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9
10 **STATE OF NEVADA**
11 **STATE ENVIRONMENTAL COMMISSION**

12
13 MOAPA BAND OF PAIUTES, a federally
recognized Tribe of Indians,

14 &

15 SIERRA CLUB, a California non-profit
16 Corporation,

17 Petitioners,

18 vs.

19 SOUTHERN NEVADA HEALTH DISTRICT

20 &

21 SOUTHERN NEVADA DISTRICT BOARD
22 OF HEALTH,

23 Respondents.

24 In Re: Appeal of Landfill Permit
25 No. LF006-CMF-01


**UNOPPOSED PETITION FOR A
DECLARATORY ORDER
(FORM #2)**

26
27 Petitioners Moapa Band of Paiutes and Sierra Club (Petitioners) submit this unopposed
28 request for an SEC Declaratory Order that the SEC has jurisdiction to hear and decide this appeal

1 by the Petitioners of decisions by the Respondent Southern Nevada Health District (SNHD) to
2 approve the application for, and to issue, Landfill Permit LF006-CMF-01 (issued Sept. 9, 2011) to
3 intervenor NV Energy.¹

4
5 **1. Name, address, telephone number, and signature of Petitioners.**

6 Petitioners are the Moapa Band of Paiutes and the Sierra Club, by and through their legal
7 representatives:

8 9 10 11 12	 _____ Dan Galpern, Attorney Western Environmental Law Center 1216 Lincoln St. Eugene, OR 97401 galpern@westernlaw.org (541) 485-2471	 10 11 12	<u>/s/ Chris Mixson</u> _____ Christopher W. Mixson Nevada Bar No. 10685 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP 3556 East Russell Rd. Las Vegas, NV 89120 cmixson@wrslawyers.com (702) 341-5200
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13 Attorneys for Petitioners Moapa Band of Paiutes & Sierra Club
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15 **2. Specific type of petitioner (individual, partnership, corporation or other) and the**
16 **exact business or occupation including a description of the business or occupation if**
17 **necessary.**

18 (a) Petitioner Moapa Band of Paiutes is a recognized Indian tribe organized under a
19 Constitution approved by the Secretary of the Interior on April 17, 1942, and governed by a Tribal
20 Council, with members living on the Moapa Reservation adjacent to the coal ash landfill at issue
21 in this matter.

22 (b) Petitioner Sierra Club is a nonprofit public benefit corporation organized in part to
23 protect and restore the quality of the natural and human environment and public health, with
24 members living in Southern Nevada and throughout the nation.

25 _____
26 ¹ In open court on Nov. 8, 2011, counsel for Respondent SNHD and Respondent-
27 Intervenor NV Energy stated that the SEC properly has jurisdiction over Petitioners’
28 administrative appeal in this matter. To that end, those same parties have also stated that they
support a request such as this one by Petitioners to the SEC seeking the SEC’s determination in a
declaratory order that it has jurisdiction over this matter.

1 **3. Exact and specific nature of order or opinion sought, including delineation of the**
2 **regulations, statutory provision, or Commission decision involved.**

3 Petitioners seek a declaratory order from the SEC that the SEC has jurisdiction to conduct
4 a contested case hearing over, and to decide Petitioners' appeal of, decisions by the Southern
5 Nevada Health District (SNHD) approving NV Energy's application for and issuing Landfill
6 Permit LF006-CMF-01 (Sept. 9, 2011).

7 NAC 445B.888 provides, in pertinent part, that "any member of the public may petition the
8 Commission for a declaratory order . . . as to the applicability of any statutory provision,
9 Commission regulation or decision as required by form 2."

10 Petitioners have appealed to the SEC from the SNHD's decisions at issue in this matter
11 pursuant to a regulation of the Commission, NAC 444.748(2), which provides, in pertinent part:
12 "Any person who wishes to appeal from a decision or action of the solid waste management
13 authority may do so. Such an appeal must be made in writing in accordance with the State
14 Environmental Commission's procedural rules."

15 Petitioners have appealed in writing in accordance with the SEC's procedural rules. *See*
16 Petitioners' filings with the SEC: Form #3 (Nov. 6, 2010; as updated Nov. 8, 2010); More Definite
17 and Detailed Statement of the Matters Asserted (Oct. 20, 2011).

18 NAC 444.748 was promulgated by the SEC pursuant to its authority granted under NRS
19 444.560(1), which statute provides that "The State Environmental Commission shall adopt
20 regulations concerning solid waste management systems, or any part thereof, including regulations
21 establishing standards for the issuance, renewal, modification, suspension, revocation and denial
22 of, and for the imposition of terms and conditions for, a permit to construct or operate a disposal
23 site."

24 The SNHD is a "district board of health of a health district" created pursuant to NRS
25 439.362 or 439.370 and, pursuant to NRS 444.557 and 444.558, functions as the solid waste
26 management authority in Clark County. *See also* SNHD Solid Waste website:
27 <http://www.southernnevadahealthdistrict.org/solid-waste/index.php>.

28 NAC 444.748 is, moreover, consistent with other relevant statutes governing the

1 relationship between the SEC and the SNHD. *See e.g.* NRS 444.558(1) (“The State
2 Environmental Commission and the district board of health of a health district . . . shall adopt
3 regulations that are necessary to establish and carry out a program of issuing permits for municipal
4 solid waste landfills”); NRS 444.570(1)(d) (providing for agency review of “the programs of other
5 solid waste management authorities in the State for issuing permits . . . and ensuring compliance
6 with the terms and conditions of such permits, the regulations of the State Environmental
7 Commission, the laws of this State . . .”); NRS 444.570(2)(b) (providing for SEC review of “plans
8 for solid waste management systems”); NRS 444.580(2) (providing that district boards of health
9 may not adopt solid waste rules that conflict with regulations adopted by the State Environmental
10 Commission).

11 **4. Petitioners’ reason for requesting the declaratory order and/or advisory opinion**
12 **including whether in behalf of self-interest, the public interest, or any other legal**
13 **entity’s or individual’s interest.**

14 Petitioners request a declaratory order on behalf of Petitioners, on behalf of the members
15 of Petitioners, and on behalf of the public interest.

16 Petitioners have appealed to the SEC from the SNHD’s approval of a permit application
17 and subsequent issuance of a permit to NV Energy to modify and expand NV Energy’s coal ash
18 landfill at its Reid Gardner facility in Moapa, NV. *See* Petitioners’ filings with the SEC: Form #3
19 (Nov. 6, 2010; as updated Nov. 8, 2010); More Definite and Detailed Statement of Matters
20 Asserted (Oct. 20, 2011). The Tribe opposes expansion of the coal ash landfill on the grounds,
21 among others, that such expansion will undermine the Tribe’s traditional way of life, impair the
22 health of members—particularly the health of the youngest and oldest generation—hasten death,
23 and contaminate the environment. The Sierra Club opposes expansion of the coal ash landfill at
24 issue here on the grounds, among others, that such an expansion will impair public health and will
25 further degrade the environment in contravention of law.

26 Petitioners sought a contested case hearing over the lawfulness of SNHD’s approval of the
27 Permit application, its issuance of the Permit, and the adequacy of that Permit to safeguard the
28 environment, as outlined in Petitioners’ Oct. 20, 2011 More Definite and Detailed Statement of
Matters Asserted, submitted pursuant to NRS 233B.121.


1 The SEC has slated this matter for a contested case hearing commencing Jan. 31, 2012 in
2 Las Vegas. For purposes, among others, of efficiency, and to avoid unnecessary expenditure of
3 public resources, and to avoid unnecessary expenditure of its members' resources, and to avoid
4 unnecessary expenditure of judicial resources, petitioners request that the SEC issue a declaratory
5 order determining that it has jurisdiction to hear and decide this matter. Accordingly, Petitioners
6 requests the declaratory order on their own behalf and on behalf of the public interest.

7 **5. An expression of what particular group(s) of people would be most affected, either**
8 **positively or negatively, by declaratory order, and/or advisory opinion.**

9 This declaratory order would have a profound effect on Petitioners and potentially on other
10 similarly situated members of the public who are aggrieved by pollution generated by, leaking
11 through, emitted thereby or discharged from coal ash landfills that may be permitted under the
12 authority of this or another health district operating as a local solid waste management authority.

13 **6. Date of petition:** November 8, 2011

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15 Respectfully submitted this 3rd day of November, 2011.

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 8th day of November, 2011, a true and correct copy of the
3 foregoing **UNOPPOSED PETITION FOR A DECLARATORY ORDER (FORM #2)** was
4 served via electronic mail, with a hard copy to be placed in the United States mail, postage
5 prepaid, to the following persons and attorneys of record in the above-captioned matter:

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