



1 Second, NOAVs 2783, 2784, and 2786 cannot be “set aside” as TWA argues in its  
2 brief. *See* TWA’s Brief at 7. There is no dispute that TWA failed to appeal these NOAVs.  
3 TWA’s attorney conceded as much at the SEC’s December 9, 2020, hearing. *See* the  
4 Transcript for the SEC’s December 9, 2020, Hearing at 9 (“[TWA’s attorney] claimed that,  
5 similar to a criminal hearing, there are two phases: liability and sentencing. [TWA’s  
6 attorney] stated that TWA chose to forgo the opportunity to appeal the underlying facts”).  
7 Thus, TWA’s belated and inconsistent request to “set aside” or review NOAVs 2783, 2784  
8 and 2786 must be denied.

9 For these reasons, NDEP again requests that the SEC adopt its Findings of Fact,  
10 Conclusions of Law, and Decision that was attached as Exhibit 1 to its Opening Brief.

## 11 **II. LEGAL ANALYSIS**

### 12 **A. TWA’s Request to Reconsider the SEC’s December 9, 2020, Decision** 13 **is Outside the Scope of this Remand Hearing**

14 Rather than proposing its own Findings of Fact and Conclusions of Law, TWA  
15 improperly attempts to use the court’s limited remand as another bite at the apple.  
16 However, the District Court’s Order was clear on the scope of remand. At the outset of the  
17 Order, the court notes that, “as an initial matter, this Court does not address the validity  
18 of the penalties and imposed and makes no findings on the merits of the dispute.” *See* the  
19 Order, attached as Exhibit 3 to NDEP’s Brief at 2. The court then states that “absent  
20 detailed findings of fact or conclusions of law, the Court cannot appropriately review the  
21 merits of an administrative agency’s decision.” *Id.* As such, the court found that the SEC’s  
22 final decision “does not provide any findings of fact or conclusions of law and fails to  
23 conform to the requirements of NRS 233B.125.” *Id.* To conclude, the Court remanded the  
24 matter back to the SEC to issue a findings of fact and conclusions of law pursuant to NRS  
25 233B.125 which will then allow judicial review of its final decision.  
26 *Id.* at 3.

27 In addition, TWA’s request for reconsideration is premature. NRS 233B.130(4)  
28 provides that “a petition for rehearing or reconsideration must be filed within 15 days

1 after the date of service of the final decision.” “An order granting or denying the petition  
2 must be served on all parties at least 5 days before the expiration of the time for filing the  
3 petition for judicial review.” *Id.* NAC 445B.899 restates this rule and provides additional  
4 requirements. That regulation provides that “if the commission grants a petition for  
5 rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to  
6 present additional evidence and will issue a modified final decision or affirm its original  
7 decision.” NAC 445B.899(8). Accordingly, to request reconsideration of the final decision  
8 reached by the SEC, TWA would have to do so after the Findings of Fact, Conclusions of  
9 Law, and Final Decision are issued pursuant to this remand hearing.

10 As the court plainly stated in its Order, the remand was not related to the validity  
11 of the SEC’s decision or the merits of the dispute. As directed by the court, this remand  
12 hearing must be limited to documenting the SEC’s decision on December 9, 2020, in a  
13 findings of fact and conclusions of law.

14 **B. TWA Has No Legal Basis to Challenge the Substance of NOAVs 2783,**  
15 **2784, and 2786**

16 As TWA is well aware, the purpose of the SEC’s December 9, 2020, hearing was to  
17 consider the *amount* of the fines to be issued, not the substantive basis for those fines.  
18 This is due to TWA’s failure to appeal NDEP’s lawfully issued NOAVs. During the  
19 hearing, TWA conceded that the underlying facts and liability were no longer in dispute.  
20 *See* the Transcript for the SEC’s December 9, 2020, Hearing at 9 (“[TWA’s attorney]  
21 claimed that, similar to a criminal hearing, there are two phases: liability and sentencing.  
22 [TWA’s attorney] stated that TWA chose to forgo the opportunity to appeal the underlying  
23 facts”).

24 NRS 445B.640 provides that “any person who violates any provision of  
25 NRS 445B.100 to 445B.450, inclusive, and 445B.470 to 445B.640, inclusive, or any  
26 regulation in force pursuant thereto . . . is guilty of a civil offense and *shall* pay an  
27 administrative fine levied by the Commission of not more than \$10,000 per day per  
28 offense.” Pursuant to this statute, the SEC was required to levy an administrative fine

1 against TWA. As such, the SEC could not then and cannot now simply “set aside” TWA’s  
2 violations in the NOAVs.

3 **III. CONCLUSION**

4 For these reasons, NDEP requests that the SEC reject TWA’s unlawful  
5 recommendation to “set aside” NOAVs 2783, 2784, and 2786, and instead adopt NDEP’s  
6 proposed Findings of Fact, Conclusions of Law, and Decision, thereby correcting the lone  
7 issue in the court’s remand order.

8 DATED this 2nd day of December, 2021.

9 AARON D. FORD  
10 Attorney General

11 By: /s/ Daniel P. Nubel  
12 DANIEL P. NUBEL (Bar No. 13553)  
13 Senior Deputy Attorney General  
14 State of Nevada  
15 Office of the Attorney General  
16 100 North Carson Street  
17 Carson City, Nevada 89701-4717  
18 T: (775) 684-1225  
19 E: [dnubel@ag.nv.gov](mailto:dnubel@ag.nv.gov)  
20 *Attorney for Nevada Division of*  
21 *Environmental Protection*  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney  
3 General, and that on this 2nd day of December, 2021, I served a true and correct copy of  
4 the foregoing NEVADA DIVISION OF ENVIRONMENTAL PROTECTION'S REPLY  
5 BRIEF, by email, to:

6 Thomas Padian, Esq.  
7 LANAK & HANNA, P.C.  
8 625 The City Drive South, Suite 190  
9 Orange, CA 92868  
[tmpadian@lanak-hanna.com](mailto:tmpadian@lanak-hanna.com)  
*Attorney for Tahoe Western Asphalt*

10 David R. Johnson, Esq.  
11 LAW OFFICES OF DAVID R. JOHNSON, PLLC  
12 8712 Spanish Ridge Avenue  
13 Las Vegas, NV 89148  
[david@drjohnsonpllc-law.com](mailto:david@drjohnsonpllc-law.com)  
*Attorney for Tahoe Western Asphalt*

14 Asheesh S. Bhalla  
15 Deputy Attorney General  
16 555 East Washington Avenue, Suite 3900  
17 Las Vegas, NV 89101  
[abhalla@ag.nv.gov](mailto:abhalla@ag.nv.gov)  
*Attorney for State Environmental Commission*

18 */s/ Daniel P. Nubel*

---