

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIERRA CLUB, A CALIFORNIA NON-PROFIT CORPORATION,

Appellant,

vs.

STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION, AN ADMINISTRATIVE AGENCY OF THE STATE OF NEVADA; AND NEVADA POWER COMPANY D/B/A NV ENERGY,

Respondents.

No. 59906

FILED

DEC 19 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an environmental matter. First Judicial District Court, Carson City; James Todd Russell, Judge.¹

Respondents Nevada Division of Environmental Protection (NDEP) and Nevada Power Company d/b/a NV Energy (NV Energy) filed a motion to dismiss on the basis that appellant Sierra Club's petition for judicial review failed to name the Nevada State Environmental Commission (SEC) as a respondent.² In its petition for judicial review,

¹The Honorable Kristina Pickering, Chief Justice, did not participate in the decision of this matter.

²NDEP and NV Energy acknowledge that they failed to notice this defect until after oral arguments had been scheduled. However, they argue that the appeal must nonetheless be dismissed with prejudice for lack of jurisdiction. Further, they argue that the question of whether the court lacks subject matter jurisdiction may be raised at any time by the parties or *sua sponte* by the court. See *Landreth v. Malik*, 127 Nev. ___, ___, 251 P.3d 163, 166 (2011).

Sierra Club named NDEP and NV Energy as respondents, but did not name the SEC.³ Sierra Club filed an opposition to NDEP and NV Energy's motion to dismiss, and the en banc court heard oral argument for this case. Subsequently, NDEP and NV Energy filed a reply. Having considered the parties' arguments, we conclude that Sierra Club's petition for judicial review did not comply with NRS 233B.130(2)(a). As a result, the district court lacked jurisdiction to consider Sierra Club's original petition for judicial review.

NDEP and NV Energy argue in their motion to dismiss that Sierra Club's appeal should be dismissed with prejudice because Sierra Club failed to name SEC as a respondent. NDEP and NV Energy further argue that NRS 233B.130(2)(a) unambiguously mandates that the agency that issued the final decision, in this case the SEC, must be named as a respondent.⁴ NDEP and NV Energy contend that this requirement is "mandatory and jurisdictional," thus failure to name the necessary parties cannot be saved by amending the petition after the filing deadline has passed. *Washoe Cnty. v. Otto*, 128 Nev. ___, ___, 282 P.3d 719, 727 (2012).

³The SEC issued the final administrative decision in this case, which affirmed NDEP's decision to reissue NV Energy's permit.

⁴NRS 233B.130 provides that petitions for judicial review must:

- (a) Name as respondents the agency and all parties of record to the administrative proceeding;
- (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred; and
- (c) Be filed within 30 days after service of the final decision of the agency.

Sierra Club responds in opposition that the “most reasonable interpretation of ‘the agency’ . . . refers to the entity whose underlying permit issuance, rule, or disciplin[e] . . . was subsequently contested by the aggrieved party.” Sierra Club supports this argument by comparing the use of the term “agency” in NRS 233B.121(d).⁵ In sum, Sierra Club argues “the agency,” as used in NRS 233B.130(2)(a), must refer to the entity whose underlying action was challenged (here, NDEP) because this interpretation encourages the separation of responsibility.

The Nevada Administrative Procedure Act (APA) governs the judicial review of an administrative decision. *Otto*, 128 Nev. at ___, 282 P.3d at 724. The APA explains which administrative decisions are reviewable and provides procedures that a party must follow to invoke a district court’s jurisdiction. *Id.* at ___, 282 P.3d at 724-25. Because judicial review of an administrative decision is only available as provided by statute, “strict compliance with the statutory requirements for such review is a precondition to jurisdiction.” *Id.* at ___, 282 P.3d at 725.

“[W]here appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision at a lower level

⁵Further, Sierra Club argues that its interpretation of “agency” is consistent with NRS 233B.130(5), in that the Contractors’ Board has “multifaceted roles as underlying actor, contested case party, contested case adjudicator, and [] potential party on judicial review.” Sierra Club states that NRS 233B.130(5) allows the district court to dismiss any agency who “[i]s named as a party in the petition for judicial review” and “[w]as not a party to the administrative proceeding for which the judicial review . . . was filed.” Sierra Club continues by stating that this section would be “inexplicable” if the legislature required adjudicative bodies to be named as respondents in a judicial review of their own decision. Sierra Club concludes that “where an agency’s sole relevant administrative role was to adjudicate the contested case, it need not be named as a respondent.”

in the agency is made final by statute.” NRS 233B.130(1). The petition must “[n]ame as respondents the agency and all parties of record to the administrative proceeding.” NRS 233B.130(2)(a). The petition must “[b]e filed within 30 days after service of the final decision of the agency.” NRS 233B.130(2)(c).

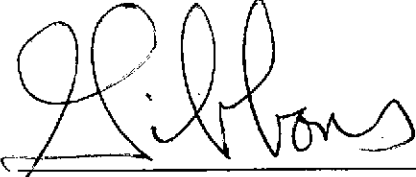
We conclude that NRS 233B.130(2)(a) required Sierra Club to name the SEC as a respondent. NRS 233B.130(2)(a) specifically states that the petition must “name the agency and all parties of record to the administrative proceeding.” Within this same section, the term “agency” is referred to again when explaining that a petition for judicial review must be filed after service of “the final decision of the agency.” See NRS 233B.130(2)(c). When read together, “agency” refers to the agency that made the final determination at issue in the petition for judicial review.⁶ This is also consistent with the definition of “agency” in NRS 233B.031 because the parties agree that SEC made the final determination in the contested case between Sierra Club and NV Energy/NDEP. Finally, we conclude that Sierra Club cannot amend its petition after the 30-day deadline because the time period for filing a petition for judicial review is mandatory and jurisdictional. *Otto*, 128 Nev. at ___, 282 P.3d at 727; see NRS 233B.130(2)(c).

As such, we conclude that Sierra Club failed to comply with the NRS 233B.130(2)(a) mandatory requirements when it failed to name

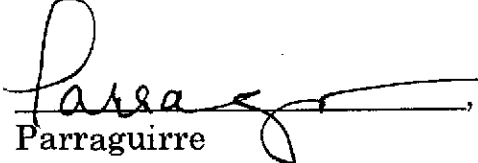
⁶Otherwise, under Sierra Club’s interpretation, the term “agency” would be inconsistent, referring to NDEP in NRS 233B.130(2)(a) and SEC in NRS 233B.130(2)(c). Further, Sierra Club’s comparison to NRS 233B.130(5) is without merit because the term “agency” in that section does not expressly refer to the agency involved in the underlying action, but to any agency who was not a party in the underlying administrative proceedings.


the SEC as a respondent in its petition for judicial review. Therefore, the district court lacked jurisdiction to consider Sierra Club's petition. Although the district court lacked jurisdiction, it reached the right result when it dismissed Sierra Club's petition for judicial review. Accordingly, we affirm the district court's order denying Sierra Club's petition for judicial review. *See Otto*, 128 Nev. at ___, 282 P.3d at 727 (affirming the district court's order dismissing an administrative appeal when it reached the right result for the wrong reason).


It is so ORDERED.⁷



_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Farraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

⁷Based on our disposition, we need not address the parties' remaining arguments.

cc: Hon. James Todd Russell, District Judge
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