Opening briefs give sneak peek at landfill appeal

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CARSON CITY — Robert Dolan and Massey Mayo filed their opening brief on Tuesday (April 17) with the State Environmental Commission for the appeal of the decision by the Nevada Division of Environmental Protection to issue an operating permit to Jungo Land & Investments for the construction of a class 1 landfill.

Dolan and Mayo represent the Clean Desert Foundation and Robert Hannum, who brought the appeals. The appeal is a sneak peek at what the two will present at the appeal hearing in Carson City on May 21 & 22.

The brief opens, “The honorable members of the Nevada State Environmental Commission are simply being asked by and through the instant appeal to protect the beauty of the high desert, the health & safety of the citizens & wildlife, and the dignity of the State of Nevada. Under the relevant facts and laws the State Environmental Commission has authority to deliver those protections to the citizens of Nevada.”

The opening brief treads familiar ground for those who have followed the lengthy battle by activists to prevent the construction of a landfill on Jungo Road, 25 miles west of Winnemucca.

Dolan and Mayo raised eight issues they allege NDEP failed to consider. The issues primarily concerned the aquifer under the landfill, the potential for flooding, the inadequacy of the location’s soil that will be used for various purposes at the site, and the inadequacy of the liner and liner system for protecting the aquifer.

Issue 1: That the aquifer is at risk. NDEP abused its discretion in approving a variance under NAC 444.678(9).

Jungo applied for and was granted a waiver of the requirement there be 100 feet between the uppermost aquifer and the base of the landfill. Instead, there will be approximately 25 feet between the two.

Several factors could decrease that 25 feet even further, the attorneys note, including the possibility the aquifer might rise.

Whether or not the basin is a closed-basin system is in dispute between the two sides. Dolan and Mayo cite a study that concludes the basin is part of a larger network; the entirety of which could be polluted with leachate from the landfill.

Dolan and Mayo dispute the landfill’s liner/liner system is adequate to protect the aquifer.

Issue 2: That NDEP abused its discretion in approving a variance pursuant to NAC 444.678(2).

Dolan and Mayo alleged the variance granted to Jungo for the 1,000 distance requirement of any surface water from the landfill site was “another abuse of discretion, was arbitrary and capricious, and/or done in excess of agency authority, and otherwise inconsistent with the goals and policies of the State of Nevada.”

They note there is historical and anecdotal history that the landfill site is regularly subjected to ponding and/or flooding.

The opening brief reads reads, “This often results in substantial amount of surface water not only being closer than 1,000 feet to the landfill site, but on top of it!”

The brief goes on to state uncontrolled flooding at the site could result in an environmental catastrophe if water made contact with landfill cells then flooded away.

Dolan and Mayo allege fairy shrimp have been located near the site, which offers proof of flooding.

They argue the plan for 4-foot high berms to keep out flood waters are inadequate – especially if soils from the site are used.

Dolan and Mayo note, “The “ponding” that occurs on the playa, and the poor quality of the soil at the location, will inevitably cause movement of water into the trash cells about the liners. The permit fails to adequately address, if at all, what the permittee can do if and when the ponding interferes with normal operation and/or delivery of waste from train to site. Will the waste be piled on the side of the railroad during the ponding episode? Will the required daily activities of burial be impossible or unduly dangerous? These questions, and similar thoughts, remain unanswered by NDEP.”

Issue 3: NDEP has abused its discretion in regarding the landfill gas and monitoring system.

Here the attorneys allege the landfill will go on creating gas long after the company is required to monitor for it, which will result in an odor if the cell is breached (such as occurs when animals dig).

Issue 4: **The soil is not adequate for this proposed landfill. A) Soil is inadequate for daily ground cover B) Soil is inadequate and should not be used on connection with the liner to guarantee protection to the aquifer.**

The plan of operations calls for multiple uses for soil at the landfill site, including use for daily cover, flood berms, and in the liner system.

The soil composition, which is primarily silty, make it inadequate for all these uses. A brisk wind could blow it away, and it is ill-suited to support the weight of millions of tons of waste above an aquifer, the attorneys argue.

Jungo and NDEP are aware of the issues with the soils, and have a plan for mitigating the problem with additional clay soils, but Dolan and Mayo call these steps “meaningless”.

Issue 5: The liner system is inadequate. A) The permit does not include a liner degradation evaluation program.

Dolan and Mayo argue here the HDPE (high density polyethylene) liner will tear and allow leachate into the aquifer. Additionally, they note, the double system also relies on soil from the site, which is inadequate for that use.

They also note there’s no plan in place for reaching a tear in the liner and fixing it, which could be problematic once there are tons and tons of trash sitting on top of the liner.

Issue 6: **NDEP has failed to adequately take into consideration the impact of seismic activity in the area.**

The attorneys note the information used by the project’s architect to obtain the permit was dated. The information came from studies completed before the construction of the geothermal plant about 4 or 5 miles from the landfill site.

Activity from geothermal drilling can cause microearthquakes, the attorneys noted, which the NDEP failed to fully consider.

Issue 7: **The proposed groundwater monitoring plan is inadequate.**

The site’s groundwater will be monitored with four wells, which Dolan and Mayo call inadequate to measure leachate throughout the lifetime of the site. In addition, they argue there’s insufficient information about the aquifer’s thickness

Issue 8: NDEP has abused its discretion in protecting the health & safety of Nevada