

**IN THE SUPREME COURT OF THE STATE OF NEVADA
GENERAL INFORMATION**

INDICATE FULL CAPTION:

ABC RECYCLING INDUSTRIES, LLC ,
Appellant

No.83027

Electronically Filed
Jul 13 2021 09:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

vs.

**DOCKETING STATEMENT
CIVIL APPEALS**

NEVADA DIVISION OF ENVIRONMENTAL
PROTECTION; STATE ENVIRONMENTAL
COMMISSION

Respondents

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Eighth Judicial District

Department 1

County Clark

Judge Hon. Bita Yeager

District Ct. Case No. . A-20-818624-J _____

2. Attorney filing this docketing statement:

Attorney Byron E. Thomas

Telephone 702 747-3103

Firm Law Offices of Byron Thomas.

Address: 3275 S. Jones Blvd., ste 104, Las Vegas Nevada, 89146

Client(s):

LAW OFFICES OF BYRON THOMAS: JO & MIKE PROPERTIES, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Dan Nubel, Esq.

Telephone 775 684-1225

Firm Nevada Attorney General Office

Address 100 N, Carson St, Carson City Nevada 89701

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all

- ☐ Judgment after bench trial
☐ Judgment after jury verdict
☐ Summary judgment
☐ Default judgment
☐ Grant/Denial of NRCP 60(b) relief
☐ Grant/Denial of injunction
☐ Grant/Denial of declaratory relief
☒ Review of agency determination

that apply):

- ☐ Dismissal:
☐ Lack of jurisdiction
☐ Failure to state claim
☐ Failure to prosecute
☐ Other (specify): _____
☐ Divorce Decree:
☐ Original ☐ Modification
☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal {e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an appeal of an agency decision to revoke Appellant's water permit. Appellant asserts that the revocation was made in bad faith and with malice and ill will. Therefore the revocation was improper and was an example of arbitrary and capricious behavior on the part of Respondents. The Respondents contend that the revocation was based on the failure to pay fees. The district court ruled in favor of Respondents.

9. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None that Appellant counsel is aware of.

10. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

☐ Yes

☐ No

If not, explain:

11. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: .

12. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant believes this matter is a retained matter that should be heard Supreme Court pursuant to NRAP 17(a)((8) Administrative agency cases involving tax, water, or public utilities commission determinations;

13. Trial. If this action proceeded to trial, how many days did the trial last? It did not proceed to trial.

Was it a bench or jury trial? N/A _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellant's counsel does not intend to file a motion to disqualify or have a justice recuse him/herself at this time.

15. TIMELINESS OF NOTICE OF APPEAL

Date of entry of written judgment or order appealed from April 26, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served April 30, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59). Not Applicable

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☒ Mail/electronic/fax

19. Date notice of appeal filed June 1, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

<input type="checkbox"/> NRAP 3A(b)(1)	<input type="checkbox"/> NRS 38.205
<input type="checkbox"/> NRAP 3A(b)(2)	<input checked="" type="checkbox"/> NRS 233B.150
<input type="checkbox"/> NRAP 3A(b)(3)	<input type="checkbox"/> NRS 703.376
<input type="checkbox"/> Other (specify)	

(a) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 233B.150 provides as that an aggrieved party can file an appeal of any final judgment entered by the district court. The district court's order was a final order.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

ABC Recycling Industries, LLC, State Environmental Commission Nevada Division
of Environmental Protection

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Not Applicable

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant sought a determination that the revocation of the water permit was arbitrary and capricious, and Respondents claimed the revocation was due to unpaid fees. The issues for Appellants and Respondents were resolved on April 26, 2021

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

ABC Recycling, LLC
Appellant

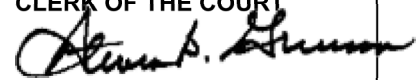
Byron E. Thomas
Name of counsel of Record


Signature of Counsel of Record

July 13, 2021

Clark County Nevada
State and County Where Signed

EXHIBIT “1” TO DOCKETING STATEMENT



CASE NO: A-20-818624-J
Department 19

LAW OFFICES OF BYRON THOMAS
BYRON E. THOMAS, ESQ.
Nevada Bar No. 8906
3275 S. Jones Blvd. Ste. 104
Las Vegas, Nevada 89146
Phone: 702 747-3103
Facsimile: (702) 543-4855
Byronthomaslaw@gmail.com
Attorney for ABC Recycling Industries LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ABC RECYCLING INDUSTRIES, LLC)	Case No.:
)	
Petitioner,)	Dept. No:
vs.)	
)	
STATE ENVIRONMENTAL COMMISSION)	
political subdivision of the State of Nevada;)	
NEVADA DIVISION OF)	
ENVIRONMENTAL PROTECTION a)	
political subdivision of the State of Nevada)	
and DOES I through X and ROE)	
CORPORATIONS XX through XXX,)	

Respondents.

PETITION FOR JUDICIAL REVIEW

COMES NOW the Petitioner, ABC Recycling Industries, LLC , domiciled in Clark County, Nevada, appearing in the above-entitled action, and hereby petitions this Court for judicial review of the Decision and Order of the State Environmental Commission and Nevada Division of Environmental Protection (the "Commission") dated June 26, 2020 , a copy of which is attached hereto as Exhibit 1.

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This Petition for Judicial Review is filed pursuant to ,NRS233B.130 which provides for judicial review of contested cases

Petitioner alleges that the Commission exceeded its statutory authority, was clearly erroneous in view of the reliable, probative and substantial evidence on the whole of the record; and was, arbitrary, capricious, characterized by abuse of discretion and erroneously interpreted a statute and rule of civil procedure..

Petitioner files this Petition pursuant to NRS 233B

LAW OFFICES OF BYRON THOMAS

/s/ Byron E. Thomas

BYRON E. THOMAS, ESQ.

Nevada Bar No. 8906

3275 S. Jones Blvd. Ste. 104

Las Vegas, Nevada 89146

Phone: 702 747-3103

Facsimile: (702) 543-4855

Byronthomaslaw@gmail.com

Attorney for ABC Recycling Industries, LLC

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EXHIBIT 1

1 **BEFORE THE STATE OF NEVADA**
2 **STATE ENVIRONMENTAL COMMISSION**

3
4 In the Matter of:

5 ABC RECYCLING LLC'S APPEAL OF
6 NDEP'S FEBRUARY 6, 2020 DECISION
7 TO REVOKE THE LATHROP MILL
8 RECLAMATION PERMIT #0171; AND
9 FORFEIT OF THE RECLAMATION
10 SURETY CASH DEPOSIT

**ORDER GRANTING THE
NEVADA DIVISION OF
ENVIRONMENTAL
PROTECTION'S MOTION FOR
SUMMARY JUDGMENT**

11 On February 15, 2020, ABC Recycling Industries, LLC ("ABC") filed its appeal of
12 the Nevada Division of Environmental Protection's ("NDEP") February 6, 2020, decision
13 to revoke the Lathrop Mill Reclamation Permit #0171 and forfeit of the reclamation
14 surety cash deposit. ABC's grounds of appeal stated that the "final decision was affected
15 by other error of law."

16 On March 11, 2020, NDEP submitted a Motion for Summary Judgment (the
17 "Motion"). ABC submitted its Opposition to NDEP's Motion on April 24, 2020. NDEP
18 submitted its Reply in Support of its Motion on May 15, 2020. Utilizing its powers under
19 NAC 445B.8913, the State Environmental Commission ("SEC") set a prehearing
20 conference date of June 12, 2020, to rule on NDEP's Motion.

21 **SUMMARY OF HEARING**

22 On June 12, 2020, a three member panel of the SEC convened to rule on NDEP's
23 Motion for Summary Judgment. The SEC Panel consisted of Chairman James Gans and
24 Commissioners Tom Porta and Kacey KC. The three member panel constituted a quorum
25 of that body. The SEC Panel was represented by Senior Deputy Attorney General Henna
26 Rasul.

27 Appellant, ABC Recycling Industries, LLC, was present and represented by Byron
28 Thomas, Esq. of Law Offices of Byron Thomas, and Appellee, NDEP, was present and

1 represented by counsel, Deputy Attorney General Daniel Nubel of the State of Nevada,
2 Office of the Attorney General.

3 The prehearing conference proceeded in due course. ABC and NDEP provided
4 opening statements. Once opening statements had concluded, the SEC Panel asked both
5 parties to answer questions relating to the Motion. The Panel then deliberated on the
6 legal and factual issues raised during the prehearing conference. The Panel found that no
7 genuine issue of material fact existed in this case because both parties agreed that ABC
8 had failed to pay its required annual fee of \$4,166 by April 15, 2019. NDEP gave ABC
9 several opportunities to come into compliance, but ABC admitted that it never availed
10 itself of those opportunities. Under NRS 519.260 and NAC 519A.235, ABC was legally
11 required to pay its annual fee by April 15, 2019. Given the uncontested fact that ABC
12 failed to pay its legally required fee by April 15, 2019, NDEP justifiably utilized its
13 powers under NRS 519A.150(9) to revoke ABC's Permit. Further, NDEP properly
14 forfeited ABC's reclamation surety cash deposit pursuant to NAC 519A.390.

15 During the deliberation, Commissioner KC made a motion to grant NDEP's Motion
16 for Summary Judgment, and thereby enter judgment affirming NDEP's decision to revoke
17 ABC's Permit and forfeit ABC's reclamation surety cash deposit. Commissioner Porta
18 seconded the motion and it passed by unanimous vote of the Panel.

19 CONCLUSION

20 The State Environmental Commission hereby grants the Nevada Division of
21 Environmental Protection's Motion for Summary Judgment. As such, the State
22 Environmental Commission affirms the Nevada Division of Environmental Protection's
23 decision to revoke ABC Recycling LLC's Reclamation Permit #0171 and forfeit of the
24 reclamation surety cash deposit.

25 DATED this 25th day of June, 2020.

26
27
28 By: 

Member

State Environmental Commission

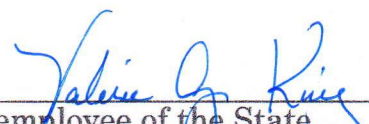
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CERTIFICATE OF SERVICE

I, Valerie King, certify that I am an employee of the State of Nevada, State Environmental Commission, and do hereby certify on this 26th day of June, 2020, I electronically mailed and deposited in the U.S. mail in Carson City, Nevada, a true and correct copy of the foregoing document, postage prepaid, to the following:

Daniel Nubel
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1225
Email: dnubel@ag.nv.gov
Attorney for NDEP

Byron Thomas, Esq.
Law Offices of Byron Thomas
3275 S Jones Blvd
Las Vegas, NV 89146
(702) 747-3103
Email: byronthomaslaw@gmail.com
Attorney for ABC



An employee of the State
Environmental Commission

1 **ORDD**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 ABC RECYCLING INDUSTRIES, LLC,

Case No. A-20-818624-J

5 Petitioner,

Dept. No. 1

6 vs.

7 STATE ENVIRONMENTAL
8 COMMISSION, a political subdivision of
9 the State of Nevada; NEVADA DIVISION
10 OF ENVIRONMENTAL PROTECTION,
a political subdivision of the State of
Nevada, and DOES I through X and ROE
CORPORATIONS XX through XXX,

11 Respondents.

12 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

13 This case comes before the Court pursuant to ABC Recycling Industries, LLC's
14 (ABC) Petition for Judicial Review, which was filed on July 27, 2020. ABC's Petition for
15 Judicial Review challenges the State Environmental Commission's decision to affirm the
16 Nevada Division of Environmental Protection decision to revoke ABC's Reclamation
17 Permit #0171. The case was fully briefed by all parties. On April 15, 2021, the Court heard
18 oral argument by all parties. After reviewing the relevant papers and hearing the
19 arguments of the parties, the Court finds, concludes, and rules as follows:

20 Based on the Court's review of the record and the law, substantial evidence in the
21 record supports the State Environmental Commission's decision in this case. The record
22 demonstrates that the State Environmental Commission properly concluded that the
23 Nevada Division of Environmental Protection did not commit an error of law in revoking

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26 ///

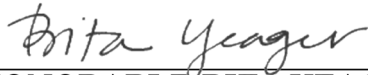
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1 ABC's Reclamation Permit #0171 based on the undisputed fact that ABC did not pay its
2 annual fee as required by statute and regulation.

3 Therefore, the Court hereby **DENIES** ABC's Petition for Judicial Review in its
4 entirety and **AFFIRMS** the decisions of the State Environmental Commission.

5 ORDERED this _____ day of _____, 2021.
6 **Dated this 26th day of April, 2021**

7 
8 HONORABLE BITA YEAGER
9 DISTRICT COURT JUDGE
10 **04B 829 B0F0 71AB**
11 **Bita Yeager**
12 **District Court Judge**

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22 Submitted by:

23 AARON D. FORD
24 Attorney General
25 DANIEL P. NUBEL (Bar No. 13553)
26 Deputy Attorney General
27 State of Nevada
28 Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1225
E: DNubel@ag.nv.gov
Attorney for Respondent NDEP

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J
Petitioner(s)
7 DEPT. NO. Department 1
8 vs.
9 State Environmental
Commission, Respondent(s)
10

11 **AUTOMATED CERTIFICATE OF SERVICE**

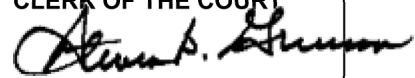
12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Notice of Deposition was served via the court's electronic eFile system
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/26/2021

16 Dorene Wright dwright@ag.nv.gov

17 Daniel Nubel dnubel@ag.nv.gov

18 Byron Thomas byronthomaslaw@gmail.com
19
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NEOJ
AARON D. FORD
Attorney General
DANIEL P. NUBEL (Bar No. 13553)
Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
T: (775) 684-1225
E: dnubel@ag.nv.gov
Attorney for Respondent NDEP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ABC RECYCLING INDUSTRIES, LLC,

Petitioner,

vs.

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Respondents.

Case No. A-20-818624-J

Dept. No. 1

**NOTICE OF ENTRY OF ORDER
DENYING PETITION FOR JUDICIAL REVIEW**

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU, AND EACH OF YOU, please take notice that an Order Denying Petition for
Judicial Review was entered in the above-entitled matter on the 26 day of April, 2021. A
copy of said Order is attached hereto as Exhibit 1.

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DATED this 30th day of April, 2021.

By: /s/ Daniel P. Nubel
DANIEL P. NUBEL
Deputy Attorney General

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 30th day of April, 2021, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER DENYING PETITION FOR JUDICIAL REVIEW, by electronic service to the participants in this case who are registered with the Eighth Judicial District Court's Odyssey eFileNV File & Serve system to this matter:

/s/ Dorene A. Wright

1 **INDEX OF EXHIBITS**

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EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Order Denying Petition for Judicial Review filed April 26, 2021	3

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EXHIBIT 1

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

ABC RECYCLING INDUSTRIES, LLC,

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ORDER DENYING PETITION FOR JUDICIAL REVIEW

This case comes before the Court pursuant to ABC Recycling Industries, LLC's (ABC) Petition for Judicial Review, which was filed on July 27, 2020. ABC's Petition for Judicial Review challenges the State Environmental Commission's decision to affirm the Nevada Division of Environmental Protection decision to revoke ABC's Reclamation Permit #0171. The case was fully briefed by all parties. On April 15, 2021, the Court heard oral argument by all parties. After reviewing the relevant papers and hearing the arguments of the parties, the Court finds, concludes, and rules as follows:

Based on the Court's review of the record and the law, substantial evidence in the record supports the State Environmental Commission's decision in this case. The record demonstrates that the State Environmental Commission properly concluded that the Nevada Division of Environmental Protection did not commit an error of law in revoking

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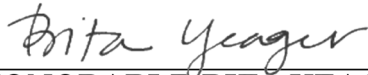
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1 ABC's Reclamation Permit #0171 based on the undisputed fact that ABC did not pay its
2 annual fee as required by statute and regulation.

3 Therefore, the Court hereby **DENIES** ABC's Petition for Judicial Review in its
4 entirety and **AFFIRMS** the decisions of the State Environmental Commission.

5 ORDERED this _____ day of _____, 2021.
6 **Dated this 26th day of April, 2021**

7 
8 HONORABLE BITA YEAGER
9 DISTRICT COURT JUDGE
10 **04B 829 B0F0 71AB**
11 **Bita Yeager**
12 **District Court Judge**

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25 DANIEL P. NUBEL (Bar No. 13553)
26 Deputy Attorney General
27 State of Nevada
28 Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
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Attorney for Respondent NDEP

1 **CSERV**

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CLARK COUNTY, NEVADA

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6 ABC Recycling Industries, LLC., CASE NO: A-20-818624-J
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