

BEFORE THE STATE ENVIRONMENTAL COMMISSION
STATE OF NEVADA

In Re:)
Appeal of Water Pollution Control Permit:)
Groundwater Permit NEV91022,)
Reid Gardner Station)

NDEP'S OPPOSITION TO SIERRA CLUB'S MOTION TO THE SEC, SEEKING (1) ISSUANCE OF SUBPOENAS TO COMPEL PRODUCTION OF DOCUMENTS, (2) VACATUR AND CONTINUANCE IN THE PROCEEDINGS, AND (3) A PRELIMINARY INJUNCTION TO SUSPEND THE EFFECTIVENESS OF THE PERMIT AND HALT CONSTRUCTION OF NEW WASTEWATER PONDS

NDEP's Opposition to Sierra Club's Motion to the SEC, Seeking (1) Issuance of Subpoenas to Compel Production of Documents, (2) Vacatur and Continuance in the Proceedings, and (3) A Preliminary Injunction to Suspend the Effectiveness of the Permit and Halt Construction of New Wastewater Ponds.

NDEP hereby opposes the Motion filed by Sierra Club for the following reasons:

1. Issuance of Subpoenas to Compel Production of Documents

Unless declared by law to be confidential, NDEP's documents are public records. NRS 239.010. All public records in NDEP's possession are available for review and copying. To that end, NDEP has consolidated most of the documents regarding the Reid Gardner permit renewal process in its Carson City office. Sierra Club can at any time come, review the documents, and arrange for and get copies.

Sierra Club's motion essentially implies that NDEP should be required to provide all documents that Sierra Club needs for its appeal. This request is unreasonable. NDEP should not be put in a position where, no matter what it does, it will always be subject to criticism and attack for not providing the documents Sierra Club believes it needs. Moreover, this request essentially asks that NDEP prepare Sierra Club's appeal for it by compiling the documents that NDEP believes Sierra Club needs for the appeal. Sierra Club should be

1 required to prepare its appeal by reviewing the documents and determining the relevance of
2 the documents and whether the documents should be presented to the SEC at the hearing.

3 NDEP notes, however, that Sierra Club's motion potentially includes numerous
4 documents that have no relevance to this appeal. NDEP reserves its right to object to the
5 admission of those documents at the hearing. It is noteworthy that all documents relevant to
6 this appeal (i.e., the administrative record) have been available for months, yet Sierra Club
7 files its motion requesting relief less than a month before the hearing. The permit renewal
8 was issued on June 28, 2010, and now, four months later, Sierra Club complains it needs
9 additional documents and time to review them. For the past few months, NDEP and its
10 counsel have informed Sierra Club that the documents are available for review. Sierra Club
11 has had ample time to review the documents and the SEC should deny its request to continue
12 the hearing.

13 **2. Vacatur and Continuance in the Proceedings**

14 Sierra Club advances the argument that the appeal hearing set for November 4 and 5
15 must be continued because it needs time to review the additional documents sought in
16 request (1). This will inevitably require the appeal hearing to be delayed. Sierra Club ignores
17 the fact that all documents that NDEP relied on in making its decision to issue the permit
18 existed in NDEP's files prior to the permit's issuance date.

19 Given that all documents relied on by NDEP in reviewing the permit were available
20 prior to issuance of the permit, Sierra Club's request for continuance should be denied.

21 **3. A Preliminary Injunction to Suspend the Effectiveness of the Permit and**
22 **Halt Construction of New Wastewater Ponds**

23 As a matter of law, there is a presumption that the renewed permits are valid. The
24 existing ponds, are located in the flood plain of the Muddy River, are the subject of a
25 corrective action that cannot begin until the construction of the new ponds are completed.
26 Sierra Club is not harmed in anyway by the construction of the new ponds. The new ponds
27 each have two synthetic liners with leak detection systems. Furthermore, the new ponds will
28 be located farther from the Muddy River, up on the mesa nearby and not in the floodplain.

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1 This relocation is more protective of the environment than the current location and the new
2 construction will ensure that these ponds are zero-discharge. Delaying the construction of the
3 new ponds increases the risk of pollution of the Muddy River, and of the groundwater.

4 DATED this 14th day of October, 2010.

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6 Attorney General

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CERTIFICATE OF SERVICE

I, Rosiland M. Hooper, hereby certify that I am an employee of the Office of the Nevada Attorney General, and on this 14th day of October, 2010, I filed the foregoing **NDEP'S OPPOSITION TO SIERRA CLUB'S MOTION TO THE SEC, SEEKING (1) ISSUANCE OF SUBPOENAS TO COMPEL PRODUCTION OF DOCUMENTS, (2) VACATUR AND CONTINUANCE IN THE PROCEEDINGS, AND (3) A PRELIMINARY INJUNCTION TO SUSPEND THE EFFECTIVENESS OF THE PERMIT AND HALT CONSTRUCTION OF NEW WASTEWATER PONDS**, to the following individuals via email:

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