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Case No. 06-01181A
Dept. No. I

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.)

**STATE ENVIRONMENTAL COMMISSION'S
MOTION TO DISMISS
AND JOINDER IN THE
NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION'S
MOTION TO DISMISS**

Comes now, the State Environmental Commission (SEC), by and through Attorney General George J. Chanos and Deputy Attorney General David W. Newton, and hereby moves this Court to dismiss this matter for lack of jurisdiction and joins in the Nevada Division of Environmental Protection's Motion to Dismiss. This Motion is based on the attached Memorandum of Points and Authorities, all papers on file, NRS 233B.130, together with any additional argument this Court may require.

Dated this 21st day of September, 2006.

GEORGE J. CHANOS
Attorney General

By: _____
DAVID W. NEWTON
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. BACKGROUND**

3 The SEC incorporates the background facts contained in the Motion by the NDEP.

4 **B. ARGUMENT**

5 The SEC incorporates the argument contained in the Motion by the NDEP, with some
6 additions contained below.

7 NRS 233B.130(2)(c) requires a petition for judicial review be filed within 30 days after
8 service of the final decision of the agency. The SEC has a regulation dealing with petitions for
9 reconsideration or rehearing and the effect of such on timing for purposes of judicial review.
10 NAC 445B.899 states in the pertinent section:

11 . . .
12 6. Unless otherwise ordered by the Commission, the filing of a
13 petition for reconsideration or rehearing or the granting of such a
14 petition does not excuse compliance with, or suspend the
15 effectiveness of, the challenged decision.

16 7. If the Commission grants a petition for reconsideration, it will
17 reexamine the record and decision with regard to the issues on
18 which reconsideration was granted and issue a modified final
19 decision or affirm its original decision within 20 days after the
20 petition is granted.

21 8. If the Commission grants a petition for rehearing, it will,
22 within 20 days thereafter, conduct a hearing to allow the parties to
23 present additional evidence and will issue a modified final decision
24 or affirm its original decision.

25 9. A modified final decision of the Commission issued upon
26 reconsideration or rehearing will incorporate those portions of the
27 original decision which are not changed by the modified final
28 decision.

10 10. A modified final decision of the Commission or the
11 affirmation of an original decision of the Commission is a final
12 decision for the purposes of judicial review.

13 Based on §6, the petition for reconsideration filed by Great Basin Mine Watch (GBMW) did not
14 suspend the effectiveness of the Order issued by the SEC on July 10, 2006. This is the date
15 of the final agency action in this matter. The SEC denied GBMW's Petition for
16 Reconsideration and Rehearing on August 4, 2006. If the SEC had granted that Petition, the
17 timing for any Petition for Judicial Review resulting therefrom would have been reset to thirty
18 days from the date of the issuance of a modified final decision or by an affirmation of the

1 original decision, based on §10. However, the SEC did not grant the Motion for
2 Reconsideration, and therefore the critical date for the filing of a Petition for Judicial Review in
3 this matter is would have been August 10, 2006, as governed by the timeline established in
4 NRS 233B.130(2)(c). As such, GBMW's Petition for Judicial Review must be dismissed as
5 untimely.

6 **C. CONCLUSION**

7 The SEC respectfully requests this Court dismiss the Petition for Judicial Review filed
8 by Great Basin Mine Watch for lack of subject matter jurisdiction.

9 Dated this 21st day of September, 2006.

10 GEORGE J. CHANOS
11 Attorney General

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13 By:

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 21st day of September, 2006, I served a copy of the foregoing, **NDEP'S MOTION TO DISMISS**, by mailing, via U.S. Post Office, postage pre-paid, a true copy to the following:

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