

1 **COMP**
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11 Attorneys for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 CLEAN WATER COALITION,
15 Plaintiff,

Case No. _____

Dept. No. _____

16 v.

17 THE STATE OF NEVADA, KATE
18 MARSHALL, in her capacity as THE NEVADA
19 STATE TREASURER; and DOE
20 DEFENDANTS I-X, inclusive,

21 Defendants.

22 **COMPLAINT**

23 Plaintiff, the Clean Water Coalition ("CWC"), by and through its attorneys, Parsons Behle
24 & Latimer, alleges as follows:

25 **PARTIES**

26 1. The CWC is a political subdivision of the State of Nevada created pursuant to
27 NRS 277.110 and 277.120 by interlocal agreement effective November 20, 2002, by and between
28 the Clark County Sanitation District (now known as the Clark County Water Reclamation
District), the City of Henderson, and the City of Las Vegas.

1 2. The CWC interlocal agreement amended and restated on September 8, 2006 to
2 include the City of North Las Vegas.

3 3. The CWC interlocal agreement was amended and restated a second and final time
4 on January 4, 2008. A true and correct copy of the Second Amendment to Interlocal Cooperative
5 Agreement Establishing the Clean Water Coalition (“Interlocal Agreement”), is attached hereto as
6 Exhibit “1.”

7 4. The CWC’s principal place of business is located at 150 N. Stephanie. #130,
8 Henderson, in Clark County, Nevada.

9 5. All of the members of the CWC are governmental entities located within Clark
10 County, Nevada.

11 6. Defendant, the State of Nevada, has waived its sovereign immunity and consented
12 to suit in Clark County, Nevada pursuant to NRS 41.031.

13 7. Defendant, the Nevada State Treasurer, is subject to suit in Clark County, Nevada
14 pursuant to NRS 41.031.

15 8. The true names and capacities, whether individual, corporate, associate, spouse,
16 estate or otherwise of Defendants named herein as Does I through X, inclusive, are unknown to
17 Plaintiffs who therefore sue said Defendants by such fictitious names and Plaintiffs will ask leave
18 to amend this complaint to show their true names and capacities when the same have been
19 ascertained. Plaintiffs are informed and believe and on that basis allege that each Defendant
20 named as Doe is responsible in some manner for the events herein referred to and caused
21 damages proximately thereby to Plaintiffs as alleged.

22 **GENERAL ALLEGATIONS**

23 9. Plaintiff incorporates by reference paragraphs 1 through 8 of this Complaint.

24 10. The CWC was created for the specific purposes of (a) planning, designing,
25 permitting, financing, constructing, operating and maintaining a regional system for the collection
26 and conveyance of effluent from existing and future wastewater treatment facilities to ultimate
27 outfall locations returning effluent to the Colorado river system or other locations determined
28 appropriate and approved by the CWC, (b) Managing effluent flowing through the CVC facilities,

1 (c) selling electric power generated from CVC facilities, and (d) preparing, reviewing, approving
2 and implementing Regional Water Quality Plans with respect to effluent produced by the
3 treatment facilities of each operating member..

4 11. Among the powers vested in the CWC by its members are the powers to enter into
5 contracts necessary to carry out the purposes of the CWC, to establish and adjust regional sewer
6 connection charges and/or regional sewer user charges to defray all or any portion of the costs of
7 the CWC, to assess CWC members for their respective shares of administrative, operation,
8 maintenance and capital costs of the CWC, and to finance the design, construction, operation,
9 maintenance and replacement of all facilities which may be needed to carry out the purposes of
10 the CWC.

11 12. Section 12.2.1 of the Interlocal Agreement provides that "All Annual Operating
12 Budgets and All Annual Capital Budgets shall be satisfied by the Members in the following
13 percentages:"

14	City of Las Vegas	30%
15	Clark County Water Reclamation District	46%
16	City of Henderson	14%
17	City of North Las Vegas	10%

18 13. Pursuant to section 12.2.1 of the Interlocal Agreement, the respective contributions
19 owed to the CWC were to cease once the regional fees were "in place and [] providing funding
20 for CWC activities, including operating costs, debt reserves and debt funding."

21 14. The regional fees for all member agencies became effective as of July 1, 2007.

22 15. Section 12.2.2 of the Interlocal Agreement, and subparts thereunder, set forth the
23 assessment of regional fees and provide that sewer connection charges and user charges shall be
24 used to determine the amount of the assessment owed by each member agency to the CWC.

25 16. The CWC's member agencies impose upon and collect sewer connection charges
26 and user fees from the residents and businesses within their respective jurisdictions, and then pay
27 their respective regional fees to the CWC with these funds.

28

1 17. The CWC possesses in excess of \$62,000,000 from the collection of regional fees
2 and the investment of those fees.

3 18. In furtherance of carrying out its purposes, the CWC is engaged in ongoing
4 activities which include the Boulder Basin Adaptive Management Plan, a water quality modeling
5 and monitoring effort that involves participants from California, Arizona and Nevada as well as
6 Federal agencies and also a comprehensive evaluation to determine necessary measures to meet
7 State and Federal water quality standards in Lake Mead and the Las Vegas Wash.

8 19. On February 28, 2010, the Assembly of the Nevada Legislature passed, by a
9 majority vote, Assembly Bill No. 6 ("A.B. 6") which was introduced in the Assembly on
10 February 28, 2010.

11 20. On March 1, 2010, the Senate of the Nevada Legislature passed A.B. 6 by a
12 majority vote.

13 21. On March 2, 2010, A.B. 6 was enrolled and delivered to the Governor.

14 22. On March 12, 2010, A.B. 6 was signed by the Governor and became law.

15 23. Section 18(1)(c) of A.B. 6 states that "[a] general law cannot be made applicable
16 to the provisions of this section because of special circumstances."

17 24. Section 18(2) of A.B. 6 states that "[o]n March 12, 2010, or such other day as is
18 mutually agreed upon by the Clean Water Coalition and the State Treasurer, the Clean Water
19 Coalition shall transfer to the State of Nevada securities and cash which together total
20 \$62,000,000, for deposit in the State General Fund for unrestricted State General Fund use."

21 **FIRST CLAIM FOR RELIEF**

22 **(Declaratory Relief)**

23 25. Plaintiff incorporates by reference paragraphs 1 through 24 of this Complaint.

24 26. Section 18 of A.B. 6, constitutes an improper and unconstitutional imposition of a
25 tax that is specifically imposed upon the residents of the member agencies, and channeled through
26 the CWC.

27 27. Section 18 of A.B. 6, impairs the Interlocal Agreement between the member
28 agencies by preventing the CWC from accomplishing its stated functions.

1 28. A justiciable controversy exists between the CWC and the Defendants, which
2 controversy is ripe for judicial determination.

3 29. Plaintiff seeks a declaratory judgment from this Court declaring that A.B. 6,
4 Section 18, violates Article 4, Sections 20 and 21 of the Nevada Constitution.

5 30. Plaintiff seeks further declaratory relief from this Court declaring that A.B. 6,
6 Section 18, violates Article 10, Section 1 of the Nevada Constitution.

7 31. Plaintiff seeks further declaratory relief from this Court declaring that A.B. 6,
8 Section 18, violates Article 1, Section 15 of the Nevada Constitution.

9 32. Plaintiff has been required to consult with and retain legal counsel to prosecute this
10 litigation and has incurred fees and costs to protect its interests. Plaintiff is entitled to recover
11 attorney's fees and costs against Defendants as allowed by law.

12 **SECOND CLAIM FOR RELIEF**

13 **(Injunctive Relief)**

14 33. Plaintiff incorporates by reference paragraphs 1 through 32 of this Complaint.

15 34. Section 18(5) of A.B. 6, declares that the State Treasurer may "take any action the
16 State Treasurer determines necessary to ensure that the transfer of the securities and cash required
17 by the provisions of this section is carried out in an appropriate and timely manner."

18 35. Section 18(5) of A.B. 6, purports to authorize the State Treasurer to take actions to
19 enforce an unconstitutional statute.

20 36. Plaintiff seeks an injunction maintaining the status quo, and preventing the State
21 Treasurer from taking any action pursuant to Section 18(5) of A.B. 6, until such time as the
22 constitutionality or unconstitutionality of A.B. 6 has been fully and finally determined by this
23 Court.

24 37. Absent an injunction, the funds collected by the CWC from a particular region and
25 for specific purposes, will be unlawfully converted to a tax, placed in the general fund of the State
26 of Nevada, and applied to Statewide debts and obligations resulting in permanent and irreparable
27 loss and harm to the CWC.

28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding COMPLAINT filed in the Eighth
Judicial District Court

Does not contain the social security number of any person

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit.

-or-

B. For the administration of a public program or for an application for a
federal or state grant.

Signature



March 12, 2010

Date

Michael R. Kealy

Print Name

Attorney for Plaintiff

Title