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**BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSON**

**In Re:** ) **Notice of NDEP and NV Energy’s Failure to**  
) **Comply with SEC Order to Produce**  
**Appeal of Authorization to NV Energy** ) **Documents, and Offer to Continue the**  
**to Discharge Process and Other** ) **Hearing with Certain Conditions**  
**Wastewater at Reid Gardner Station** )  
**Permit NEV91022** )

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On Oct. 28, 2010, the SEC memorialized an Order announced during its Oct. 21 preliminary hearing on this matter thusly:

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“IT IS FURTHER ORDERED that the motion for a continuance of the November 4 and 5 hearing dates is DENIED, **provided that NDEP provide to Sierra Club the quarterly groundwater monitoring reports, interstitial layer monitoring reports, and the hydrogeologic site characterization reports and engineering design reports for the proposed mesa ponds listed in Exhibit 3 to Sierra Club’s response to the opposition, by October 28, 2010.**” [Emphasis added.]

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Also on Oct. 28, Sierra Club received a voluminous amount of documents and data, including a number of quarterly groundwater monitoring reports and interstitial layer monitoring reports. These were required to be produced to NDEP by NV Energy quarterly, albeit analyzed monthly, pursuant to 2005 Permit NEV 91022, terms I.A.1, I.A.2, I.B.2, among others.

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Sierra Club here provides notice to the SEC and the other parties that the information provided to it fails to comply substantially with the SEC’s Order. First, quarterly monitoring reports were not received for any quarter in 2002, and also not for the 2<sup>nd</sup> and 3<sup>rd</sup> quarter of 2003. Second, and most importantly, data provided as to interstitial layer wastewater, required pursuant to 2005 Permit Term I.A.2 are either missing or are manifestly incorrect. Regarding the latter, we hope the material provided here reflect mere administrative error. It is improper, at best, to

substitute extractions of lab data from samples taken from ponds for the direct analyses required pursuant to Term I.A.2.c, of wastewater in the interstitial layers of the ponds.

Under the terms of the Commission's Order, Sierra Club is entitled to a delay in the hearing, as it originally sought, so as to be able to receive and analyze data and documents central to the matter of NV Energy's compliance with the 2005 Permit.

Sierra Club nevertheless wishes, if possible without unduly prejudicing its preparation for the Hearing, to satisfy the expressed desire by Commissioners to proceed as scheduled.

Accordingly, Sierra Club offers to continue as currently scheduled only if:

(1) Subpoenas are issued by the SEC to ensure that NDEP identifies for the Sierra Club prior to the Hearing, and produces at the Hearing, those person(s) responsible for ensuring compliance with the 2005 Permit during the period it was in effect including, but not limited to, Part I, Term I.A. and its sections and sub-sections, Term I.B. and its sections and subsections, Part II, Term II.A. and its sections and sub sections, and II.B. and its sections and sub sections.

(2) Subpoenas are issued by the SEC that ensure that NV Energy identifies for Sierra Club prior to the Hearing, and produces at the Hearing, those person(s) during the period that the 2005 Permit was in effect who were responsible for ensuring compliance with Permit terms, and reporting compliance-related information to NDEP, including, but not limited to, Part I, Term I.A. and its sections and sub-sections, Term I.B. and its sections and subsections, Part II, Term II.A. and its sections and sub sections, and II.B. and its sections and sub sections.

(3) NDEP and NV Energy produces and delivers, in hardcopy and electronic format, information and data that is fully responsive to the 2005 Permit Term I.A.2., prior to 6pm on

Nov. 2, with delivery to Sierra Club's undersigned attorney at his Eugene office address denoted  
2 below, and to Sierra Club's expert in this matter, Mr. Elliott Lips, at the following address:

4 Elliott W. Lips  
Principal Engineering Geologist  
Great Basin Earth Science, Inc.  
6 2241 E. Bendemere Circle  
Salt Lake City, Utah 84109  
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Respectfully submitted,



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12 Western Environmental Law Center  
1216 Lincoln Ave.  
14 Eugene, OR 97403  
16 (541) 359-3243

CERTIFICATE OF SERVICE

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The undersigned, Daniel Galpern, does hereby certify that on the 31st day of October, 2010, a true and correct copy of the foregoing **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** was emailed, with the same to be mailed, postage prepaid, to the following, on Nov. 1:

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Attorney for Intervenor

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Respectfully submitted, Oct. 31, 2010



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Oct. 31, 2010