

Before the State of Nevada
State Environmental Commission

In re:

Appeals of Class 1 Solid Waste
Disposal Site Permit #SW495REV00

Appellant Cook's Response to
Recology's 4/25/12 Motion to
Dismiss Appeals

I take strong exception to Frankovich/Leonard's attempt to restrict my personal rights under the law. I was for a brief period a board member and treasurer of Clean Desert Foundation (Dec 8, 2011 – Feb. 17, 2012). Attached is a copy of my resignation from CDF. I filed a timely appeal on form 3 to the SEC March 9, 2012 as a private citizen which gives me standing under Nevada Law. Comes now Frankovich/Leonard's legal maneuvering to try and block my access to administrative remedy.

I appealed because I disagree totally with Frankovich/Leonard's contention that the proposed landfill is, "state-of-the-art." I and many others, including landfill expert G. Fred Lee, PhD, see dry-cell landfills as a failed technology of the previous century. The European community voted unanimously in 1999 to phase out this type of landfill entirely as they are inherently damaging to the environment; however, my appeal is based specifically on what I believe were clear violations by NDEP of NAC 444, 678 sections 1, 2 and 9.

I have seen this despicable tactic of attempting to impinge upon the rights of citizens by telling legitimate authority how they must act based upon some irrelevant legal decision previously from Mr. Frankovich. Attached is a copy of his 4/29/10 letter to the Humboldt County Clerk and the Initiative Petition Committees' rebuttal in which Mr. Frankovich tells the County how they must act because he says so. The County Commissioners declined to interfere and the ballot measure limiting the size of future landfills went on to win by a 70% margin. Mr. Frankovich immediately began posturing that the measure did not relate to his client because they were "grandfathered in." That too is an assertion by Mr. Frankovich that remains to be decided by legitimate authority.

I respectfully request that the SEC dismiss Frankovich/Leonard's absurd conclusion that I do not have standing because of some legal decision that has no bearing on my legitimate use of the established SEC appeals process.

April 26, 2012

Richard Cook
4320 Paradise Ranchos Dr.
Winnemucca, NV 89445
Richard_cook99@yahoo.com

Feb. 17, 2012

Phil Jacka, President
Clean Desert Foundation, Inc.
PO Box 33
Winnemucca, NV 89446

Dear Phil,

I hereby resign from the Clean Desert Foundation board of directors.
Good luck with the foundation.

Sincerely,

Richard Cook

Cc: Bob Dolan Law



MCDONALD·CARANO·WILSON^{PC}

John Frankovich
jfrankovich@mcdonaldcarano.com

Reply to: Reno

April 29, 2010

Humboldt County Clerk
50 West 5th Street
Winnemucca, Nevada 89445

*Re: Consideration of Initiative Petition proposing amendment to
Humboldt County Solid Waste Code*

This request is submitted on behalf of Jungo Land & Investments, Inc. ("Jungo") in connection with Item #13 on the Humboldt County Commission agenda for the meeting scheduled May 3, 2010, and any subsequent consideration of the Initiative Petition described in the agenda.

Jungo believes that the Initiative Petition suffers from numerous procedural and substantive legal defects which preclude its adoption as an ordinance or submission to the ballot. These deficiencies include, but are not limited to, the following:

1. The Initiative Petition suffers from a number of procedural defects in violation of NRS Chapter 295, including the absence of fiscal impact information and a sufficient description of effect in compliance with NRS 295.009. If the Initiative Petition applies to the Jungo Project, which it clearly is intended to do, then it could have a significant long-term financial impact on Humboldt County. The Nevada Commission on Economic Development has calculated the first-year impact alone, based upon construction jobs and taxes that will be generated by the Jungo Project, to be \$40,158,130. This, in addition to the ongoing annual impact of sales, property taxes and host fees, which together are projected to exceed \$6 million annually, amount to a considerable economic loss to Humboldt County should the Initiative be adopted. The law requires that this information be disclosed at the time that the Initiative Petition is circulated for signatures, which was not done.

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ATTORNEYS AT LAW



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2. The Initiative Petition constitutes an administrative act in violation of Article 19, Sec. 4 of the Nevada Constitution, and exceeds the authority delegated to the County. Ordinances that are administrative in nature are not proper subjects for initiative. *See Citizens for Train Trench Vote v. Reno*, 118 Nev. 574, at 585, 53 P.3d 387, 392 (2002). Moreover, the power to declare policy and permanent laws on intrastate and interstate solid waste disposal is vested solely within the State of Nevada, not the counties. *See Nevada Revised Statutes, Chapter 444*. On a number of grounds, the Initiative Petition impermissibly constitutes an administrative act in violation of the Nevada constitutional limitations.

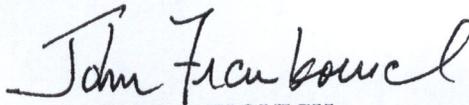
3. The subject matter of the Initiative Petition is preempted by and impermissibly conflicts with state law, in violation of Article 19, Sec. 4 of the Nevada Constitution. Nevada has adopted a comprehensive legislative scheme preempting the field of intrastate and interstate solid waste transportation and disposal, the purposes and objectives of which are frustrated by the Initiative. *See Lamb v. Mirin*, 90 Nev. 329, 332-33, 526 P.2d 80, 82 (1974). Moreover, the Initiative Petition impermissibly conflicts with Nevada's Solid Waste Management Plan, which specifically states that "no State or local government can establish rules that discriminate against disposal of waste based on its State of origin," in violation of NRS 444.510.

4. The Initiative Petition is unconstitutional and violates the Dormant Commerce Clause of the United States Constitution. The United States Supreme Court has long recognized that laws prohibiting or imposing undue burdens on the importation of solid waste violate the dormant commerce clause. *See City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531 (1978). The sole purpose, and clear effect, of the Initiative Petition is to discriminate against interstate commerce, which directly violates this constitutional protection.

Jungo believes the legal infirmities contained in the Initiative Petition preclude the County from adopting it as an ordinance and respectfully requests that the County refrain from doing so. Because the Initiative Petition is unlawful, the County must, under the holding of *Las Vegas Taxpayer Accountability Committee v. City of Las Vegas*, 125 Nev. 17 (2009), initiate an action in a court of law seeking declaratory, injunctive or other relief to prevent the measure's placement on the ballot. Jungo respectfully requests that the County recognize the legal infirmities contained in the Initiative Petition and initiate a suit to prevent its placement on the ballot as expeditiously as possible.

We appreciate your consideration of this information and the foregoing requests.

Very truly yours,


JOHN FRANKOVICH

JF/keh

cc: Russell Smith

May 2, 2010

Humboldt County Commissioners
50 West Fifth St.
Winnemucca, NV

Sent by e-mail hard copy to follow

Re: response to John Frankcovich's letter dated 4/29/10 Re:
Consideration of Initiative Petition Proposing Amendment to Humboldt
County Solid Waste Code.

Dear Commissioners:

We, the initiative petitioners' committee take strong exception to the above referenced letter. We urge you to understand and believe that the primary purpose of the initiative petition is to protect the health and safety of the public, which you as public officials have a duty and fundamental responsibility to uphold. Although we are not lawyers, we have ready access to legal advice from several sources and we reply as follows:

Item #1: We are very familiar with NRS Section 295, which governs initiative and referendum procedures. NRS295.009 governs State, not County Initiative and Referenda and is not relevant. Rather, NRS 295.075, NRS 295.085, NRS 295.095, NRS 295.105, NRS 295.115, NRS 295.121 and NRS 295.125 govern the county initiative and referendum process. Regarding the absence of fiscal impact information in the initiative's description, the only requirement in this regard, pursuant to NRS 295.095 (4) states: "Upon receipt of a petition for initiative or referendum placed on file pursuant to subsection 1, the county clerk shall consult with the board to determine if the initiative or referendum may have any anticipated financial effect on the local government if the initiative or referendum is approved by the voters. If the board determines that the initiative or referendum may have an anticipated financial effect on the local government if the initiative or referendum is approved by the voters, the board must prepare a description of the anticipated financial effect and the county clerk shall post a copy of this information on his internet Website, if he maintains one." Also regarding lost revenue, one cannot lose what one doesn't have. Recology's pie in the sky estimate of potential lost revenue pales by comparison to the potential threat to the health, safety and welfare of the citizens of this county when future generations are faced with cancer clusters, birth defects and contaminated air and/or water.

Item #2: Article 19, Section 4 of the Nevada constitution states: “The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of **every kind** in or for such county or municipality [emphasis added].” This initiative is not about intrastate or interstate commerce, the intent of the initiative is to preserve and promote the health, safety and welfare of the citizens of Humboldt County and the State of Nevada.

Item #3: We believe Mr. Frankovich’s assertion that the subject matter of the initiative petition is preempted by and impermissibly conflicts with state law, in violation of Article 19, Sec. 4 of the Nevada Constitution to be a misstatement of the law. Nevada’s comprehensive legislative scheme preempting the field of intrastate and interstate solid waste transportation and disposal purposes and objectives are not frustrated by the initiative. Furthermore, the initiative does not discriminate against the disposal of waste based on its State of Origin.

Item #4: Mr. Frankovich is trying to spin this serious public health issue into some kind of sterile legal issue that is all about the “Commerce Clause”, which is not true and he knows it. The commerce clause is not absolute, and is trumped by legitimate exercise of the police powers. The County has the authority under such powers to take action to protect public health and safety of its citizens.

This committee believes that there are no legal infirmities contained in the initiative petition, contrary to the assertion by Mr. Frankovich. The district attorney in this county is only obligated to bring action under the Las Vegas Taxpayer Accountability Committee case as cited by Mr. Frankovich if the city council or other local governing body believes that a proposed municipal ballot measure is substantively invalid. Any finding that the sole purpose, and clear effect, of the initiative petition is to discriminate against interstate commerce would be incorrect. We believe that you should find that the primary purpose of the petition is to protect the health and safety of the public from toxins and environmental harm, and that there has not been enough study of the health effects, given the high water table and unknown hydrology, for serious, adverse health effects including birth defects and death should toxic solid waste be placed in a landfill in the Humboldt River watershed. You should feel confident that this initiative is valid and make the decision not to file suit against the committee, and ultimately against the citizens you are elected to protect. Let Mr. Frankovich on behalf of Jungo challenge said validity of this petition by filing a complaint in district court for a judicial review pursuant to NRS 295.105(4).

Humboldt County Commissioners
May 2, 2010
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Thank you in advance for your considerations.

Sincerely,

Petition Committee Members

Marlene Brisenden

Richard Cook

Gail Janhunen

Mike Liberatore

Vicki Nye

cc: Russell Smith, Humboldt County District Attorney