

Case No. 06-01641A
Dept. No. 5

REC'D & FILED

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IN THE FIRST JUDICIAL DISTRICT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY
FRANZ

BILL BARRACKMAN,)	
)	
Petitioner,)	
)	
vs.)	PETITION FOR JUDICIAL
)	REVIEW
)	
STATE OF NEVADA DEPARTMENT OF)	
CONSERVATION AND NATURAL)	
RESOURCES; DIVISION OF)	
ENVIRONMENTAL PROTECTION, BUREAU)	
OF WATER POLLUTION CONTROL; STATE)	
ENVIRONMENTAL COMMISSION; and)	
A.K. CORAL CAY TRUST DBA BEVERLY)	
HILLS DAIRY,)	
)	
Respondents.)	

1. Pursuant to the State Administrative Procedure Act (APA), NRS 233B.010 et seq., Bill Barrackman hereby petitions this court for judicial review of the State Environmental Commission's Order dated November 15, 2006 (attached) dismissing Mr. Barrackman's appeal of the Nevada Division of Environmental Protection's issuance of Water Pollution Control Permit No. NEV2006504 for the "Beverly Hills Dairy," which is owned by the A.K. Coral Cay Trust. Mr. Barrackman also challenges the Nevada Division of Environmental Protection's issuance of the underlying permit as described herein. In the event that this Court finds that Mr. Barrackman is not situated to bring the underlying appeal before the State Environmental

Commission, Mr. Barrackman asks this Court for an extraordinary writ to review the legality of Permit No. NEV2006504.

2. The Beverly Hills Dairy is proposed to house a total of 3,950 cows on 287 acres of land in the Amargosa Valley, Nevada. The dairy property also includes a 100 acre field located about two miles from the animal housing and milking facility. The waste produced by one dairy cow is equal to that of 20 to 40 people. The dairy will produce, at minimum, an amount of waste equal to a city of approximately 80,000 people. Confined animal feeding operations such as the Beverly Hills Dairy frequently cause pollution of groundwater with bacteria, nitrates, phosphorus, and other pollutants.

3. Permit No. NEV2006504 includes no specific plan for the management of waste at the Beverly Hills Dairy. The Permit requires the dairy to prepare a nutrient management plan, but such plan will not be subject to any public notice or comment requirement. Mr. Barrackman cannot know how, where, and at what frequency the Beverly Hills Dairy will dispose of an estimated 1,052 tons of solids and 111.59 million gallons of process wastewater per year, yet the Nevada Division of Environmental Protection has granted the final permit for the discharge of such wastes to groundwater.

4. Mr. Barrackman draws groundwater from the aquifer underlying the Beverly Hills Dairy, and uses such water for domestic, agricultural, and commercial purposes. He has strong, direct personal and financial interests in protecting the quality of water in the aquifer.

JURISDICTION AND VENUE

5. The Administrative Procedure Act (APA), NRS 233B.010 et. seq. confers jurisdiction over this action.

6. The APA provides that “[a]ny party who is: (a) Identified as a party of record by an agency in an administrative proceeding; and (b) aggrieved by a final decision in a contested case, is entitled to judicial review of the decision.” NRS 233B.130(1).

7. Mr. Barrackman was an appellant below and, as is explained in more detail herein, is aggrieved by the SEC’s dismissal of his appeal, the opinion of the Attorney General dated June 19, 2006 which the SEC relied upon, and NDEP’s actions as described in this Petition.

8. Venue is proper in the First Judicial District Court in and for Carson City pursuant to NRS 233B.130(2)(b). The SEC and NDEP are located in Carson City.

9. If this court determines that the APA does not govern the SEC’s dismissal of Mr. Barrackman’s appeal or if it determines that Mr. Barrackman is not situated to prosecute an appeal of NDEP’s issuance of Permit No. NEV2006504, Mr. Barrackman requests that this court review the SEC’s decision to dismiss and/or the merits of NDEP’s issuance of Permit No. NEV2006504 pursuant to a writ of certiorari, NRS 34.020 et seq, or in the alternative, a petition for a writ of mandamus, NRS 34.160 et seq.

10. When a party seeks review in the district court of a ruling of an administrative agency not governed by the APA an extraordinary writ is the proper vehicle for seeking judicial review of the merits of the agency’s actions. See Washington v. Clark County Liquor and Gaming Licensing Board, 110 Nev. 425, 428, 683 P.2d 31, 33-34 (1984); Private Investigator’s Licensing Board v. Atherly, 98 Nev. 514, 515, 654 P.2d 1019, 1019-20 (1982) (treating an improper petition for judicial review pursuant to the APA as a petition for a writ of mandamus).

PARTIES

11. Petitioner Bill Barrackman is an individual residing in Amargosa Valley, Nevada. Mr. Barrackman lives less than one (1) mile from the site proposed for construction of the Beverly Hills Dairy. Mr. Barrackman owns and operates a commercial organic pistachio farm and processing facility on his property. He draws groundwater for domestic, commercial, and agricultural purposes from the same aquifer to which the Beverly Hills Dairy proposes to discharge dairy wastes.

12. Mr. Barrackman was an appellant in the administrative proceeding at the SEC and also commented on NDEP's actions during the permitting process. Mr. Barrackman is a party of record as required by the APA. NRS 233B.130(1)(a).

13. Mr. Barrackman is aggrieved by the SEC's decision to dismiss his appeal for lack of standing and is likewise aggrieved by NDEP's issuance of Permit No. NEV2006504.

14. Because Permit No. NEV2006504 does not adequately and lawfully protect groundwater from pollution, and because Mr. Barrackman was wrongly denied the opportunity to even comment on all the effluent limitations arising from Permit No. NEV2006504, Mr. Barrackman is adversely affected and aggrieved by Permit No. NEV2006504 and by the SEC's dismissal of his appeal.

15. Respondent Nevada Division of Environmental Protection (NDEP) is an agency of the Nevada Department of Conservation and Natural Resources. The Bureau of Water Pollution Control is a branch of NDEP.

16. NDEP is responsible for enforcing Nevada's Water Pollution Control Law, NRS 445A.300 et seq, and its implementing regulations. NDEP was responsible for issuing and renewing Permit No. NEV2006504.

17. Beverly Hills Dairy, A.K. Coral Cay Trust, is the holder of Permit No. NEV2006504, and is named as a party in this action pursuant to NRS 233B.130.

18. Respondent State Environmental Commission (SEC) is a branch of NDEP. The SEC is an eleven member quasi-judicial agency that hears and decides contested cases and appeals regarding permitting decisions of NDEP.

BACKGROUND AND PROCEEDINGS BELOW

19. NDEP issued its Notice of Proposed Action to issue Permit No. NEV2006504 to Beverly Hills Dairy on November 8, 2005. At the same time NDEP released a draft of such permit for public comment.

20. The draft permit proposed to authorize Beverly Hills Dairy to discharge manure and process wastewater generated by the housing and milking of some 2,900 mature dairy cows and 1,050 dairy heifers in the Amargosa Valley. NDEP estimated the Beverly Hills Dairy would generate 1,052 tons of solid wastes and 111.59 million gallons of process wastewater per year.

21. In issuing draft Permit No. NEV2006504 NDEP failed to disclose all practices and controls it will require of the Beverly Hills Dairy to limit and prevent the discharge of pollutants to groundwater. The most important practices and controls to limit and prevent such discharges would be detailed in a nutrient management plan ("NMP"). A NMP normally is a comprehensive, technical document that details the locations, rates, and practices of storing, utilizing, and disposing of livestock waste. The

intent of an NMP is to ensure that any waste applied to crops is applied only at the correct agronomic rates, and to ensure that any disposal of waste is conducted in a manner that prevents such waste from being released to ground or surface water. The scope of potential sites (including sites owned by third parties) and waste disposal practices which may be identified in an NMP for waste application is enormous.

22. At a public hearing held December 13, 2005, Mr. Barrackman provided oral comments to NDEP on draft Permit No. NEV2006504, and requested denial of the Permit. Mr. Barrackman also provided comments on the permit to NDEP via email on December 6, 2005.

23. NDEP issued the final Permit No. NEV2006504, along with its response to public comments on March 3, 2006. The permit became effective March 18, 2006 and will remain effective until March 17, 2011 unless it is modified, suspended or revoked.

24. The final permit requires Beverly Hills Dairy to prepare a NMP under certain general guidelines and submit such NMP to NDEP for review and approval. No members of the public will be notified nor provided an opportunity for comment or review of the NMP. Thus, it is unknown to Mr. Barrackman how, where, and at what frequency the Beverly Hills Dairy will apply this waste.

25. Mr. Barrackman timely filed the underlying request for an appeal hearing on Permit No. NEV2006504 before the SEC on March 16, 2006. His grounds for appeal stated: "Our concerns are about the mass loading of pollutants on the aquifer, water quality standards, operation of the waste management systems, and other aspects of the application, which are administratively and technically incomplete." Eight other individuals submitted requests for an appeal hearing as well.

26. On March 22, 2006, in a different matter already pending before the SEC (an appeal by Great Basin Mine Watch of a water quality permit for the Big Springs Mine), NDEP filed a “Notice of Intent to Challenge Great Basin Mine Watch’s Standing Pursuant to NRS 223B.127(4).” After briefing by the parties in that case, the SEC sought the opinion of the Nevada Attorney General on the impact of NRS 223B.127(4) upon appeals to the SEC.

27. On June 19, 2006, the Nevada Attorney General issued Formal Opinion 2006-3, which stated: (1) “NRS 233B.127(4) requires a public interest group to demonstrate a financial interest as a direct result of a grant or renewal of a license in order to appeal that grant or renewal to the State Environmental Commission;” (2) “Under Nevada law a ‘permit’ is substantially similar to a “license” for purposes of NRS 233B.127(4);” (3) “The restrictions outlined in NRS 233B.127(4) apply to an appeal filed with the State Environmental Commission prior to the effective date of that statutory provision, but where the actual hearing on the matter occurs after its effective date;” and (4) “The State Environmental Commission has jurisdiction to hear appeals regarding the grant or denial of a water quality permit pursuant to the terms of NRS 445A.605(1), but it must do so in harmony with the jurisdictional limitations outlined in NRS 233B.127(4).”

28. In the Big Springs Mine case, the SEC voted on July 6, 2006, to dismiss Great Basin Mine Watch’s appeal. On July 10, 2006, the SEC entered its Findings of Facts, Conclusions of Law and Order, relying on the Attorney General’s opinion.

29. On August 21, 2006, NDEP moved to dismiss Mr. Barrackman’s appeal of Permit No. NEV2006504, relying on the SEC’s July 10 dismissal of Great Basin Mine Watch’s case challenging the Big Spring Mine permit. Mr. Barrackman opposed such

dismissal, including by providing information on his financial and personal interests in protecting the quality of groundwater in the aquifer underlying his private property.

30. On October 30, 2006, the SEC heard oral arguments on NDEP's motion to dismiss, and voted to dismiss Mr. Barrackman's appeal as well as the appeals filed by other individuals. During the hearing, the attorney advising the SEC in its review capacity is the attorney who authored Attorney General's opinion at issue. The Attorney General also supplies the attorney for the NDEP. Thus, it is unlikely that the SEC will receive impartial legal advice regarding the Attorney General's opinion.

31. On November 15, 2006, the SEC issued its written order dismissing Mr. Barrackman's appeal, as well as the appeals filed by other individuals, on the basis that all appellants lack "standing" under NRS 223B.127(4).

32. The SEC's dismissal of Mr. Barrackman's appeal has deprived Mr. Barrackman of procedures and protections of law which continue to be provided to other persons with financial interests in environmental permits. Under the SEC's reasoning, only permittees (or prospective permittees) of environmental permits would have the right to appeal such permit to the SEC, to have their grievances heard without resort to litigation, and to have the right of discovery and cross-examination of NDEP staff. Mr. Barrackman also possesses a direct financial and personal interest in ensuring Permit No. NEV2006504 lawfully and adequately protects the quality of groundwater beneath his property, yet Mr. Barrackman has been denied the right to challenge the legality and validity of such permit before the SEC.

FIRST CAUSE OF ACTION

THE SEC VIOLATED NEVADA REVISED STATUTES

33. Mr. Barrackman incorporates by reference all preceding paragraphs.

34. The SEC's dismissal of Mr. Barrackman's appeal of Permit No. NEV2006504 relies upon on erroneous interpretation of Nevada law offered in the Nevada Attorney General's Opinion dated June 19, 2006.

35. Mr. Barrackman has standing to pursue his appeal of Permit No. NEV2006504 before the SEC because he is an "aggrieved person" under NRS 445A.605(1), which applies specifically to the SEC. The SEC erred by construing NRS 233B.127(4) to require dismissal of Mr. Barrackman's appeal.

36. In addition, the process used by the SEC in using the same attorney to advise it as issued the Nevada Attorney General's Opinion denied Mr. Barrackman constitutional right to an impartial forum.

37. Pursuant to NRS 233B.135, the SEC's dismissal of Mr. Barrackman's appeal of Permit No. NEV2006504 is therefore (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency; (c) Made upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of discretion.

38. The SEC's order of dismissal should be reversed and remanded to the SEC with direction to set a hearing on the merits of Mr. Barrackman's appeal of Permit No. NEV2006504 as required by law.

SECOND CAUSE OF ACTION

MR. BARRACKMAN MEETS THE REQUIREMENTS OF NRS 233B.127(4)

39. Mr. Barrackman incorporates by reference all preceding paragraphs.

40. Mr. Barrackman pleads this Second Cause of Action in the alternative to his First and Second Causes of Action. This Second Cause of Action only need be adjudicated if the Court finds the proper construction of Nevada Revised Statutes requires the Court to apply the requirements of NRS 233B.127(4) in considering Mr. Barrackman's standing to maintain an appeal at the SEC.

41. The Director of NDEP is required to verify that the discharge authorized by Permit No. NEV2006504 will not violate applicable standards for water quality. NAC 445A.245. Due to his direct interests in protecting the quality of groundwater underlying his property, Mr. Barrackman has a direct commercial, financial, and personal interest in the validity, accuracy, and legality of such verification. Therefore Mr. Barrackman poses the requisite interests in the lawful issuance of a permit as required by NRS 233B.127(4).

42. As set forth herein, NDEP's verification under NAC 445A.245 for Permit No. NEV2006504 was not valid, accurate, or lawful.

43. Pursuant to NRS 233B.135, the SEC's dismissal of Mr. Barrackman's appeal of Permit No. NEV2006504 is therefore (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency; (c) Made upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of discretion.

44. The SEC's order of dismissal should be reversed and remanded to the SEC with direction to set a hearing on the merits of Mr. Barrackman's appeal of Permit No. NEV2006504 as required by law.

THIRD CAUSE OF ACTION

NRS 233B.127(4) VIOLATES CONSTITUTIONAL REQUIREMENTS

45. Mr. Barrackman incorporates by reference all preceding paragraphs.

46. Mr. Barrackman pleads this Third Cause of Action in the alternative to his First and Second Causes of Action. This Third Cause of Action only need be adjudicated if the Court finds the proper construction of Nevada Revised Statutes, absent consideration of Constitutional prohibitions, would require dismissal of Mr. Barrackman's appeal to the SEC.

47. The Fourteenth Amendment of the United States Constitution provides that no State shall "deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. This provision requires, at minimum, that a statutory classification be rationally related to a legitimate governmental purpose.

48. NRS 233B.127(4), both on its face and as applied to Mr. Barrackman, creates two classes of persons which both share a personal and financial stake in environmental permits. Those persons that are benefited from the issuance of a permit have access to the appeal process before the SEC and the protections it provides; while those whose personal and financial interests may be harmed the issuance of a permit do not enjoy access to the process at all. Because this creation of two classes with different rights lacks a rational basis, NRS 233B.127(4) violates the equal protection provision of the Fourteenth Amendment.

49. The Fourteenth Amendment also provides for the protection of substantive and procedural due process. It provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV. § 1.

50. NRS 233B.127(4), both on its face and as applied to Mr. Barrackman, violates both substantive and procedural due process because, according to the statute, persons whose property or health is harmed by an agency’s issuance of a permit do not have the right to challenge the permit and would, therefore, suffer procedural and substantive harm to their vested rights in violation of the Due Process Clause of the United States Constitution.

51. The First Amendment of the United States Constitution and Article 1 of the Nevada Constitution protect the Freedom of Speech. U.S.C.A. Art. 1 (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”); Nev. Const. art. 1, § 9 (“Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain nor abridge the liberty of speech or of the press.”).

52. The Freedom of Speech protected by the First Amendment includes an individual’s right to petition the government for a redress of grievances. U.S.C.A. Const. Amend. 1. The right to access the courts is one aspect of this right. Administrative and judicial review are often the only avenues open for citizens to obtain redress of governmental grievances. As such, NRS 233B.127(4), both on its face and as applied to Mr. Barrackman, prevents Mr. Barrackman from seeking to protect his personal and

financial interests from unlawful and uninformed NDEP permitting decisions violates the First Amendment of the U.S. Constitution.

53. Pursuant to NRS 233B.135, the SEC's dismissal of Mr. Barrackman's appeal of Permit No. NEV2006504 is therefore (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency;(c) Made upon unlawful procedure;(d) Affected by other error of law; (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of discretion.

54. The SEC's order of dismissal should be reversed and remanded to the SEC with direction to set a hearing on the merits of Mr. Barrackman's appeal of Permit No. NEV2006504 as required by law.

FOURTH CAUSE OF ACTION

JUDICIAL REVIEW OF PERMIT NO. NEV2006504

55. Mr. Barrackman incorporates by reference all preceding paragraphs.

56. Mr. Barrackman pleads this Fourth Cause of Action in the alternative to his First, Second and Third Causes of Action. This Fourth Cause of Action only need be adjudicated if the Court finds that proper construction of Nevada Revised Statutes would require dismissal of Mr. Barrackman's appeal to the SEC, and that NRS 233B.127(4) withstands constitutional scrutiny.

57. Under NRS 233B.130(1), Mr. Barrackman may seek judicial review of a final administrative decision. If Mr. Barrackman does not have access to an administrative appeal, then the NDEP's issuance of Permit No. NEV2006504 was the final agency action as to him. Permit No. NEV2006504 became the final agency action

as to Mr. Barrackman when the SEC denied his standing to appeal, thus concluding all agency processes below.

58. The practical restrictions in any water quality permit, including Permit No. NEV2006504, that prevent or limit the discharge of pollutants to groundwater or surface water are known as “effluent limitations.” Under Nevada law, “[e]ffluent limitation” means any applicable state and federal water quality standard or limitation which imposes any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into any waters of the State.” NRS 445A.355.

59. The Beverly Hills Dairy is a “point source” as defined by NRS 445A.395.

60. The groundwater underlying the Beverly Hills Dairy and Mr. Barrackman’s property is “waters of the State as defined by NRS 445A.415.

61. A NMP for a dairy such as Beverly Hills Dairy, and the terms of such plan as incorporated to a permit, constitute an “effluent limitation.”

62. Nevada Administrative Code 445A.233(1)(b)(1) provides that NDEP “shall formulate and prepare tentative determinations in advance of public notice of the proposed issuance or denial of the permit” including specific tentative determinations on the “proposed effluent limitations . . . for those pollutants proposed to be limited.”

63. Nevada Administrative Code 445A.234(3) provides that the Director of NDEP “shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application.”

64. No NMP was submitted to NDEP, nor otherwise available for public review, during the public comment period for draft Permit No. NEV2006504. Rather, Permit No. NEV2006504 requires Beverly Hills Dairy to submit a NMP months after Permit No. NEV2006504 was final and approved.

65. NDEP violated NAC 445A.233(1)(b)(1) by failing to formulate and prepare a tentative determination on the proposed effluent limitations in Permit No. NEV2006504, including without limitation a tentative determination describing the terms of the NMP for Beverly Hills Dairy.

66. NDEP violated NAC 445A.234(3) by depriving Mr. Barrackman and the public of the right to submit written comments on all tentative determinations for Permit No. NEV2006504, including with limitation a tentative determination describing the terms of the NMP for Beverly Hills Dairy.

67. Permit No. NEV2006504 violates NRS 445A.490, which provides: “No permit may be issued which authorizes any discharge or injection of fluids through a well into any waters of the State: . . . (3) Which would result in the degradation of existing or potential underground sources of drinking water”

68. Permit No. NEV2006504 fails to meet the requirements of NRS 445A.500, NAC 445A.243, and NAC 445A.245.

69. The Director of NDEP is required to verify that the discharge authorized by Permit No. NEV2006504 will not violate applicable standards for water quality. NAC 445A.245. As set forth herein, NDEP’s verification under NAC 445A.245 for Permit No. NEV2006504 was not valid, accurate, or lawful.

70. NDEP issuance of Permit No. NEV2006504, including without limitation NDEP's determination that such permit will not cause violation water quality standards or otherwise cause degradation of existing underground sources of drinking water, lacks substantial evidence in the record, is clearly erroneous, and arbitrary and capricious.

71. Permit No. NEV2006504 is therefore (a) In violation of constitutional or statutory provisions; (b) In excess of the statutory authority of the agency;(c) Made upon unlawful procedure;(d) Affected by other error of law; (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) Arbitrary or capricious or characterized by abuse of discretion.

ALTERNATIVE REQUEST FOR EXTRAORDINARY WRIT RELIEF

72. Mr. Barrackman incorporates by reference all preceding paragraphs.

73. Mr. Barrackman makes this alternative request for writ relief in the alternative to First, Second, Third, and Fourth Causes of Action. This Request for Writ Relif only need be adjudicated if the Court finds that such relief is the only available means of review of Permit No. NEV2006504.

74. Mr. Barrackman requests that Court via a writ of certiorari and mandamus, review the merits of the underlying matter and set aside and remand Permit No. NEV2006504 to NDEP with instructions to comply with all statutory and regulatory provisions

PRAYER FOR RELIEF

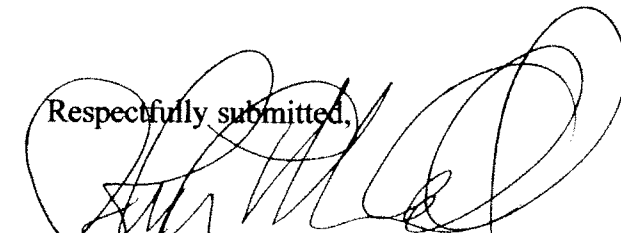
75. Based on the foregoing, the SEC's November 15, 2006 Order, the AG's June 19, 2006 Opinion, and NDEP's issuance of Permit No. NEV2006504 are in violation of statutory and regulatory provisions, unreasonable, based on erroneous

conclusions of law and mistaken fact, clearly erroneous in view of the reliable, probative, and substantive evidence, and arbitrary and capricious. Mr. Barrackman therefore respectfully requests the following relief:

- i. That this Court set aside the SEC's November 15, 2006 Order dismissing Mr. Barrackman's appeal for lack of standing and the underlying June 19, 2006 Opinion of the Attorney General;
- ii. In the alternative, that this Court declare NRS 233B.127(4) unconstitutional, null, void, and of no effect;
- iii. That this Court remand to the SEC with affirmative instructions that Mr. Barrackman has standing under Nevada law to prosecute his appeal Permit No. NEV2006504 to the SEC;
- iv. In the alternative, that this Court, through direct review under the Nevada APA or via a writ of certiorari and mandamus, review the merits of the underlying matter and set aside and remand Permit No. NEV2006504 to NDEP with instructions to comply with all statutory and regulatory provisions;
- v. That this Court grant Mr. Barrackman reasonable attorneys fees and costs; and
- vi. That this Court grant any further relief it deems just and proper.

Dated this 15th day of December, 2006.

Respectfully submitted,



John L. Marshall (NV 6733)
570 Marsh Ave.
Reno, Nevada, 89509
(775) 322-5668

CERTIFICATE OF SERVICE

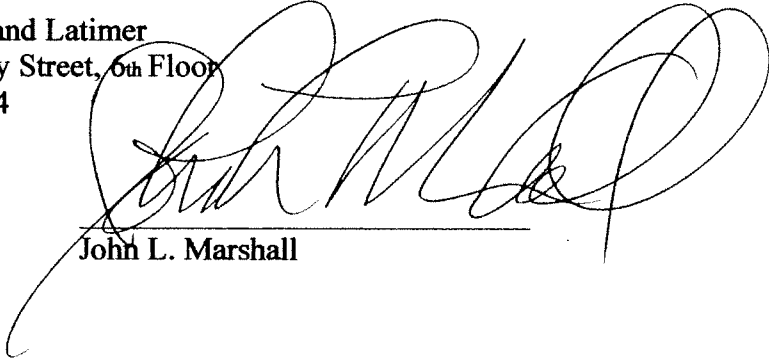
I, John Marshall, hereby certify that I served the foregoing upon the following individuals via the United States Postal Service this 15th day of December, 2006:

John Walker
Executive Secretary
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