



A PROFESSIONAL
LAW CORPORATION

50 West Liberty Street
Suite 750
Reno, Nevada 89501
Telephone 775.323.1601
Facsimile 775.348.7250

Reno • Las Vegas • Salt Lake City

Ross E. de Lipkau

Direct Dial
(775) 789-6545
E-Mail
RdeLipkau@parsonsbehle.com

February 23, 2009

Via EMail Only: jbwalker@ndep.nv.gov

John B. Walker, Executive Secretary
State of Nevada
State Environmental Commission (SEC)
901 S. Stewart Street
Suite 4001
Carson City, NV 89701

**Re: Rockview Farms, Inc. - NDEP
Client-Matter No. 17423.001
In re: ACE Petition for Declaratory Order or Advisory Opinion
(01.08.2009)
Opposition to Petition for Leave to Intervene**

Dear Mr. Walker:

Please find enclosed an Opposition to Petition for Leave to Intervene as filed on behalf of Rockview Farms, Inc., as Operator of the Ponderosa Dairy.

Please contact me if you have any questions regarding this document. Thank you for your attention to this matter.

Sincerely,

Parsons Behle & Latimer

John R. Zimmerman

/sdl

Enclosure

cc: Rose Marie Reynolds, SEC/DAG (Via EMail Only: rreynolds@ag.nv.gov)
William J. Frey, SDAG (Via EMail Only: bfrey@ag.nv.gov)
John L. Marshall (Via EMail Only: johnmarshall@charter.net)

1 PARSONS BEHLE & LATIMER
Jim B. Butler, NSB# 8389
2 John R. Zimmerman, NSB# 9729
50 West Liberty Street, Suite 750
3 Reno, NV 89501
Telephone: (775) 323-1601
4 Facsimile: (775) 348-7250

5 *Attorneys for Rockview Farms, Inc.*

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8 BEFORE THE STATE ENVIRONMENTAL COMMISSION
9 STATE OF NEVADA

10
11 *In re:*
12 Appeal of Permit NV0023027

13 **OPPOSITION TO PETITION FOR LEAVE TO INTERVENE**

14 COMES NOW, Rockview Farms, Inc., as operator of the Ponderosa Dairy, and hereby
15 files its opposition to the Amargosa Citizens for the Environment's (ACE) Petition for leave to
16 Intervene filed on February 13, 2009. Rockview Farms' opposition is based on the following
17 points and authorities, all documents on file with the Nevada Division of Environmental
18 Protection (NDEP), and any oral argument the Commission may require.

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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **Facts**

22 In February 2007, NDEP issued its Fact Sheet regarding Rockview Farms' application to
23 renew Permit NV0023027. The Fact Sheet contained a detailed description of the entire
24 Ponderosa Dairy facility and the proposed crop type and acreage, nutrient application, and
25 effluent limitations. The Fact Sheet also set forth NDEP's rationale for the Permit, the procedure
26 for submitting public comment, and NDEP's tentative determination to renew the Permit for
27 another five-year term. In addition to the Fact Sheet, NDEP conducted a public hearing in May
28

1 2007 to hear and respond to public comments on the proposed renewal of the Permit. At the
2 hearing, Rockview Farms' consultants also responded to questions from the public and explained
3 the reason for the renewal of NV0023027. The record shows that there were numerous public
4 comments received by NDEP, including comments and questions from the officers of ACE.
5 NDEP's decision to renew Rockview Farms' Permit was issued on October 25, 2007. The
6 decision was appealed to the Commission by John F. Bosta and Antonio Guerra Martinez in
7 November 2007. Also in November 2007, Rockview Farms requested to intervene in the
8 proceedings. Since late 2007 Bosta and Martinez have taken no action on the appeal.

9
10 Now, more than a year after the deadline to file an appeal of the Permit, ACE seeks to
11 enter the case and present evidence and argument challenging NDEP's issuance of the Permit.
12 Essentially, if allowed to intervene, ACE would be allowed to appeal a Permit more than a year
13 after the deadline to file an appeal. If ACE believed NDEP should not have renewed Rockview
14 Farms' Permit, however, it should have filed an appeal within the time required by
15 NAC 445A.8915. The intervention process should not be used to enable a party to file an
16 untimely appeal and the Commission should deny ACE's request as untimely and unwarranted
17 under the circumstances.
18

19 Argument

20 **I. The Commission should dismiss ACE's Petition for Leave to Intervene because** 21 **it is not timely.**

22 The Petition is untimely and ACE has failed to offer any reasonable excuse for the delay.
23 A petition for leave to intervene in a proceeding before the Commission must be filed within 10
24 days after the notice of appeal is filed. NAC 445B.8915. Here, the appeals by Bosta and
25 Martinez were filed in November 2007—more than a year before either the instant Petition or
26 ACE's recent petition for a declaratory order and an advisory opinion. Accordingly, ACE's
27 Petition failed to comply with the Commission's regulations and should be denied.
28

1 ACE offers no reasonable excuse for not filing an appeal of Rockview Farms' Permit.
2 ACE's sole reason for its untimely Petition is simply untenable and based on an incorrect
3 representation of the Commission's remarks regarding ACE's petition for a declaratory order and
4 an advisory opinion. First, ACE states that its Petition is in response to the Commission's
5 decision to deny ACE's petition for a declaratory order and an advisory opinion. But ACE filed
6 the petition for a declaratory order and an advisory opinion on January 9, 2009. Accordingly,
7 ACE's assertion that it should be excused for failing to timely file a petition for leave to intervene
8 is unreasonable because it is based on actions that were taken long after the appeal deadline had
9 expired. Second, ACE asserts that the Commission denied its petition for a declaratory order and
10 an advisory opinion because ACE's concerns regarding the Ponderosa Dairy "would be more
11 appropriately considered during the appeals of the Ponderosa Dairy's NPDES permit." But the
12 Commission simply stated that ACE's concerns should not be considered in a petition for a
13 declaratory order or an advisory opinion. Moreover, the Commission denied ACE's petition for a
14 declaratory order and an advisory opinion in part because the petition improperly requested the
15 Commission to engage in ad hoc rule making. Rockview Farms submits that ACE's Petition is
16 untimely, having been filed over a year after the appeal deadline has passed, and is simply an
17 improper attempt to circumvent the appeals process. Because ACE failed to timely file an appeal
18 or a petition for leave to intervene despite having notice of, and actually participating in, the
19 underlying proceedings, the Commission should deny the Petition and not allow ACE to
20 intervene in the appeals filed by Bosta and Martinez.
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24 **II. The Commission should dismiss the Petition because ACE fails to adequately**
25 **demonstrate any direct and substantial interest in the appeals and seeks to**
26 **unreasonably broaden the scope of the appeals.**

27 ACE's Petition should be denied because it has not adequately demonstrated a direct and
28 substantial interest in the subject matter of the appeal. ACE failed to list its members or

1 specifically describe where they live or work in the Amargosa Valley or how their interests would
2 be impacted if they are not allowed to intervene in the Bosta and Martinez appeals. ACE simply
3 has not satisfied its burden under NAC 445B.8915 in this case. Further, ACE's Petition also
4 raises issues outside the scope of the appeal such as air quality, groundwater depletion, and the
5 general quality of life in the Amargosa Valley. These issues would unreasonably broaden the
6 scope of these appeals and complicate the issues to the detriment of Rockview Farms. Therefore
7 the Commission should deny ACE's request to intervene in the Bosta and Martinez appeals.
8

9 **III. The Commission should dismiss the Petition because Rockview Farms' interests**
10 **will be prejudiced if ACE is allowed to circumvent the appeals process.**

11 Rockview Farms' interest will be prejudiced because ACE's Petition is simply an attempt
12 to circumvent the appeals process to challenge the Permit and is untimely. As stated above, more
13 than one year after the issuance of the Permit, ACE wants the Commission to ignore the deadline
14 to file an appeal under NAC 445A.890 and allow it to attack Rockview Farms' Permit as though
15 it had filed an appeal. As with its recent petition for declaratory order or an advisory opinion,
16 ACE is attempting to circumvent the appeal process. Granting ACE's Petition effectively would
17 allow an appeal to be filed at any time prior to the appeal hearing. Accordingly, the Commission
18 should deny ACE's Petition.
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20 Here, the prejudice to Rockview Farms by allowing ACE to intervene outweighs ACE's
21 interest in intervening in the Bosta and Martinez appeals. First, Bosta clearly has not prosecuted
22 his appeal diligently. Bosta filed his appeal in November 2007 and has done nothing to prepare
23 his case to the Commission. Likewise, ACE has failed to take any steps to appeal Rockview
24 Farms' Permit. The Commission should not reward an appellant for failing to prepare its appeal
25 in a diligent manner.
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27 Lastly, only Rockview Farms' interest will be prejudiced by the delay. Rockview Farms
28 is aware of and takes seriously the Commission's commitment to a fair and open process,

1 however, denying ACE's Petition is not contrary to that policy. After being given an opportunity
2 to participate in the permitting process ACE failed to do anything until over a year after an appeal
3 had been filed. Further, ACE and its members will be given the opportunity to present their
4 views during the public comment period at the appeal hearing. Accordingly, the Commission
5 should deny ACE's Petition.
6

7 **Conclusion**

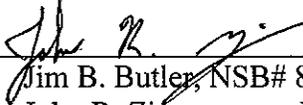
8 Based on the foregoing, Rockview Farms respectfully requests the Commission to deny
9 ACE's Petition to Intervene in the appeals filed by Bosta and Martinez.

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030, the undersigned hereby affirms that the preceding document
12 does not contain the Social Security number of any person.
13

14 PARSONS BEHLE & LATIMER

15 DATED this 23 day of February, 2009

16 By: 
17 Jim B. Butler, NSB# 8389
18 John R. Zimmerman, NSB# 9729
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