

FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING
BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

Sent to email to John Walker, SEC Secretary,

1. Name, address, telephone number, and signature of applicant:

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Representing the Sierra Club

2. Specify type of applicant: Individual, Partnership, **Corporation**, or Other: **Non profit corporation**
3. Other person or persons authorized to receive service of notice:
Jeryl R. Gardner, P.E., Bureau of Water Pollution Control, NDEP
4. Complete description of the business or activity and the location of the activity involved in the request:
Renewal, with modifications, of Nevada Discharge Permit NEV91022, authorizing discharge of process and non-process water to evaporation ponds located at the Reid Gardner Station (RGS) in Moapa, Clark County, Nevada, operated by NV Energy, with discharge to: 8 existing on-site double-lined evaporation ponds (Ponds F, B-1, B-2, B-3, C-1, C-2, E-1 and E-2), and eventually to 9 yet-to-be constructed double-lined evaporation ponds in the Mesa area (Ponds M-1 through M-9)
5. Nature of the appeal and grounds thereof:
(a) As an initial matter, we object to NDEP's failure to date to provide Sierra Club with adequate notice of its right to appeal the final permit, even though that document, the corresponding notice of decision, and the corresponding final fact sheet were finalized on June 24, and even though Sierra Club, through Counsel Galpern and Anderson, submitted extensive

comments on same by email (to which NDEP responds in its Notice of Decision document). The Counsel discovered the documents only yesterday (Thursday, July 1st) on NDEP's website, and so was only then informed that a request for appeal needed to be filed on or before tomorrow, Saturday, July 3. Accordingly, this request to appeal is filed to protect Sierra Club's right to appeal. The appeal itself should be held in abeyance until we have had time to fully examine the above-denoted documents and their legal basis, and we further seek leave until that time to amend the following description of the nature and grounds for appeal.

(b) The provisions of the permit are insufficient to ensure against pollutant discharges despite the fact that no discharges are ostensibly allowed under this "no-discharge" permit. If NV Energy designs its Reid Gardner evaporation pond facility pursuant to the minimum standards mandated in the permit, significant contamination of groundwater and/or surface water will ensue. This assertion is supported by two factors: Industry standards for HDPE dual-lined ponds allow for a certain amount of leakage as part of their design (thus requiring an interstitial leakage detection and collection system), yet there is no process or system required by the permit to prevent, detect, or remediate such leakage beyond the second liner.

(c) Although the permit purports to shift responsibility for soil and groundwater contamination to the Bureau of Corrective Action, the Bureau of Water Pollution Control cannot evade its responsibility under NRS 445A.465 to prevent discharge from any point source of any pollutant into any waters of the State (including groundwater) or to allow a pollutant discharged from a point source to remain in a place where the pollutant could be carried into the waters of the State (including groundwater) by any means.

(d) BWPC argues, without citation, that it lacks "regulatory authority regarding climate change," even though state agencies retain inherent authority and responsibility, as guardians of the public trust in natural resources, including the atmosphere and state waters, and even though the Nevada Water Pollution Control Law expressly declares state policy and agency purpose to be to maintain the quality of state waters. See NRS 445A.305. As Sierra Club noted in earlier comments, such water quality cannot be maintained in the event of accelerated climate change.

(e) Based on the above, and given the facility's ongoing violations of previous permits and failure to remediate previous contamination, the permit renewal must be denied, or in the alternative, modified to require rigorous groundwater monitoring under and around the existing and proposed evaporation ponds, as well as to require a sufficient plan to remediate the inevitable contamination that will result from their operation.

6. Section or sections of the State Air Quality Regulations, **Water Pollution Control Regulations**, Hazardous Waste Regulations, Solid Waste Management Regulations, or NRS section involved in the appeal:

For the reasons stated in Item 5(a) above, the following listing of statutes and regulations is partial and we reserve the right to add or amend:

NRS 445A.605(1) [appeal process]; NAC 445A.263(7) [appeal process]; NRS 445A.465 [prevention of pollutant discharge]; NAC 445A.250 [discharge monitoring]

7. Approximate time in hours and minutes necessary for delivery of oral testimony and reading of prepared statements as admissible evidence to be entered in the record: **30 minutes for opening, 10 minutes to rebut argument of NDEP, and 10 minutes to rebut the argument of each intervenor.**

Date of Request: **July 2, 2010**

Send Form To: John B. Walker, State Environmental Commission, 901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249