

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

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In Re:)
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)
Appeal of Water Pollution Control)
Groundwater Permit No. NEV91022)
Reid Gardner Station)
)

ORDER REGARDING MOTION
SEEKING ISSUANCE OF SUBPOENAS,
CONTINUANCE OF HEARING AND
PRELIMINARY INJUNCTION

7 On October 21, 2010, this matter came for a preliminary hearing before a panel of the
8 State Environmental Commission (“Commission”) on appellant Sierra Club’s motion seeking:
9 (1) issuance of subpoenas to compel production of documents; (2) vacatur and continuance of
10 the November 4 and 5, 2010 hearing; and (3) a preliminary injunction to suspend the
11 effectiveness of the permit and halt construction of new wastewater ponds. Appellant Sierra
12 Club did not appear but was represented by its counsel, Dan Galpern, Esq. and Chris Mixson,
13 Esq. Respondent Nevada Division of Environmental Protection (“NDEP”) appeared and was
14 represented by its counsel, Bill Frey, Esq. and Carolyn Tanner, Esq. Intervener NV Energy
15 appeared and was represented by its counsel, Tom Woodworth, Esq.

16 After considering the written motion, oppositions and response, and after hearing the
17 arguments of counsel for Sierra Club, NDEP and NV Energy, and good cause appearing, the
18 panel found that it did not have jurisdiction pursuant to NRS 445A.425 and NRS 445A.605 to
19 issue a preliminary injunction to suspend the effectiveness of the permit and halt construction
20 of new wastewater ponds. Alternatively, if the panel did have jurisdiction to issue a
21 preliminary injunction, there was no showing of imminent harm if NV Energy continued its
22 construction activities. Any potential threat to the environment or the public does not occur
23 until wastewater is put into the ponds and construction of the first pond will not be completed
24 until February 2011.

25 Regarding the documents and request for continuance, Sierra Club represented that it
26 had on three separate occasions examined documents from NDEP’s Bureau of Water
27 Pollution Control, beginning at the end of June 2010. However, it had not received all the
28 documents it had requested on September 8 and 13, 2010, which were identified in Exhibit 3

1 to its response to the opposition (“Exhibit 3”). Sierra Club represented that it would need three
2 weeks minimum to review the documents when provided and a continuance was needed.

3 NDEP represented that it had provided everything it had to Sierra Club and that
4 numerous documents in Exhibit 3 had no relevance to the appeal. For example, the updated
5 sampling and analysis plan and updated O&M manual were not required to be submitted to
6 NDEP until September 25, 2010, after the permit had been issued. NDEP expressed concern
7 that there would be a never ending list of documents to be produced if a continuance were
8 granted and that finality was needed.

9 NV Energy acknowledged Sierra Club had the right to examine documents that were
10 part of the permit application process. It argued the Commission should limit the documents
11 to be produced to such relevant documents. It argued that Sierra Club could have requested
12 documents as early as October 2009 and that it was late to the process to request them now.
13 It also argued that a continuance impacted its finality as well.

14 The panel found that of the documents listed in Exhibit 3, the quarterly groundwater
15 monitoring reports, interstitial layer monitoring reports, and the hydrogeologic site
16 characterization reports and engineering design reports for the proposed mesa ponds may be
17 relevant to the appeal. Based on the representations of NDEP and NV Energy that they
18 would produce those documents quickly to Sierra Club within the next week, the panel found
19 that the original hearing date could be kept.

20 IT IS THEREFORE ORDERED that Sierra Club’s motion for a preliminary injunction to
21 suspend the effectiveness of the permit and halt construction of new wastewater ponds is
22 DENIED, although NDEP is required to notify the Commission prior to the placement of
23 wastewater into the ponds.

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

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IT IS FURTHER ORDERED that Sierra Club's motion for subpoenas is DENIED.

IT IS FURTHER ORDERED that the Commission's Order requiring briefs to be filed in this matter is waived.

Dated this 28th day of October, 2010.

Alan Coyner
State Environmental Commission

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the
4 foregoing ORDER REGARDING MOTION SEEKING ISSUANCE OF SUBPOENAS,
5 CONTINUANCE OF HEARING AND PRELIMINARY INJUNCTION was duly mailed, postage
6 prepaid, to the following:

7 Thomas C. Woodworth, Esq.
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An employee of the State Environmental Commission

DATED: October 28, 2010