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BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSON

In Re:) **Motion to Specify Issues and for**
) **Subpoenas to Produce Witnesses at**
Appeal of Authorization to NV) **Hearing**
Energy to Discharge Process)
and Other Wastewater at Reid)
Gardner Station)
Permit NEV91022

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On Sept. 22, pursuant to NAC 445B.8925, the State Environmental
Commission (SEC) “ORDERED that Sierra Club file a brief with the SEC on or before
October 7, 2010 and serve a copy of the brief on all parties to the appeal. The brief
should contain a detailed statement of the issue(s) to be raised during the hearing,”
and the SEC stated that a “list of proposed witnesses should also be included.” The
Sierra Club complied with this Order.

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Following an Oct. 21, 2010 preliminary hearing on a motion by Sierra Club,
on Oct. 28, 2010 the SEC, *inter alia*, “ORDERED that the Commission’s Order
requiring briefs to be filed in this matter is waived.” This *sua sponte* Order aimed in
part to relieve Sierra Club from the burden of filing a Nov. 1 reply brief in light of the
short time period in which Sierra Club would need to undertake analysis of
significant materials that previously had not been available to it. The SEC did not
intend, however, to eliminate Sierra Club’s considered statement of issues
submitted pursuant to the SEC’s prior Order. Accordingly, those are here
summarized, without elaboration, argument, or citations to the law, all of which will
be reserved for the Nov. 4-5 hearing:

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1. Issuance of the Permit to NV Energy was Unlawful in Light of NV Energy's
2 Violations of its 2005 Permit, and Its Certain Violation of its New (2010) Permit;

2. Issuance of the Permit to NV Energy was Unlawful in Light of NV Energy's
4 Incomplete Application;

3. The Permit is Fatally Lax in Its Compliance Schedule for NV Energy, an
6 Active Discharger;

4. The Permit Fails to Ensure Against Degradation of Water Quality
8 Standards in Underground Sources of Potential Drinking Water;

5. The Permit Fails to Ensure Water Quality Standards in the Muddy River,
10 including Beneficial Uses;

6. The Permit Was Issued in Violation of NDEP's Duty to Render a Reasonable
12 Decision as to The Application in Light of Available Evidence.

In addition, Sierra Club seeks to add the following issue for appeal:

7. The 2010-issued Permit is incoherent and unenforceable, so that NDEP's
14 issuance of it was unlawful.

16 Further, Sierra Club presented in its opening brief, as required by the SEC's
Sept. 22 Order, a list of witnesses it wished to call. In light of subsequent
18 developments including the SEC's Order to "waive" the briefing, and pursuant to
NAC 445B.892, Sierra Club here provides its list of witnesses, the first of whom
20 requires no subpoena, while for the others Sierra Club seeks SEC subpoenas to
ensure their presence at hearing.

22 1. Elliott Lips, hydro-geologist expert for the Sierra Club in this matter,

2. Al Tinney, NDEP (Subpoena sought): Sierra Club believes that Mr. Tinney was, in part, responsible for decision-making at NDEP on matters relating to compliance with the 2005-issued NEV91022 and in decision-making to issue the 2010 version of the permit. Sierra Club wishes to question Mr. Tinney about that decision-making.
3. Jeryl Gardner, NDEP (Subpoena sought): Mr. Gardner signed the 2010 Permit NEV 91022, and was responsible for its development. Sierra Club wishes to question Mr. Gardner about that development.
4. Diana Silsby, NDEP (Subpoena sought). Ms. Silsby is the person to whom, for several recent years and currently, NV Energy conveyed materials in support of its discharge monitoring reports and related permit compliance information. Sierra Club wishes to question Ms. Silsby about this information and that compliance *vel non*.
5. Shannon Harbour, NDEP (Subpoena sought). Ms. Harbour is responsible, in part, for ensuring that NV Energy is complying with progress toward its AOC and for the receipt and analysis of information relevant to compliance with NEV91022. Sierra Club wishes to question Ms. Harbour about this information and that compliance *vel non*.
6. Cliff Lawson, NDEP (Subpoena sought). Mr. Lawson or a colleague at NDEP Technical Services reviewed documents relating to the design and construction of new Mesa wastewater ponds at Reid Gardner Station. Sierra

Club wishes to question Mr. Lawson or the relevant person who reviewed those documents about that review.

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7. Tony Garcia, NV Energy (Subpoena sought), and

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8. Dave Sharp, NV Energy (Subpoena sought).

a. Mr. Garcia and Mr. Sharp have information about Reid Gardner's

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efforts, *vel non*, to comply with its prior permit, and Sierra Club wishes to question them about that information and compliance.

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Respectfully submitted,



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Daniel Galpern, Staff Attorney
Western Environmental Law Center
1216 Lincoln Ave.
Eugene, OR 97403
(541) 359-3243

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CERTIFICATE OF SERVICE

2 The undersigned, Daniel Galpern, does hereby certify that on the 29th day of October,
4 2010, a true and correct copy of the foregoing **Motion to Specify Issues and for**
6 **Subpoenas to Produce Witnesses at Hearing** was emailed, with the same to be mailed,
postage prepaid, to the following, on Nov. 1:

8 John B Walker, State of Nevada
State Environmental Commission
10 901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249
12 jbwalker@ndep.nv.gov

14 Carolyn E. Tanner, Deputy Attorney General
16 Office of Attorney General
100 North Carson Street
18 Carson City, NV 89701
ctanner@ag.nv.gov

20 Bill Frey, Esq.
22 Office of Attorney General
100 North Carson Street
24 Carson City, NV 89701
BFrey@ag.nv.gov

26 Attorneys for Respondent NDEP

28 Thomas C. Woodworth, Assistant General Counsel
30 NV Energy, Inc.
6226 West Sahara Ave, MS 03A
32 Las Vegas, NV 89146
TWoodworth@nvenergy.com
34 Attorney for Intervenor

36 Christopher W. Mixson, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin
38 3356 E. Russell Rd.
Las Vegas, NV 89117
40 cmixson@wrslawyers.com

42 Megan Anderson
Staff Attorney
44 Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
46 Taos, NM 87571

anderson@westernlaw.org

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Dan Galpern, Attorney
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
(541) 359-3243

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galpern@westernlaw.org

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Attorneys for Sierra Club

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Respectfully submitted,

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Daniel Galpern, Staff Attorney
Western Environmental Law Center
1216 Lincoln Ave.
Eugene, OR 97403
(541) 359-3243
galpern@westernlaw.org
Oct. 29, 2010

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