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Real Party-in-Interest Recology, Inc.  
7

8 BEFORE THE STATE OF NEVADA  
9 STATE ENVIRONMENTAL COMMISSION  
10

11 In re  
12 APPEALS OF CLASS I SOLID WASTE  
DISPOSAL SITE PERMIT # SW495REVOO  
13

**RECOLOGY'S  
MOTION TO DISMISS  
APPEALS**

14 \_\_\_\_\_/

15 Intervenor and Real Party-in-Interest Recology, Inc., by and through counsel of record  
16 McDonald Carano Wilson LLP, moves to dismiss Appellants' appeals because Appellants lack  
17 any cognizable legal interest to confer standing to appeal.

18 **INTRODUCTION**

19 Robert Dolan and Massey Mayo use the shell organization Clean Desert Foundation  
20 ("CDF") to circumvent a federal court order that effectively deprives the Commission of  
21 jurisdiction to hear these appeals. Since 2009, Dolan and Mayo have filed six (6) appeals  
22 challenging Real Party-in-Interest Recology, Inc.'s efforts to develop a state-of-the-art landfill in  
23 Humboldt County, Nevada. In the course of these attacks, a federal judge has entered an order  
24 holding that Dolan and Mayo lack standing to challenge the Jungo project because they are not  
25 "aggrieved," as the law requires. As the court noted, Dolan and Mayo live over 25 miles from the  
26 Jungo site and have no personal or property right that is implicated by the Jungo project.  
27 Additionally, the court emphasized, Dolan and Mayo's interests are no different than any other  
28 member of the public.

1 On the basis of this federal court order, none of the Appellants has standing to bring their  
2 appeals before the Commission. All of the Appellants live far away from the Jungo site, and no  
3 one has a cognizable legal interest that will be affected by the Jungo project. The Appellants  
4 recognize that they must meet the standing threshold to have their appeals heard by the  
5 Commission, yet have not and cannot, as a matter of law, do so. Allowing these appeals to  
6 proceed in the absence of standing will render the “aggrieved” standard meaningless, open the  
7 floodgates to unauthorized appeals, unfairly burden the permit holder and needlessly tax the  
8 resources of NDEP and the Commission.

9 **FACTUAL AND PROCEDURAL HISTORY**

10 **A. The Permittee**

11 Recology, Inc. and its subsidiaries are in the business of providing solid waste services to  
12 communities in California, Oregon and Nevada. These services include residential and  
13 commercial recycling, materials recovery, construction and demolition debris recycling, large-  
14 scale composting of food scraps and organic waste, compost sales, waste collection, transfer,  
15 disposal and landfill operations, planning and administration.

16 Jungo Land & Investments, Inc. (“Jungo”), a Nevada corporation, is a wholly-owned  
17 subsidiary of Recology Nevada, Inc., also a Nevada corporation, formerly known as Norcal  
18 Waste Systems of Nevada, Inc. Recology Nevada, Inc. is a wholly-owned subsidiary of  
19 Recology, Inc., a California corporation. Jungo is the holder of a Conditional Use Permit granted  
20 by Humboldt County on or about April 23, 2007, #UH-07-05 (“CUP”), to construct and operate a  
21 municipal solid waste landfill in Humboldt County, Nevada. Jungo has a leasehold interest with  
22 an option to purchase the real property upon which the proposed landfill will be constructed,  
23 identified as Sec. 7, T35N, R33E, approximately 25 miles west of Winnemucca, Nevada.

24 **B. The Federal Court Ruling That Dolan and Mayo Have No Legal Standing**

25 Starting in approximately June 2009, which was over two years after Jungo’s CUP was  
26 issued, Dolan and Mayo initiated a campaign to interfere with Jungo’s development of the Jungo  
27 landfill project. In total, Dolan and Mayo have filed six (6) administrative and legal challenges to  
28 the Jungo project. Ultimately, all of Dolan and Mayo’s challenges and appeals have failed. As a

1 result of one of Dolan and Mayo’s appeals, a federal judge has determined that they have no legal  
2 standing to challenge the Jungo project.

3 At issue in the federal judge’s decision was whether the Humboldt County Board of  
4 County Commissioners had jurisdiction to hear Dolan and Mayo’s appeal of the Humboldt  
5 Regional Planning Commission’s approval of a five-year extension of Jungo’s CUP. Jungo filed  
6 a document with the United States District Court for the District of Nevada entitled a Petition for  
7 Writ of Mandamus seeking a ruling that no such jurisdiction existed. The Court agreed with  
8 Jungo and granted the relief requested by Jungo.

9 Specifically, on December 8, 2011, the federal judge issued an order granting Jungo’s  
10 Petition for Writ of Mandamus on the basis that **Dolan and Mayo lacked standing** and therefore  
11 the BCC lacked jurisdiction to consider the appeal of Jungo’s CUP extension granted by the  
12 Planning Commission. (Ex. 1 hereto). Referring to Dolan and Mayo collectively as “Dolan,” the  
13 court found that they have no “personal or property right that has been adversely or substantially  
14 affected by the Jungo CUP extension. Dolan does not own any property within 25 miles of the  
15 Project site. Additionally, Dolan has not shown that he has suffered any special damages  
16 differing from the general public.” (*Id.* at 6:10-13).

17 In light of these findings, the District Court concluded that the County Commission lacked  
18 jurisdiction to hear Dolan and Mayo’s appeal and (1) vacated the County Commission’s decision  
19 reversing the Planning Commission’s five-year extension of Jungo’s CUP; (2) dismissed the  
20 Dolan Appeal with prejudice based on the County Commission’s lack of jurisdiction to hear the  
21 appeal; and (3) reinstated the Planning Commission’s February 11, 2010 decision granting the  
22 five-year extension to Jungo’s CUP. (*Id.* at 7:9-15). As a result, there is now a court ruling that  
23 Dolan and Mayo have no cognizable legal interest that confers them with standing to challenge  
24 the Jungo project.

25 **C. Dolan and Mayo’s Efforts to Circumvent Their Lack of Standing**

26 Throughout Dolan and Mayo’s challenges and appeals regarding the Jungo project, Jungo  
27 has argued that they lacked standing. In order to skirt these arguments, Dolan and Mayo recently  
28 created a shell entity with the name “Clean Desert Foundation, Inc.” (“CDF”), through which

1 they bring the instant appeal. CDF owns no property anywhere and has no personal or property  
2 interest in the Jungo Project.

3 Dolan filed the incorporation papers with the Nevada Secretary of State to form CDF, is  
4 the lawyer for and resident agent of CDF and filed the appeal in CDF's name.  
5 (Ex. 2). The address for CDF is that of Dolan and Mayo's law offices in Winnemucca. Mayo  
6 identifies herself as "a member in good standing of CDF." (Ex. 31 to CDF Opening Brief).  
7 Along with another individual, James Reed, Mayo provides the Commission with an affidavit  
8 specifically for the purpose of "establishing standing to appeal by the Clean Desert Foundation,  
9 Inc. (CDF)." (Exs. 30 and 31 to CDF Op. Br.) Mayo and Reed are both Winnemucca residents  
10 who have no property or other interests that will be affected by the Jungo project. (See id.)

11 Appellant Cook does not even try to establish standing, even though the reasoning of the  
12 federal court order would likewise bar his appeal. Like Dolan, Mayo and Reed, Cook lives in  
13 Winnemucca. (See Cook's Op. Br. p. 7.) Cook is also Treasurer and Director of CDF.

14 Appellant Hannum lives in Mountain View, California, over 400 miles from the project  
15 site. Although Hannum purports to have purchased property in 2008 "within 2-3 miles" of the  
16 Jungo site, his appeal appears to be an effort by Dolan and Mayo to manufacture standing where  
17 none exists, as Dolan and Mayo represent Hannum in his appeal, and Hannum's brief is  
18 essentially the same as that of CDF. In other words, even in the face of the federal court order  
19 that they lack standing, Dolan and Mayo continue to challenge the Jungo project and prosecute  
20 appeals to this Commission through abusive tactics.

21 These facts and procedural history require the dismissal of CDF, Hannum and Cook's  
22 appeals because none of the Appellants has legal standing the challenge the Jungo project.

23 **ARGUMENT**

24 **A. Appellants Do No Satisfy the "Aggrieved Person" Standard to Bring these Appeals**

25 Standing is a threshold jurisdictional requirement that the Appellants must satisfy before  
26 the Commission can consider their appeal. See City of North Las Vegas v. Eighth Jud. Dist. Ct.,  
27 122 Nev. 1197, 1207, 147 P.3d 1109, 1117-18 (2006). Under the Nevada Revised Statutes, only

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1 an “aggrieved” person has standing to take an appeal to this Commission from NDEP’s issuance  
2 of a permit. NRS 445B.340, 445B.360. The statutory language provides:

3 Any person **aggrieved** by:

- 4 (a) The issuance, denial, renewal, modification, suspension or revocation of an  
5 operating permit; or
- 6 (b) The issuance, modification or rescission of any other order,  
7 by the Director may appeal to the Commission.

8 NRS 445B.360(1) (emphasis added).

9 Although the statute itself does not define “aggrieved,” Nevada law is very specific as to  
10 the meaning of “aggrieved” for the purposes of standing to bring an appeal. See Kay v. Nunez,  
11 122 Nev. 1100, 1106, 146 P.3d 801, 805 (2006). According to the Nevada Supreme Court, a  
12 party is considered “aggrieved” “for general appellate purposes” when either a “personal or  
13 property right has been adversely and substantially affected” by a ruling. Id.; Las Vegas Police  
14 Protective Ass’n Metro, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark, 122 Nev. 230,  
15 130 P.3d 182, 189 (2006). This general appellate definition of aggrieved applies to administrative  
16 appeals under statutes that do not otherwise define the term. See, e.g., Dickinson v. Am. Med.  
17 Response, 124 Nev. 460, 467, 186 P.3d 878, 882-83 n.12 (2008). By limiting appeals to persons  
18 with a cognizable legal interest, the Nevada Legislature has ensured that appellants establish  
19 standing by “show[ing] that they have suffered special or peculiar damages differing in kind from  
20 the general public.” L & T Corp. v. Henderson, 98 Nev. 501, 504, 654 P.2d 1015, 1016-1017  
21 (1982) (internal quotation omitted).

22 It is the burden of the parties appealing to the Commission to prove that they have  
23 standing. See City of North Las Vegas, 122 Nev. at 1207, 147 P.3d at 1117-18. Here, Appellants  
24 have failed to identify a personal or property right that is adversely and substantially affected by  
25 Jungo’s permit because no such right exists. According to the addresses listed in their appeals,  
26 Appellant CDF is based out of Dolan’s law offices in Winnemucca and Appellant Cook lives in  
27 Winnemucca, over 25 miles away from the landfill site. Appellant Hannum lives in Mountain  
28 View, California, approximately 415 miles from the location of the Jungo project. None of the

1 Appellants owns adjoining property, and the site is surrounded by undeveloped BLM land, which  
2 has no established uses. Appellants cannot be deemed to be substantially and adversely affected  
3 in Winnemucca or Mountain View, California by the Jungo project.

4 In his opening brief, Hannum claims that, since September 2008, he has owned property  
5 “within 2-3 miles of the landfill site,” but nowhere in his appeal does he establish a cognizable  
6 legal interest that will be substantially and adversely affected by the Jungo project. At the time  
7 that Hannum allegedly purchased his property, the Jungo site was zoned for a landfill, Humboldt  
8 County had issued a conditional use permit to construct a landfill at the Jungo location and  
9 Recology had already submitted its application to NDEP for a solid waste disposal site permit.  
10 As a result, to the extent that Hannum owns property “within 2-3 miles of the landfill site,” he  
11 took title subject to the development of a solid waste landfill at the Jungo location.

12 Moreover, Hannum’s appeal is based upon an alleged violation of a National Pollution  
13 Discharge Elimination System (“NPDES”) permit through a purported discharge of pollutants  
14 into groundwater, not the issuance of a solid waste disposal site permit that is at issue here. (See  
15 Hannum Form 3). Under the solid waste disposal site permit issued by NDEP, no discharges into  
16 the waters of the state are allowed. In other words, the entire premise of Hannum’s appeal – that  
17 NDEP’s permit purportedly allows Jungo to pollute the aquifer – is in error because Jungo’s  
18 disposal site permit *expressly prohibits* the discharge of pollutants into waters of the state. The  
19 landfill operations and design – specifically the double liner system – more than satisfy this  
20 permit requirement. Since no discharge into groundwater is allowed, and in any event, Hannum  
21 has not identified any water right that could be impacted, Hannum has no cognizable legal  
22 interest to bring an appeal.

23 To the extent that Appellants can show any interest (which Jungo refutes), their interest is  
24 no different than that of any member of the public. This conclusion is substantiated by the  
25 arguments presented in their individual appeals and the general educational purpose of the CDF  
26 organization. Those who have only an interest in “matters of public concern” “in common with  
27 people generally” do not have standing. Ariz. Christian Sch. Tuition Org. v. Winn, 131 S.Ct.

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1 1436, 1443 (U.S. 2011) (quotations omitted). Because none of the Appellants is “aggrieved” by  
2 the Jungo project, their appeals must be dismissed for lack of legal standing. NRS 445B.360(1) .

3 **B. The Federal Court Ruling That Dolan and Mayo Lack Standing is Conclusive in**  
4 **This Proceeding**

5 Who constitutes an “aggrieved” person in relation to the Jungo project has already been  
6 determined by the federal court, and Dolan and Mayo cannot overcome the federal judge’s  
7 determination that they lack standing by hiding behind the shell of CDF.

8 **1. The Federal Court Conclusively Determined that Dolan and Mayo Lack**  
9 **Standing to Challenge the Jungo Project**

10 The issue of Dolan and Mayo’s lack of standing was not only decided in the federal  
11 lawsuit, but it formed the basis for the District Court’s decision in favor of Jungo in that case.  
12 The court concluded that Dolan and Mayo had no personal or property right that had been  
13 adversely or substantially affected by the Jungo project. (Ex. 1 hereto). To reach that conclusion,  
14 the court correctly noted that Dolan “does not own any property within 25 miles of the Project  
15 site. Additionally, Dolan has not shown that he has suffered any special damages differing from  
16 the general public.” (*Id.* at 6:10-13). For those reasons, the court concluded that Dolan and Mayo  
17 were not “aggrieved” by the Jungo project. (*See id.*).

18 **2. The Shell Organization of CDF Cannot Overcome the Federal Court’s**  
19 **Determination That Dolan and Mayo Lack Standing**

20 Since CDF owns no property or other independent legal interest in the Jungo project  
21 separate and apart from Dolan and Mayo, the organization likewise lacks standing. Indeed, the  
22 record demonstrates a unity of interests between Dolan, Mayo and CDF such that CDF cannot be  
23 differentiated from Dolan and Mayo. For example, Dolan and Mayo submitted their comments to  
24 NDEP in their own names on the letterhead of their law practice. (December 16, 2011 letter, Ex.  
25 2 hereto). The comments that Dolan purportedly submitted on behalf of CDF were substantially  
26 the same and likewise on his law practice letterhead. (Dec. 14, 2011 letter, Ex. 3 hereto). Mayo’s  
27 comments at the December 1, 2011 public hearing in Winnemucca were not made as a member of  
28 CDF but from her individually. (12/1/11 Hrg. Trans. at p. 5, Ex. 4 hereto). Likewise, Dolan’s

1 comments were not made on behalf of CDF but from him as an individual. (*Id.* at pp. 5-6). In  
2 fact, with regard to appealing NDEP’s decision, Dolan threatened: “**I’m** going to do that [appeal]  
3 once he [Jon Taylor] issues the Permit.” (*Id.* at p. 5 (emphasis added)).

4 CDF acknowledges that it must have standing to bring this appeal. (CDF Op. Br. 2:16-  
5 20). In an effort to establish CDF’s standing, Dolan submitted two affidavits – one from Mayo  
6 and one from an individual by the name of James Reed (CDF Op. Br. at 2:16-19 and Exs. 30 and  
7 31), neither of which can create associational standing.

8 An association has standing to bring suit on behalf of its members when its  
9 members would otherwise have standing to sue in their own right, the interests at  
10 stake are germane to the organization's purpose, and neither the claim asserted nor  
the relief requested requires the participation of individual members in the  
lawsuit.

11 Friends of the Earth, Inc. v. Laidlaw Enviro. Servs. (TOC), Inc., 528 U.S. 167, 181 (2000).  
12 Given that the federal court has already determined that Mayo lacks individual standing, her  
13 affidavit as a member of CDF cannot, as a matter of law, assist CDF to establish standing. *See id.*  
14 Since James Reeds’ interests are no different than Mayo’s, his affidavit likewise cannot be used  
15 to circumvent the federal court ruling that Mayo lacks standing.

16 Even if the federal court ruling did not preclude Mayo and Reed from establishing  
17 individual standing, CDF has not demonstrated that the Jungo project is “germane to the  
18 organization’s purpose.” *Id.* According to the Mayo and Reed affidavits, “CDF is a Nevada non-  
19 profit corporation organized to educate the public and governmental entities about the beauty of  
20 the high desert and how policies and programs threaten said beauty.” (Exs. 30 and 31 at ¶3).  
21 NDEP’s issuance of the permit for the Jungo project will not interfere with CDF’s educational  
22 mission or preclude CDF from engaging in its educational activities. Under these precise  
23 circumstances, the federal court has held that no associational standing exists. *See Consejo de*  
24 Desarrollo Economico de Mexicali v. United States, 417 F. Supp. 2d 1176, 1187 (D. Nev. 2006)  
25 (“It is not clear how possible harm to the environment ... will prevent [plaintiff organizations]  
26 from educating ... residents about the environment ...”).

27 Finally, Mayo and Reed’s alleged recreational activities “in and around the landfill site”  
28 (Exs. 30 and 31 at ¶ 6) do not establish standing for CDF. It is axiomatic that CDF’s members



1 have no cognizable interest in the enjoyment of private land because it is not theirs to enjoy. In  
2 other words, CDF cannot establish standing through its members' trespass onto private property.  
3 The fact that two of CDF's members might enjoy the use of certain public lands in the Desert  
4 Valley does not bestow upon them a concrete or particularized interest in the private property  
5 upon which the Jungo landfill will be constructed. See Animal Lovers Volunteer Ass'n, Inc.  
6 ("ALVA") v. Weinberger, 765 F.2d 937, 938 (9th Cir. 1985).

7 In sum, the formation of the shell organization CDF cannot create standing where none  
8 exists. CDF is nothing more than a screen behind which Dolan and Mayo seek to insulate  
9 themselves from liability for their continued attacks on the Jungo project. Dolan formed the  
10 entity, prepared all the documents, submitted all comments to NDEP on behalf of CDF, drafted  
11 the appeal, signed all pertinent documents and serves as the CDF's resident agent. Mayo is a  
12 member of CDF and, despite a federal court order holding that she lacks any cognizable legal  
13 interest in the Jungo project, submitted an affidavit seeking to establish CDF's standing through  
14 her purported injury. Under these circumstances, there can be no doubt of the close relationship  
15 between Dolan, Mayo and the shell entity CDF to bar CDF's appeal for lack of standing.

16 **C. The Commission Should Not Open the Floodgates to Abusive Challenges to NDEP's**  
17 **Decisions**

18 Standing is not just a legal technicality; it is a jurisdictional prerequisite. The Nevada  
19 Legislature has not opened the right to appeal to simply anyone. Rather, only those who are  
20 "aggrieved" by an NDEP decision may appeal to the Commission. NRS 445B.360(1). This  
21 jurisdictional limitation protects the rights of the permit holder, preserves the resources of the  
22 agency and prevents unauthorized attacks on the permitting process by unaffected persons.

23 The appeals that are currently before the Commission represent a concerted effort by the  
24 Appellants to circumvent a federal court ruling that they lack standing. The federal judge was  
25 unequivocal: Dolan and Mayo have no legal interest that will be impacted and are therefore not  
26 "aggrieved" persons with standing to challenge the Jungo project. (Ex. 1). Creation of the shell  
27 organization of CDF does not rectify Dolan and Mayo's lack of standing, and the Commission

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Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Dated: April 25, 2012

McDonald Carano Wilson LLP

*Debbie Leonard*

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Attorneys for Real Party in Interest/Intervenor  
 RECOLOGY, INC.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify, under penalty of perjury, that I am an employee of McDonald Carano  
3 Wilson LLP, and that on this 25th day of April, 2012, I provided a copy of the **RECOLOGY'S**  
4 **MOTION TO DISMISS** via first-class United States mail, with a courtesy copy via Email, to the  
5 following:

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# EXHIBIT 1

# EXHIBIT 1

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JUNGO LAND & INVESTMENTS, INC.,  
Plaintiff,  
v.  
HUMBOLDT COUNTY BOARD OF  
COUNTY COMMISSIONERS, et al.,  
Defendants.

3:10-cv-257-RCJ-VPC  
**ORDER**

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Currently before the Court is Plaintiff-Petitioner Jungo Land & Investments, Inc.’s (“Jungo”) Petition for Writ of Mandamus and/or Writ of Prohibition (#6) and Petition for Judicial Review (#142).

**BACKGROUND**

On April 12, 2007, the Humboldt County Regional Planning Commission (“Regional Planning Commission”) voted and approved a Conditional Use Permit, #UH-07-05 (“CUP”) to Jungo to construct and operate a long-term solid waste disposal site in Humboldt County, Nevada (“Project”) on property located approximately 25 miles west of Winnemucca, Nevada (“Property”). (Petitioner’s App. (“PA”) 36-38; App. (#11) at 43-45).<sup>1</sup> The CUP required operations to commence within three years of the date of final approval of the CUP “unless an extension ha[d] been approved by the Regional Planning Commission.” (PA 37; App. (#11) at 44).

On January 19, 2010, Jungo filed a request with the Regional Planning Commission for

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<sup>1</sup> The PA citation identifies the Bates Number referenced on the documents. The Appendix citation identifies the CM/ECF location.

1 a five-year CUP extension for good cause. (PA 206; App. (#12) at 106). Jungo submitted  
2 evidence demonstrating its efforts to comply with the CUP conditions. (See PA 206-21, 225-  
3 37; App. (#12) at 106-09; App. (#13) at 3-13, 17-29). On February 5, 2010, the staff of the  
4 Regional Planning Department submitted a staff report and recommended that the Regional  
5 Planning Commission grant the five-year extension because Jungo had demonstrated good  
6 cause for the extension. (PA 224; App. (#13) at 16). On February 11, 2010, the Regional  
7 Planning Commission held a public hearing on Jungo's extension request. (PA 225-26; App.  
8 (#13) at 17-18). After reviewing the facts submitted by Jungo, the facts identified by the staff  
9 of the Regional Planning Department, and the staff report, the Regional Planning Commission  
10 found good cause and approved the five-year CUP extension. (See PA 225-38; App. (#13)  
11 at 17-30).

12 On February 18, 2010, Robert E. Dolan and Massey K. Mayo (collectively "Dolan") filed  
13 an appeal of the vote, decision, and findings by the Regional Planning Commission regarding  
14 the five-year CUP extension that took place on February 11th ("Dolan Appeal") to the  
15 Humboldt County Board of Commissioners ("BCC"). (PA 299; App. (#13) at 91). The Dolan  
16 Appeal explained that

17 the appellants [were] citizens and residents of Humboldt County, State of  
18 Nevada, and use and have used the land abutting the land subject to the CUP  
19 herein, and appeared at the aforesaid hearing and objected to the unconditioned  
20 extension request. The planned landfill on Jungo will adversely affect the air,  
21 water, and peace and contentment of the appellants as they use said abutting  
22 land, and are aggrieved and interested persons by the issuance of the CUP . . . .

23 (PA 301; App. (#13) at 93).

24 On February 24, 2010, Jungo objected to the Dolan Appeal on grounds that Dolan did  
25 not have standing to appeal and that the grant of an extension was not an appealable decision  
26 under the Humboldt County Code. (PA 256; App. (#13) at 48). Jungo argued that an  
27 "interested person" must have more than a subjective, academic curiosity about the proposed  
28 project to appeal. (PA 257; App. (#13) at 49). Jungo asserted that, although appellants  
claimed that they use and have used the land abutting the Property, the record established  
that the Project was more than 25 miles away from the City of Winnemucca and that the

1 property surrounding the Project was owned by the Bureau of Land Management (“BLM”).  
2 (*Id.*). Jungo asserted that there were no existing uses on any of the surrounding properties  
3 and no improved or designated recreational areas on the land surrounding the Project. (PA  
4 257-58; App. (#13) at 49-50). Jungo argued that appellants had no specific interest in the  
5 surrounding property that would grant them standing to appeal the CUP extension. (PA 258;  
6 App. (#13) at 50). Jungo argued that a generalized grievance by a member of a community  
7 did not confer standing for the purpose of challenging an administrative action. (*Id.*).

8 On that same day, the Humboldt County District Attorney’s Office issued a  
9 memorandum to the BCC on the standing issue. (PA 259; App. (#13) at 51). The District  
10 Attorney’s Office believed that Dolan lacked standing to appeal the Regional Planning  
11 Commission’s decision to grant Jungo a CUP extension because Dolan did not have a  
12 property interest with regard to the issue and Dolan had not shown that he had suffered  
13 special damages differing from the general public. (*Id.*).

14 On April 5, 2010, the BCC held a public hearing on the Dolan Appeal. (See PA 295,  
15 318-422; App. (#13) at 87; App. (#14) at 2-106). Jungo raised the issue of standing at the  
16 hearing. (PA 349-50; App. (#14) at 33-34). The BCC stated that they had previously  
17 considered the issue of standing and proceeded with the hearing. (*Id.*). At the hearing, the  
18 BCC unanimously denied the extension of the CUP. (PA 420-21; App. (#14) at 104-05). On  
19 April 12, 2010, the BCC issued a notice of decision that granted the Dolan Appeal and denied  
20 the CUP extension. (PA 315; App. (#13) at 107).

21 Jungo filed a Petition for Writ of Mandamus and/or Writ of Prohibition against  
22 Defendants Humboldt County Board of County Commissioners (“BCC”); Humboldt County;  
23 and Chuck Giordano, Mike Bell, Dan Cassinelli, Garley Amos, and Tom Fransway, in their  
24 individual and official capacities as Humboldt County Commissioners (collectively  
25 “Defendants”).

## 26 DISCUSSION

### 27 I. Petition for Writ of Mandamus and/or Writ of Prohibition (#6)

28 Jungo files a petition for a writ of mandamus and/or a writ of prohibition ordering



1 Defendants to cease and desist their extra-jurisdictional activities related to Jungo's CUP  
2 extension, dismiss Dolan's Appeal of the Regional Planning Commission's decision with  
3 prejudice, and allow the Regional Planning Commission's February 11, 2010 decision  
4 extending the Jungo CUP for five years to stand as final. (Writ. Mem. (#10) at 1-2). Jungo  
5 raises four jurisdictional issues, including whether Defendants exceeded their jurisdiction and  
6 authority by hearing and deciding the Dolan Appeal when the appealing party was not an  
7 "interested" person and lacked standing to appeal the Regional Planning Commission's  
8 extension of Jungo's CUP.<sup>2</sup> (*Id.* at 2). Jungo argues that a governing body cannot hear an  
9 administrative appeal if the appellant lacks standing and that a writ of prohibition and/or  
10 mandamus is appropriate to address the jurisdictional issue. (*Id.* at 25). Jungo asserts that  
11 Dolan's standing allegations are insufficient because general citizenship interests or  
12 recreational interests are insufficient to create standing in a land use entitlement proceeding.  
13 (*Id.* at 26). Jungo argues that Dolan lives more than 25 miles from the Project and does not  
14 hold any interest in property within 25 miles of the Project. (*Id.*). Jungo argues that Dolan is  
15 not an "interested person" within the meaning of the Humboldt County Code. (*Id.*).

16 In response, Defendants argue that a petition for judicial review, and not a writ of  
17 mandamus, is the proper vehicle to challenge the issues at hand. (Opp'n to Writ (#46) at 9).  
18 Defendants assert that the term "interested person" is not as restrictive as Jungo argues and  
19 cites *Mesagate Homeowners' Ass'n v. City of Fernley*, 194 P.3d 1248 (Nev. 2008) in support  
20 of its proposition. (*Id.* at 9-10).

21 In reply, Jungo factually distinguishes *Mesagate* from the facts at hand and asserts that  
22 Dolan lacked standing to appeal. (Reply to Writ (#50) at 10).

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23  
24 <sup>2</sup> Jungo also raised whether Defendants exceeded their jurisdiction and authority by  
25 hearing and deciding the Dolan appeal when (a) the Humboldt County Code and the terms of  
26 the Jungo CUP stated that the Regional Planning Commission had exclusive final  
27 administrative authority to act on an extension of the Jungo CUP; (b) the BCC violated the  
28 abuse of discretion standard on appeal by looking beyond the record on appeal and  
considering and relying on matters never asserted before or considered by the Regional  
Planning Commission; and (c) the BCC failed to disqualify Commissioner Fransway and failed  
to provide a fair, independent and impartial tribunal to hear and decide the Dolan Appeal.  
(Writ Mem. (#10) at 2). Because the Court finds that Dolan lacked standing to appeal the CUP  
extension, this Court declines to address the other jurisdictional issues raised in this case.

1           **A.     Proper Vehicle for Jurisdictional Challenge**

2           The Nevada Supreme Court has held that a “writ of mandamus is available to compel  
3 the performance of an act that the law requires as a duty resulting from an office, trust, or  
4 station, or to control an arbitrary or capricious exercise of discretion.” *City of N. Las Vegas v.*  
5 *Eighth Jud. Dist. Ct.*, 147 P.3d 1109, 1113 (Nev. 2006). “As the counterpart to a writ of  
6 mandamus, a writ of prohibition is available when a district court acts without or in excess of  
7 its jurisdiction.” *Id.* “[N]either writ will issue when the petitioner has a plain, speedy, and  
8 adequate remedy in the ordinary course of law.” *Id.* In contrast, when a party files a petition  
9 for judicial review, the district court reviews the agency record to determine whether the  
10 administrative agency’s decision was supported by substantial evidence. *Kay v. Nunez*, 146  
11 P.3d 801, 803, 805 (Nev. 2006) (holding that the proper mechanism for seeking review of a  
12 local zoning and planning decision in district court is through a petition for judicial review).

13           Here, Jungo properly filed a writ of mandamus/prohibition to challenge Defendants’  
14 jurisdictional authority to hear the Dolan Appeal. Because Jungo is not challenging whether  
15 the BCC’s decision was supported by substantial evidence in its writ, but is instead challenging  
16 whether the BCC acted in excess of its jurisdiction, the writ is the proper vehicle for this  
17 challenge.

18           **B.     Standing**

19           Pursuant to NRS § 278.3195, “each governing body shall adopt an ordinance that any  
20 person who is aggrieved” by a decision of the planning commission may appeal the decision  
21 to the governing body. Nev. Rev. Stat. § 278.3195(1)(a). The Humboldt County Code (“HCC”)  
22 provides that an appeal may be filed by the applicant or “any interested person.” HCC  
23 § 17.68.120.<sup>3</sup>

24           The Nevada Revised Statutes define the term “aggrieved” persons for counties with  
25 populations over 400,000. Nev. Rev. Stat. § 278.3195(1). Humboldt County only has a  
26 population of 16,528. See U.S. Census Bureau 2010 at

27 \_\_\_\_\_  
28           <sup>3</sup> An online version of the Humboldt County Code is located at [http://www.hcnv.us/planning/county\\_zoning.htm](http://www.hcnv.us/planning/county_zoning.htm).

1 <http://quickfacts.census.gov/qfd/states/32/32013.html>. For general appellate purposes, the  
2 Nevada Supreme Court defines an “aggrieved party” as one whose personal or property right  
3 has been adversely and substantially affected. *Kay*, 146 P.3d at 806. However, neither the  
4 HCC nor the Nevada Supreme Court have defined the term “interested person.” Black’s Law  
5 Dictionary defines an “interested person” as “[a] person having a property right in or claim  
6 against a thing, such as a trust or decedent’s estate” and an “interest” as “[a] legal share in  
7 something; all or part of a legal or equitable claim to or right in property.” Black’s Law  
8 Dictionary 652, 932 (7th abridged ed. 2000).

9 In this case, there is no evidence in the record that demonstrates that Dolan has any  
10 personal or property right that has been adversely or substantially affected by the Jungo CUP  
11 extension. Dolan does not own any property within 25 miles of the Project site. Additionally,  
12 Dolan has not shown that he has suffered any special damages differing from the general  
13 public. See *L&T Corp. v. City of Henderson*, 654 P.2d 1015, 1016-17 (Nev. 1982) (holding  
14 that any person, whether or not a landowner, has standing to challenge and obtain injunctive  
15 relief against a proposed vacation when he or she has suffered special or peculiar damage  
16 differing in kind from the general public). As such, the Court finds that the BCC lacked  
17 jurisdiction to hear the appeal because Dolan did not have standing to appeal the Regional  
18 Planning Commission’s decision to grant the CUP extension. Accordingly, the Court grants  
19 Jungo’s Petition for Writ of Mandamus and/or Writ of Prohibition (#6) and orders Defendants  
20 to (1) vacate the BCC’s decision reversing the Regional Planning Commission’s five-year  
21 extension of the Jungo CUP; (2) dismiss the Dolan Appeal with prejudice based on the BCC’s  
22 lack of jurisdiction to hear the appeal; and (3) reinstate the Regional Planning Commission’s  
23 February 11, 2010 decision granting Jungo a five-year CUP extension.<sup>4</sup>

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24  
25 <sup>4</sup> The Court further notes that Defendants reliance on *Mesagate* is misplaced. In  
26 *Mesagate*, the Nevada Supreme Court addressed whether a party had standing to file a  
27 petition for a writ of mandamus. *Mesagate*, 194 P.3d at 1251. The Court held that, to have  
28 standing, a petitioner had to have a beneficial interest in obtaining writ relief. *Id.* The Court  
noted that, absent the beneficial interest, the petitioner would gain no direct benefit from the  
issuance of the writ and suffer no direct detriment if relief was declined. *Id.* at 1252. Because  
the issue in this case is whether Dolan is an interested party under the HCC, the Court finds  
that *Mesagate*’s discussion on the beneficial interests related to writ relief is inapplicable to the

1 **II. Petition for Judicial Review (#142)**

2 Jungo files a petition for judicial review and argues that the BCC's decision reversing  
3 the Regional Planning Commission's grant of a five-year CUP extension cannot be upheld  
4 because the BCC acted without jurisdiction, in violation of Nevada's Open Meeting Law, used  
5 unlawful procedures, and violated Jungo's statutory and constitutional rights. (Pet. for Judicial  
6 Review (#142) at 7). The Court denies the Petition for Judicial Review (#142) as moot in light  
7 of this Court's finding that the BCC lacked jurisdiction to hear the Dolan Appeal.

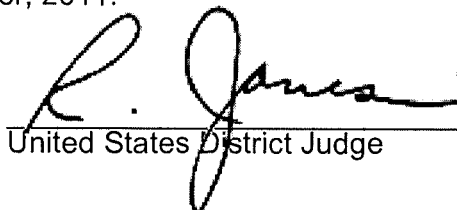
8 **CONCLUSION**

9 For the foregoing reasons, IT IS ORDERED that Jungo's Petition for Writ of Mandamus  
10 and/or Writ of Prohibition (#6) is GRANTED to the extent discussed above.

11 IT IS FURTHER ORDERED that Defendants (1) vacate the BCC's decision reversing  
12 the Regional Planning Commission's five-year extension of the Jungo CUP; (2) dismiss the  
13 Dolan Appeal with prejudice based on the BCC's lack of jurisdiction to hear the appeal; and  
14 (3) reinstate the Regional Planning Commission's February 11, 2010 decision granting Jungo  
15 a five-year CUP extension.

16 IT IS FURTHER ORDERED that Jungo's Petition for Judicial Review (#142) is DENIED  
17 as moot.

18  
19 DATED: This 7th day of December, 2011.

20  
21   
22 United States District Judge

23  
24  
25  
26  
27  
28 \_\_\_\_\_  
case at hand.

**EXHIBIT 2**

**EXHIBIT 2**

DEC 19 2011

ENVIRONMENTAL PROTECTION

Bob Dolan  
bobdolanlaw@sbcglobal.net  
(Admitted: NV, NY, DC)  
Massey K. Mayo  
mmcbobdolanlaw@sbcglobal.net

December 16<sup>th</sup>, 2011

Jonathan Taylor, P.E. CEM  
Nevada Division of Environmental Protection  
Bureau of Waste Management  
901 South Stewart St., Suite 4001  
Carson City, NV 89701

Sent via first class mail and email

Re: Jungo Landfill and/or Recology and/or  
Nevada Land and Resource, Inc.  
Request for Class I Solid Waste Operating  
Permit, #SW495REV00

Dear Mr. Taylor:

Please take note that the undersigned citizens and attorneys from Humboldt County, State of Nevada, hereby objects to the proposed issuance of the above referenced operating permit (hereinafter, "permit") by the Nevada Department of Environmental Protection (hereinafter, "NDEP") based on the following points and/or objections:

- 1) As set forth below, the proposed or actual granting of the aforementioned permit by NDEP will be, or has been, done in violation of all relevant statutory provisions under Chapter 444 of the NRS, and/or was done in excess of the statutory authority of the NDEP, and/or was made upon unlawful procedure, and/or is clearly erroneous in view of reliable, probative and substantial evidence, and/or is arbitrary and/or capricious and/or the result of an abuse of discretion.
- 2) The undersigned adopts and incorporates by reference as if fully restated herein all of the points, facts and arguments from the attached exhibits:
  - "A"-- The soil report of the USDA dated October 13, 2009
  - "B" – The Review of Potential Public Health & Groundwater Quality Impacts of the Proposed Jungo Landfill, as prepared by G. Fred Lee, PhD, dated December 9, 2011
- 3) Failure to adequately consider the adverse consequences to the surrounding community and/or adjoining land regarding the foul smelling odor which will emanate from the landfill site.

Page two of three

Letter to Jonathan Taylor, P.E., CEM

December 16<sup>th</sup>, 2011

- 4) Failure to take into consideration that the liner as designed will not ensure that leachate will not eventually seep into the groundwater, and violate requirements pursuant to, including, without limitation, NAC 444.629 and NAC 444.678 and the general goals and policies of the State of Nevada as regards to protecting the health, safety and welfare of its citizens and wildlife.
- 5) The failure of the 30 year post-closure time frame to adequately protect and/or monitor and/or remedy, the surrounding area and subsurface ground water from exposure to waste-generated contaminants.
- 6) The proposed location for the landfill is not suitable due to scientific evidence that said site is located in a floodplain, within a seismic zone, in a region prone to high winds, and upon soils which are not conducive to landfill operations of this kind, as reported in the United States Department of Agriculture Soil Report (attached hereto as exhibit A).
- 7) Failure to adequately consider and protect Native American historical land usage rights and/or cultural preservation needs.
- 8) The proposed landfill allows for leachate to be collected and then spread over portions of the landfill area as part of the dust control procedures. NDEP has failed to take into consideration the impact of said leachate upon surrounding areas, air quality, ground water, storm water runoff, and the general public health.
- 9) Failure of applicant to present a plan that can adequately protect the State of Nevada and its citizens during the post-closure period of time, including, but not limited to, (a) requiring firm financial assurance and certified cost-closures for post-closure monitoring, maintenance and remediation, (b) transparency of ownership during both the operating and post-closure periods of time; (c) identifying the parties whom will bear liability and responsibility for post-closure remediation and/or nuisance conditions.
- 10) Failure to require the applicant to submit a design proposal that adequately reflects the actual wind speeds and wind direction for the proposed site. NDEP has the authority to require pre-monitoring of said wind conditions over a reasonable period of time prior, located on the actual proposed site to gain accurate and real data for said location.


Page three of three  
Letter to Jonathan Taylor, P E , CEM  
December 16<sup>th</sup>, 2011

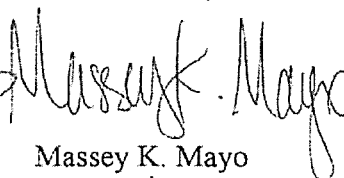
11) The failure of applicant's plan to ensure that it shall not cause or permit particulate matter to become airborne.

The below signed believe that the stated public policy of the State of Nevada will not be served by the granting of the permit in question. Indeed, the quality of life of the citizens from Northern Nevada will be substantially adversely affected, and the health and safety of said citizens will be put at risk if this landfill permit is granted.

Thank you for your attention to this matter. We await your response to the foregoing.

Sincerely,

  
Bob Dolan

  
Massey K. Mayo

Enclosures: Exhibits A, B



# **EXHIBIT 3**

# **EXHIBIT 3**

DEC 13 2011

ENVIRONMENTAL PROTECTION

December 14, 2011

Jonathan Taylor, P.E. CEM  
Division of Environmental Protection  
Bureau of Waste Management  
901 South Stewart St., Suite 4001  
Carson City, NV 89701

sent via first class mail and email

Re: Jungo Landfill and/or Recology  
And/or Nevada Land and Resource Inc.  
Request for Class I Solid Waste Operating  
Permit, # SW495REV00

Dear Mr. Taylor:

Please take note that the undersigned counsel represents the Clean Desert Foundation, Inc. (a Nevada non-profit corporation) in connection herewith, and on its behalf objects to the proposed issuance of the above referenced operating permit (hereinafter "permit") by the Nevada Division of Environmental Protection (hereinafter "NDEP") based on the following points and/or objections:

- 1) As set forth below, the proposed or actual granting of the aforementioned permit by NDEP will be, or has been, done in violation of all relevant statutory provisions under Chapter 444 of the NRS, and/or was done in excess of the statutory authority of the NDEP, and/or was made upon unlawful procedure, and/or is clearly erroneous in view of reliable, probative and substantial evidence, and/or is arbitrary and/or capricious and/or the result of an abuse of discretion.
- 2) The undersigned adopts and incorporates by reference as if fully restated herein all of the points, facts and arguments from the attached exhibits:
  - "A"-the December 1, 2011 letter to Jon Taylor from Richard Cook;
  - "B"- the five page letter to Jon Taylor from Charles Schlarb;
  - "C"- the December 2, 2011 letter and attachments to Jon Taylor from Tom Brissenden.
  - "D"- The soil report of the USDA dated October 13, 2009

Letter dated December 14, 2011

To Jon Taylor

Page two of three

- 3) The permit fails to comply with NRS 444.560 and the rules promulgated pursuant thereto, including, without limitation, NAC 444.629 and NAC 444.678.
- 4) To the extent the NDEP granted any waiver and/or exception from NRS 444.560, and/or NAC 444.629 and 444.678, the aforesaid waiver and/or exception was done without sufficient or good cause, and/or was arbitrary, capricious, and/or the result of an abuse of discretion.
- 5) The permit unduly threatens and/or does or allows for damage to the underground water near the landfill site.
- 6) The NDEP has failed to adequately protect the beauty of the Nevada desert.
- 7) Since all underground water within the boundaries of the State of Nevada belong to the public, the decision of NDEP fails to adequately protect the ownership rights of the public to said underground water.
- 8) The type and quality of the land upon which the landfill is to be placed is not adequate to protect the health, safety and welfare of the public, wildlife and vegetation. Among other problems is that the landfill site is prone to flooding and high winds which will cause, among other things, the transfer or removal of waste from the landfill site to surrounding areas.
- 9) The proposed liner and/or liner system is inadequate to meet the goals and policy of the State of Nevada as regards protecting the health, safety and welfare of its citizens and wildlife.
- 10) The permit fails to adequately address the points raised in the United States Department of Agriculture Soil Report (attached hereto as exhibit "D"). The soil at the landfill site is just not adequate to meet the needs of the permit and the relevant law and rules.
- 11) That there was a failure by the applicant, and the proposed or conditional permit, to adequately consider the substantial wind gusts and/or speed and/or the powerful regular and/or intermittent prevailing winds as regards causing adverse consequences, relative to both the location of the landfill and the possible point of unloading the garbage and/or solid waste, to adjoining land owners and/or users near the respective locations, and/or the citizens of Winnemucca, and/or Humboldt County, Nevada, by the spreading or emission of noxious odors and/or unhealthy particulate matter and/or other hazardous materials through the air.

Letter dated December 14, 2011

To Jon Taylor

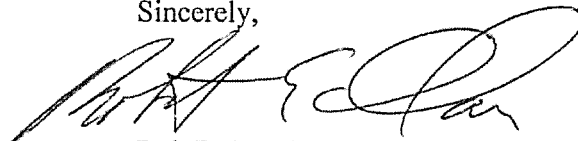
Page three of three

- 12) The failure to adequately take into account the instability caused to the surrounding area and sub-surface, by the operation of Nevada Geothermal's power nearby plant. That, inter alia, improper modeling was performed by NDEP in connection with how seismic activity ensuring that the landfill site is appropriate to maintain and ensure the health, safety and welfare of the citizens of Nevada.
- 13) The approval by NDEP of the variance from the 100 foot distance from the uppermost aquifer to the location of the landfill site is an abuse of discretion, and was arbitrary and capricious.
- 14) The approval by NDEP of the variance from the 1000 foot distance requirement of any surface water from the landfill site is an abuse of discretion, and was arbitrary and capricious, and done in excess of agency authority. The landfill site is prone to flooding by surface water so there will be regular events whereby the landfill site is actually under water, and/or surrounded by water at a distance substantially closer than 1000 feet.
- 15) The failure of the applicant, and/or the conditional permit, to adequately consider the likelihood that lightning will regularly strike the landfill site and that said lightning strikes will substantially reduce the effectiveness of any proposed environmental safety methods as regarding limiting the emission to the air and otherwise of noxious odor, particulate matter and/or other hazardous materials.

The below signed believe that the stated public policy of the State of Nevada will not be served by the granting of the permit in question. Indeed, the quality of life of the citizens from Northern Nevada will be substantially adversely affected, and the health and safety of said citizens will be put at risk if this landfill application is granted.

Thank you for your attention to this matter.

Sincerely,

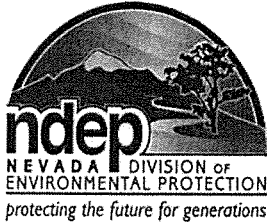


Bob Dolan, Esq.  
Counsel for Clean Desert Foundation, Inc.

cc: Clean Desert Foundation, Inc.  
enclosures: exhibits A-D

**EXHIBIT 4**

**EXHIBIT 4**



# STATE OF NEVADA

Department of Conservation & Natural Resources

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

DIVISION OF ENVIRONMENTAL PROTECTION

Colleen Cripps, Ph.D., Administrator

## Jungo Landfill Site Permit - Public Hearing [Public Comment Transcription]

Winnemucca Convention Center, Winnemucca Nevada  
Thursday 12/1/11, 6:00 to 9:00 p.m.

### NEVADA DIVISION OF ENVIRONMENTAL PROTECTION [NDEP] staff in attendance:

- ❖ Dave Emme, Deputy Administrator.
- ❖ Eric Noack, Bureau of Waste Management Chief;
- ❖ Vince Guthreau, NDEP-PUBLIC INFORMATION OFFICER
- ❖ Art Gravenstein PE, Solid Waste & Recycling Branch Supervisor;
- ❖ Jon Taylor PE CEM, Solid Waste Permit Writer;
- ❖ Jasmine Vittori, Northern Nevada Recycling Coordinator

### *NDEP PIO Vince Guthreau opened public comment period at 7:30p.m*

7:30 **Jean Williams:** Part of my comment has to do with the very top line, no construction without a valid Conditional Use Permit. When the CUP was initially given to Recology it was not valid at that time because our county law did not permit such a thing to happen and I do believe the State of Nevada owes us that, and you know, our public kind of, caught this late, and we acted on it with our initiative, and that initiative was 70% not in favor of the dump. And I think NDEP should also take that into consideration. Thank you.

7:31 **Norm Sweeney:** I'm a, at a minimum, citizen of Winnemucca for 40 years, I'm a relative new-comer here, and a Nevada State licensed Contractor for over 30 years. Was employed as the Public Works Director for the City of Winnemucca from 1985- 1992, I worked with mining and under NDEP regulations for most of the time I've been in Winnemucca I worked under NDEP permits in 3 areas: assumed [Inaudible] mining (all the same?), Sweeney [Inaudible] construction, and [Inaudible]. I'll just leave copies of this available up here, [Inaudible] if they can't [Inaudible] not understand it, I'd like for me to redo it.

I've never experienced as highly a designed mining system as I see for the Jungo Road Landfill which is approximately 7 feet in thickness, including a bentonite liner and two pressure tested polyethylene liners with daily coverage requirements, as I have seen in most mines in Elko, Lander, and Pershing counties [Inaudible] etc., etc., which would be signs indicating cyanide and heavy metals, waste, etc. Many of these mines use only a bentonite liner, or at most a single polyethylene liner with bentonite liner.

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I remain greatly concerned and offer no solutions except to ask the NDEP for clarification on who is getting the Permit, why are these discrepancies prevalent in the project material, clearly it is of concern in terms of who is responsibility for having the valid CUP, and in terms of being accountable for clean-up of the land, either during the life of the landfill or after it. Is this duplicitous name game being done to defraud the County and to leave us holding the trash bag? Thank you.

7:47 **Massey Mayo:** I'm a resident of Winnemucca, Humboldt County. Three questions in regard to post-closure and monitoring of the landfill.

My first question relates to the proposed post-closure maintenance costs as reported in the [Inaudible], I would like to know if these costs are certified by a third party as reasonable and/or accurate. Where do these costs derive from, and how can any third person know that those costs are not just from the corporation itself? Has any documentation been provided to NDEP, as the language implies, that supports the notion that there will be adequate funding for the Trust Fund for the 1<sup>st</sup> section [Inadubile]. If so, has that been made public?

Secondly, regards monitoring in the post-closure phase. It states that it will be done in the first five years two-times a year, for both leachate and the ground water; however, I would like to know what NDEP plans on doing if leachate is not dissipating as projected, or if the ground water is not [Inadubile]. Who directs more frequent monitoring or what policies or implementations can be made to correct the issues? Although the technical presentation somewhat addressed this, who exactly who will be doing the monitoring at the post-closure phase?

The third question concerns the 30-years being the period for post-closure monitoring. The technical presentation did address that it can go beyond 30 years if, "something is going on." What is "something," and why is that not made specific in the conditions of the Permit? NDEP, please address what exactly would be "something" that would require 30-years plus monitoring.

7:50 **Bob Dolan:** Good evening ladies and gentlemen. I appreciate the sincerity of Mr. Taylor, I was impressed by your presentation, [I was] not too impressed with you (indicating NDEP PIO), but I was impressed with you.

The fact of the matter is, there's nothing we can say here folks that's going to stop NDEP, whether in written form, with the eloquence of Shakespeare, Mr. Taylor's going to issue the Permit. (I am a betting man. I will take bets). Now, what we hope he does is deny it, and let whoever the Permittee is go through the legal process to appeal his decision and say he's being arbitrary and capricious. Because I'm going to do that once he issues the Permit. Everything about this is arbitrary and capricious, not based upon sound science; it's based upon mathematical equations that are guesswork at best, formulae from laboratories.

Let me tell you something, I was once challenged by an elected official in the State of Oregon who said to me, "You know, we do all this stuff in the mines, and we do all this

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stuff here.” I said, “Well, first of all, why do we, as human beings build museums? For beauty.” I’ll tell you what, there’s beauty out there in that valley and in that land, what you are all are going to allow to be destroyed by a corporate organization, who has good council and this one [Inaudible], indicating Mr. Frankovich in the back of the room. But man does not live by bread alone, and we’ve shown our metal when we as citizens voted to try to stop this landfill.

The first speech I gave over at the Martin where I am no longer allowed to go in, but the first speech I gave on this issue I said to the people at the Martin, NDEP will grant this permit, it’s up to you to look at the negatives to stop it locally. They can [Inaudible] if they want to. That’s why, after you issue the Permit, which you will issue, and after I go to the State Environmental Commission, and into the District Court, and into the Nevada Supreme Court, and then they’ll come back and they’ll say something else, we will have the opportunity as citizens to vote for a monitoring system. We will ring that landfill at public expense, to monitor the particulate matter.

I must tell you, I went to the SEC hearing to discuss their Air Quality Permit, and I paid for an expert out of my own pocket, to discuss the fact that certain data that was part of the NDEP website was really not accurate, in fact, it is in my opinion fraudulent, and in my expert witnesses opinion was fraudulent, and guess what? The NDEP person who issued the Permit was asked by one of the Commissioners, “Did you look at that data before you issued that Permit?” [and they answered], “Nope, we didn’t.” So they ruled that testimony of my expert for not even being in order.

With respect to the soil samples, I looked at this report from the USDA Natural Resources Conservation Services; it basically says that this location for this landfill is not a good place for it. Because it’s not a good place for it, move it somewhere else. Plus we don’t want it. Now, I don’t think it’s been adequately taken into account with respect to all of the Nevada mathematical formulae that you know we can rely upon the that is still conjecture, cause you look at the Xs and Ys and the subdivisions, it’s hocus-pocus junk science and it’s only reinforced by junk scientists who have a little part of the world where they can be an expert in, nobody can understand a word that they say because it means nothing.

So, in the final analysis, just know that I appreciate [Inaudible] all the great things you have done for this community and John Siegfried also. There comes a time, we can’t reconcile all of the inconsistencies in life. We could find out all sorts of reasons, we could open up a bombing range 10-miles out of town like they’ve done in Vegas, but you stop at some point, for me it’s this landfill, my wife and I found it and camp out there, I’ve kicked the soccer ball, and hunted, and look at the stars, so it’s a jewel and it’s a shame that this is coming to our community. The 20 jobs the (project will generate?), the mines for the next 15 years are going to generate hundreds and hundreds and hundreds of jobs, and they’re subjected to more rigorous oversight than is presented here today.

I wish you all a good night and Merry Christmas.