

AUG 17 2015

ENVIRONMENTAL PROTECTION

BEFORE THE STATE OF NEVADA STATE ENVIRONMENTAL COMMISSION

In Re:

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

ORDER AFFIRMING NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S ISSUANCE OF PERMIT NO. NS2014502

PROCEDURAL HISTORY

On March 9, 2015, the Nevada Division of Environmental Protection (NDEP) issued a groundwater discharge permit, Permit No. NS2014502, to Smith Valley Dairy (SVD). On March 19, 2015, Save Our Smith Valley, Inc. (SOS), appealed the issuance of the permit to the State Environmental Commission (SEC) alleging that the issuance of the permit was: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) affected by other error of law; (4) clearly erroneous in view of the reliable, probative and substantial evidence on the whole of the record; and (5) arbitrary or capricious or characterized by abuse of discretion. On March 24, 2015, SVD filed a Petition for Leave to Intervene in these proceedings, alleging that its interests were directly and substantially affected by SOS' appeal. On April 1, 2015, the SEC granted that petition.

The SEC set a briefing schedule and set the hearing for SOS's appeal for July 23, 2015. Briefing on the appeal was concluded on June 25, 2015.

SUMMARY OF HEARING

On July 23, 2015, a Panel of the SEC, with Commission members James Gans, Tom Porta and Mark Turner, held a hearing on SOS's appeal of NDEP's issuance of permit No. NS2014502. At the time of the hearing, SOS was present and represented by John Marshall, Esq. NDEP was present and represented by counsel, Deputy Attorney General Katie Armstrong, and Senior Deputy Attorney General Micheline Fairbank. SVD was present and represented by counsel, Brad Johnston. The Panel was represented by Deputy Attorney General Colleen Platt.

1           At the start of the hearing, the parties stipulated to the admission of NDEP's and SVD's  
2 exhibits as presented and a number of SOS's proposed exhibits. SOS presented its case-in-  
3 chief by calling witnesses Frank Ely, Kim Gattusso, Marshall Todd, Kathy Martin, Michele Reid  
4 and Mark Kaminski. Frank Ely, Kim Gattusso and Marshall Todd are members of SOS that  
5 own property near the Smith Valley Dairy. Kathy Martin was SOS's expert witness. Ms. Reid  
6 and Mr. Kaminski are both NDEP employees. At the conclusion of SOS's case, NDEP and  
7 SVD moved for a Directed Finding/Summary Judgment, arguing that SOS had failed to prove  
8 by a preponderance of the evidence that NDEP had issued Permit No. NS2014502 in  
9 an arbitrary or capricious manner or in violation of any law. (See NRS 233B.121 and  
10 233B.125 as amended by Section 5 and 7, respectively, of Assembly Bill 53 of the 78th  
11 Legislative Session).

12           On July 25, 2015, the Panel of the SEC reconvened the hearing of SOS's appeal of  
13 NDEP's issuance of Permit No. NS2014502. As a preliminary matter, SOS reviewed the  
14 exhibits it submitted prior to the hearing and sought admission of the remainder of its  
15 unadmitted exhibits. The SEC admitted some of SOS's unstipulated exhibits and denied  
16 admission to the remainder. NDEP and SVD then presented their arguments in support of  
17 their motion for a Directed Finding/Summary Judgment. NDEP and SVD argued, among  
18 other things, that there was no need to proceed beyond SOS's case-in-chief because the  
19 evidence SOS produced during its case failed to show that NDEP acted in an arbitrary or  
20 capricious manner or in violation of any law. SOS presented its argument in opposition to the  
21 motions. Having submitted their arguments to the Panel, the Panel members discussed and  
22 deliberated the motions based upon the testimony and exhibits presented and admitted into  
23 evidence during the hearing. At the conclusion of its deliberation the Panel made a  
24 determination that SOS failed to prove by a preponderance of the evidence that NDEP issued  
25 Permit No. NS2014502 in an arbitrary or capricious manner or in violation of the law.

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1 **CONCLUSION**

2 The State Environmental Commission hereby Affirms the Nevada Division of  
3 Environmental Protection's issuance of Groundwater Discharge Permit No. NS2014502,  
4 issued to Smith Valley Dairy on March 9, 2015.

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6 Dated this 13<sup>th</sup> day of August, 2015.

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1 **CERTIFICATE OF SERVICE**

2 I, Valerie King, certify that I am an employee of the State of Nevada, State  
3 Environmental Commission, and do hereby certify that on this 18<sup>th</sup> day of August, 2015, I  
4 electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and correct  
5 copy of the foregoing document, postage prepaid, to the following:

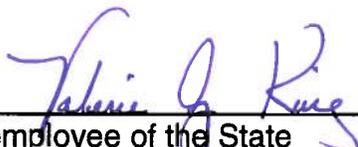
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28 An employee of the State  
Environmental Commission