 1, 2, 3	Monitor and Report	f., g., h.	Continuous	Meter Readings
Flow, irrigation		e.		
pH (standard units)	Monitor and Report	a.	Annually ¹	Discrete
		b.	Each discharge ²	Discrete
Chlorides (mg/L)	Monitor and Report	a. ⁵	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
Total Dissolved Solids (mg/L)	Monitor and Report	a. ⁵	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
Total Suspended Solids (mg/L)	Monitor and Report	a. ⁵	Annually ¹	Composite
		b.	Each discharge ²	Discrete
5-day Biochemical Oxygen Demand (mg/L)	Monitor and Report	a. ⁵	Annually ¹	Composite
		b.	Each discharge ²	Discrete
Total Nitrogen -N (mg/L, mg/Kg) ³	Monitor and Report	a.	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
		c.	(⁶)	Composite
		e. ¹¹	Annually ¹	Discrete
Total Nitrogen -N Applied (lbs/acre)	See Part I.A.3. for Annual Limit ⁹	d.	Annually ¹	Calculation
Total Kjeldahl Nitrogen - N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
		c.	(⁶)	Composite
Nitrate -N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
		c.	(⁶)	Composite
Ammonia -N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
		c.	(⁶)	Composite
Total Phosphorus -P (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ⁴	Composite
		b.	Each discharge ²	Discrete
		c.	(⁶)	Composite
		e. ¹¹	Annually ¹	Discrete
Total Phosphorus -P Applied (lbs/acre)	Monitor and Report	d.	Annually ¹	Calculation
Fecal Coliform (CFU or MPN/100 mL)	Monitor and Report	a. ⁵	Annually ¹	Composite
		b.	Each discharge ²	Discrete
Manure and/or Process Wastewater Applied ¹⁰ (units)	Monitor and Report	a.	Monthly	Estimate
Crop Yield ⁸ (tons/acre)	Monitor and Report	d.	Annually ¹	Calculate
Volume of Discharge (gallons)	Monitor and Report	b.	Each discharge ²	Estimate

Notes:

manure or compost storage, approved by the Division, shall be selected;

-If the total nitrogen-N concentration increases to 9.0 mg/L, construction of the approved alternate process wastewater and/or manure or compost storage facility shall begin; and

-If the total nitrogen-N concentration increases to 10.0 mg/L, discharge to groundwater shall cease.

Schedule of Compliance: The Permittee shall implement and comply with the provisions of the schedule of compliance after approval by the Administrator, including in said implementation and compliance, any additions or modifications that the Administrator may make in approving the schedule of compliance.

- a. The Permittee shall achieve compliance with the effluent limitations upon issuance of the permit.
- b. Within thirty (30) days of the permit effective date, the Permittee shall submit to the Division an updated NMP. The updated NMP shall include any information that may be out of date, e.g. copies of permits, plans that do not include Dairy 3 or the new Dairy 2 pond, etc.

The updated NMP may include the appropriate information required by WTS-2 Minimum Information Required for an Operation and Maintenance Manual for a Wastewater Treatment Plant or a separate O & M Manual shall also be submitted within thirty days of the permit effective date.

- c. Within sixty (60) days of the permit effective date, the Permittee shall:
 - i. Submit to the Division a certification stamped by a Nevada licensed Professional Engineer stating that the two composting facilities at the permitted site were constructed in accordance with NRCS Conservation Practice Standard Code 317, Composting Facility, October 2003 or more recent; or
 - ii. Install groundwater monitoring wells and submit to the Division a groundwater monitoring plan, including a map identifying each well, the well locations, and the screened intervals to demonstrate that the composting facilities are/have not degrading/ed groundwaters of the State; or
 - iii. Submit to the Division a schedule to complete the upgrade and/or replacement of the compost facilities to the standards of NRCS Conservation Practice Standard Code 317, within one year.
- d. Within sixty (60) days of the permit effective date, the Permittee shall:
 - i. Submit to the Division a certification stamped by a Nevada licensed Professional Engineer stating that the facility production areas have been constructed to contain, with no discharge to waters of the State, all process wastewater, including direct precipitation and runoff from the 25-year, 24-hour storm event; or
 - ii. Install up- and downgradient groundwater monitoring wells and submit to the Division a groundwater monitoring plan, including a map of the well locations, to demonstrate that the production area is/has not degrading/ed groundwaters of the State; or
 - iii. Submit to the Division a schedule to complete the upgrade and/or replacement of the production area, within one year.
- e. Within twenty-four (24) hours of receiving any water other than direct precipitation in the unlined West Holding Pond, the Permittee shall notify the Bureau of Water Pollution Control Compliance Coordinator at (775) 687-9438.
- f. Within seventy-two (72) hours of receiving any process wastewater due to a storm event, the unlined West Holding Pond of Dairy 3 shall be completely evacuated.

- g. Within forty-five (45) days of the second use of the West Holding Pond for containment of process wastewater, the Permittee shall:
 - i. Construct groundwater monitoring wells up- and downgradient of the West Holding Pond; or
 - ii. Submit to the Division a design and schedule for the installation of a 60-mil HDPE liner for the West Holding Pond.
- h. At least ninety (90) days prior to the closure of a lagoon, pond, surface impoundment, or other manure or process wastewater storage or treatment facility, the Permittee shall submit to the Division for review and approval a component closure plan or facility closure plan, if operations will cease.
- i. At least ninety (90) days prior to the temporary closure of a lagoon, pond, surface impoundment, or other manure or process wastewater storage or treatment facility, the Permittee shall submit to the Division for review and approval a component temporary closure plan or facility temporary closure plan, if operations will temporarily cease.
- j. Within seven (7) days of closure or temporary closure of a lagoon, pond, surface impoundment, or other manure or process wastewater storage or treatment facility, the Permittee shall notify the Division of the closure.
- k. Within five (5) days of the permit effective date, the Permittee shall submit to the Division documentation of compliance NAC 534.420 with respect to the abandonment of monitoring well MW-2.
- l. Within ten (10) days of the abandonment of any monitoring or production well at the facility, the Permittee shall submit to the Division documentation of compliance NAC 534.420.

Rationale for Permit Requirements: Monitoring requirements for the parameters specified in Table I.1: Discharge Monitoring are being proposed to ensure that the Permittee has appropriate compost and process wastewater data to comply with the Nutrient Management Plan and to determine any potential impact to waters of the State that may occur in response to a storm related discharge or seepage from an unlined process component.

Flow: Although the Permittee requested daily maximum and 30-day average flows of 1.403 MGD in the permit renewal application, the Dairy Planning portion of the CNMP was prepared based on daily maximum and 30-day average flows of 1.000 MGD. The CNMP flow is proposed for inclusion in the permit as a seven-day average. The Division determined that weekly meter readings will be adequate for the monitoring of dairy irrigation discharge flows.

Annual monitoring of the irrigation water flow from the wells is necessary to calculate the nitrogen load from this source.

Nutrients, pH, Chlorides, Total Dissolved Solids, Total Suspended Solids, Fecal Coliform: Monitoring of the nitrogen species, total phosphorus, pH, chlorides, total dissolved solids, total suspended solids, and fecal coliform of the discharge is required because these are the parameters most likely to be present in the discharge. These parameters are not limited because much of the data is used to determine compost and/or process wastewater application rates and there are only narrative water quality standards for the ephemeral receiving waters.

Monitoring Well 1: Monitoring of groundwater quality is required to verify that the groundwater has not been degraded by the effluent in the Dairy 1 unlined pond system. Nitrogen, total dissolved solids and chlorides have been determined to be the most likely groundwater contaminants from a facility of this type. Although the drinking water standard is 10.0 mg/L nitrate as N, the Division has applied a 10.0 mg/L total nitrogen as N permit limitation because ammonia in groundwater is converted to nitrate under most conditions.

Procedures for Public Comment: The Notice of the Division's intent to issue a permit authorizing the continued

discharge to the ground and surface waters of the State of Nevada subject to the conditions contained within the permit is being sent to the **Las Vegas Review-Journal** and the **Pahrump Valley Times** for publication. The notice is being mailed to interested persons on the Division's mailing list. Anyone wishing to comment on the proposed permit can do so in writing for a period of thirty (30) days following the date of the public notice. The comment period can be extended at the discretion of the Administrator. The deadline for receipt of all comments pertaining to this proposed permit is 5:00 PM March 12, 2007.

A public hearing on the proposed determination can be requested by the applicant, any affected State, any affected interstate agency, the Regional Administrator of EPA Region IX or any interested agency, person or group of persons. The request must be filed within the comment period and must indicate the interest of the person filing the request and the reasons why a hearing is warranted.

Any public hearing determined by the Administrator to be held must be conducted in the geographical area of the proposed discharge or any other area the Administrator determines to be appropriate. All public hearings must be conducted in accordance with NAC 445A.238.

The final determination of the Administrator may be appealed to the State Environmental Commission pursuant to NRS 445A.605.

Proposed Determination: The Division has made the tentative determination to issue the proposed permit for a term of five (5) years.

Prepared by: Bruce Holmgren
February 2007

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NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

FACT SHEET (pursuant to NAC 445A.236)

Applicant: Desert Hills Dairy
350 Campbell Lane
Yerington, Nevada 89447

Permit: NEV99000

Location: Desert Hills Dairy
Parcel #014-231-20
350 Campbell Lane
Yerington, Lyon County, Nevada 89447

Latitude: 39.09924° N; Longitude: 119.24917° W
Township 14 N, Range 24 E, Section 1 MDB&M

Public Water Supply: The facility is not located within a wellhead protection capture zone or a 7,000 foot public water supply well buffer zone.

General: The Applicant has applied for a water pollution control discharge permit, NEV99000, to discharge manure and process wastewater to groundwaters of the State in response to storms in excess of the 25-year, 24-hour storm event from the Desert Hills Dairy in Yerington. The facility is defined as a concentrated animal feeding operation (CAFO) because the dairy confines at least 700 mature dairy cows for 30 days or more in a 12-month period in an area devoid of vegetation during the normal growing season.

The existing 80-acre facility, formerly the Moreda Dairy, is owned and operated as a dairy by the Applicant. The facility was designed and constructed to confine a total herd size of approximately 3,000 head in open containment. The facility is operated with approximately 2,000 milkers. The facility includes four compacted soil wastewater ponds. The dairy process wastewater flows to one of three settling ponds, ponds one and two are 100-foot by 600-foot by 15-foot deep and pond three is 100-foot by 270-foot by 20-foot deep, with the clarified water flowing to the 270-foot by 420-foot by 25-foot deep fourth pond for storage/evaporation.

The Applicant is proposing to expand the facility to approximately double the herd size. The expansion is planned to include 63 acres of new corrals and 6.5 acres of ponds. The facility expansion must be designed to Natural Resource Conservation Service standards, including lined ponds.

Process wastewater generated at the facility includes liquid manure, cow wash water, barn wash water, water from washing the lines and milk storage tanks, precipitation, and runoff. All manure and process wastewater shall be evaporated or transferred to L-S Dairy, NEV99007, for composting and land application, therefore, a nutrient management plan is not required for this facility. The existing facility generates an estimated 7.3 million gallons of process wastewater per year; this volume should double with the increased herd size.

The discharge rate to L-S Dairy will be quantified at a flow meter on the pipeline from the evaporation/storage pond. All process wastewater will be transferred to L-S Dairy or evaporate. The transferred process wastewater reportedly has the following characteristics:

Kjeldahl nitrogen as N	513.5 mg/L	Chloride	7.5 mg/L
Total phosphorus	80.74 mg/L	pH	7.5 SU
Total dissolved solids	4,828 mg/L		

The proposed permit will require containment of all runoff of manure and process wastewater in response to storms that do not exceed the 25-year, 24-hour event. The storm discharge flow rate into the pond system will not be limited by the permit and will be dependent upon the magnitude of the storm event.

Flow: 0.040 million gallons per day (MGD) – 30-day average

This flow is the discharge of liquid manure, cow wash water, barn wash water, and water from washing the lines and milk storage tanks to the existing and proposed pond systems. This estimated flow is based on doubling the flow of the July 2004 permit application form to account for the proposed herd size increase. The facility is operated to minimize water consumption.

Receiving Water Characteristics: The Applicant will use a combination of evaporation and transfer to L-S Dairy to dispose of the manure and process wastewater generated by the facility. The Applicant has identified one well, Desert Hills Dairy Well #1, on the property and reports that groundwater is at 77 feet below ground surface. The well is located northeast of the existing dairy and may be downgradient. There are two production wells and two monitoring wells at the adjacent L-S Dairy.

Based on a January 2006 Nevada State Dairy Commission sampling, the facility water supply was characterized as follows:

Arsenic	26 µg/L	Manganese	0.02 mg/L
Barium	0.02 mg/L	Nitrate + Nitrite	0.7 mg/L
Boron	0.4 mg/L	pH	8.14 SU
Chloride	26 mg/L	Sulfate	78 mg/L
Copper	<0.02 mg/L	Total Dissolved Solids	322 mg/L
Fluoride	1 mg/L	Total Phosphorus	0.03 mg/L
Iron	<0.05 mg/L	Total Coliform	Absent

The Applicant will be allowed to discharge to groundwater only during storms greater than the 25-year, 24-hour storm event or after a series of chronic events that exceed the total volume of the 25-year, 24-hour storm event. No discharge to surface waters is permitted.

Proposed Effluent Limitations: During the period beginning on the effective date of this permit, and lasting until the permit expires, the Permittee is authorized to discharge manure and process wastewater in response to storm events that exceed the 25-year, 24-hour storm event to groundwaters of the State.

Samples taken in compliance with the monitoring requirements specified below shall be taken from:

- a. Manure and process wastewater; and
- b. Storm-related discharge to groundwaters of the State.

The discharge shall be limited and monitored by the Permittee as specified in Table I.1.

TABLE I.1: Discharge Monitoring

PARAMETERS	EFFLUENT DISCHARGE LIMITATIONS	MONITORING REQUIREMENTS		
		Sample Locations	Measurement Frequency	Sample Type
pH (standard units)	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Chlorides (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Total Dissolved Solids (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Total Suspended Solids (mg/L)	Monitor and Report	a.	Annually ⁴	Discrete
		b.	Each discharge ²	
5-day Biological Oxygen Demand (mg/L)	Monitor and Report	a.	Annually ⁴	Discrete
		b.	Each discharge ²	
Total Nitrogen -N (mg/L, mg/Kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Total Kjeldahl Nitrogen -N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Nitrate -N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete

PARAMETERS	EFFLUENT DISCHARGE LIMITATIONS	MONITORING REQUIREMENTS		
		Sample Locations	Measurement Frequency	Sample Type
		b.	Each discharge ²	
Ammonia -N (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Total Phosphorus -P (mg/L, mg/kg) ³	Monitor and Report	a.	Biannually ¹	Discrete
		b.	Each discharge ²	
Fecal Coliform (CFU or MPN/100 mL)	Monitor and Report	a.	Annually ⁴	Discrete
		b.	Each discharge ²	
Manure and/or Process Wastewater Transferred (tons, gallons)	Monitor and Report	a.	Monthly	Estimate
				Flow Meter
Volume of Discharge (gallons)	Monitor and Report	b.	Each discharge ²	Estimate

Notes:

1. Biannual characterizations shall be conducted in the second and fourth quarters and reported in the appropriate Discharge Monitoring Report (DMR).
2. The Permittee shall collect the sample within 30 minutes of the first knowledge of the discharge. If sampling in that period is inappropriate due to dangerous weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay. Also, report date and time of each discharge.
3. mg/L for liquids, mg/kg for solids.
4. Annual characterizations shall be conducted in the fourth quarter and reported in the fourth quarter DMR.

mg/L: Milligram per liter.
gpd: Gallons per day.
-N: As nitrogen.
-P: As phosphorus.

CFU: Colony Forming Unit.
MPN: Most Probable Number.
mL: Milliliter.
mg/kg: Milligrams per kilogram.

Discrete groundwater samples shall be collected to confirm the effective protection of groundwater under the established discharge conditions of this permit. [Required if Permittee has not demonstrated that all waste storage facilities are in compliance with the NRCS Code 313 and/or Code 359 design and construction standards. See schedule of Compliance Item I.A.26.b.]

- a. All wells shall be monitored in accordance with the following parameters:

TABLE I.2.

PARAMETER	REQUIREMENTS	SAMPLE LOCATION ¹	FREQUENCY	SAMPLE TYPE
Depth to Groundwater (feet)	Monitor & Report	MW-1, MW-2	Quarterly	Field Measurement
Groundwater Elevation (feet)	Monitor & Report	MW-1, MW-2	Quarterly	Calculate
pH (standard units)	Monitor & Report	MW-1, MW-2	Quarterly	Discrete
Chlorides (mg/L)	Monitor & Report	MW-1, MW-2	Quarterly	Discrete
Nitrate -N (mg/L)	Monitor & Report	MW-1, MW-2	Quarterly	Discrete
Total Nitrogen -N (mg/L)	10	MW-1, MW-2	Quarterly	Discrete
Total Dissolved Solids (mg/L)	Monitor & Report	MW-1, MW-2	Quarterly	Discrete

Notes:

1. Additional monitoring wells may be added to the permit as a minor modification.
- mg/L: Milligrams per liter
-N: As nitrogen

- b. The detection of concentrations of total nitrogen as nitrogen (-N) in groundwater samples invoke the following limitations and response requirements:
 - i. If the total nitrogen-N concentration increases to 7.0 mg/L, an alternate method of manure storage, approved by the Division, shall be selected;
 - ii. If the total nitrogen-N concentration increases to 9.0 mg/L, construction of the approved alternate manure storage facility shall begin; and
 - iii. If the total nitrogen-N concentration increases to 10.0 mg/L, discharge to groundwater shall cease.

Rationale for Permit Requirements: Monitoring requirements for the parameters specified in Table I.1: Discharge Monitoring are being proposed to ensure that the Applicant has appropriate manure and process wastewater data to comply with the Manure Transfer Requirements, Part I.A.9., and to determine any potential impact to waters of the State that may occur in response to a storm related discharge.

The groundwater monitoring of Part I.A.2. will be required if the Applicant cannot demonstrate the existing pond system was not constructed to appropriate NRCS liner requirements. If all manure and process wastewater storage facilities have been constructed to the appropriate NRCS standards, groundwater monitoring shall not be required.

Schedule of Compliance: The Permittee shall implement and comply with the provisions of the schedule of compliance after approval by the Administrator, including in said implementation and compliance, any additions or modifications that the Administrator may make in approving the schedule of compliance.

- a. The Permittee shall achieve compliance with the effluent limitations upon issuance of the permit.
- b. Within sixty (60) days of the permit effective date, the Permittee shall:
 - i. Submit to the Division a certification stamped by a Nevada licensed Professional Engineer stating that all waste storage facilities at the permitted site were constructed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate.
 - ii. Install groundwater monitoring wells and submit to the Division a groundwater monitoring plan, including a map of the well locations, to demonstrate that the waste storage facility(ies) are/have not degrading/ed groundwaters of the State; or
 - iii. Submit to the Division a schedule to complete the upgrade and/or replacement of all waste storage facilities to the standards of NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent, or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate, within one year.

All three of these options require submittal of Nevada licensed Professional Engineer stamped plans and volume calculations documenting compliance with the process wastewater containment requirements of this permit.

- c. Within sixty (60) days of the permit effective date, the Permittee shall submit to the Division for review and approval an Animal Mortality Management Plan.
- d. Within thirty (30) days of Division approval of the Animal Mortality Management Plan, the

Permittee shall implement the AMMP.

- e. Thirty (30) days prior to the start of construction of a waste storage facility, the Permittee shall submit to the Division for review and approval Nevada licensed Professional Engineer stamped plans and specifications of the proposed storage facility. The design shall be in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate.
- f. Within thirty (30) days of the completion of construction, the Permittee shall submit to the Division a certification stamped by a Nevada licensed Professional Engineer stating that all waste storage facilities at the permitted site were constructed in accordance with NRCS Conservation Practice Standard Code 313, Waste Storage Facility, October 2003 or more recent; or NRCS Conservation Practice Standard Code 359, Waste Treatment Lagoon, October 2003 or more recent, as appropriate. If there were any deviations from the approved design, and stamped as-built drawings of the facility shall accompany the certification.
- g. Within ninety (90) days of the permit effective date, the Permittee shall submit to the Division for review and approval an Operation and Maintenance Manual for the manure and process wastewater collection, retention, and transfer system.
- h. At least ninety (90) days prior to the closure of a lagoon, pond, surface impoundment, or other manure or process wastewater storage or treatment facility, the Permittee shall submit to the Division for review and approval a component closure plan or facility closure plan, if operations will cease.
- i. At least ninety (90) days prior to the temporary closure of a lagoon, pond, surface impoundment, or other manure, litter, or process wastewater storage or treatment facility, the Permittee shall submit to the Division for review and approval a component temporary closure plan or facility temporary closure plan, if operations will temporarily cease.

Proposed Determination: The Division has made the tentative determination to issue the proposed permit for a period of five (5) years.

Procedures for Public Comment: The Notice of the Division's intent to issue a permit authorizing the facility to discharge manure and process wastewater to the groundwater of the State is being sent to the **Mason Valley News** and the **Reno Gazette-Journal** for publication. The notice is being mailed to interested persons on the Division's mailing list. Anyone wishing to comment on the proposed permit can do so in writing for a period of thirty (30) days following the date of publication of the Notice of Proposed Action in the newspapers. The deadline for receipt of all comments pertaining to this proposed permit is 5:00 PM June 3, 2006. The comment period can be extended at the discretion of the Administrator.

A public hearing on the proposed determination can be requested by the applicant, any affected State or interstate agency, the Regional Administrator of EPA Region IX or any interested agency, person or group of persons. The request must be filed within the comment period and indicate the interest of the person filing the request and the reasons why a hearing is warranted. Public hearings granted by the Division shall be conducted in accordance with NAC 445A.238.

All comments or objections received within the thirty (30) day period will be considered in the formulation of final determinations regarding the application. If the determinations of the Administrator are substantially changed from the tentative determinations, the Administrator will give public notice of the revised determinations.

Additional comments and objections will be considered at that time.

The final determination of the Administrator may be appealed to the State Environmental Commission pursuant to NRS 445A.605.

Prepared by: Bruce Holmgren
April 2006

1 JOHN L. MARSHALL
2 SBN 6733
3 570 Marsh Avenue
4 Reno, Nevada 89509
5 Telephone: (775) 303-4882
6 Attorney Appellant Save Our Smith Valley, Inc.

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12 **BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION**

13 In Re:

14 Appeal of Groundwater Pollution Control
15 Permit No. NS2014502
16 Smith Valley Dairy
17

18 **DECLARATION OF MARSHALL TODD IN SUPPORT OF SOS's REPLY BRIEF**

19 I, MARSHALL TODD, do hereby declare:

- 20 1. I reside at my home on 25 Linda Way, Wellington, Smith Valley, Nevada.
- 21 2. I bought my home in Smith Valley in November 2012.
- 22 3. I learned that a Smith Valley CAFO dairy was moving within less than a thousand
23 feet from my property when they started construction on the dairy.
- 24 4. I then went to the Nevada Division of Environmental Protection (NDEP) to find
25 out about the dairy.
- 26 5. I went to the NDEP on January 27, 2014, March 6, 2014 and April 30, 2014 to
27 inquire about the Smith Valley Dairy and to review documents.
- 28 6. On each occasion, I met with NDEP staff and they politely attempted to answer all
of my questions.
7. I asked to review the Smith Valley Dairy file but I was told that the file was not
public until the permit for the dairy was finalized.

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8. NDEP did not allow me to review the file until after the Dairy was essentially fully constructed late in 2014.

I declare the foregoing to be true and correct under penalty of perjury to the best of my recollection.

Date: June 23, 2015.



Marshall Todd