

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

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In Re:)
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Appeal of Water Pollution Control)
Groundwater Permit No. NEV91022)
Reid Gardner Station)
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ORDER GRANTING MOTION TO DISMISS AND AFFIRMING PERMIT

This matter came before a panel of the State Environmental Commission (“Commission”) on November 4, 2010. Sierra Club appealed NDEP’s renewal with modifications of Groundwater Permit No. NEV91022 issued to NV Energy on June 24, 2010. Groundwater Permit No. NEV91022 authorizes discharge of process and non-process water to evaporation ponds at Reid Gardner Station. Appellant Sierra Club did not appear but was represented by its counsel, Dan Galpern, Esq. and Chris Mixson, Esq. Respondent Nevada Division of Environmental Protection (“NDEP”) appeared and was represented by its counsel, Bill Frey, Esq. Intervener NV Energy appeared and was represented by its counsel, Tom Woodworth, Esq.

Prior to the hearing, Sierra Club filed: (1) Notice of NDEP and NV Energy’s Failure to Comply with SEC Order to Produce Documents, and Offer to Continue the Hearing with Certain Conditions; and (2) Motion to Specify Issues and for Subpoenas to Produce Witnesses at Hearing. NDEP and NV Energy each filed its own response to Sierra Club’s two documents.

After considering the written notice, motion and responses, and after hearing the arguments of counsel for Sierra Club, NDEP and NV Energy, the panel found that the motion for subpoenas to produce witnesses was moot because NDEP and NV Energy produced the requested witnesses, or an acceptable alternate, at the hearing. The panel also found that NDEP had complied with the panel’s October 28, 2010 Order and produced the specified documents.

At the hearing, Sierra Club presented a list of three issues: (1) was NDEP’s decision to issue the 2010 permit unlawful in light of NV Energy violations of its 2005 permit; (2) was

1 NDEP's decision to issue the 2010 permit unlawful in light of available evidence as to whether
2 NV Energy could meet the schedule of compliance; and (3) was NDEP's decision to issue the
3 2010 permit unlawful in light of its unsubstantiated or erroneous presumptions as to
4 performance of newly authorized mesa ponds or unenforceable no discharge requirement.
5 Sierra Club had previously specified five issues when it completed its request for an appeal
6 hearing. NDEP then moved to dismiss the case because the three issues were not grounds
7 for any action by the Commission to affirm, deny or modify the permit. NDEP argued that the
8 schedule of compliance is a part of the permit that specifies actions that are going to occur in
9 the future, and if NDEP had to make a permittee demonstrate that in the future they could
10 perform such an action, NDEP would not have a schedule of compliance. NDEP also argued
11 that if there is going to be a violation of the permit, it becomes a compliance issue, rather than
12 a reason not to issue the permit.

13 After hearing arguments of counsel for NDEP, NV Energy and Sierra Club, the panel
14 requested limited testimony from witnesses to determine whether any notices of alleged
15 violation had been issued to NV Energy during the term of the 2005 permit and whether there
16 were monitoring wells associated with the 2010 permit, Groundwater Permit No. NEV91022.
17 NDEP Enforcement Branch Supervisor Valerie King and NDEP Permitting Branch Supervisor
18 Alan Tinney testified. NV Energy also volunteered to submit a groundwater monitoring plan to
19 NDEP to ensure there is sufficient groundwater monitoring in the vicinity of the new ponds.

20 After hearing witness testimony and arguments of counsel, the Commission finds and
21 decides as follows:

22 FINDINGS OF FACT

23 1. NV Energy had minor violations of the 2005 permit at the Reid Gardener site for
24 failure to sample water that was being used as dust control for coal piles and in 2009 for
25 failure to sample water that was sprayed on haul roads.

26 2. During the term of the 2005 permit, NDEP did not issue any findings of alleged
27 violations, which is NDEP's term for formal enforcement action.

28 3. Groundwater Permit No. NEV91022 did not require monitoring wells for the newly

1 proposed ponds because of the way the ponds are to be built and their double lined leak
2 detection system. The ponds will have two 80 mil liners with a leak detection system between
3 the two liners, which obviates the need for a monitoring well. This is a state of the art system.

4 CONCLUSIONS OF LAW

5 1. NRS 445A.495 states: "In compliance with the regulations adopted by the
6 Commission, the Department may issue a new permit upon expiration of an existing permit if:
7 (1) The holder of the permit is in full or substantial compliance with all the requirements and
8 schedules of compliance of the expired permit."

9 2. Because NDEP did not issue any findings of alleged violations during the term of
10 the 2005 permit, NV Energy was in substantial compliance when NDEP issued Groundwater
11 Permit No. NEV91022 in 2010.

12 ORDER

13 Based on the foregoing findings of fact and conclusions of law, NDEP's motion to
14 dismiss is GRANTED and NDEP's issuance of Groundwater Permit No. NEV91022 to NV
15 Energy is AFFIRMED.

16 Dated this 3 day of December, 2010.

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19 Alan Coyner, Vice Chairman
20 State Environmental Commission
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25 A signed copy of this order is on file at the office of the State Environmental Commission in Carson City, Nevada.
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1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing ORDER GRANTING MOTION TO DISMISS AND AFFIRMING PERMIT was duly
5 mailed, postage prepaid, to the following:

6 Thomas C. Woodworth, Esq.
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An employee of the State Environmental Commission

DATED: December 3, 2010