

Public Comments Submitted to the State Environmental Commission (SEC) on Agenda Items 5 and 6 --- February 11, 2009 SEC Regulatory Hearing

Comments on Motion to Vacate and Reset Hearing on Petition: Declaratory Order and Advisory Opinion (Agenda Item 5)

- February 03, 2009 - Comment from John Bosta opposing the Motion to vacate and reset hearing (1 page)

Comments on Declaratory Order and Advisory Opinion i.e., the ACE Petition (Agenda Item 6)

- January 29, 2009 - Email form Alan Hinman, supporting the ACE Petition (1 page)
- February 03, 2009 - Email from Curt Stengel supporting the ACE Petition (1 page)
- February 04, 2009 - Comment from John Bosta supporting the ACE petition (10 pages)
- February 05, 2009 - Comment from Jane Matthews and Chris De Angelis supporting the ACE petition (1 Page)
- February 05, 2009 - Comment document from Rockview Farms Inc. opposing the ACE Petition (8 pages)
- February 09, 2009 - Email from Elinor Gibbs, supporting the ACE Petition (1 page)

John F. Bosta
P.O. Box 42
Amargosa Valley, NV 89020
(775) 372-9038

State Environmental Commission
901 So. Stewart St. Suite 4001
Carson City, NV 89701

RE: Rockview Farms, Inc., Motion to Vacate and Reset Hearing on Petition for
Declaratory Order or Advisory Opinion

Dear Commissioners,

Thank you for the opportunity to respond to the Rockview Farms, Inc., Motion to Vacate and Reset Hearing on Petition for Declaratory Order or Advisory Opinion on your upcoming hearing Wednesday, February 11, 2009.

This is another delay tactic of the Rockview legal counsel to prevent the citizens of Amargosa Valley, Nevada to have a free and impartial hearing before the State Environmental Commission.

Ed Goedhart is not the Permittee. Ponderosa Dairy appointed Mr Michael Kwiatkowski as the facility's interim General Manager to oversee the facility or its operations. Mr. Ed Goedhart, the facility's former General Manager resigned this position in mid-August 2006.

Goedhart was elected to the Assembly District 36 for 2007-2008 sessions. He listed his occupation: commodities procurement and alterative energy program manager. He was reelected to the 2009-2010 session.

The Rockview Farms, Inc., Motion to Vacate and Reset Hearing on Petition for Declaratory Order or Advisory Opinion should be denied. The hearing agenda item # 6, Declaratory Order or Advisory Opinion filed January 8, 2009 should go forward as scheduled.

Respectfully submitted John F. Bosta



GLORIETA GEOSCIENCE, INC.
P.O. Box 5727 Santa Fe, NM 87502
(505) 983-5446 Fax (505) 983-6482

October 30, 2006

Bruce Holmgren
Bureau of Water Pollution Control
Nevada Division of Environmental Protection
901 S. Stewart St. Suite 4000
Carson City, Nevada 89701

Re: Ponderosa Dairy, NPDES Permit #NV0023027

Dear Mr. Holmgren:

With this submittal, Ponderosa Dairy appoints Mr. Michael Kwiatkowski as the facility's interim General Manager to oversee the facility or its operations. Mr. Ed Goedhart, the facility's former General Manager resigned this position in mid-August 2006.

Mr. Kwitkowski can be reached at 702-373-0298.

Please contact me or Mr. Kwitkowski with any questions or comments.

Sincerely,

Reddy Ganta
Agronomist/Project Manager

Xc.
Ed Goedhart, Ponderosa Dairies
Diana Silsby, NDEP
Bruce Holmgren, NDEP

John Walker

From: Alan Hinman [turfherder@yahoo.com]
Sent: Thursday, January 29, 2009 1:34 PM
To: John Walker
Subject: letter for support of Amargosa Citizens Enviornments (ACE)

Dear Mr. Walker,

I am writing this note to show my support for ACE in regards to the petition filed Jan. 09. 2009. I am quite concerned about the effects to the enviornment and specifically our water quality due to the practices of Rockview Dairy in Amargosa Valley, Nevada. Rockview Dairies has not been a good steward of the land, since coming to Amargosa Valley. They have used poor practices that have led to poor air quality. I have lived in Amargosa for 25 years, and our quality of life is much poorer now, than in the past.

Thank You For Time and Consideration,

Alan Hinman
950 East Anvil Rd.
Amargosa Valley, Nv. 89020
775-372-5232

John Walker

From: curt stengel [stengel-blvd@avnv.net]
Sent: Tuesday, February 03, 2009 8:22 AM
To: John Walker
Subject: ACE Petition

I'm writing in support of ACEs' petition and hope it will be on the Feb. 11th agenda.
It's my understanding Ed Goodhart does not represent the Dairy as a manager but is in charge of commodities.

John F. Bosta
P.O. Box 42
Amargosa Valley, NV 89020
(775) 372-9038

State Environmental Commission
901 So. Stewart St. Suite 4001
Carson City, NV 89701

RE: Petition for a Declaratory Order or Advisory Opinion: (Ponderosa Dairy)

Dear Commissioners,

Thank you for the opportunity to respond to the Petition for a Declaratory Order or Advisory Opinion: (Ponderosa Dairy) on your upcoming hearing Wednesday, February 11, 2009 at 10 am.

The Ponderosa Dairy began operation in 1993 without a required National Pollutant Discharge Elimination System (NPDES) permit required by and Secondary Water Right (SWR) permits to use the wastewater as the source of the water and irrigation as the manner of use.

- ◆ The **1976 Final Rule EPA established permitting regulations for CAFO's, which is mandatory duty for all CAFO's to apply for a NPDES permit** and to develop and implement a Comprehensive Nutrient Management Plan (CNMP). (40 CFR Part 122.21(a))
- ◆ November 5, 1996 Devender Narala, SE III, Permit Branch of Bureau of Water Pollution Control sent a letter to the Ponderosa Dairy I & II that NDEP had received information from the Health Division that Ponderosa I & II may be required to obtain a Nevada Discharge Permit for their facilities. An application was enclosed.
- ◆ December 26, 1996 Ponderosa Dairy filed an application for a permanent discharge permit, which the NDEP number the Permit NEV 96022. This number is for a State Discharge Permit and not a Federal NPDES permit.
- ◆ February 14, 1997 Devender Narala sent a letter to Ponderosa a letter in reference to permit # NEV 96022, "NDEP received your permit application on December 26, 1996 and has been determined to be incomplete. To complete the application, please submit the following additional information: 1) Layout of the facility on an USGS map. 2) Description of the operation of the facility. 3) The reuse of the effluent and the types of crop cultivated at the farm. 4) Handling of the manure and the amount of wastewater applied to the fields."
A handwritten note on the copy of the letter, "The requested info. was never submitted to the NDEP", initialed J.L.

The Ponderosa Dairy on or about February 24, 1998 illegally discharged 1.7 million gallons of dairy wastewater contaminated with urine and feces. The wastewater flowed approximately eight miles across the desert and then into the Amargosa River in Inyo County, California. The case was investigated by EPA's Criminal Investigation Division, the California Department of Fish and Game, the Regional Water Quality Control Board, the Nevada Department of Environmental Protection, and was prosecuted by the U.S. Department of Justice. The Rockview Farms, a California corporation that owns and operates the Ponderosa Dairy in Amargosa Valley, Nevada, was sentenced on April 26, 1999 in U.S. District Court for the Eastern District of California in Fresno for violating the Clean Water Act and for making a false statement. Rockview was fined \$250,000, and was ordered to upgrade the dairy to prevent future discharges. The court also ordered Rockview to reimburse the investigating agencies \$6,900 for response and investigation cost, and ordered the defendant to purchase \$10,000 worth of investigatory equipment for the North and South Central Valley Dairy Waste Enforcement Task Force.

July 20, 1998 Jay Lazarus, President of Glorieta GeoScience, Inc (GGI), sent a letter to Joe Livak, NDEP Enforcement Officer on the Ponderosa Dairy's efforts to work with the NDEP on their pending discharge permit. Based on our discussions, Ponderosa is requesting that NDEP delay any enforcement action regarding our February 1998 discharge until Ponderosa and NDEP reach concurrence on conditions of proposed Permit No. NEV 96022. Once Ponderosa and the NDEP reach concurrence on reasonable permit conditions, Ponderosa will submit all information required by the discharge permit. It seems like GGI dictates the policy and regulations to NDEP, the record shows that the requested information for Permit NEV96022 back in 1997 was not submitted.

On October 6, 1998 Frankie Sue Del Papa, Attorney General filed a Complaint for NDEP in the Fifth Judicial District Court of the State of Nevada in and for Nye County for violating specific sections of the Nevada Water Pollution Control Law, Nevada Revised Statutes 445A.300 to 445A.730. NDEP and Ponderosa Dairy agreed that all matter set forth in the Complaint should be settled without trial. Ponderosa Dairy agree to pay \$35,000 of the \$100,000 penalty for the unauthorized discharge and release of dairy waste and cow manure from the Ponderosa Dairy on or about February 24, 1998 over a seven year period at \$5,000 each year.

March 6, 1999 Eric R. Goedhart made an application for a NPDES Permit for a commercial dairy that has been operating since 1993. Ponderosa Dairy currently has 5000 milking cows, 1000 dry cows, and 2000 calves. NDEP issued Permit NV0023027 on June 16, 2000 for total permitted flow of 0.350 million gallons per day (MGD).

May 5, 1999 Rockview Farms, Inc. (EPA No. 99-012-00A) Convicted of Clean Air or Clean Water Act violation is ineligible for awards to be performed at Violating Facility and Ponderosa Dairy (Violating Facility) was originally "Listed" under Code H and removed from the list November 20, 2002.

State Engineer's Ruling #4836 dated January 11, 2000.

- ◆ Finding of Fact V, page 9, Applications 64766 and 64767 were filed for the primary purpose of a commercial dairy and any irrigation with waste water contemplated would be a secondary purpose. The State Engineer finds if the applicant wishes to use the waste water for the irrigation purposes stated in remarks section of the application it must file another application citing to the waste water of these permits as the source of the water and irrigation as the manner of use; therefore, no use for irrigation will be granted under these applications;
- ◆ Conclusion of Law V, page 10 The State Engineer concludes the requested use for irrigation is not within the one purpose allowed by statute in any individual water right application; therefore, no use for irrigation will be granted under these applications.

May/June, 2000 FDA Veterinarian Newsletter REGULATORY ACTIVITIES, Eric R. Goedhart, Amargosa Valley, NV received a warning letter for offering animals for slaughter that contained illegal drug residues. The violations involved illegal residues of sulfadimethoxine in a dairy cow, gentamicin and penicillin in a dairy cow.

January 25, 2001 Rockview Farms, inc. made a secondary water right application for Permit 67163 to appropriate water to be dispose of the effluent from Permits: 43524, 59729, 61080, 62115, 62116, 64766,64767, 65145, 65145,66041, 66042. And also to comply with the State Engineer's Ruling #4836. The U.S.D.I., National Park Service protested on 4/27/01.

July 3, 2001 a letter to Joseph Maez NDEP from Cathy Ratcliff, GGI, "As discussed, I have reviewed the seepage calculations included in our July 3, 2001 letter to you. The total seepage (1,188,241 gallons/year given on page 2 is correct." Synonym for seepage is leakage, leaching, or discharge.

July 18, 2001 Eric R. Goedhart made an application to amend NPDES Permit NV0023027. The Ponderosa Dairy consists of two adjacent facilities with nearly identical operational plans. The NPDES permit was approved on December 4, 2000 for an average discharge of 350,000 gallons per day. This application is being submitted to modify the existing permit, prior to expansion of the existing facilities. With the new dairy Ponderosa plans to have 8,600 milking cows, 1,800 dry cows, and 3,400 calves.

NDEP issued the amended Permit NV0023027, which required two monitoring wells on February 28, 2002 for the sum of flows from Barn 1 and 2 shall not exceed 0.350 MGD and that the flow from Barn 3 shall not exceed 0.275MGD.

- ◆ A letter under the date of March 26, 2002 to Cathy Ratcliff, Geologist/Project Manager GGI from Bruce Holmgren, NDEP Staff Engineer; The NPDES Permit, Part LA.26.d, requires these wells to be installed within 60 days of the February 28, 2002 effective date of the permit. The well locations, well logs, and initial sampling data may be submitted with the discharge monitoring report due July 28, 2002.
- ◆ The Monitoring Well Installation Report, Ponderosa Dairy, NPDES Permit # NV0023027 dated May 20, 2002 was filed by Cathy Ratcliff, GGI. The two monitoring wells (MW) were drilled by Badlands Drilling Corporation and supervised by GGI. MW-1 was completed at Dairy #1 on April 26, 2002; total depth of this well is 95 feet with N03-N of 7.7 mg/L. MW-2 was completed at Dairy #2 on April 27, 2002; total depth of this well is 100 feet with N03-N of 5.7 mg/L. Ground water was encountered between 75 and 80 feet below ground surface in both wells. In accordance with the terms of the approved permit, no monitoring well was completed at Dairy #3 because the lagoons at this dairy will be synthetically lined.

In a little more than year, April 27, 2002 to September 2003 (382 days), the nitrate as nitrogen (N03-N) increased from 5.7 mg/L to 11.0mg/L in MW-2. 11.0mg/L is a violation of the Safe Drinking Water Act. The State Record for Permit NV0023027 contains no citation for this violation.

During the June 12, 2007 State of Nevada Bureau of Water Pollution Control Public Hearing:

- ◆ I asked, "Now, if you have a monitoring well that gives you a report you have violated the drinking water standard, what was done?"
- ◆ Staff, Bruce Holmgren, responded, "They're required to upgrade the pond liner system."
- ◆ I said, "But we know, and it has been in cases before appellate court that a liner will not guarantee that the leakage will not occur. And putting in a liner is not the solution."
- ◆ Staff responded, "The source was eliminated?"
- ◆ I said, "Temporarily, but it will eventually leak, and then it is not eliminated. It's a temporary fix, like a band-aid. And the precedent cases in the courts that this is not a solution and is not a viable reason on permitting."
- ◆ Staff responded, "Well, I don't think this is the proper forum for a legal discussion."
- ◆ I responded, "Well, this is a public hearing, and it seems like we should be able to talk these things."
 - Staff responded, "Well, we will respond in the notice of decision." (See page70, lines 17-20, and page 71, lines 1-15)

There was no response to my comments in the Notice of Decision dated October 25, 2007 regarding the four above comments.

The State Engineer's Ruling # 5311 dated December 23, 2003; Finding of Fact II. Page 3, A previous attempt was made with the filing of Application 64766 and 64767 on January 13, 1999. These earlier applications proposed a commercial manner of use, which would generate wastewater, which in turn would be used to irrigate nearby fields. This proposal was rejected by the State Engineer with the issuance of Ruling No. 4836, which limited the permits derived from Application 64766 and 64767, to a primary commercial use. The State Engineer's ruling also contained a finding of fact, which required the applicant to file a separate water right application to secure the use of its wastewater for irrigation purposes. This requirement was met by the applicants with the filing of Application 67163. Conclusions V., page 7, The State Engineer concludes that to transform unused wastewater, which has been previously impounded and subject to evaporation, to a beneficial use under a secondary irrigation use would not threaten to prove detrimental to the public interest. Permit 67163 was approved April 6, 2004, this irrigation is a secondary use and cannot be the primary purpose for appropriating water under Permits 61080, 62115, 62116, 64766, 64767, 65144, 65145, 66041, and 66042. The amount of water to be appropriated shall be limited to the amount, which can be applied to beneficial use, and not to exceed **2.6 cubic feet per second, but not to exceed 789 acre-feet annually.**

The Ponderosa Dairy had been using recycled sewage (wastewater) to irrigate fields without secondary water right permits from 1993 to April 6, 2004. The permittee did not secure all the required permits or approvals related to the discharge permit and the state did not enforce the law requiring such.

The General Notes in Water Technical Services (WTS)-1A: General Design Criteria for Reclaimed Water Irrigation Use, "Also, the Nevada Division of Water Resources must be notified of the plan to use reclaimed water in order to address requirements for secondary water rights."

The Ponderosa Dairies NPDES # NV0023027 Operations & Maintenance Plan (OMP) page 11, "Microbes are added to the ponds and lagoons to facilitate decomposition of solids. At Dairies # 1 and #2, effluent is drained from a pond when it is approximately half full of solids. The drained ponds are allowed to dry and solids are scraped from the bottom using a front-end loader or backhoe. Solids scraped from the lagoons and solids from the static screen separators are land applied, as needed. Wastewater at the facility is stored in the lagoons. The wastewater disposal system consists of a combination of evaporation and irrigation.

- ◆ The Dairy 3 process wastewater system was connected to Dairy 1 and 2 process wastewater system by a pipe line. This fact is excluded in the wastewater section in page 11 of the OMP.

The Notice of Decision Permit Number NV0023027; RESPONSE TO COMMENTS RECEIVED DURING PUBLIC COMMENT PERIOD:

- ◆ Letter from Curt Stengel of Amargosa Valley received March 7, 2007, 1.5 Comment: "What range of distance are considered unhealthy (Sic) from the fields receiving manure and/or waste water?"
 - Response: "There are no statutes or regulations limiting the distance between a concentrated animal feeding operation (CAFO) land application field and a residence."
- ◆ Oral comment at June 12, 2007 Public Hearing, 43.7 Comment: "Then I know that you do have wells – a well that you're making test from. That was one of my questions, and one other question is: "What range of distance are considered unhealthy (Sic) from the fields receiving manure and/or waste water? I'm specifically referring to previous questions where it involves human occupation, human residents. Where does it become unhealthy to be next to those fields?"
 - See response to comment 1.2, "The closest residence to any of the fields is approximately 0.5 mile."

- **This response is factually incorrect! There are about 15 residences (mobiles homes) for dairy worker next to the center pivots using spray irrigation. Many of these residences are possibly less than 75 feet from the edge of the field.**
- This is the response by Bruce Holmgren during the June 12, 2007 Public Hearing Minutes line 20 page 77, “We have no required buffer zone for CAFOs.”

Again Mr. Holmgren is factually incorrect! CAFOs are regulated pursuant to NAC 445A.228 (1) & 2)(C)(1)(II).

The last three words of the 6th line in the first paragraph of the Notice of Decision is factually incorrect, “Runoff from land application areas where manure and/or process wastewater applied in accordance with an NMP is not regulated.”

- ◆ Permit NV0023027, The **AUTHORIZATION TO DISCHARGE** is issued in compliance with the provisions of the Clean Water Act as amended (33 U.S.C. 1251 et. Seq.; the “Act”, and Chapter 445A of the Nevada Revised Statutes (NRS)
- ◆ A Comprehensive Nutrient Management Plan (CNMP) shall be prepared when NRCS is providing technical or financial assistance to an ARO or CAFO to address manure or wastewater handling and storage/treatment, and/or when providing technical or financial assistance for nutrient management that involves the application of manure and wastewater.
- ◆ The CNMP include documentation showing how the CNMP complies with Federal, State, tribal, and local laws, regulations, and permit requirements. At a minimum, the documentation shall include an evaluation of compliance with the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and other effects on the environment.
- ◆ Any CNMP that is developed by NRCS, partner employee, or Technical Service Provider (TSP) will have the CNMP approved by a certified conservation planner, as defined by GM 180, Part 409.3 or GM-180, Part 409.9. Has the CNMP been certified?
- ◆ Each of the NRCS, NV Code General Criteria Applicable: “All Purposes shall be applied in accordance with federal, state, and local rules, laws, and regulations. The owner or operator shall be responsible for securing all required permits or approvals.”
- ◆ NV 023027 1.A.3 **Nutrient Management Plan:** The NMP shall be prepared in accordance with Natural Resources Conservation Service (NRCS) Conservation Practice Standard Code 590 Nutrient Management and NRCS Conservation Code 663 Waste Utilization.
- ◆ One of the PURPOSES of Code 590 NMP is to minimize agricultural non-point source pollution of surface and ground water resources.
 - To provide controlled access for sampling ground water near an agricultural waste storage or treatment facility in order to detect seepage and monitor the effects of contaminants in seepage on ground water quality.
 - Monitoring wells shall be located both up gradient and down gradient of the waste storage facility and at a distance and depth based on the results of the hydrogeologic investigation of the site.
 - A minimum of one monitoring well shall be placed on the up gradient side of the waste storage facility and a minimum of three monitoring wells shall be placed down gradient.
 - The planner has not followed these regulations.
- ◆ Another PURPOSE of Code 590 is the protection of air quality by reducing nitrogen emissions (ammonium and NOx compounds) and the formation of atmospheric particulates should be included in NMP. The following sources needs to be considered to protect the air quality:
 - 146,371 gallons of water evaporates from the lagoons per day. Approximately 80% of the nitrogen available in manure stored in open lagoons is lost through volatilization.

- When applying manure with irrigation equipment N-volatilization occurs from the time the manure leaves the application equipment until it reaches the ground. The three (3) center pivots applies 59,400,000 gallons per year.
- Land application the volatilization losses can become significant if manure is not immediately incorporated into the soil after application.
- The N-volatilization of the manure compost plant.
- The N-volatilization of the animal mortality plant.
- ◆ NAC 445A.250 Monitoring. (NRS 445A.425, 445A.465) 1. Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the Director including the installation, use and maintenance of monitoring equipment or methods, including, where appropriate, biological monitoring methods.
- ◆ NAC 445A.2754 Irrigation: Requirements and restrictions. (NRS 445A.425) 1. A person using treated effluent for irrigation shall not: (a) Allow the effluent to run off the site being irrigated. 2. A person using treated effluent for spray irrigation shall conduct the irrigation in a manner that inhibits the treated effluent spray from drifting beyond the area of use or the buffer zone, if any. (Added to NAC by Environmental Comm'n by R063-04, eff. 10-6-2004)

WTS-1B General Criteria For Preparing an Effluent Management Plan (EMP), "Pursuant to NAC 445A.275.1(b) NDEP must issue a discharge permit for the use of reclaimed water. NAC 445A.275.1(a) states that an EMP must be submitted and approved prior to the use of reclaimed water." ADDITIONAL RECLAIMED WATER IRRIGATION ITEMS FOR SPRAY IRRIGATION, Item G. Spray Irrigation with Reclaimed Water: Category B, C, D, and E, Quality of reclaimed water will dictate level of contact controls required (See Table page 6). **Category D:** Public Access is prohibited during irrigation periods. No human contact due to site isolation; Pasture Lands, other agricultural uses; **400 ft. Buffer Zone; 30 day Fecal Coliform Geometric Mean equal to or less than: 200mpn (cfu)/100ml. Daily Max: 400mpn (cfu)/100ml.** **Category E:** Public Access is prohibited during irrigation periods. No human contact due to site isolations; Pasture Lands, other agricultural uses; **800 ft. Buffer Zone; No Limit.**

This guidance document has not been updated for the changes in NAC 445A.275 – 445A.2768. For example, General requirements and restrictions. (NRS 445A.425) 1. A person shall not use treated effluent unless: (a) The person has: (1) Received the approval of the Division of a plan for the management of effluent; and (2) Obtained a permit pursuant to NAC 445A.228 to 445A.263, inclusive; and ... (2). As used in this section: (b) "Plan for the management of effluent" means: (1) An effluent management plan; or (2) A site specific management plan. (Added to NAC by Environmental 2. As used in this section, "c.f.u. or mpn/100ml" means colony forming units or most probable number per 100 milliliters of the treated effluent. (Added to NAC by Environmental Comm'n, eff. 9-13-91; A by R063-04, 10-6-2004)

The Ponderosa Dairy should be required to treat its sewage (wastewater) until the requirements for bacteriological quality of Categories D (NAC 445A.276) before the effluent is applied to the land.

In 2004 the Ponderosa Dairy reported that they exceeded the permitted discharge flow limitation of 0.625 MGD by 0.2 MGD, which is 224 AFA. The reported 0.825 MGD is 924 AFA. This is proof that dairy's secondary permit use, discharging to the land more water than the combine duty of primary permits. $924 - 789 = 135$, this is a taking of 135 AFA of the public's water without a commercial primary permit.

Taking of the public's water without permit is larceny and denotes the commission of theft, that is, the felonious taking and carrying away of the personal property of another, and without right and without

leave or consent of the owner and with intent to keep or make use wrongfully. (Black's Law Dictionary Sixth Edition)

Illegal water use is a problem that affects, above all, the environment and the legal users (suppliers, irrigators, industries and individuals abstracting water for domestic use), who run out of water while others make a considerable profit by breaking the law. In many cases, the decrease in quantity goes hand in hand with a decrease in quality. It is society as a whole that suffers the consequences of this illegal use, since the uncontrolled exploitation of water resources also results in nature's deterioration.

NDEP's inability to stop this activity is due to lack of instruments for water management and law enforcement. In some cases, there is also a lack of political willingness to allow the strict application of the law, which would discourage the ever-increasing illegal use. Nevertheless, the main reason that water is abstracted illegally lies in the huge profits that are derived from its use such as dairy development and irrigation farming.

September 8, 2004 a letter from NDEP to Ed Goedhart, NDEP has reviewed the submittal dated August 13, 2004.

- ◆ The submittal was in response to NDEP's concerns about various aspects of your facility, including the elevated levels of nitrate reported in the ground water, violations of flows and storm water management at Dairy #3.
- ◆ NDEP supports the plan and schedule for building an HDPE lined pond system at Dairy #2. This should address the elevated levels of nitrate reported in the groundwater near this vicinity.
- ◆ Please submit the permit modification of the flow modification no later than September 24, 2004
- ◆ **Please keep in mind that Ponderosa Dairy is currently in violation of its current permit with respect to flow and this violation has not, nor will be, approved by NDEP.**

December 16, 2004 Ed Goedhart submitted an application using Appendix – Form 2B to renew permit NV0023027 for 11,500 Mature Dairy Cows and 7,000 Dairy Heifers for a Total of 18,500 animals for a Total Lagoon Capacity (in gallons) 66,543,961. NDEP determined that the December 16, 2004 application was not consistent with the existing CNMP. On September 19, 2006 Bruce Holmgren faxed the application back to Reddy Ganta. The application was replaced for a Total of 8,500 signed by Eric Goedhart 10-5-04

September 19, 2006 a letter to Bruce Holmgren from Reedy Ganta, GGI Agricultural Scientist/Project Manager, "As you are aware, Ponderosa Dairy was issued NPDES permit # NV0023027 on February 28, which expired June 16, 2005. The facility applied for discharge permit renewal and modification on December 6, 2004 that is currently being processed. The permit conditions under the existing permit required that the sum of flows from Barn 1 and 2 shall not exceed 0.350 MGD and that the flow from Barn 3 shall not exceed 0.275MGD. The existing permit was inadvertently not applied for a combined discharge of 0.625 MGD from all three dairies.

- ◆ Construction of Dairy was completed in February 3, 2003. The Dairy 3 process wastewater system was connected to Dairy 1 and 2 process wastewater system by pipe line. Ponderosa Dairy violated permit NV0023027 discharge conditions of 0.350 from 2003 to 2006. The 0.275 MGD from Barn 3 was applied to the land without a permit.
- ◆ **This violation of the permit was not included in the Compliance History page 5 of the Fact Sheet for the renewal of the expired permit for public review. The public was lead to believe that the new permit was increased from 0.625 MGD to 1.0 MGD, when in reality it is increased from 0.350 MGD to 1.0 MGD. It appears that the new permit legalizes the past discharge violations of the dairies.**

October 30, 2006 a letter to Bruce Holmgren from Reddy, GGI, “ With this submittal, Ponderosa Dairy appoints Mr. Michael Kwiatkowski as the facility’s interim General Manager to oversee the facility or its operation. **Mr. Ed Goedhart, the facility’s former General Manager resigned this position in mid-August 2006.**” (Emphasis added)

During the June 12, 2007 State of Nevada Bureau of Water Pollution Control Public Hearing:

- ◆ I asked, “if the ponds are regulated the same as sewer ponds?”
 - The state staff, Bruce Holmgren, responded, “It is regulated the same as sewer ponds but the design requirements are not the same.”
- ◆ I asked, “What is the difference of the design?”
 - State staff responded, “A modern sewer pond is most likely designed with a double liner. There are places where facilities do not have double-lined ponds, but that's -- that's our typical standard of performance. I don't know.”
- ◆ I asked, “Is the ponds regulated by regulated by the Federal Clean Water Act, and then the State can have its own act which could be more be more strict than the federal; is that correct?”
 - State staff responded, “We can could be more strict, yes, but I don't think we work with federal requirements on the pond liners of the sewage treatment plant.”
- ◆ I asked, “Why not?”
 - State staff responded, “Those are state requirements.”
- ◆ I asked, “Why not?”
 - State staff responded, “Because we feel our requirements are adequate.”
- ◆ I asked, “But do they meet federal requirements?”
 - State staff responded, “I don't know what the federal requirements are, because we don't work with the federal requirements in ponds, on that -- on a sewer pond. So I don't know what their requirements would be.” (See page 18, lines 15-25 and page 19, lines 1-24)
- ◆ I asked, “I would like to know what you're saying is that you have one pond that's lined, bed lined, and then you have two ponds that are lined with some type of plastic material. What is the allowed leakage in the groundwater in the bed-lined pond, and the amount of leakage into the groundwater by the synthetic-lined ponds?”
 - State staff responded, Well, a soil liner which is what you're referring to as a bed-lined pond, has a requirement of a one-time standard of an in place hydraulic conductivity of 1×10^{-7} centimeters per second. So that's one material. Now, the two synthetically lined ponds, such as the (unintelligible) HDP, and they're going to have a lower coefficient permeability, but it's also going to be a much thinner material.”
- ◆ I asked, “Are they not rated the same as that bed line?”
 - State staff responded, ”They're both going to meet the standard requirements.”
- ◆ I asked, “And is that requirement -- like, for example, if I'm covering one acre of land, I'm allowed one-acre foot of leakage per year?”
 - State staff responded, “There is going to be leakage through those liners, yes.” **The Response to 22.4 on page 14 of Notice of Decision October 25, 2007 is not accurate account of the dialogue in the June 12, 2007 Public Hearing, the response 22.4 is not the same as the response in the minutes. The following questions and answer is the correct dialogue. The response, 22.4, is what I call CYA.** (See seepage the first paragraph page 3 above)
- ◆ I asked, “So you agree that the lined pond and the synthetic lined ponds do not prevent leakage to the groundwater -- leakage is still going to go through to the groundwater?”
 - State staff responded, “It will leak through. Will it get to groundwater (unintelligible). It's going to depend on the rate.”
- ◆ I said, “I know that in court cases the experts have agreed that the synthetic liners will not prevent the leaking into the ground. It's only when.”
 - State staff responded, “There is no perfect liner, but these meet the state requirements.”

- ◆ I asked, “ Then why is there no liner barrier with monitoring underneath the sealed ponds, such that if there's a leak in the pond, we will know it?
 - State staff responded, “Because we did not feel that was necessary for a dairy facility.”
- ◆ I asked, “Do you mean to tell me that our health is not necessary for protection?”
 - State staff responded, “No, that's not what I was saying.”
- ◆ I said, “Well, that's the way it sounds.”
 - State staff responded, “Okay. Well, I think we should move on. I don't think that we can get anywhere with this discussion.” (See page24, lines 20-25, page 25, lines 1-25 and page26, lines 1-24)

My comments about court cases that experts assert that all liner systems will leak can be found in the second paragraph on page nine out of thirteen and footnote eight in the State of California State Water Resources Control Board Order No. WQ 91-09.

- ◆ The Ponderosa Dairy paid consultant, Jay Lazarus, President and Senior Geohydrologist at Glorieta Geoscience, “We have almost 72 million gallons of total green water storage capacity. That's what has been referred to here as sewage water, sewage effluent. This is not sewage. This is not sewage effluent. This is water coming from the milking parlors that is reused for irrigation of the crops.” (See page 30, lines 10-15)
 - State Staff, Jim Hogan and Bruce Holmgren, made no effort to correct Jay Lazarus untrue statement about sewage. In fact, both staff members continued to use his new definition “green water”.

Pursuant to NAC 445A.107 “Sewage” defined. (NRS 445A.425) 1. “Sewage” means the water-carried human or animal waste from residences, buildings, industrial establishments, feedlots or other places, together with such groundwater infiltration and surface water as may be present.

Domestic sewage and the CAFO’s Dairy sewage are the same. The requirements for Domestic ponds and Dairy ponds are the same. **Bruce Holmgren response**, “It is regulated the same as sewer ponds but the design requirements are not the same”, **is factually incorrect**.

- ◆ Water Technical Services (WTS) – 5, Guidance Document For Design Of Wastewater Treatment Ponds, defines the following types of ponds: 1. Geomembrane; 2. Facultative Pond, a. Oxidation, b. Stabilization; 3. Partial Mix Pond, and 4. Complete Mix Pond
- ◆ The designer shall attempt to **not** locate any ponds within the 100-year flood plain (NAC 445A.285). If located in this plain, the ponds must be protected from this flood.
- ◆ Liner Requirements
 1. A liner is required for each treatment pond. The allowable liner leakage shall be equivalent to 12 inches of material with an in-place hydraulic conductivity of 1×10^{-7} cm/sec.
 2. A plan for leak detection must be presented. Acceptable leak detection plans include double liners with leak collection or downgradient monitoring wells. Other innovative plans for leak detection will be reviewed by NDEP prior to acceptance.
- ◆ The treatment ponds can be **SOIL LINED PONDS** or **GEOMEMBRANE LINE PONDS**. See WTS – 5 pages 7 of 9 and 8 of 9.

During the June 12, 2007 State of Nevada Bureau of Water Pollution Control Public Hearing: Bruce Crater again, “I have a couple questions concerning the effluent which is the milking facility waste water that was spoke of.

- ◆ Does it carry any pathogens at any time?
 - Reddy Ganta, GGI responded, “Pathogens in the green water?”
- ◆ “In the green water or the waste water at any time?”

- ◆ “No. (Unintelligible) microbes -- (See page 39, lines 17-25)

More than 150 pathogens found in livestock manure are associated with risks to humans, including six human pathogens that account for more the 90% of food and waterborne diseases in humans. The 2003 CAFO Rule, 68 Fed. Reg. at 7236 (“These organisms are: Campylobacter ssp., Salmonella ssp. (nontyphoid), Listeria monocytogenes, Escherichia coli 0157:H7, Cryptosporidium parvum, and Giardia lamblia. All of these organisms may be rapidly transmitted from one animal to another in CAFO settings.” **Reddy Ganta’s statement “no” is factually incorrect.**

December 12, 2007 a **WARNING LETTER – NV0023027** was sent to Michael Kwiatkowski , General Manager of the Ponderosa Dairy by Diana Silsby, Compliance Coordinator, “Unfortunately, Ponderosa Dairy has failed to act in good faith with respect to compliance with the renewed discharge permit. Ponderosa Dairy has violated, on two separate occasions, its permit-required Schedule of compliance (SOC) items that Ponderosa Dairy committed to prior to the issuance of its renewed permit, which remain under appeal until such time a SEC hearing is held.”

February 8, 2008 a letter to Ponderosa Dairies, Inc., **Re: Undocumented Well**, Assessor Parcel Number 019-381-15 from Robert Coache, Deputy State Engineer, “While preparing a response to the Ponderosa Dairy’s legal counsel, 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 which is located within the NW ¼ NE ¼ of Section 09, Township 17 South, Range 49 East. ... It appears that the Haybale well was drilled by an unlicensed well driller without the benefit of a permit, temporary permit, or combination application and waiver appurtenant to the location of said well. This lack of documentation is also substantiated by the fact that the Haybale well was not disclosed to the Ponderosa Dairy’s legal counsel and hidden by hay bales with additional hay bales being added prior to a December 9, 2006, announced joint field inspection attended by personnel from this, Ponderosa Dairy’s legal counsel and management of the Ponderosa Dairy.”

Under the date February 8, 2008 a letter Gregory J. Welch, Ponderosa Dairy legal counsel from Robert Coache, Deputy State Engineer, “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 to the Ponderosa Dairy were advised during the December 9, 2006 field inspection that certain wells did not have valid water rights appurtenant to them.”

- ◆ When is the State going to take action against the Ponderosa Dairy for the alleged taking of the public’s water?

The last sentence of the first paragraph of the October 25, 2007 of the Notice of Decision Permit Number NV0023027, “Sufficient information has been provided, in accordance with Nevada Administrative Code (NAC) 445A.288 through 445A.263 to assure the Bureau that the waters of the State will not be degraded from this operation and that public safety and health will be protected.” Without groundwater and air monitoring of the wastewater ponds, lagoons, feed lots, compost and animal facilities, the discharge of manure and wastewater onto the fields NDEP will not know if my health and welfare is protected. A written document that is not enforced cannot protect me.

Respectfully submitted, John F. Bosta

John Walker

From: JEMcando@aol.com
Sent: Thursday, February 05, 2009 2:11 PM
To: John Walker
Subject: SEC Meeting 2/11/09: We support ACE's position, Agenda item #6

Mr Walker -

We own land and a home in Amargosa Valley and we support ACE' s petition to hopefully be considered by the SEC on February 11, 2009.

Living 600 feet south of Beverly Hills Dairy alfalfa fields, we've experienced first-hand (first sniff!) the insensitivity and callous nature of Ponderosa Dairy's manure-handling activities: last Fall they illegally dumped on BLM land approximately 3 acres of fresh manure, some if not most bottom-of-the-corral scrapings from the Mecca location. (One of their maintenance crew told us that.) The stench and the flies were incredible, affecting everyone and everything for at least 1-3 miles' radius. Had it rained it would have ruined our and our neighborhood's grounds. Why couldn't they have at least enclosed it, for hygienic and good-neighbor purposes? The 10-foot tall piles kept growing over the land for over a month, as did the 1000's of flies hatched.

So how can we trust the Dairy to keep their manure solids and wastewater safely managed, hygienically maintained? The Dairy's shown such little regard for people's living conditions affected by the manure piles and the odiferous manure periodically spread over the crop fields, we are quite pessimistic about their procedures and containment facilities suddenly becoming top-notch. The fact the Dairy protests so loudly about regular and specific well-monitoring activities tells us they already KNOW their facilities WILL pollute our ground waters. We feel the Dairy is not to be trusted and requires regulation enforcement from outside.

Further, per the SEC's agenda item #5, to vacate item #6 to hear ACE's petition, is ludicrous: Ed Goedhart should send another representative from the Dairy or Rockview Farms itself: his lack of physical availability on February 11th should not hold back the SEC's hearing our serious concerns. Further, if item #6 is bypassed, it would give the Dairy almost four more months to move forward on their deleterious activities.

Please help proceedings at the meeting to address ACE's petition regardless. Thank you.

Best regards,

Jane Matthews and Chris De Angelis

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5 *Attorneys for Rockview Farms, Inc.*

6
7
8 BEFORE THE STATE ENVIRONMENTAL COMMISSION
9 STATE OF NEVADA
10

11
12 *In re:*
Amargosa Citizens for the Environment,
13 *Petition for Declaratory Order or Advisory*
Opinion filed January 8, 2009.

14
15 **ROCKVIEW FARMS, INC., OPPOSITION TO PETITION FOR A DECLARATORY**
ORDER OR AN ADVISORY OPINION

16 Comes now, Rockview Farms, Inc., as operator of the Ponderosa Dairy, by and through its
17 attorneys of record, Parsons, Behle & Latimer, and hereby files its opposition to the Petition for a
18 Declaratory Order and an Advisory Opinion filed by the Amargosa Citizens for the Environment
19 (ACE) on January 8, 2009. Rockview Farms' opposition is supported by the following
20 memorandum of points and authorities, all relevant documents on file with the Commission or the
21 Nevada Division of Environmental Protection (NDEP), and any oral argument the Commission
22 may request.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Introduction**

3 ACE's Petition should not be considered by the Commission because it is not authorized
4 under NRS 233B.120. Likewise, because ACE failed to timely file an appeal of Rockview's
5 Permit, it has no standing to challenge the terms of the Permit at the Commission. Accordingly,
6 the Commission should dismiss ACE's Petition.
7

8 Even if the Commission considers ACE's Petition, it is clear that there is no basis for
9 ACE's request for the Commission to declare that the Director of the Department of Conservation
10 and Natural Resources should require groundwater quality monitoring of all existing wells in
11 close proximity to the Ponderosa Dairy or a groundwater monitoring program at the Ponderosa
12 Dairy. Moreover, the Permit already requires groundwater monitoring and there is no evidence
13 that more extensive monitoring is necessary. Lastly, ACE's request for a declaratory order that
14 sewage, as defined under NAC 445A.107, includes dairy wastewater is based on incorrect
15 conclusions regarding the process wastewater that is stored in dairy lagoons and applied to land as
16 fertilizer. Lastly, ACE's request for an advisory opinion that groundwater monitoring is the only
17 way to adequately protect groundwater is not supported by the law or the facts. ACE's Petition is
18 simply an improper attempt to circumvent the appeal process set forth in NRS 445A.605 and
19 should be dismissed or denied by the Commission.
20
21

22 **Facts**

23 The Nevada Division of Environmental Protection, Bureau of Water Pollution Control
24 renewed Rockview Farms' Permit NV0023027 on October 25, 2007. The Permit became
25 effective November 4, 2007 and expires on November 3, 2012. NDEP issued the Permit pursuant
26 to the Clean Water Act as amended, 33 U.S.C. 1251 *et seq.*, and the Nevada Water Pollution
27 Control Law, NRS 445A.300 – NRS 445A.730. The Permit allows Rockview Farms to discharge
28

1 manure solids and process wastewater (green water) from the Ponderosa Dairy and apply it to
2 approximately 865 acres of crop lands. All manure solids generated onsite are removed from the
3 production area and composted and sold under NDEP Compost Plant Permit #SW289REV00.
4 The rate at which nitrogen compounds in the green water are applied to crops is limited to the
5 annual crop nitrogen uptake rate.
6

7 The record shows that NDEP's decision to renew Rockview Farms' Permit was the result
8 of a lengthy review within the agency and extensive public comment. During the review process
9 NDEP reviewed and responded to numerous written comments and those made at a public
10 hearing on June 12, 2007. ACE's president, secretary, and treasurer all participated in the public
11 comment process, but did not timely appeal the Permit to the Commission.
12

13 Only two individuals (John Bosta and Antonio Guerra Martinez) appealed NDEP's
14 decision to renew Rockview Farms' Permit, which appeal is currently pending before the
15 Commission. ACE, however, failed to timely file an appeal of the Permit and instead is now
16 attempting to challenge the Permit through an administrative declaratory order or advisory
17 opinion under NRS 233B.120. For the reasons set forth below, however, ACE's Petition is
18 procedurally improper, not supported by the law or the facts, and untimely.
19

20 Argument

21 **I. The Commission should dismiss ACE's Petition because it is not authorized by 22 NRS 233B.120 and ACE failed to timely appeal the Permit.**

23 The only basis for ACE's Petition is NRS 233B.120. But Ace's Petition does not seek the
24 Commission's decision regarding the applicability of a statute, or agency regulation or decision.
25 Thus, NRS 233B.120 does not apply and the Commission should not consider the Petition. In
26 addition, ACE lacks standing to challenge the terms of the Permit because it failed to timely file
27 an appeal as allowed under NRS 445A.605. Because ACE failed to timely appeal NDEP's
28 decision, it has waived any objection to the Permit. Accordingly, the Commission should dismiss

1 ACE's Petition.

2 **a) The Petition is not Authorized Under NRS 233B.120 and should be**
3 **dismissed.**

4 Any interested person may petition the Commission for a declaratory order or an advisory
5 opinion as to the applicability of any statutory provision, or Commission regulation or decision.
6 NRS 233B.120; NAC 445B.888. The procedure for obtaining an agency decision regarding the
7 applicability of a statute, or agency regulation or decision is designed to promote the process of
8 obtaining a decision regarding an agency's position on a particular matter rather than challenging
9 a determination already made. *Women Aware v. Reagen*, 331 N.W.2d 88, 92 (Iowa 1983) (citing
10 *Wisconsin Fertilizer Assn. v. Karns*, 158 N.W.2d 294, 300 (Wis. 1968)); see also, *Hill v. State*
11 *Employees Retirement Commn.*, 851 A.2d 320, 325 (Conn. App. 2004). The procedure was not
12 intended to "allow review of concrete agency decisions for which other means of review are
13 available." *Citizens Against Reckless Dev. v. Zoning Bd. of App.*, 159 P.3d 143, 156 (Haw. 2007).

15 Here, ACE is not seeking the Commission's input regarding the applicability of any
16 statute, or Commission regulation or decision, but is attempting to appeal NDEP's decision to
17 renew Rockview Farms' Permit by asking the Commission to add a new provision to the Permit.

19 The first two issues in ACE's Petition that concern NAC 445A.250(1) do not request the
20 Commission to decide the applicability of any statute, or Commission regulation or decision.
21 NAC 445A.250(1) states that any discharge authorized by the Nevada Water Pollution Control
22 Law may be subject to such monitoring requirements as may be reasonably required by the
23 Director of the Department of Conservation and Natural Resources. There is no question that the
24 monitoring requirements authorized under NAC 445A.250(1) were applicable, and in fact were
25 applied, to Rockview Farms' Permit. Section I.A.2(a) of the Permit mandates that groundwater
26 samples shall be collected from a monitoring well (MW-1) to confirm the effective protection of
27 groundwater. Therefore, clearly ACE is challenging the groundwater quality monitoring program
28

1 that NDEP designed and imposed in the Permit terms, not the applicability of the regulation. If
2 ACE believed NDEP should have required monitoring of all existing groundwater wells in
3 proximity to the Ponderosa Dairy or instituted a groundwater monitoring program, then it could
4 have appealed the Permit to the Commission under NRS 445A.605.

5
6 Throughout the Petition, ACE repeatedly raises policy issues and concerns regarding the
7 “shortcomings” of the current regulatory system for reviewing and issuing water pollution control
8 discharge permits. But none of the policy issues raised by ACE may be considered under NRS
9 233B.120 because they do not relate to the applicability of a statute, or agency regulation or
10 decision. Accordingly, the Petition is not proper and should be dismissed by the Commission.

11 **b) ACE failed to appeal NDEP’s decision to renew Rockview’s Permit**
12 **and should be barred from challenging the decision under NRS**
13 **233B.120.**

14 As stated above, NDEP issued the Permit in October 2007 and ACE did not file an appeal
15 with the Commission. Thus, ACE should not be allowed to challenge the terms of the Permit
16 under NRS 233B.120 because it failed to appeal the Permit under NRS 445A.605 and its
17 challenge is untimely. Allowing a party to circumvent the administrative appeal process over a
18 year after a Permit is issued would render the time limits for an appeal meaningless and would
19 subject NDEP to endless review of its permits. Therefore, the Commission should dismiss ACE’s
20 Petition as an improper and untimely appeal of an agency decision.

21
22 **II. The Commission should not issue any declaratory order or advisory opinion**
23 **based on ACE’s Petition because Nevada law does not require all existing wells**
24 **to be monitored or a groundwater monitoring program.**

25 The Nevada Water Pollution Control Law does not mandate groundwater monitoring.
26 Concentrated Animal Feeding Operations (CAFOs) are regulated based primarily on nutrient
27 application rates, which are a function of nutrient concentration and crop uptake rates. The
28 nutrient application rates are set forth in an approved nutrient management plan (NMP) and based

1 on best management practices as described by the U.S. Department of Agriculture, Natural
2 Resources Conservation Service. Contrary to ACE's assertion, groundwater monitoring is not
3 required by NDEP if a CAFO has synthetically-lined process wastewater storage facilities that are
4 designed, constructed, and operated to achieve current State of Nevada standards and green water
5 is land applied in accordance with an approved NMP.

6
7 Moreover, ACE fails to recognize that Rockview Farms' Permit requires groundwater
8 monitoring. ACE is not seeking to determine whether NAC 445A.250(1) applies to discharge
9 permits, or even if the Ponderosa Dairy should be subject to any monitoring requirements. ACE
10 instead is seeking to impose more stringent groundwater monitoring policies on the Ponderosa
11 Dairy based on its unsubstantiated¹ allegations regarding groundwater pollution. ACE also fails
12 to recognize that Rockview Farms, at significant expense, constructed synthetically-lined lagoons
13 in reliance on NDEP's policy not to require monitoring wells if the CAFO has a synthetically-
14 lined lagoon. Rockview Farms could have expended substantially less money to construct clay-
15 lined lagoons and installed monitoring wells, but chose to be proactive and install synthetically-
16 lined lagoons and installed monitoring wells, but chose to be proactive and install synthetically-
17 lined lagoons that are more protective of groundwater quality.

18 In addition, ACE simply fails to understand or ignores the fact that compliance with an
19 approved NMP adequately protects groundwater quality and satisfies the requirements of the
20 Nevada Water Pollution Control Law. ACE's mistrust of NDEP's ability to effectively monitor
21 and enforce compliance with Rockview Farms' Permit and its skepticism regarding the current
22 permitting process is not a proper subject for a Petition under NRS 233B.120. Accordingly, the
23 Commission should deny ACE's Petition.
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27 ¹ ACE consistently mischaracterizes the Permit and the operating record of the Ponderosa Dairy. The Petition shows
28 why the Commission should not allow a party to indirectly appeal a Permit decision through a petition under NRS
233B.120—because the entire permitting record, specific permit terms, and operating record of the permittee should
be before the Commission if it is reviewing an NDEP permit.

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III. ACE's request that sewage includes dairy feedlots should be denied because it fails to distinguish between animal waste and process wastewater.

ACE requests the Commission to declare that sewage, as defined under NAC 445A.107, includes dairy feedlots, but fails to offer any evidence that the term includes, or was intended to include, process wastewater from a dairy. Further, ACE's request is not authorized by NRS 233B.120 because it does not concern the applicability of a statute, or Commission regulation or decision.

IV. ACE's request regarding an advisory opinion is not allowed under NRS 233B.120.

As stated above, a person may not Petition an agency for an advisory opinion unless it relates to the applicability of a statute, or agency regulation or decision. Here, ACE's request for an advisory opinion is improper because it seeks an overly broad policy statement from the Commission that is not based supported by Nevada law or the facts. Groundwater monitoring is discretionary under the Nevada Water Pollution Control Law because the level of monitoring required for discharge permits varies depending on site specific conditions. Further, synthetically-lined lagoons, soil sampling, monitoring, and reporting requirements adequately protect groundwater and allow NDEP to detect whether excess nutrients are being applied to the land. Accordingly, ACE's request is not supported by Nevada law or the facts.

Conclusion

Based on the foregoing, Rockview Farms respectfully requests the Commission to dismiss or deny ACE's Petition.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms that the preceding document does not contain the Social Security number of any person.

PARSONS BEHLE & LATIMER

DATED this 5th day of February, 2009

By: 
John R. Zimmerman, NSB# 9729

John Walker

From: Elinor Gibbs [elinorgibbs-blum@ltcomm.com]
Sent: Monday, February 09, 2009 9:39 AM
To: John Walker
Subject: ACE Petition

We are long time residents of Amargosa Valley living adjacent to the Ponderosa Dairy for the last 12 years. We strongly support the ACE petition. John and Elinor Blum