BEFORE THE NEVADA STATE BOARD OF EQUALIZATION

IN THE MATTER OF: EAGLE SHADOW MOUNTAIN SOLAR, 325MK 8ME, LLC c/o AREVON ENERGY, Petitioner Personal Property, Direct Appeal	)	Case No. 25-155

ASSESSOR'S REQUEST TO STRIKE PETITIONER'S UNTIMELY SEPTEMBER 19, 2025 FILING AND IN THE ALTERNATIVE THE ASSESSOR'S REPLY IN ACCORDANCE WITH NAC 361.703(4)

Respondent, Clark County Assessor ("Assessor") hereby submits this motion to request that the Petitioner's, Eagle Shadow Mountain Solar, 325MK 8ME LLC ("Petitioner") filing on Friday, September 19, 2025 be stricken from the record as untimely. On September 19, 2025, the Petitioner, through its legal counsel Josh Hicks submitted a letter and related exhibits pursuant to Nevada Administrative Code ("NAC") 361.703(3) to State Board secretary Kari Skalsky requesting that the letter and exhibits be part of the record before the State Board of Equalization ("State Board") for the above referenced case. This submittal should not be submitted as part of the record as the Petitioner did not submit its written explanation to the State Board twenty (20) days before the hearing, which would have been September 9, 2025.

NAC 361.703(2) allows a party on its own initiative to submit a brief, memorandum or other written explanation. If a party submits a brief, memorandum or other written explanation it must be filed with State Board and served on the other parties at least 20 days before the date established for the hearing. The hearing on this case has been scheduled for September 29, September 30 and October 1, 2025. Any written explanation in this case pursuant to NAC 361.703 would have been due to the State Board by September 9, 2025. Neither party in this case submitted a written explanation to State Board in accordance with NAC 361.703, but somehow the Petitioner has submitted a response in accordance with subsection 3 of NAC 361.703, but Clark County never submitted a brief or written explanation to the State Board in accordance with NAC 361.703. Rather, Clark County submitted its case materials fifteen (15) days before the hearing as required NAC 361.745. While the Petitioner would have been

free to submit a brief or written explanation twenty (20) days before the hearing, the Petitioner's attempt to respond to Clark County's case materials is inappropriate and not pursuant to NAC 361.703 as there was no written explanation submitted to the State Board to respond to pursuant to subsection 3 of NAC 361.703. Clark County respectfully request the State Board not include the September 19, 2025 letter and exhibits into the record of this case as they are untimely.

ARGUMENTS IN RESPONSE TO IMPROPER SEPTEMBER 19, 2025 LETTER

If the State Board chooses to include the September 19, 2025 letter and accompanying exhibits into the record, Clark County submits the following reply in accordance with subsection 4 of NAC 361.703.

(1) Clark County did not Misrepresent or Misconstrue the Lease as the Tribe has the Option to Require the Solar Facility to be Removed from its Property.

The Petitioner attempts to misconstrue Clark County's position regarding the ownership of the taxable property in determining whether or not the property is taxable under state and federal law. Clark County acknowledges that the under Section 12 of the lease between the Petitioner and the Moapa Band of Paiute Indians ("Tribe") has the following options: (1) require the Petitioner to remove all the Tenant's Property, including the Tenant Infrastructure Improvements; (2) require the Petitioner to remove all the Tenant's Property, except for the Tenant Infrastructure Improvements or (3) not remove any of Tenant's Property, including the Tenant Infrastructure Improvements. If the Tribe elects to have the Tenant Property and Tenant Infrastructure Improvements remain, the Tribe must purchase the improvements for the fair market value of the property. See Section 12.03 of the Lease.

Furthermore, Petitioner and Nevada Energy have a twenty-five (25) year agreement that allows NV Energy to purchase the solar facility at the end of the twenty-five (25) year agreement between the Petitioner and NV Energy. *See* page 11 of Petitioner letter to Clark County dated September 9, 2025, page 43 of 613 of record. So for at least the first twenty-five (25) years of the lease it would seem that the solar facilities are not held in trust for the Tribe. There is not a one size fits all solution regarding the taxation of improvements even

permanent improvements owned by non-tribal entity. While the County acknowledges that there are situations in which permanent improvements not owned by a tribe could be non-taxable if held in trust for the tribe, but each situation has to be evaluated on a case-by-case basis. Based on the various options in the lease regarding the solar facility and NV Energy's right to purchase the solar facility from the Petitioner it is clear that the solar facility is not an improvement that is held in trust for the Tribe, but instead is owned and operated by the Petitioner. Clark County Assessor has properly determined that the solar facility is taxable under state and federal law based on the relationship between the Petitioner and the Tribe.

(2) <u>Ninth Circuit Decision is *Chehalis* is Distinguishable and Not Applicable to the Facts of this Case.</u>

The Petitioner attempts to oversimplify the issue in the case regarding federal taxation of property owned by non-tribal entities but located on tribal lands. Whether or not states are preempted from taxation on tribal lands is governed by the Indian Reorganization Act, which states title to any lands or rights acquired pursuant to this Act of the Act of July 28, 1955 shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such **lands or rights** shall be exempt from State and local taxation. Emphasis added. In order to determine whether the property is not subject to taxation you have to determine the tribe's lands or rights. According to the Bureau of Indian Affairs those rights include "any interests, benefits, and rights inherent in the ownership of the real property. 25 CFR 150.2. Here, the Tribe does not have any ownership interest in the solar facility until it purchases the solar facility from the Petitioner. It also will not have the right to purchase the solar facility for at least for twenty-five (25) years as NV Energy has the right to purchase the solar facility at the end of its twenty-five (25) year agreement with the Petitioner. Just as the Arizona Supreme Court, which is subject to Ninth Circuit Court of Appeal precedent found that the *Chehalis* decision was distinguishable, the solar facility in this case is distinguishable due to the lack of the tribe's ownership interest in the solar facility. In *Chehalis (*Great Wolf Lodge) and *Mescalero* (operated an off-reservation ski resort), the tribe was found to have ownership interest in the property or business that was being taxed.

While the Court found it was irrelevant or unimportant how the tribe held ownership in these businesses, the courts still require the tribe to have rights to the property in order for the property to be non-taxable. Just as the Nevada Supreme Court would analyze the *Chehalis* decision, the Arizona Supreme Court in S*outh Point Energy v. Arizona Department of Revenue*, 253 Ariz. 30 (2022) analyzed all the cases cited by the Petitioner and found the Ninth Circuit decision in *Chehalis* does not persuade us that *Mescalero* interpreted Section 5 of the Indian Reorganization Act as a categorical bar to taxation especially when the tax does not infringe on the Tribe's ownership interest. Here, there is no infringement on the Tribe's rights as the Petitioner not the Tribe is responsible for the payment of the taxes. The Petitioner seeks to ignore the analysis required of the Tribe's interest and requests the State Board to categorically find that any improvements on tribal land are not taxable regardless of ownership. While the solar facility may be located on tribal land, all the benefits from the operation of the solar facility are held by the Petitioner. The Petitioner and NV Energy have a Renewable Power Purchase Agreement that requires the Petitioner to provide all its solar generated power to NV Energy for twenty-five (25) years so at a minimum the Tribe does not have any "rights" to the solar facility for at least twenty-five (25) years. The Petitioner's position is not reflective of the complex and various case law across the country with respect to taxation of property owned by non-tribal entities on tribal lands. If the Petitioner's position was true, the United States Supreme Court would have accepted the appeal in South Point Energy, but the United States Supreme Court declined to make such a one size fits all rule. Clark County reliance on South Point Energy is not misplaced as the facts in that case are most similar to the case before the State Board because the Tribe does not have any ownership interest in the Petitioner's business or the solar facility that was constructed on its land, therefore, federal law does not preempt Clark County's assessment and taxation of the solar facility.

Furthermore, the Assessor is not ignoring the guidance issued by the Department of Taxation in 2014 as the Assessor has assessed the solar facility as personal property based on Nevada law (NRS 361.035) and the *Whiteco* analysis, therefore, the Assessor is in compliance

with the Department of Taxation's guidance. Based on recent decisions across the country with respect to non-tribal entities property on tribal lands, it would appear that the Department's guidance is outdated, or clarification is needed for situations when the tribe does not have any of the bundles of rights to the improvements on tribal land.

(3) <u>State of Nevada Governor's Office of Energy Does Not Determine the Taxability of Property in Clark County.</u>

All property in the State of Nevada is taxable unless otherwise provided by law. NRS 361.045. Tax exemptions are strictly construed and one claiming the exemption must demonstrate clearly an intent to exempt and any reasonable doubt about applicability of exemption must be construed against the taxpayer. *Sierra Pacific Power Company v. Department of Taxation*, 96 Nev. 295, 298 (1980). In Clark County the Clark County Assessor is tasked with assessing all real and personal property located in Clark County unless it is centrally assessed property, which is assessed by the Department of Taxation. Here, on or around June of 2020, the Petitioner submitted a Renewable Energy Tax Abatement Application to the Nevada Governor's Office of Energy seeking both a sales & use abatement and a property tax abatement. Petitioner's Exhibit J, page 602 -625 of 1079 of pdf. Why would the Petitioner submit an application for a property tax abatement when the Petitioner is so adamant that the solar facility is preempted from taxation because it is located on tribal lands? There is only one answer because the solar facility is taxable under Nevada law.

The Petitioner also alleges that Clark County abruptly reversed its position regarding the taxability of this solar facility and that the State of Nevada informed the Petitioner that the solar facility was exempt from property taxes. While the Governor's Office of Energy may have incorrectly communicated that the solar facility was not subject property taxes, this is inconsistent with the Renewable Energy Tax Abatement Application. On page 11 of the Renewable Energy Tax Abatement Application, the State explicitly states that, "the final determination of the classification of property as real or personal property is made by the county assessor for locally-assessed property or the Department of Taxation for centrally-assessed property. Placement of property on these sheets of the application is made for

purposes of this fiscal note only and is not determinative of the final classification of property by the appropriate taxing official." Page 614 of 1079 of pdf. Here, the appropriate taxing official is the Clark County Assessor. The Assessor cannot be bound by an error made by the Governor's Office of Energy with respect to the taxability of property located on tribal lands. Lastly, Clark County has not changed its position regarding the taxability of this facility. Clark County is now assessing the solar facility because the Assessor was not aware that the facility had been constructed, therefore, the Assessor has assessed the solar facility for the past three fiscal years as permitted by NRS 361.767. Lastly, the Petitioner failed to timely submit a written statement declaring its personal property within Clark County as required by NRS 361.265.

(4) Federal Leasing Regulations Do Not Preempt State Property Taxation and Clark County has a Substantial Government Interest under the Bracker Balancing Test.

Petitioner incorrectly alleges that 25 CFR 162.017(a) bars Clark County from taxing the solar facility. The Ninth Circuit in 2017, three years after the *Chehalis* decision, found that the United States Supreme Court requires courts to undertake a fact-specific balancing test in order to decide whether federal law preempts any particular state effort to regulate non-Indian conduct on tribal lands. *Desert Water Agency v. United States Department of Interior*, 849 F.3d 1250 (9th Cir. 2017) citing *White Mountain Apache Trine v. Bracker*, 448 U.S. 136 (1980). In *Desert Water Agency*, the Ninth Circuit adopted the Department of Interior position that 25 CFR 162.017 has no effect on preemption and has no legal effect at all as it does not purport to preempt any specific state taxes. The only thing 25 CFR 162.017 does, according to the Department of Interior is to state publicly the agency's interpretation of existing law (namely Bracker). *Id*. At 1255. If *Chehalis* provides such a bright line rule for the preemption of non-Indian property on tribal land why in 2017 does the Ninth Circuit and the Department of Interior assert that the *Bracker* balancing test is required to determine whether state taxation of non-Indians engaging in activity or owning property on the reservation is preempted.

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Under the Bracker balancing test the court must consider: (1) the extent of the federal and tribal regulations governing the taxed activity; (2) whether the economic burden of the tax falls on the tribe or non-Indian entity and (3) the extent of the state interest in justifying the imposition of the taxes. First, as the Ninth Circuit found in *Desert Water Agency*, there are no federal or tribal regulations with respect to ad valorem property taxes. While NRS 372.800 allows for the tribe to collect sales and use tax, Clark County is not aware of any tribal law applicable to ad valorem taxes requiring the Tribe to tax the property of the Petitioner. The federal interest in supporting tribal economic self-sufficiency diminishes when the commercial activity is structured to exploit tax exemptions. *Barona Band of Mission Indians v. Yee*, 528 F.3d 1184 (2008). Second, there are no economic burden on the Tribe as the property taxes are the responsibility of the Petitioner. The land is not taxed only the personal property that is owned by the Petitioner. Third, Clark County provides various government services to the Tribe and its members. The children of tribal members attend Clark County School District, which is funded by the ad valorem taxes that Clark County collects. Clark County provides emergency and fire services to the reservation and to the solar facility and its employees.

Here, there is no overarching federal interest, the taxation of the Petitioner does not impede the Tribe's ability to lease the property to the Petitioner. The Petitioner not the Tribe is responsible for the payment of the personal property taxes assessed on the property owned and operated by the Petitioner. Lastly, the ad valorem taxes provide fundamental government services to the residents of the reservation, such as education, indigent services, medical services, general improvements in the areas surrounding the reservation. The ad valorem taxes are also used by the State of Nevada to provide State services. Clark County has a statutory duty to assess and tax the Petitioner and that duty is not preempted by federal law under the *Bracker* test.

(5) <u>Nevada Treatment of Payment in Lieu of Taxes ("PILOT")</u>

NRS 372.800 and NRS 372.805 also for the governing body of an Indian reservation or Indian colony to impose a tax on the privilege of selling tangible personal property at retail on the reservation or colony. The Department of Taxation shall not collect the sales and use

tax imposed by NRS 372 as long as the tax is equal to or greater than the tax imposed by NRS 372 and a copy of an approved tribal tax ordinance imposing the tax has been filed with the Department of Taxation. There is no similar process in Nevada for ad valorem taxes. But, even if the State of Nevada or the Tribe's own taxing regulations permitted the Tribe to collect the ad valorem taxes, the Pilot Payments provided for in the lease of $230,000 a year are based on a flat $100 per acre cost based on the lease of approximately 2,300 acres of land with a 3% per year adjustment. These Pilot Payments do not take into consideration the valuation of the improvements made by the Petitioner. Furthermore, in Lease in Section 13.02 states that,

> "[i]f relief from Nevada state property taxes is only available if the Pilot Payments (defined in the Tribal Agreement) equal at least the property tax rate charged by the State of Nevada and/or its subdivisions, then the Pilot Payments with respect to the Project shall be 100% of the rate that would apply if the Project were located [were located] on land outside the Reservation in the State of Nevada but within 50 miles of the Reservation, but all other payments due to Landlord under the Lease shall be adjusted so that the net financial effect for Tenant shall be equivalent to payment of Pilot Payments at 80% of the off-Reservation rate."

Here, the $230,000 per year Pilot Payment is not close to 80% of the property tax assessment. The property tax for the 2024/2025 tax year was $1,266,998.98. The Pilot Payments under Section 4 of the Tribal Agreement between the Petitioner and the Tribe is not exclusive to just ad valorem property taxes, it is in lieu of all taxes, tax levies or other tax assessments (other than sales and use tax) that could be levied by the Tribe against the Petitioner, therefore, the Tribe shall has the ability to collect Pilot Payments as agreed to in the lease. Such a contractual agreement between the Tribe and Petitioner cannot preempt the ad valorem taxes required to be collected by the Clark County Assessor in accordance with Nevada law.

CONCLUSION

Clark County request that the State Board not include the letter and exhibits submitted on September 19, 2025 by the Petitioner as they were untimely pursuant NAC 361.703 as there was no brief or written explanation submitted to the State Board to respond to, therefore there could be no response submitted pursuant to subsection 3 of NAC 361.703(3). Furthermore,

Clark County request the State Board uphold the valuation established by the Clark County Assessor for the solar facility owned and operated by the Petitioner.

DATED this 24th day of September, 2025.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: */s/ Lisa V. Logsdon*
LISA V. LOGSDON
County Counsel
500 S. Grand Central Pkwy. 5th Flr.
Las Vegas, Nevada 89155-2215
Attorney for Clark County Assessor

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 24th day of September, 2025, I emailed a copy of the above and foregoing **Assessor's Request to Strike Petitioner's Untimely September 19, 2025 filing and in the Alternative the Assessor's Reply in Accordance with NAC 361.703(4).** addressed as follows:

State Board of Equalization
c/o Kari Skalsky
kskalsky@tax.state.nv.us
stateboard@tax.state.nv.us

McDonald & Carano
Joshua Hicks, Esq.
jhicks@mcdonaldcarano.com

/s/ Afeni Banks
An Employee of the Clark County District Attorney's Office – Civil Division