

Case No. 06-01181A  
Dept No. I

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SEP 29 2006

ENVIRONMENTAL PROTECTION

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

GREAT BASIN MINE WATCH,

Petitioner

vs.

STATE OF NEVADA DEPARTMENT OF  
CONSERVATION AND NATURAL RESOURCES;  
DIVISION OF ENVIRONMENTAL PROTECTION;  
BUREAU OF MINING REGULATION AND  
RECLAMATION; STATE  
ENVIRONMENTAL COMMISSION; AND  
ANGLOGOLD ASHANTI (NEVADA) CORPORATION

Respondents.

**GBMW'S JOINT  
RESPONSE TO  
THE SEC'S AND  
ANGLOGOLD'S  
MOTION TO DISMISS**

On September 5, 2006 Great Basin Mine Watch (GBMW) filed a petition for judicial review and alternative request for writ relief with this Court regarding the Nevada Department of Conservation and Natural Resources Division of Environmental Protection (NDEP), State Environmental Commission (SEC)'s July 10, 2006 Order (attached) dismissing GBMW's appeal of NDEP's renewal of Water Pollution Control Permit (WPCP) NEV0087001 for the Big Springs Mine. On September 13, 2006, NDEP filed a motion to dismiss GBMW's request for judicial review and alternative request for writ relief for lack of jurisdiction. On September 21, 2006 and September 22, 2006, the SEC and Anglogold Ashanti (Nevada) Corporation, respectively, filed individual motions to dismiss, joining in NDEP's motion.

In response, BMW relies on its response to NDEP's motion to dismiss filed on September 25, 2006 and the points and authorities outlined herein, which respond solely to new points and authorities raised by AngloGold and the SEC. BMW respectfully avers that jurisdiction for this matter is properly before this Court and, accordingly, requests that this Court deny AngloGold's motion.

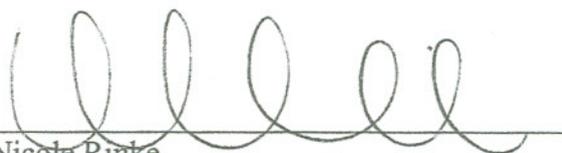
AngloGold and the SEC, like NDEP, argue that the APA requires that a petition for judicial review be filed within thirty days of the SEC's original decision. In support of their motions, AngloGold and the SEC rely on NAC 445B.899(6). That section does not, however, address the procedural effect of filing a petition for reconsideration or rehearing, but rather addresses the substantive effect of such a filing on the underlying decision. It states, "[u]nless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of the challenged decision." NAC 445B.899(6) (emphasis added). This section indicates that the filing of a petition for rehearing or reconsideration does not stay the effectiveness of the challenged decision, but does not, as AngloGold and the SEC otherwise suggest, address the effect of a petition for reconsideration on the time for filing a subsequent petition for judicial review.

As explained in BMW's response to NDEP's motion to dismiss, the APA only expressly addresses the tolling of the time for filing a petition for judicial review in the event that a petition for reconsideration or rehearing is granted. The legislature has not specifically and expressly addressed the tolling effect in the event that a petition is denied and by implication, then, has left that matter to the discretion of individual state agencies.

In this case, as explained, the SEC has specifically provided that a decision upon rehearing is the final decision for purposes of judicial review. NAC 445B.899(10).

The SEC suggests in its motion to this Court that NAC 445B.899(10) only applies if the petition for reconsideration or rehearing is granted. However, that interpretation does not comport with the plain language of the section, which does not specifically limit itself to situations where petitions are granted. In contrast, sections (7) and (9) of the same regulation expressly limit themselves to instances where the Commission grants a petition for reconsideration or rehearing. See NAC 445B.899(7) and (8) (beginning "if the Commission grants a petition"). The SEC's failure to expressly limit section (10) to situations where petitions are granted, as it did in sections (7) and (8), suggests that it does not intend section (10) to be limited only to situations where petitions are granted. See Galloway v. Truesdell, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) ("The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State.").

Respectfully submitted this 27<sup>th</sup> day of September, 2006 by,



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**CERTIFICATE OF SERVICE**

I, Nicole Rinke, hereby certify that I served the foregoing upon the following individuals via the United States Postal Service, 27th day of September, 2006:

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State Environmental Commission  
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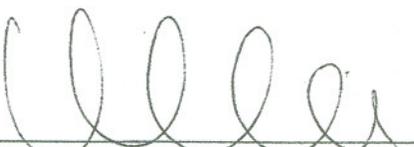
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