

**JIM. GIBBONS**  
Governor



STATE OF NEVADA  
**STATE ENVIRONMENTAL COMMISSION**

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**ALLEN BIAGGI**  
Director



CHAIRMAN:  
Lew Dodgion  
Carson City, NV

**Memorandum**

VICE CHAIRMAN:  
Alan Coyner  
Administrator  
Division of Minerals  
Commission on Mineral  
Resources

DATE: October 05, 2007  
TO: Charles Benjamin, Director - Nevada Office  
Western Resource Advocates

MEMBERS

FROM: John B. Walker, Executive Secretary

Pete Anderson  
State Forester  
Division of Forestry

SUBJECT: Decision Notice, Public Petition, Western Resource  
Advocates (WRA), Submitted Under NRS 233b.100

Donna Rise, Director  
Department of  
Agriculture

Attached is the final decision of the State Environmental Commission on the above referenced public petition. Please note that all of the comments submitted on the petition along with the attached SEC Decision Notice are posted on the SEC Website at the following address:  
[http://sec.nv.gov/main/hearing\\_0907.htm](http://sec.nv.gov/main/hearing_0907.htm)

Eugene Gans  
Las Vegas, NV

JBW/jbw  
ecc: Members, State Environmental Commission  
Leo Drozdoff, P.E. Administrator NDEP  
Colleen Cripps, Deputy Admin. NDEP  
Mike Elges, Air Programs, NDEP  
Bill Frey, SDAG-NDEP  
Rose Marie Reynolds, DAG-SEC

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Las Vegas, NV

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Rosemarie Reynolds

STAFF  
[John B. Walker](#)  
Executive Secretary

[Robert Pearson](#)  
Recording Secretary

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

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3 In Re:

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**DECISION**

On September 7, 2007, the State Environmental Commission (SEC or Commission) considered a petition submitted by the Western Resource Advocates (WRA) pursuant to NRS 233B.100 and NAC 445B.886. At the hearing, presentations were made by representatives from Western Resource Advocates; the Office of the Governor; the Public Utilities Commission of Nevada; Sierra Pacific Resources; LS Power Development, LLC; Toquop Energy LLC; and the Nevada Division of Environmental Protection. Public comment was also received.

The petition requested five regulatory changes, summarized as follows:

1. That the SEC suspend the issuance of air pollution control permits by the Nevada Division of Environmental Protection (NDEP) for any coal-fired electric generating plants to be located in the State of Nevada until such time as a greenhouse gas emission standard is enacted;
2. That a greenhouse gas emission standard, limiting the emission of carbon dioxide from new electricity generating facilities to no more than 1,100 pounds of carbon dioxide per megawatt hour generated, be implemented;
3. That the SEC adopt a regulation requiring that a public utility and other “merchants” of electricity that contract to purchase electricity provide certification to NDEP that the source of the electricity complies with the above mentioned greenhouse gas standard;
4. That the SEC make these regulations enforceable and require that they be

1 reviewed and if necessary and appropriate be revised every five years, and  
2 5. That such regulations define “new electricity generating facility” to be a  
3 power plant with a nameplate capacity rating exceeding ten (10) megawatts  
4 and that has not as of August 1, 2007 obtained all required pre-construction  
5 air quality permits as are required by the location of the facility.

6 The Commission requested legal advice from its counsel regarding its authority to act  
7 on the petition. Counsel advised the Commission with respect to the five regulatory changes:

- 8 1. The Commission did not have the statutory or regulatory authority to tell the  
9 Director of NDEP to not grant an operating permit for a new or existing  
10 stationary source. Under NAC 445B.318(3), an operating permit must be  
11 granted if the Director of NDEP finds the specified conditions are met.
- 12 2. The Commission has the authority to begin the rulemaking process to enact  
13 a regulation establishing a greenhouse gas emission standard such as the  
14 one proposed by the WRA.
- 15 3. The Commission does not have jurisdiction over the purchase of power.
- 16 4. The Commission has the authority to begin the rulemaking process to enact  
17 a regulation requiring that the regulations be made enforceable and be  
18 reviewed or revised every five years.
- 19 5. The Commission does not have the authority to enact a regulation that  
20 would retroactively apply to permits issued by NDEP by some  
21 predetermined date.

22 Following the presentations and public comment, the Commission discussed the  
23 petition. The Commission discussed the time involved in to adopt a complex and potentially  
24 contentious regulation, such as that contained in the WRA petition. After reviewing testimony  
25 and questioning witnesses, the Commission acknowledged that adoption of a complex  
26 regulation could take 18 months or longer and could not be done by the next Commission  
27 meeting in December 2007 as had been suggested by the WRA in its presentation.

1 The Commission also acknowledged its concern over climate change and greenhouse  
2 gas emissions and the need for decisions to be founded on sound science. It questioned  
3 whether there was adequate data to move forward with the rulemaking process on developing  
4 a greenhouse gas emission standard.

5 The last issue discussed by the Commission focused on carbon-capture technology as  
6 a mechanism to mitigate greenhouse gas emission from any new coal fired power plants  
7 permitted in Nevada. After considerable discussion, the Commission instructed NDEP to  
8 develop Memoranda of Understanding with the companies proposing new coal fired power  
9 plants in Nevada. Such agreements would define the process whereby such companies  
10 would commit to the deployment of carbon sequestration technologies at the power plants  
11 once such technologies were commercially available. The Commission also instructed NDEP  
12 to provide regular reports to it regarding the activities of the Governor's Climate Change  
13 Advisory Committee, the Climate Registry Steering Committee, and the Western States  
14 Climate Initiative.

15 Based on the foregoing, the petition filed by the Western Resource Advocates is  
16 DENIED.

17 Dated this 5<sup>th</sup> day of October, 2007.

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Lew Dodgion, Chairman  
21 State Environmental Commission  
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