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September 21, 2010

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Western Environmental Law Center
1216 Lincoln Street
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VIA FACSIMILE AND U.S. MAIL

Re: Reid Gardner Station Permit Appeal

Dear Dan:

In response to your letter dated September 13, 2010, and related correspondence regarding a request of public records, I submit this letter, the attached Division of Environmental Protection – Bureau of Corrective Actions (“NDEP – BCA”) Redline Edit of your document entitled, “Documents Required by Sierra Club,” and a copy of a letter from Shannon Harbour, NDEP – BCA, to Legal Copy Cats & Printing dated September 21, 2010.

Your records request, as set forth in the “Documents Required by Sierra Club,” indicates that the records requested are all referenced in a document titled “Reid Gardner Station AOC Groundwater Investigation Encyclopedia of Supporting Documentation.” Please be advised that this encyclopedia was prepared by Nevada Power Company, now known as NV Energy (“NVE”). This document was submitted by NVE to NDEP – BCA and is thus a part of the public record; however, NDEP cannot account for the accuracy of the information listed therein. For instance, Document 138, Renewal of Authorization to Discharge Permit dated 2/19/2004, does not accurately reflect the date of the permit renewal issued by NDEP for that time period. Accordingly, I have listed the document as not submitted.

In the attached redlined “Documents Required by Sierra Club,” please note that NDEP – BCA highlighted in yellow are those documents that are in the possession of the NDEP – BCA. These have been submitted to Legal Copy Cats for reproduction. I trust you have set up an account to retrieve these documents. The documents that are highlighted in red are not in the possession of NDEP – BCA. It appears that most of these documents were not submitted to NDEP – BCA, and thus they are not a part of the public record. There are a few that I have noted will be cross-referenced with documents at the NDEP Bureau of Water Pollution Control (“BWPC”). I will advise you

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on whether and where these documents exist within the public record as soon as possible.

In regards to the additional information you have requested in your letter of September 13, 2010, specifically items (1) through (5), NDEP BWPC is investigating whether and where these documents exist within the public record. On these, I will also get back to you as soon as possible.

As I previously indicated to you via e-mail, I can find no authority that would require NDEP to track down documents for the Sierra Club that were never a part of the public record and are solely in the possession of the intervenor, NVE. Similarly, I can find no authority that would require NDEP, as the regulator, to organize a site visit on NVE property for the Sierra Club. I suggest that you contact Tom Woodworth, Esq. at NVE to see what accommodations NVE will make for you.

Finally, at this stage of the appeal, I am not inclined to make NDEP staff available for questioning on the permit appeal. Obviously, you may ask questions of subpoenaed witnesses at any hearing on this matter, subject to objections by NDEP.

If you have any questions, please do not hesitate to contact me.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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Deputy Attorney General
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CET/lzd
Enclosures

cc: Jon Palm, Chief, NDEP BWPC
Jim Najima, Chief, NDEP BCA
Shannon Harbour, NDEP BCA
Alan Tinney, NDEP BWPC
Jeryl Gardner, NDEP BWPC
Tom Woodworth, Esq., NVE