

1 BEFORE THE STATE OF NEVADA,  
2 STATE ENVIRONMENTAL COMMISSION

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5 In Re: )  
6 )  
7 Appeal of Solid Waste Disposal Site Permit )  
8 Permit No. SW495REV00 )  
9 Operator: Recology )

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11 **REPLY BRIEF ON APPEAL**

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13 COMES NOW, the Appellants, Robert Hannum, and the Clean Desert Foundation's  
14 (CDF), and in connection with the above stated matter, respectfully submits this Reply brief to  
15 the Recology (real party in interest) and Nevada Division of Environmental Protection (NDEP)  
16 briefs.

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18 Dated this 11<sup>th</sup> day of May, 2012.

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## POINTS AND AUTHORITIES

1) NDEP's brief (p. 4:23-27) is interesting in that their position is that Hannum has presented "several pieces of evidence" in his brief, and that said evidence cannot be considered by the SEC "because the evidence was not before NDEP during the permitting process". Recology echoes NDEP's argument in this regard. Since Hannum is arguing, inter alia, that NDEP abused its discretion by granting a variance from the 100 foot distance requirement between the base of the landfill and the uppermost aquifer, NDEP's position amounts to an admission that it did not have before it all relevant evidence as it granted the variance.

2) Both NDEP and Recology object to characterizing NDEP as having granted a "variance" from the requirement of NAC 444.678 without good and proper cause. But this characterization is the most accurate and best way to describe and understand what is the true nature of what occurred herein, because appellant's construction, approach, understanding, and use of nomenclature, is more consistent with the stated policy of the State of Nevada as found in NRS 444.440 than respondent's. Nevada has spoken and declared as follows: It is hereby declared to be the policy of this State to regulate the collection and disposal of solid waste in a manner that will:

1. Protect public health and welfare.
2. Prevent water or air pollution.
3. Prevent the spread of disease and the creation of nuisances.
4. Conserve natural resources.
5. Enhance the beauty and quality of the environment.

Allowing for the variance of the administrative rule (NAC 444.678) does not advance one of the stated goals under the NRS 444.440, which is the statute under which the administrative rules are made. The only thing the aforesaid variance advances is making Nevada, and the high desert in Humboldt County, the garbage pile for California. Shameful.

1 3) Substantial evidence has not been presented by Recology to support the variance from  
2 what is described in NAC 444.678 as the “general” rule concerning location of the proposed  
3 Class I site. The rule provides that said site “**must**” not be within 100 feet of the uppermost  
4 aquifer unless an exception is granted by the NDEP. It is the granting of the exception, which is  
5 a variance from the general rule, and which constitutes an abuse of discretion by NDEP, and also  
6 was clearly erroneous in view of reliable, probative and substantial evidence on the whole  
7 record.  
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10 4) Meanwhile, (at page 2:9 of its brief) NDEP essentially presents an argument that a point  
11 was reached in the permitting process that it was without discretion in connection with the  
12 decision to grant the permit. How could the agency have lost its discretion is beyond  
13 comprehension? NDEP wrote that “NDEP was obligated to issue the permit at the point it  
14 determined that the design was sufficient to meet the regulatory requirements, including the  
15 requirement to protect the waters of the State from degradation by pollutants or  
16 contaminants.” This view of the obligation of the Nevada’s environmental official’s role in the  
17 process amounts to a “rubber stamp” and is certainly not consistent with the view that maybe  
18 reasonable minds can and do differ on important matters, and some may even not get things  
19 right. As is the case here.  
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22 5) The undersigned counsel is mindful that the sovereign state of Nevada always can  
23 interpret its laws and rules so as to protect the health, safety and welfare of its citizens. It should  
24 do so here. Recology offers their assumptions to you that the landfill won’t leak and damage or  
25 threaten the aquifer, and that otherwise their plans, design, etc. are good enough to be allowed to  
26 go to work dumping 4000 tons of garbage for the next 95 years.  
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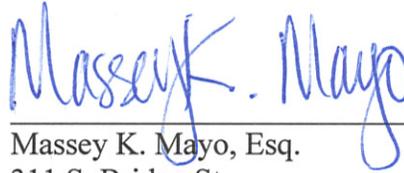
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1 Appellants and counsel offer that the landfill will leak, that human error is inevitable, that  
2 the environment will be unnecessarily damaged, and that ground water will be polluted, and that  
3 the greater good of the citizens of Nevada will be served by rejecting the granting of the permit.  
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5 Respectfully submitted this 11<sup>th</sup> day of May, 2012.

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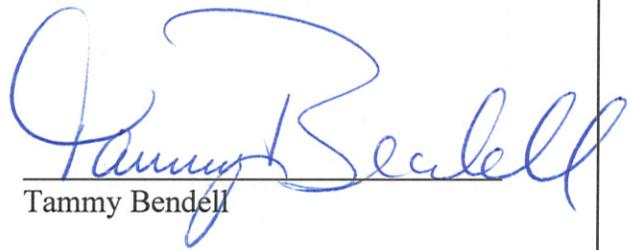
**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2012, I have deposited in the U.S. Mail in a properly addressed and stamped envelope a true and correct copy of the Robert Hannum Reply Brief on appeal, addressed to the following:

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