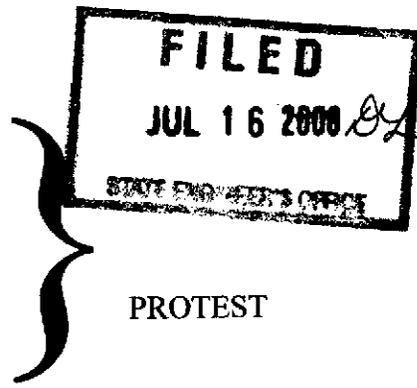


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER.76795, FILED BY
ROCKVIEW DAIRIES, INC. OF AMARGOSA VALLEY NEVADA ON
MARCH 11 2008, TO APPROPRIATE THE WATERS OF PERMIT
17695.



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STATE ENGINEERS OFFICE

Comes now John F. Bosta whose post office address is P. O. Box 42 Amargosa Valley, Nevada 89020 whose occupation is Retired and protests the granting of Application Number 76795 filed on March 11, 2008 by Rockview Dairies, Inc. incorporated on March 28,1968 in the State of California ID #543153 to appropriate the waters of an underground source under permit 17695 situated in Basin 230 in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

On September 20, 2002 I purchased my home on 1830 E. McCoy Street which is located in Section 35, Township 16 South, Range 49 East, M.D.B.&M My domestic water supply well is located about 4.6 miles from the point of diversion (POD) in the NW ¼ SW ¼ Section 9, Township 17 South, Range 49 East, M.D.B.&M. for the proposed amount of water to be changed 0.312.c.f.s, not to exceed 250 afa for Commercial Dairy/Domestic use. The detailed description of the proposed project and its water usage is intended to be used for general commercial dairy operation including bu not limited to the watering and milking of 9,400, the watering of 5,000 calves, cooling milk refrigeration compressors, irrigation of alfalfa to feed the cows, compost operation, employee housing and dust control. The place of use includes a total of 1920 acres located in Sections 4, 9, 10, and 15.

The information about size, specific plans and location for this commercial dairy operation has not been included in this application.

1) Are the 9,400 cows and 5,000 calves an addition to the already existing 11,000 cows, heifers, and calves?

The approval of the proposed Commercial Dairy/Domestic water use for the total of 1920 acres would require abrogation of all of the previous approved permits included in the 161 records of Applications (15925-76795) and 15 Certificates (5764-16906) listed the Special Hydrographic Abstract, under Owner Name, ROCKVIEW for Irrigation, Irrigation/Domestic.

- 1) The Total Combine Duty would need to be determined.
- 2) The use for irrigation would need to be determined.
- 3) The number of acres to be irrigated needs to be identified

The dairy uses a shotgun approach to permitting by applying for two or more permits at a time, hoping that at least one or more will be approved. Usually the permits are disjoint having little or no connection to each other. This is the case with these two permits, 76794 and 76795. The applicant has commingled four previous applications into these two new permits:

- 1) Permit 76218 applied for Commercial Dairy with the same Item 15: Remarks and submitted map 76218 outlining the same 1920 acres as map 76794 & 76795.
- 2) Permit 76229 applied for Commercial Dairy with the same Item 15: Remarks and submitted map 76229 & 76230 outlining the same 1920 acres as map 76794 & 76795.

- 3) **Permit 76230** applied for **Commercial Dairy** with the same Item 15: Remarks and submitted map 76229 & 76230 outlining the same 1920 acres as map 76794 & 76795.
- 4) **Permit 72197** applied for **Quasi-Municipal and Domestic** purposes with POU for 5 acres within the W ½ SW ¼ SW ¼ SW ¼ of Section 9, T.17S. R.48E. with a detailed map of the 5 acres. This water is intended to be used to serve six mobile homes for employee housing at the Ponderosa Dairy in Amargosa Valley. These six mobiles now exist and have been used for several years without any permit.

The “shotgun approach” used by the Dairy is a waste of the State Engineers staff and time using up the departments budget. The State Engineer should deny any or all of the duplicated applications to the end this tactic of “shotgun approach” used by the Dairy.

This application presents no information about the cone of depression or the capture zone of the pumping wells under the dairy.

- 1) The Static Water Level in 2003 is thirty (30) feet lower than in 1963 due to the excessive over drafting by the dairy.
- 2) The water withdrawals over the last fifteen years, 1993-2008, the area of influence of the commercial production wells are approaching the edge of the domestic wells or the geologic structure controlling the domestic wells.
- 3) Nye County received grants from NDEP for the preparation of a basin wide Wellhead Protection Plan the County Complex water supply wells in Amargosa Valley.
 - a) This plan was completed in 2005 and the reports presented in early 2006. A Potentiometric Map in the Report showed a conic depression under the dairies. (See EXHIBIT A attached hereto.)
 - b) A local hydrologist presented this information at the NDEP Public Hearing for the Beverly Hills Dairy Permit NEV2006504.
 - c) In 2006 the Fish and Wildlife Service submitted extensive documentation showing certain of the springs are currently experiencing declining discharge rates. The Service presented information that tied this decline to groundwater pumping in the Amargosa Basin.
 - d) With the onset of pumping water levels are lowered in the vicinity of the production wells. If more than one production well is present a pumping center may develop where the cone of depression of each well begins to overlap. With continued excessive pumping, the area over which declines occur begins to expand outward from the pumping well or wells. The effects of a pumping well can be represented mathematically as the intersection of a plane with a cone. This parabola shaped depression in the ground water is called the captures zone for a well. This capture zone varies in width and length depending upon the volume of pumping, the duration of pumping, and the hydrologic parameters. Over time subsiding will occur, for example the subsiding in Las Vegas is 6 feet.

If State Engineer approves water Application 76795, the cumulative effect of these two water Permits 76794 and 76795, the dairy excessive pumping of the groundwater will increase the capture zone, which could affect the domestic water supply wells. The owner of the domestic water supply well will need to deepen their well to receive water or drill a new well.

- 1) **This is happening now!**
 - a) The discharge rate of domestic supply wells located on Minor Road has declined and an owner had to deepen his well in or about the 1st few day of July.
 - b) A neighbor less than 1/8 of a mile on Fisher Road well is sucking mud.

- c) These two domestic wells are between the 3rd and 4th gradient levels above the control center of the Potentiometric Map used in contouring the water table and the direction of the groundwater flow in Amargosa Valley.
 - d) The domestic wells located on Fisher Rd and Miner Rd is 2 miles due west of the dairy wells on Windjammer Rd. located in APN 019-381-07.
- 2) Also, look at Item 15: Remarks in all of the Application of Permits 70719, 70720, 70721, 70722, 70723, 70724, 70725, 70726, 70727, and 70728, “ This change in the Point of Diversion is needed because the well driven at the specified point of diversion did not produce a sufficient volume of water.” All of the permits were approved April 5, 2005.
 - 3) Since I am retired, I cannot afford the cost of deepening my water well or drilling a new well.

The information about the wells in this permit is lacking details about the work type and proposed use of each well.

- 1) The detailed application map has 13 wells labeled A, B, C, D, E, F, G, H, I, L, M, & N. I did not see any well J.
- 2) Seven (7) wells are not located on the map.
- 3) The wells are not identified using their log number.
- 4) What are the Work Type and Proposed Use of the 13 wells?
- 5) The NDWR Well Log Data has 26 well logs listed in Sections 9, 10, & 15.
 - a) The Work Type for 2 wells is Deepen, 19 wells is New, 2 wells is Plug or Abandonment, 2 wells is Recondition, and 1 is Stock.
 - b) The Proposed Use for 19 wells is Irrigation, 1 well is Commercial, 1 well is Monitoring Well, 1 well is Domestic and 1 well is Unused.
- 6) The State Engineers Approval of permit 64489 requires three wells to be plugged. The three well using Well Logs 4966, 6928, & 60901 have not plugged or abandon.
 - a) When a well is abandoned or about to be abandoned, the owner, in lieu of plugging the well, may advise the State Engineer and other interested hydrologic entities that the well is available to monitor the groundwater. If, in the opinion of the State Engineer, the well would be useful as a site for monitoring, the State Engineer may grant the owner a waiver of the requirement that the well be plugged.
 - b) Did the State Engineer grant the owner a waiver for these three wells to become monitoring wells?

The information in NDEP Permit NV0023027 Fact Sheet, page 5,

- 1) “There are three (3) dairy water supply wells and six (6) irrigation wells”.
- 2) “The dairy wells are used to supply all of the water that becomes effluent.”
 - a) **Permit 66042** issued February 12, 2001 for **Commercial Dairy** use; the **APPROVAL of STATE ENGINEER;** **“No irrigation is allowed under this permit.”** (emphasis added)
- 3) “The Permittee has identified 21 wells within a 1-mile radius of the property boundary.
 - a) Where are these 21 well located?
- 4) “12 wells, not including the two monitoring wells, within the property.”

- a) Are these 12 wells the same as wells labeled A-M located on application map?

It appears that the database and information provided to the State Engineer use for decision making is lacking, obsolete, and misleading.

- 1) The Permits issued by NDEP to discharge water unto the land have contradicted Permits issued by NDWR for water use from wells for dairy use with restrictions that the water will not be used for irrigation.
- 2) The dairy wells are used to supply all of the water to the dairy that becomes effluent and the effluent is used to irrigate dairy agricultural fields.

The applicant has no water rights within Section 4

There are no approved Permits, Well Logs or Certificates issued to divert groundwater into S ½ of Section 4, T.17S, R.49E.. However, proposed WELL A is located on the Application Map.

- 1) **Permit 74132** application was filed April 7, 2006 for a **commercial (Dairy)** for the amount of water 0.3208 CFS, but not exceed 89.5 AFA. The POD is a point within the NE ¼ NE ¼ of Section 4 or at a point from which the NE. Corner of said Section 4 bears N. 7 degrees, 34 minutes, 59 seconds E, a distance of 741 feet. Item 15: Remarks, "This water is to be used for general commercial dairy operations. The size and specific plans for this operation have not been determined at this time, therefore, no fixture count is available."
- 2) I protested **Application 76229 and 76230** for Well A located in NE ¼ NE ¼ of Section 4, T.17S. R.49E. for the total of 1920 acres located in Sections 4,9 and 15, T.17S. R.49E.
 - a) Application 76229 and 76230 is the same as **Application 76794 and 76795**, the water will be used for a Commercial Dairy, the Proposed place of Use is for a total of 1920 acres of land and Item 15 Remarks: "This water is to be used for general commercial dairy operations including the watering and milking of 9,400 cows, the watering of 5000 calves, cooling milk refrigeration compressors, irrigation of alfalfa to feed these cows, composting operation, employee housing, and dust control."

The past Method of Operation for building a dairy used by the Rockview Dairy is once they receive a water right Permit for Commercial Dairy a new dairy will built in Section 4 without any other permits.

- 1) The new dairy will house 9400 cows and 5000 calves.
- 2) Nye County has no Uniform Building Codes and no Building Permits with the exception of Pahrump.
- 3) This M. O. was used to build Dairy No. 3. The dairy received a Commercial Dairy permit July 12, 2000 for 3000 cows and a new was built for 3000 cows. The construction of Dairy 3 was completed in February 2003

The applicant has water rights permits and certification for Irrigation and Irrigation & Domestic, and three approved permit for Dairy purposes Section 9:

1. **Permit 15929**, irrigation and domestic, issued December 29, 1954 to divert water in NE ¼ NE ¼ Section 9, T.17S, R.49E to irrigate 320 using well log 5388 for Wells E in N ½ Section 9, T.17S, R.49E. The Permit was approved for 3.5 CFS or a yearly duty of 5.0 acre-feet per acre of land irrigated. Thirty-seven (37) years later **Certificate 13431** was issued July 28th 1992 by State Engineer, Michael Turnipseed retroactive for **Irrigation and Domestic** use appurtenant to **80 acres total** in the N ½ of Sec. 9 with an appropriation of **2.228 CFS, but not to exceed 400.0 AFA**. (The total combined duty of water under this certificate and Permit 17241, Certificate 5929 and Permit 29549, Certificate 11302 shall not exceed 1471.0 AFA);

- 2: **Permit 17241** issued July 23, 1957 to divert water in NE ¼ NE ¼ Section 9, T.17S, R.49E to irrigate 320 acres using well logs 4738, 4966, & 6928 for Wells C, D, & F in N ½ Section 9, T.17S, R.49E. and **Certificate 5929** issued October 19, 1965. Wells A, B, C, and D was permitted to irrigate the same 320 acres;
3. **Permit 19374** issued January 25, 1962 to divert water in SE ¼ SE ¼ Section 9, T.17S, R49E to irrigate 280 acres in SW ¼, N ½ SE ¼, SE ¼ SE ¼ of Section 9 using well log 7787, Well K and well log 7004, Well L;
4. **Permit 19375** issued January 25, 1962 was **cancelled** for failing to comply with the provisions of the permit;
5. **Permit 20925** was approved July 22, 1965, abrogating **Permit 15929**, to diverted water in NE ¼ NE ¼ Section 9, T.17S, R.49E using well log 5388, Wells E, to irrigate 320 acres in N ½ Section 9, T.17S, R.49E;
6. **Permit 24729**, abrogating Permit 19374, was issued October 1, 1969 for **Irrigation** use and **Certificate 7336** issued for **Irrigation & Domestic** purposes for the Amount of 3.12 CFS, but not to exceed 250.0 AFA appurtenant to 25 acres in the NE ¼ SE ¼ and 25 acres in the NW ¼ SE ¼ of Section 9, T.17S, R49E for a total of 50 acres was issued April 21, 1970;
7. **Permit 29649** (This is a “start-over “ of the present permit 2009 excepting this one does not cover the NW ¼ of s. 9 but only the NE ¼ of said Section) issued for **Irrigation & Domestic** purposes for the Amount of 3.5 CFS for irrigation of 160 acres in the NE ¼ Section 9, T.17S, R49E. (This permit was issued subject to the final determination of litigation pending in the United States District Court for the District of Nevada styled United States of America vs. Francis Leo Cappaert. Et al., Civil LV 1687). There is no evidence in the record for the decision of the Civil Case 1687, **Certificate 11302** issued February 13, 1986 for **Irrigation & Domestic** for the Amount 1.32 CFS, but not to exceed 628.0 AFA appurtenant 125.6 acres in NE ¼ Section 9, T.17S, R49E, the total duty of water shall not exceed 5.0 AFA from any/or all sources ;
8. **Permit 59729** issued January 31, 2000 abrogating Permit 29649, **Certificate 13431** for **Dairy** purposes to be used in the daily operation of a commercial dairy for the Amount of 0.1051 CFS, 50.0 AFA. The given **Certificate 13431** is incorrect. The Certificate number for **Permit 29649** is **Certificate 11302**.
9. **Permit 62115** issued January 31, 2000 **Commercial Dairy** purposes for the Amount of water 0.5549 CFS, not to exceed 264 AFA. The POD is within the NE ¼ NE ¼ of Section 9, T.17S, R49E. The POU is 160 acres within the NE ¼ of Section 9, T.17S, R49E for watering of 2500 cows, cleaning of barns, cooling misters, and general daily operation of a commercial dairy. Also, the runoff water is to be disposed of by sprinkling it on fields of alfalfa to grow feed for these cows. This recycled water is to be sprinkled within this permit area. APPROVAL of STATE ENGINEER; “The total combined duty of water under Permits 62115, and 65144 **shall not** exceed 285.5 acre-feet annually.” (emphasis added); the use of recycled water is not included in the approval.
10. **Permit 64489** issued November 15, 2001 for **Irrigation & Domestic** changes the existing POD at a point from which the NE corner of said section 9 bears N. 88 degrees 03 minutes E. a distance of 3002 ft labeled P.O.D. PEMT. 17241 within the NE ¼ NW ¼ of Section 9 on detailed map 64489 to a new POD at a point from which the SE corner of said section 9 bears S 39 degree 27 minutes E, a distance of 1876 ft labeled PROPOSED P.O.D. 64489 within NE ¼ SE ¼ of Section 9 on detailed map 64489. The APPROVAL of STATE ENGINEER last paragraph page 2 of 2, “Any well drilled under Permit 17241, Certificate 5929 **shall** be plugged in accordance with the Nevada Administration Code, Chapter 534.420, “Regulations for Water Well and Related Drilling” within 60 days from the issuance of this permit.” (emphasis added). There are four (4) well logs in Permit 17241, Log 6928 with work type N (new), Log 4738 with work type N, log 4966 with work type D (deepen), and Log 60901 with work type R

(recondition). None of these well has never been plugged and are still used by the dairy Section 9. The well is labeled WELL C on the submitted map for Applications 7679 and 76975 is one of 4 wells.

11. Permit 66041 issued July 12, 2000 for Commercial Dairy purposes for the Amount 1CFS, not to exceed 59.83 AFA for 160 acres within the NE ¼ of Section 9, T.17S, R. 49E. The proposed work is to deepen the well at the POD a point Within the NW ¼ NE ¼ of Section 9 or a point from the NE corner of said Section 9 bears N. 87 degrees, 40 minutes, 51 seconds E, a distance of 1284 feet (See map accompanying Application 64766 for reference.) There is no well log to deepen a well at this location under this permit. APPROVAL of STATE ENGINEER; “The total combined duty of water under Permits 62115, 64766, 65144, and 66041 shall not exceed 402.83 acre-feet annually.” (emphasis added); “No irrigation is allowed under this permit.” (emphasis added); “The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 1.0 cubic feet per second, but not to exceed 59.83 acre-feet annually.”

The applicant has water rights permits and certification for Irrigation, Irrigation & Domestic, Commercial Dairy purposes and one well log in Section 10:

1. Permit 43524 issued March 1, 1982 for Irrigation & Domestic for the Amount 2.7 CFS, 5.0 AFA for use in the whole of the NW ¼ of Section 10, T.17S., R.49, a total of 160 acres, Certificate 11303 issued February 13, 1986 for Irrigation & Domestic for the Amount of 1.454 CFS, but not exceed 628.0 AFA appurtenant 31.4Acres in the NE ¼ NW ¼,, 31.4 Acres in the SE ¼ NW ¼, 31.4 Acres in the SW ¼ NW ¼, 31.4 Acres in NW ¼ NW ¼ for a total 125.6 acres in Section 10, T.17S, R49E;
2. Permit 49947 issued October 29, 1986 for Irrigation & Domestic for the Amount 1.75 CFS, but not to exceed 450 AFA appurtenant 40 acres in NE ¼ NW ¼, 40 acres in SE ¼ NW ¼, 10 acres in E. ½ E ½ SW ¼ NW ¼ of Section 10, T.17S., R.49, Certifiante 12435 for Irrigation & Domestic for the Amount 1.75 CFS, but not to exceed 281.9 AFA appurtenant to 16.38 acres in the NE ¼ NW ¼, 40 acres in the SE ¼ NW ¼ for a total of 56.38 acres in Section 10, T.17S., R.49;
3. Permit 61080 issued December 28,1995 for Commercial Dairy purposes for the Amount 0.1051 CFS, 50.0 AFA located in the NW ¼ NE ¼ and the SW ¼ NE ¼ of Section 10, T.17, R. 49E, Certificate 15366 issued January 4, 2000 for Commercial use for the Amount 0.105 CFS, but not to exceed 50.0 AFA for a 3000 cow commercial dairy located within the W ½ ND1/4 of Section 10, T.17, R. 49E, *This certificate changes the point of diversion, place of use and manner of use of a portion of Permit 29649, Certificate 11302, therefore, the date of priority remains the same as Permit 29649, Certificate 11302;
4. Permit 62116 issued January 31, 2000 for Commercial Dairy purposes for the Amount 0.5549 CFS, not to exceed 264 AFA for 80 acres within the W ½ and 40 acres within the NE ¼ NE ¼, all in Section 10, T.17, R. 49E for watering of 2500 cows, cleaning of barns, cooling mister, and general daily operation of a commercial dairy. Also, the runoff water is to be disposed of by sprinkling it on fields of alfalfa to grow feed for these dairy cows. This recycled water is to be sprinkled within the permit area. The total combined duty of water under Permits 61080, 62116 and 65145 shall not exceed 335.5 AFA. Certificate 16273 issued January 20, 2004 for Commercial (Dairy) for the Amount 0.5549 CFS, not to exceed 264 AFA for 3,000 cow commercial dairy located within the W ½ NE ¼ and the NE ¼ NE ¼ Section 10, T.17, R. 49E. Approval of State Engineer *The total combined duty of water under this certificate and Permit 61080, Certificate 15366; Permit 64767, Certificate 16274; Permit 6545, Certificate 16275; and Permit 66042, Certificate 16276, shall not exceed 335.5 AFA. The approval does not include the use of recycled water is to be sprinkled within the permit area.
5. Permit 66042 issued February 12, 2001 for Commercial Dairy purposes for the Amount 1CFS, not to exceed 59.83 AFA for 120 acres within the NW ¼ NE ¼ NE ¼ NE ¼ and SW ¼ NE ¼ of Section 10, T.17S, R. 49E. APPROVAL of STATE ENGINEER;

“The total combined duty of water under Permits 61080, 62116, 64767, 65145, and 66042 shall not exceed 452.83 acre-feet annually.” (emphasis added); “No irrigation is allowed under this permit.” (emphasis added); “The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 1.0 cubic feet per second, but not to exceed 59.83 acre-feet annually.”

The applicant has water rights permits and certification for Irrigation, Irrigation & Domestic, in Section 15:

1. Permit 17694 issued February 11, 1959 Irrigation & Domestic for the Amount 2.0 CFS or a yearly duty of 5.0 acre-feet per acre of land irrigated for 80 acres of land. The POD is SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T.17S, R.49E or at a point from which the N. corner of said Section 15 bears N. three degrees 57 minutes W., a distance of 1434 feet. The POU is SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T.17S, R.49E and NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15, T.17S, R.49E, Certificate 7194 issued November 7, 1969 for 2.0 CFS, but not to exceed 191.0 AFA. Land to which water is appurtenant is 38.2 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T.17S, R.49E. Ninety-six (96) AFA was forfeited February 14, 1997 by Ruling 4496. Ninety-five (95) AFA was not forfeited. Well Log 4983 issued August 13, 1959 was drilled and cased to a depth of 200 feet. and Well Log 6943 issued November 27, 1962 deepened the same well to 515 feet with no additional casing.
2. Permit 66151 issued November 2, 2001 Irrigation & Domestic abrogated permit 17694 for the Amount of water, 0.998 CFS, not to exceed 95.0 AFA. The POD is SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 15, T.17S, R.49E or at a point from which the NW corner of S three degrees, 57 minutes 10 seconds, a distance of 1434 ft. from the NW corner of Sec. 15, T.17S, R.49E. The POU is 89.04 acres within the SW $\frac{1}{4}$ of Sec. 15, T.17S, R.49E. The total combined duty of water under Permits 65401, 65635, 6536, 65637, 66151, and 66152 shall not exceed 445.16 AFA for the irrigation of 89.03 acres within the described POU.
3. Permit 66152 issued November 2, 2001 for Irrigation use this permit abrogated permit 26283, Certificate 7987 for the Amount of water 0.0937 CFS, not to exceed 34.0 AFA. The POD is NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T.17S, R.49E or, at a point from which the SW corner of said Section 15 bears S. 1 degree, 6 minutes, 37 seconds W., a distance of 2448 feet. The POU is 89.04 acres within the SW $\frac{1}{4}$ of Section 15, T.17S, R.49E. The total combined duty of water under Permits 65401, 65635, 6536, 65637, 66151, and 66152 shall not exceed 445.16 AFA for the irrigation of 89.03 acres within the described POU. Well Log 91700 issued October 23, 2003 to drill a new well 498 feet deep with a static water level of 83 feet.
4. Permit 68217 issued March 27, 2002 for Irrigation & Domestic use this permit abrogated permit 66152, 66151, 65636, 65635, and 65401 for the Amount of water 0.0937 CFS, not to exceed 95.0 AFA. The POD is NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T.17S, R.49E or, at a point from which the SW. corner of said Section 9 bears S. zero degrees, 25 minutes, 7 seconds W., a distance of 1658 feet. The POU is 89.03 acres within the SW $\frac{1}{4}$ of Section 15, T.17S, R.49E, as shown on the accompanying map. The total combined duty of water under Permits 65401, 65635, 6536, 65637, 66152, and 68217 shall not exceed 445.16 AFA for the irrigation of 89.03 acres within the described POU.
5. Permit 68218 issued March 27, 2002 for Irrigation & Domestic use this permit changes permit 66201 for the Amount of Water 1.2895 CFS. The POD is NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, , T.17S, R.49E or, at a point from which the SE., corner of said Section 9 bears S. 39 degrees, 27 minutes E, a distance of 1876.8 feet. The existing POD is NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.17S, R.49E or, at a point from which the NW. corner of said Section 15 bears N. 46 degrees, 14 minutes W., a distance 142 feet. The POU is 113 acres within the NW $\frac{1}{4}$ of Section 15, T.17S, R.49E. The total combined duty of water under Permits 65327, 66787, 66788, 66789, and 68218 shall not exceed 574.38 AFA for irrigation of 114.876 within the described place of use. The water to be appropriated shall be limited to the amount, which can be applied to beneficial use, and not to exceed 1.2895 CFS, but not to

exceed 345.4 acre-feet annually, and not to exceed an annual duty of 5.0 acre-feet per acre of land irrigated from any and/or all sources.

6. **Permits 70719, 70720, 70721, and 70722** were issued April 5, 2005 for **Irrigation & Domestic** use. All have the same the POD, Existing POD, POU for 113 acres as in Permit 68218 above. The only difference is the Amount of water. 70719 is 0.151 CFS, but not to exceed 50 AFA, 70720 is 0.130 CFS, but not to exceed 42.98 AFA, 70721 is 0.336 CFS, but not to exceed 111.0 AFA, and 70722 is 0.075 CFS, but not to exceed 25 AFA. The Total combined duty of water under Permits 68218, 70719, 70720, 70721, and 70722 shall not exceed 574.38 AFA. All of these permits have the same Item 15: Remarks: “**This change in the Point of Diversion is needed because the well driven at the specified point of diversion did not produce a sufficient volume of water.**”
7. **Permits 70723, 70724, 70725, 70726, 70727 and 70728** were issued April 5, 2005 for **Irrigation & Domestic** use. All have the POD, POU, and Item 15. Only the Amount of Water is different. The POD is NW ¼ SW ¼ of Section 15, T.17S, R.49E or, at a point from which the SW. corner of said Section 15 bears S. 8 degrees, 37 minutes, 22 seconds W., a distance of 2210 feet. The POU is 89.03 acres within the SW ¼ of Section 15, T.17S, R.49E, as shown on the accompanying map. The Amount of Water for 70723 is 0.02 CFS, not to exceed 5.08 AFA, 70724 is 0.02 CFS, not to exceed 5.08 AFA, 70725 is 0.907 CFS, not exceed 300 AFA, 70726 is 0.0233 CFS, not to exceed 6 AFA, 70727 is 0.0937 CFS, not to exceed 34 AFA and 70728 is 0.998 CFS, not to exceed 95 AFA. The Total combined duty of water under Permits 70723, 70724, 70725, 70726, 70727 and 70728 shall not exceed 445.16 AFA. All of these permits have the same Item 15: Remarks: “ This change in the Point of Diversion is needed because the well driven at the specified point of diversion did not produce a sufficient volume of water.”

“The Dairy has an extensive history of compliance issues due primarily to elevated nitrate concentrations at Dairy 2 pond system, MW-2, and to exceeding the flow limitations at Dairies 1 & 2 and Dairy 3.” (Fact Sheet NV0023027) (Emphasis add)

- 1) Monitoring well data from April 2002 through June 2004, a 26-month period of time **the dairy contaminated the ground water.** “In September 2003, nitrate as nitrogen was detected in MW-2 at a concentration of 11.0 mg/l” (NDEP Fact Sheet). This contamination of the groundwater is a violation of the Drinking Water Standard for nitrate, which is 10 mg/l. NDEP, required the replacement of the unlined pond with HDPE-lined pond. NDEP no longer requires the use of MW-2 to monitor the new HDPE-lined pond.
- a) This replaced HDPE-lined pond is **not** zero discharge, lined ponds will leak. The allowable linear leakage shall be equivalent to 12 inches of material with an in- place hydraulic conductivity of 1×10^{-7} cm/sec.
- b) This lack of monitoring is NDEP lack of concern for public’s health. The especially the identified 21 wells within a 1-mile radius of the property boundary and any domestic well down gradient from the dairies pond systems..
- 2) The data for violation of Report Flow into the pond systems and the Permitted Limitation of discharge to the land. However, the Staff Report does not compare the Combine Duty Flow from the Commercial Dairy permits for the pumping wells to the Reported Flow into pond systems.
- a) I used the Online Water Calculator to convert AFA to GPM (1AFA = 0.62 GPM) and 1 day = 1440 minutes to determine MGD for the **Permit 66041** APPROVAL of STATE ENGINEER; “**The total combined duty of water under Permits 62115, 64766, 65144, and 66041 shall not exceed 402.83 acre-feet annually**” (402.83 AFA = .0360 MGD) and **Permit 66042** APPROVAL of STATE ENGINEER; “**The total combined duty of water under Permits 61080, 62116, 64767,**

65145, and 66042 shall not exceed 452.83 acre-feet annually." (452.83 = 0.404 MGD) The Total Combined Duty of Water for Permits 66041 & 66042 is 855.66 AFA or 0.764 MGD .

b) I use the exceeding flow limitation for Dairies 1 & 2 and Dairy 3 on page 5 and 6 of the NDEP Staff Report. Since Milking Barn 1 and Milking Barn 3 are both within Section 9, the water used by each barn is not separated in the 402.83 AFA for Section 9. So, I combined the Quarter Reports for Dairy 1 & 2 and Dairy 3 into one combined number. The 2000 Quarter 1 is 0.825 MGD, which exceeds the combine water supply wells number by 0.061 MGD; Quarter 2 is 0.767 MGD, which exceeds the combine water supply wells number by 0.003 MGD; Quarter 3 is 0.875 MGD, which exceeds the combine water supply wells number by 0.111 MGD; Quarter 4 the dairy failed to sample Dairies 1 & 2, Dairy 3 flow to the pond system was 0.409 MGD. The combined flow for water supply wells in Section 9 is 0.360 MGD. Dairy 3 exceeds this value by 0.049 MGD. For the year 2000 the total excessive water flow from permitted water supply wells is 0.224 MGD which equals 250.91 AFA

i) What action did NDWR take for this violation of taking of 251 AFA more water than permitted?

c) The Rockview Farms , Inc renewal of the NPDES Permit NV0023027 to increase the permitted discharge flow onto the land from 0.625 million gallons per day (MGD) to 1.000 MGD, which is 3.1 acre-feet per day (AFD) or 1132 AFA, for Commercial use for the existing three dairies located Sections 9, 10&15, within a total 825 acres.

i) The Total Combined Duty of Water for Permits 66041 & 66042 is 855.66 AFA or 0.764 MGD .

ii) The 1132 AFA permitted by NDEP in Permit NV0023027 is 276.34 AFA more than the 855.66 AFA permitted by NDWR for Commercial Dairies in Section 9 and Section 10.

iii) NDEP staff attitude expressed during the public hearing, "We issue discharge permit to the land only, we have no jurisdiction over water rights that is in another department."

iv) Did NDEP staff discuss the amount of water available for Dairy use with NDWR staff before issuing a permit needing 276.34 AFA more than permitted by NDWR?

Domestic Use:

The submitted map for Permit 76795 is map 76794 & 76795, which include the 1920 acres located in Sections 4,9, 10, and 15. The proposed domestic use is for the proposed 5 acres for 10 mobile homes for employees somewhere within the 1920 acre. The 5 acres is not located on the submitted detailed map. The number of existing mobile homes and their location has not been located on the detailed project map. . Do the proposed 10 mobile homes already exist on location or are they additional mobiles to the existing?

To answer my question about existing housing I did some research and this is what I found. The dairy is assessed as Personal Property for eighteen (18) mobile homes on the Unsecured Tax Roll for existing mobile houses on the 1920 acres. Six (6) Mobile Homes with Personal Property Account Numbers, MH610768, MH610769, MH610770, MH610771, MH610772, and MH610773 are located in W ½ of Section 15. However, there are fourteen (14) mobile houses for employees within the W ½ of Section 15; five (5) are within NW ¼NW ¼ NW ¼ SW ¼ and nine (9) within SW ¼ SW ¼ NW ¼ SW ¼ of Section 15. These 14 mobile units are within the Real Property assessment roll as APN# 019-701-06 with a Land Use, 602 of Ag- Deferred w/Res. The residence is located within the SW ¼ SW ¼ SW ¼ SW ¼ starting the SW corner of Section 15. Eight (8) Mobile Homes with Personal Property Account Numbers, MH610774, MH610775, MH610776, MH610777, MH610778, MH610779, MH610780, and MH61002 are located in NE ¼ of Section 9 and the N ½ of Section 10. These mobile houses are located within the Real Property assessment roll as APN# 019-

381-15 with a Land Use, 602 of Ag- Deferred w/Res. Four (4) Mobile Homes with Personal Property Account Numbers, MH610803, MH610804, MH1610805, and MH610806 located in the W 1/2 SW 1/4 of Section 9. However, there are eleven (11) mobile houses for employees within the W 1/2 SW 1/4 of Section 9, five (5) are within W 1/2 NW 1/4 NW 1/4 SW 1/4 and Six (6) within W 1/2 SW 1/4 NW 1/4 SW 1/4 starting at SW corner of Section 9, T.17S, R.49E. These 6 mobile houses are within the Real Property assessment roll as APN# 019-381-07 with a Land Use, 604- Ag-deferred w/Commercial. February 07, 2005 Rockview Dairy filed Application #72197 for Quasi-Municipal and Domestic purposes; Item 12. Remarks, "The water is intended to be used to serve six mobile homes for employee housing at the Ponderosa Dairy in Amargosa Valley." A detailed map of the location of 5 acres within the W 1/2 SW 1/4 SW 1/4 of Section 9 was submitted with the application.

- 1) Application 76795 is lacking information about these thirty-three (33) existing units on the 1920 acres.
- 2) Why is the applicant so vague about disclosing the existing housing?
- 3) Is employee housing a Conversion to Higher Use pursuant to NRS 361A.150 (1) (a); A physical alteration of the surface of the property enabling it to be used for a higher use?

The Rockview Dairies, Inc. of Amargosa Valley has not provided information pursuant to Amargosa Valley Town Advisory Board Resolution Number 05-001 to "ensure that no further development plans are implemented by the by the existing or proposed Dairy Farming Operation/CAFO until the Amargosa Valley Town Advisory Board is provided with meaningful, detailed and comprehensive impact studies regarding the potential negative effect of Concentrated Animal Feeding Operations on the health, and welfare of the inhabitants of the Town of Amargosa Valley and Amargosa Valley."

- 1) The Rockview Dairies, Inc. continues the attitude that if they have a State Water Right Permit for a Commercial Dairy the local government has no say in their operations within the Amargosa Valley.
 - a) Nye County has no Uniform Building Code and Building Permits except in Pahrump.
- 2) This permit should be denied until the Rockview Dairies, Inc. has provided the required plans and other information to the Amargosa Town Advisory Board for review.
 - a) If and when the Town Advisory Board approves the proposed plan of the Rockview Dairies, Inc., they can reapply for a state permit.

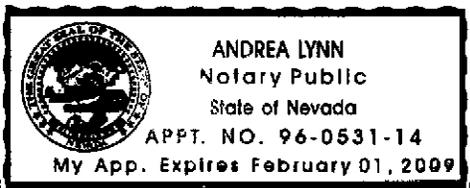
THEREFORE the Protestant requests that the application should be denied on the primary criteria that the application conflicts with existing rights of domestic wells and that an order be entered for such relief as the State Engineer deems just and proper.

Signed *John F. Bosta*
John F. Bosta
Address P. O. Box 42
Amargosa Valley, NV 89020

Subscribed and sworn to before me this 14.day of July, 2008

..... *Andrea Lynn*

State of Nevada
County of Nye.



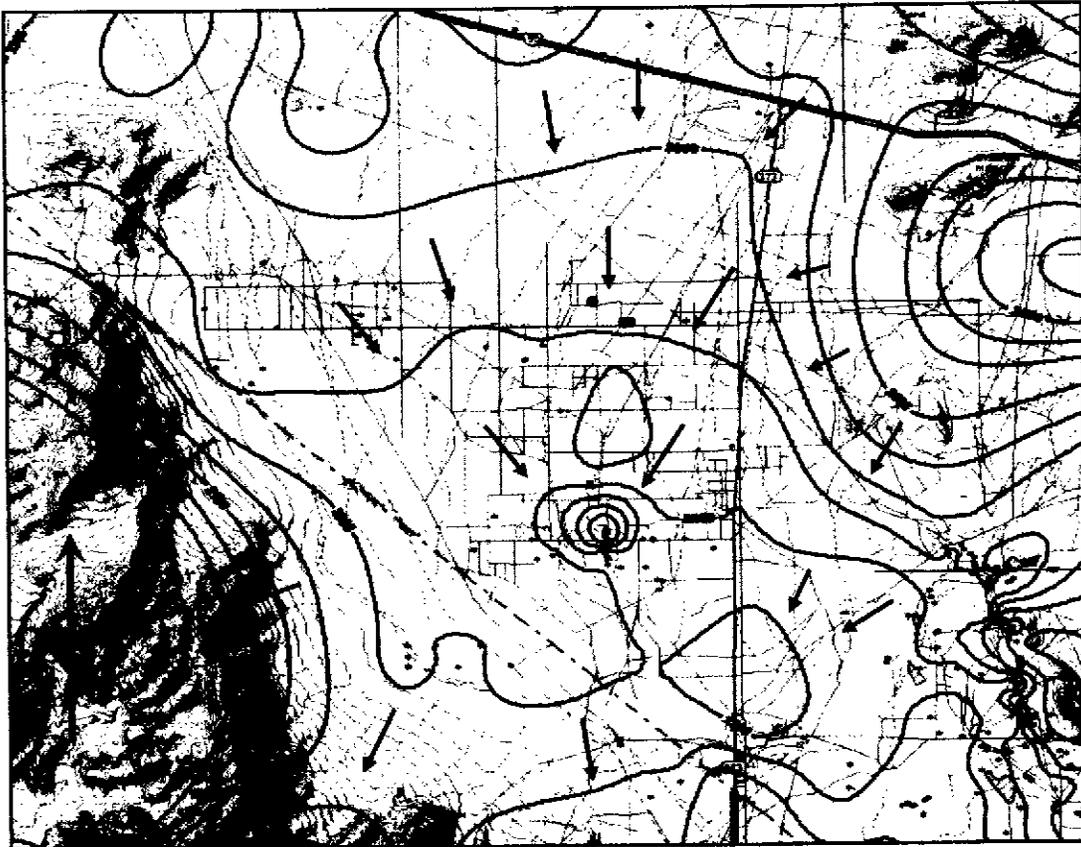


Figure 6. Potentiometric map showing the elevation of the water table in the spring of 2004 and the directions of groundwater flow

Note: This map is based upon water level measurements taken primarily by Nye County and the U.S. Geological Survey with supplemental data from the Nevada Division of Water Resources.

**Wellhead Protection Plan
For Nye County Operated
Systems in Amargosa Valley
March 2006**

**Prepared by:
Thomas S Buqo, Consulting Hydrogeologist, Inc.
P.O. Box 127, Blue Diamond, NV 89004**

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EXHIBIT A