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Permits Office Air-3
U.S. EPA, Region 9

May 24, 2002

Gerardo Rios
Chief, Permits Office, Air Division (AIR-3)
EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

Dear Mr. Rios:

This letter comments on a notice in the Federal Register, 67 FR 21194 (April 30, 2002), entitled "Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Area 61 for Particulate Matter, Sulfur Dioxide, and Nitrogen Dioxide; State of Nevada".

EPA has not shown that hydrographic areas are PSD baseline areas. The notice aims to "replace the single unclassifiable area designated for Nevada for PM10 with 253 unclassifiable areas". This seems to disagree with a footnote saying that these areas are "already established as the PSD baseline areas". The footnote refers to the so-called "technical correction" at 67 FR 12474 (March 19, 2002), which says that baseline areas were defined in terms of 107(d) areas by 1980 regulation. If there is only a single unclassifiable 107(d) now, and 107(d) areas are the basis for PSD baseline areas, then there must be only a single PSD baseline area now, not 253.

Maybe EPA did have the unstated intention to designate the 253 hydrographic areas as section 107(d) areas back in 1978 and 1992. And maybe EPA intended to consider these as PSD baseline areas. But that designation isn't what EPA actually did, and isn't what is in the Code of Federal Regulations. No analysis or justification is provided for dividing the state into so many separate areas, which is a big change from most of the state as a single area. It is wrong to get public agreement on one definition, then unilaterally change that definition, while claiming that the public agreement is still there. Also, it is dishonest to hide this change within a so-called "technical correction" with no opportunity for public comment.

The notice states that Nevada's request for this redesignation was on April 16, 2002, and EPA has 18 months (until October 2003) to act on it. EPA provides no reason for proposing to approve this request in just two weeks after the request, but does provide a good reason for waiting: "EPA is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations to ensure that it continues to adequately prevent significant deterioration of air quality". If EPA really wants to ensure prevention of deterioration, this request should not be considered until that evaluation is complete, assuming it can be completed by October 2003. Why undercut the evaluation by this rushed approval?

The notice says that the "State's ability to effectively manage air quality" is a consideration for evaluating redesignation requests, and that dividing the area into two will "promote" this ability by recognizing the "distinct geographic, meteorologic, and land use characteristics" of the two parts of Hydrographic Area 61. EPA does not describe what makes the two parts "distinct", and does not describe how management is "promoted" by a split based on such distinctions. A map shows that there are no relevant natural or political boundaries within Hydrographic Area 61. Since "Hydrographic Areas" are based on water drainages, which are separated by high ridges as in this case, there are

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no geographic or meteorological distinctions between the two subareas, by definition. The cited State claim that "the redesignation will promote their air quality management objectives" is bogus.

Unless, of course, those "objectives" are different than keeping the air clean. Articles in the Elko Daily Free Press suggest what these objectives actually are. On February 12th, an article there stated: "Without the new designation, the power plant would fall under the same air quality umbrella as Newmont and Barrick Goldstrike Mines Inc. operations on the Carlin Trend and could cause problems when one of the companies wanted to expand." On May 12, the article "Newmont gains ground toward new power plant" stated: "Newmont needs the new designation so the mining company can start new mine projects on the Carlin Trend without stricter air quality regulations kicking in because a power plant is in the same air quality monitoring airshed." So the objective appears to be to split Hydrographic Area 61 so that new sources in the power plant half will not trigger the PSD minor source baseline date in the mining half. In other words, the objective is to help Newmont and Barrick mines circumvent PSD. EPA's approval of the redesignation would help this objective.

The notice says that "air-quality related considerations the Administrator deems appropriate" are a basis for evaluation of state redesignation requests. What considerations like that were used in evaluating this request? The Prevention of Significant Deterioration of air quality was apparently not considered, but it is obviously "appropriate" to do so. The notice states that "section 107(d)(3) does not provide specific direction to EPA for evaluating redesignation requests that involve subdivision of existing attainment or unclassifiable areas", and that EPA's "concern is ... to ensure that it [the redesignation] ... does not interfere with the State's management of air quality". But the lack of specific direction and the desire to prevent interference do not excuse active participation in circumventing the intent of the PSD program as spelled out in law and regulation.

The effect of this redesignation would be to do a favor to a special interest, undermine the PSD program in Nevada and nationally, and undercut EPA's current evaluation of the PSD regulatory framework. EPA should explain how these effects entered into EPA's evaluation of the redesignation request, and how they are consistent with the EPA's mission of implementing PSD and protecting air quality.

EPA should not approve this redesignation request, because it is inconsistent with the goals and intent of PSD provision of the Clean Air Act.

Thank you for considering these comments.

Sincerely,

David Lee

David Lee
822 Washington St.
Oakland, CA
94607