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STATE OF NEVADA  
STATE ENVIRONMENTAL COMMISSION  
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In Re the Matter of:  
Consolidated Appeal -  
North Valley Waste Water  
Treatment Facility  
Permit NEV60025

TRANSCRIPT OF PROCEEDINGS  
MONDAY, OCTOBER 15, 2007  
CARSON CITY, NEVADA

The SEC Commission: LEW DODGION, Chairman  
IRA RACKLEY, Commissioner  
DONNA RISE, Member

For the Commission: ROSE MARIE REYNOLDS, DAG  
Commission Counsel

WILLIAM FREY, SDAG,  
Nevada Division of  
Environmental Protection

For the Commission: JOHN B. WALKER,  
Executive Secretary

ROBERT PEARSON,  
Recording Secretary

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For the Appellant, John Nolte:	JOHN N. NOLTE
For the Appellant, Steve Bennett:	JOHN A. HAUG, P.E.
For the Appellant, Carl Larsen:	LYNN NOEL MUZZY
For the State:	JANET HESS, Deputy Attorney General Nevada Department of Justice 100 N. Carson Street Carson City, Nevada 89701
For the Interveners:	ROBERT T. MORRIS, Chief Civil Deputy District Attorney Douglas County P.O. Box 218 Minden, Nevada 89423

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1 CARSON CITY, NEVADA, MONDAY, OCTOBER 15, 2007 AT 9:31 A.M.

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3  
4 COMMISSION CHAIRMAN DODGION: This is the noted  
5 time and place to consider an appeal to the Douglas County  
6 North Valley Wastewater Treatment Facility, Water Pollution  
7 Control Permit Number NEV60025.

8 This hearing is to be held by a three-member  
9 panel of the State Environmental Commission. I'm Lew  
10 Dodgion, a member of the Commission, I will be chairing the  
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11 Commission. On my left is Ms. Donna Rice, and on my right  
12 is Mr. Ira Rackley, also members of the Commission making  
13 up the panel.

14 This is a consolidated appeal because we have  
15 three Appellants. The consolidation is in accordance with  
16 NAC 445B.8957. Also in accordance with the NAC 455B, we  
17 have interveners here, which is Douglas County.

18 Before we proceed I'd like to go around the  
19 room for introductions so we can all know who everyone is,  
20 starting with you.

21 MR. ROSENTHAL: I'm Rose Marie Reynolds. I'm  
22 from the office of the Attorney General. I'm here  
23 representing the Commission.

24 MR. MUZZY: My name is Lynn Muzzy. I'm here  
25 representing Carl Larsen.

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1 MR. HAUG: My name is John Haug. I'm  
2 representing Steve Bennett and the rest of the estate  
3 holders.

4 MR. NOLTE: My name is John Nolte. I'm  
5 representing myself.

6 MR. HALL: My name is John Hall. I'm with the  
7 Nevada Department of Environmental Protection.

8 MS. HESS: I'm Janet Hess. I represent the  
9 Nevada Environmental Protection.

10 MR. MORRIS: I'm Robert Morris. I'm a Deputy  
11 District Attorney from Douglas County, Nevada.

12 MS. POOL: I'm Cathe Pool. I'm representing  
13 Douglas County.

14 MR. HOGAN: I'm Jim Hogan, Nevada Division of  
15 Environmental Protection.

16 MR. FREY: Bill Frey, with the AG's Office. I  
17 represent the Division of Environmental Protection.

18 MR. TINNY: Alan Tinney with the Division of  
19 Environmental Protection.

20 MR. PEARSON: Robert Pearson, Recording  
21 Secretary for the Commission.

22 MR. WALKER: John Walker. I'm staff for the  
23 Commission.

24 COMMISSION CHAIRMAN DODGION: All right. Thank  
25 you, everybody.

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1 First, as obvious, I point out that today's  
2 proceedings are being recorded both electronically and by  
3 the Court Stenographer. We will try to kind of outline the  
4 format that we're going to try to adhere to today. We'll  
5 start with opening statements, beginning with the  
6 representative of the Division of Environmental Protection,  
7 followed by the Applicants, followed by the Intervener, and  
8 then move onto the appeal.

9 With -- the appeal will also again start with  
10 the presentation of the State's case, and the State, I  
11 assume, will be calling witnesses. All witnesses will be  
12 sworn, and all testimony will be given under oath.

13 The Appellants then can cross-examine any of  
14 the State's witnesses, followed by cross-examination by the  
15 Intervener, and the panel can also ask questions of any of  
16 the witnesses at any time.



20 MS. HESS: Yes, Mr. Chairman and panel.  
21 First of all, I have a preliminary issue I  
22 would like to address. I would like to have Mr. Bennett's  
23 case dismissed, because he does not have a legal  
24 representative. Instead he has someone that he has just  
25 decided to have here.

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1 Also, as well, I would like to move to dismiss  
2 Mr. Larsen's case, because he doesn't have a legal  
3 representative here. He instead has somebody that he has  
4 just kind of nominated.

5 Also, I would move to dismiss everyone's appeal  
6 because they failed to state anything that has to do with  
7 water quality of the state, and therefore is, in fact,  
8 nothing that should be appealed. And then after the ruling  
9 on those issues --

10 COMMISSION CHAIRMAN DODGION: All right.

11 MS. HESS: -- I will --

12 COMMISSION CHAIRMAN DODGION: With respect to  
13 the not being represented by Counsel, I don't believe  
14 that's a requirement. I can that the regulations of the  
15 statute provide that they can be represented by a person of  
16 their choice. And does our Counsel have any response to  
17 that?

18 MR. ROSENTHAL: No. I agree with your  
19 statement.

20 COMMISSION CHAIRMAN DODGION: Mr. Rackley?

21 COMMISSIONER RACKLEY: I agree.

22 COMMISSIONER RICE: Concur.

23 COMMISSION CHAIRMAN DODGION: With respect to  
24 that, your petition to dismiss, those are denied.

25 MS. HESS: And then on the basis that, could I

1 have a ruling as well failing to present an issue that is  
2 within the authority of NDEP, that is brought up by their  
3 appeal?

4 COMMISSION CHAIRMAN DODGION: With respect to  
5 that, as I understand their appeals, having read this, I  
6 believe that they're complaining that the permit, as issued  
7 by the Division, does not adequately cover things such as  
8 odors, pests, and a bigger issue perhaps might be that the  
9 method or the methods to dispose of the effluent are not  
10 sufficiently defined, and therefore that the -- I might be  
11 adding a little bit here -- therefore that the sewer  
12 treatment plant can't stand without adequate methods for  
13 disposal of the effluent.

14 Those matters are certainly within the purview  
15 of the permit, and therefore within the purview of this  
16 panel to hear it.

17 COMMISSIONER RACKLEY: I agrees.

18 COMMISSIONER RICE: Concur.

19 COMMISSION CHAIRMAN DODGION: Your rebuttal to  
20 that, Ms. Hess?

21 MS. HESS: No, I just needed a ruling. Thank  
22 you very much. So I will now do my opening.

23 This is an appeal of the Douglas County North  
24 Valley Water treatment Facility's permit for a renewal,  
25 and, as well, a modification of the permit was issued by

1 NDEP. It has to do with an expansion of a plant as well,  
2 because of the increased population that is out there in  
3 Douglas County. They're asking and ask for a million  
4 gallons per day -- an increase to a million gallons per day  
5 discharge.

6 There -- there's a pond that is being worked  
7 on, I understand, that is within the location of the  
8 Appellants in this particular housing tract. The same  
9 concerns have been addressed at a hearing. The same  
10 concerns have been addressed in a Notice of Decision by  
11 NDEP, and, as well, NDEP has listened to their concerns and  
12 addressed their concerns.

13 My client did everything properly by the NRS's  
14 and the NAC's, and therefore we're ready to proceed when  
15 necessary, when the Commission so desires, to show that my  
16 client certainly addressed the concerns to the best that  
17 they possibly could under the laws of the State of Nevada,  
18 and they have done everything properly. Thank you.

19 COMMISSION CHAIRMAN DODGION: Thank you.  
20 Opening statement by Appellants?

21 MR. NOLTE: Basically, we don't argue with the  
22 process. We argue with the fact that we don't think the  
23 process generated a sufficient information to actually  
24 address our questions. There was -- a lot of the response  
25 to our comments were vague, and we still have the same

1 questions. We think that the process, in and of itself,  
2 that took, a -- you know, a complete environmental process  
3 and cut it in two, and governed it by two permits, is  
4 defective in that one can't exist without the other. And  
5 our feeling is that both permits should have been brought  
6 to the floor and either approved simultaneously together or  
7 not approved at all, because the linkage, the  
8 dependencies -- each dependency there is -- while the  
9 actual language of the permits may seem to indicate that  
10 they stand alone, practically speaking, the process says  
11 they don't.

12 COMMISSION CHAIRMAN DODGION: All right.

13 Other --

14 MR. NOLTE: No, I'm speaking for both.

15 COMMISSION CHAIRMAN DODGION: Thank you very  
16 much.

17 Opening statement by the Intervener?

18 MR. MORRIS: Thank you, Mr. Chairman. I  
19 appreciate the opportunity to be here. Douglas County is  
20 the permittee on the North Valley Wastewater Treatment  
21 Plant. The plant basically requires expansion because of  
22 growth in the area. Douglas County has properly completed  
23 all the local government approvals, including a hearing in  
24 front of the Planning Commission, and a hearing in front of  
25 the Board of County Commission, as an appeal of that

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1 Special Use Permit for the expansion of the plant. That  
2 approval has not been contested. I do have a copy of it

3 that I probably will introduce later.

4           The main reason that Douglas County wishes to  
5 attend this appeal is because of state law requirements.  
6 There -- through the process and at the hearing below  
7 and -- and there's some comments and talking points that  
8 are here, basically address things that are outside of the  
9 purview of this Commission. One of them was the -- what I  
10 just talked about, the county amendment of the Special Use  
11 Permit. I believe that that is something really outside  
12 the purview. It was done properly. We can present  
13 evidence to show that. The county procurement process for  
14 the expansion is another thing that has been complained  
15 about, and again I think that is something that's clearly  
16 outside of NAC 455A.

17           There have been complaints about the effect on  
18 property values to adjacent lots. That, again, is  
19 something I think is outside the jurisdiction of this  
20 appeal. And close to what was addressed by the panel, I  
21 believe the design of the method of the waste water  
22 treatment and disposal are again up to the County and not  
23 really within -- within the purview of this panel.

24           And, again, I have to be careful to say the  
25 design of the method. It's not the method, itself. The

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1 design of the method, I think is up to the County. If it  
2 meets the state requirements, then it's allowed to go  
3 forward.

4           And then briefly on the appeal, I think the  
5 appeal talks about anticipated problems. They're

6 speculating that there may be problems. And I think that  
7 the best way to deal with that is to have plans such as the  
8 O&M Manual that addresses those specific speculative  
9 problems and have a process in place to deal with that.  
10 And I think that staff has written a comprehensive review  
11 of the permit, and I think it's properly been issued.  
12 Thank you.

13 COMMISSION CHAIRMAN DODGION: Thank you. All  
14 right. Back to the State for presentation of your case in  
15 chief.

16 MS. HESS: Yes. I'd call Alan Tinney to the  
17 stand, please. Alan Tinney.

18 COMMISSION CHAIRMAN DODGION: will you swear  
19 Mr. Tinney in, please?

20 MS. REYNOLDS: Yes. Raise your right hand.

21  
22 ALAN TINNEY,  
23 having been previously duly sworn,  
24 was examined and testified as follows:  
25 THE WITNESS: I do.

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1 DIRECT EXAMINATION  
2 BY MS. HESS:  
3 Q For the record, would you spell -- please spell  
4 your first and last name?  
5 A Alan, A-l-a-n, Tinney, T-i-n-n-e-y.  
6 Q Thank you, Mr. Tinney.  
7 where do you work?  
8 A The Nevada Division Environmental Protection,

9 of Bureau of Water Pollution Control.  
10 Q And how long have you worked there?  
11 A I've worked at NDEP for five years, and the  
12 Bureau for four years.  
13 Q And what has been -- what is your position and  
14 your title?  
15 A I'm the current Supervisor of the Bureau of  
16 Water Pollution Control.  
17 Q What does that involve?  
18 A That involves all applicable regulations of  
19 445A, statutes of 445A to issue permits to any discharges  
20 in the State of Nevada.  
21 Q What does NDEP not have the authority to  
22 consider in a discharge permit --  
23 A When --  
24 Q -- whether to issue a discharge permit?  
25 A When we issue a permit, we have no authority

15

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1 over property values, land use, and esthetics, and so  
2 forth.  
3 Q And I'd ask that you speak up a little bit for  
4 the Court Reporter. And if you have a problem with me, let  
5 me know.  
6 A I can move closer to you, too.  
7 THE REPORTER: Just speak up.  
8 THE WITNESS: Okay.  
9 THE REPORTER: Because he's recording, and we  
10 want to make sure both of us get it.  
11 BY MS. HESS:

10-15-07\_minutes.txt  
12 Q Do you supervise Mr. Hogan?  
13 A Yes, I do.  
14 (Exhibit No. 1 marked for  
15 Identification)  
16 BY MS. HESS:  
17 Q Now, I would ask that you to turn to Exhibit 1.  
18 A (Witness complying).  
19 Q Have you seen that document before?  
20 A Yes.  
21 Q And what is the date of that document?  
22 A March 29th, 2007.  
23 Q And who is it from?  
24 A It's from Jim Hogan, NDEP, Bureau of Water  
25 Pollution Control, Nevada Division of Environmental

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1 Protection.  
2 Q Now, it's to Mr. Hogan?  
3 A I'm sorry. It's to Mr. Hogan from -- I'm  
4 sorry -- the Community Development -- Douglas County  
5 Community Development.  
6 Q Now, they're hoping for a renewal and an  
7 issuance of permit, and how much flow are they asking for?  
8 A A change from .5 million gallons per day to  
9 1 million gallons per day.  
10 (Exhibit No. 2 marked for  
11 Identification)  
12 BY MS. HESS:  
13 Q Now, is -- if you would again turn to -- to the  
14 next exhibit, Exhibit 2, please.

10-15-07\_minutes.txt  
15 A (witness complying).  
16 Q what is this particular document?  
17 A This is NDEP's Groundwater Discharge Permit  
18 Application.  
19 Q And do you tell the Applicant what to ask for  
20 in a -- when they fill this out?  
21 A No.  
22 Q Now, this is a form provided by the Department;  
23 is that correct?  
24 A Yes.  
25 Q what is in the left-hand -- the right-hand

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1 corner, please?  
2 A In the upper right-hand corner --  
3 Q Yes.  
4 A -- is the receipt of the amount of \$4,000 by a  
5 check to the Bureau of Water Pollution Control.  
6 Q Was this done 180 days in advance to the  
7 increased discharge?  
8 A Yes.  
9 Q How much are the discharging -- were they  
10 discharging at the time that this permit was, in fact, put  
11 in for a renewal and modification?  
12 A Prior to this renewal and modification is a  
13 discharge of .45 million gallons per day, maximum.  
14 Q Did you make a determination if this -- if this  
15 application was complete?  
16 A Yes, we did.  
17 Q And what did you determine?

18           A     We determined to -- to issue the permit. We  
19 determined that the permit application was -- was a good  
20 permit application, and it met all the qualifications, and  
21 we determined to go to public notice with the permit and  
22 also public hearing.

23           Q     Now, I have a question for you. What were  
24 they -- what is proposed in the -- in the application to do  
25 with the discharge, increased discharge?

18

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1           A     They will be going to -- up to four or five  
2 locations -- I have to go and look for that -- five  
3 locations. One would be an effluent pond. One would be  
4 the wetlands. One would be a Rapid Infiltration Basin.  
5 One would be for on-site use for construction water, reused  
6 water on their site, and another one would be possible  
7 reuse for at Bently's tract, property.

8           Q     Is that called the current tract -- Bently's  
9 Kirman Tract?

10          A     That's correct.

11          Q     And this is located on page on 3; is it not, of  
12 the application?

13          A     That is correct. The wetlands, the Rapid  
14 Infiltration Basin, and the Bently Kirman Tract is on age 3  
15 of the Exhibit 2.

16          Q     Now, who signed this particular application?

17          A     The signature was Carl Ruschmeyer, County  
18 Engineer for the County of Douglas.

19          Q     And is there a certification on there that the  
20 person signing is familiar with the information provided to

21 the best of his or her knowledge and belief, and is  
22 complete and accurate?

23 A That is correct.

24 Q And where is that located?

25 A Right above the signature of Carl Ruschmeyer.

□

1 (Exhibit No. 3a marked for  
2 Identification)

3 BY MS. HESS:

4 Q Would you please turn to Exhibit 3A?

5 A (Witness complying).

6 Q Do you recall this particular document?

7 A Yes.

8 Q And would you tell me what it is?

9 A This is a letter from NDEP to Carl Ruschmeyer,  
10 Douglas County, regarding North Valley Wastewater Treatment  
11 Facility, letting him know that we're putting -- for a  
12 three-day public notice, and also there was a significant  
13 degree of public interest expressed, and that a public  
14 hearing will also be requested.

15 Q And do you have the dates for getting the  
16 public hearing notices that's been given to them?

17 A Public notice went in the Nevada Appeal on the  
18 28th, and also for the public hearing for August 1st.

19 Q And does it have a location for that particular  
20 hearing?

21 A Yes, it does, the Legislative Building, 401  
22 South Carson Street, Carson City, Nevada.

23 Q Now, what was enclosed with this particular

24 page 09? what was enclosed with this particular letter?

25 A The enclosures sent to Mr. Ruschmeyer was a

20

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1 draft permit, a fact sheet, and copy the public notice.

2 Q And how many people received a copy of this  
3 particular letter?

4 A There was four cc's.

5 (Exhibit No. 3b marked for  
6 Identification)

7 BY MS. HESS:

8 Q Now, if I could have you turn to Exhibit 3b,  
9 please?

10 A (Witness complying).

11 Q Have you seen this document before?

12 A Yes.

13 Q Who prepared this document?

14 A NDEP.

15 Q And what is this document?

16 A This is the Notice of Proposed Action and  
17 Notice -- also the Notice of Public Hearing.

18 Q When was this published?

19 A This was published on June -- let me back up to  
20 the date here, June 28th, 2007.

21 Q And also, as well, who were the persons that  
22 received a copy of this public notice?

23 A The public notice was placed into the Nevada  
24 Appeal. Also NDEP keeps a list of people who want copies  
25 of -- a list of people who want copies of all our proposed

21

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1 actions, and also it was placed on the NDEP website.

2 Q Now, I want to ask you a few questions about  
3 this. Did the Director decide to hold a hearing or was  
4 there a petition that was received for a public hearing?

5 A There was a petition received also. We  
6 determined that there was significant degree of public  
7 interest.

8 Q Does it have the name and the address of the  
9 Department?

10 A Yes, it does.

11 Q And where is that located?

12 A It's located on page 10 of Exhibit 3b, about  
13 two-thirds the way down on the page.

14 Q And does it have the name and address of the  
15 Applicant?

16 A Yes, it does.

17 Q And where is that?

18 A Also on page 10 of Exhibit 3b, at the top of  
19 the page.

20 Q Does it have a reference to the -- to the  
21 permit application and identification number?

22 A Does it have a reference -- it has a reference  
23 to Modified Groundwater Discharge Permit NEV60025.

24 Q And does it describe the purpose of the  
25 hearing?

1 A Yes, it does.

2 MS. HESS: Let me take a look through the  
3 statutes here for just a minute.

4 Q Is there listed in there a tentative decision  
5 on whether to issue or not?

6 A Yes, there is.

7 Q And what is that?

8 A It's on -- also on page 10 of 3b, middle of the  
9 page, the Division has made a tentative determination to  
10 issue renew modifications.

11 Q And does it have a 30-day period for written  
12 comments?

13 A Yes, it does.

14 Q And where is that located?

15 A It's -- it's also on page 10 of Exhibit 3b, a  
16 little bit below the middle of the page, 30 days of the  
17 date of the newspaper publication.

18 Q And it has the date of the public hearing,  
19 correct?

20 A That's correct. Wednesday, August 1st, 2007.

21 Q And it has the location --

22 A Yes, it does.

23 Q -- of the hearing?

24 A Top of page 11.

25 Q Okay. Thank you.

□

1 (Exhibit No. 3c marked for  
2 Identification)

3 BY MS. HESS:

4 Q Now, if you would turn to Exhibit 3c,  
Page 21

5 Mr. Tinney, what is this?  
6 A This is the fact sheet.  
7 Q And who was that prepared by?  
8 A NDEP.  
9 Q And why do they prepare a fact sheet?  
10 A It's pursuant to Nevada Administrative Code.  
11 Q Does it mention that a public hearing is going  
12 to be held?  
13 A Yes.  
14 Q And where is that located?  
15 A Page 20 of Exhibit 3c.  
16 Q Bate stamp page 20. Does it discuss the rate  
17 or frequency of the proposed discharge?  
18 A Yes, it does.  
19 Q And where is that located?  
20 A That would be located -- page 13 in the general  
21 description.  
22 Q Where is the 30-day comment period that's  
23 included in the fact sheet?  
24 A It's on page 20 of Exhibit 3c, 30 days in  
25 writing.

□

1 Q Does it mention any other -- any other -- does  
2 it mention the hearing that's supposed to take place?  
3 A That's correct.  
4 Q And the time?  
5 A That's correct.  
6 Q Does it say who may come in and give testimony  
7 on that day?

8 A That's correct.  
9 Q And who is that?  
10 A The public.  
11 Q Where was this fact sheet located at NDEP? How  
12 could somebody get a copy of this?  
13 A Two locations. It was in the file within the  
14 Bureau of Pollution Control. It was also on the NDEP's  
15 website.  
16 (Exhibit No. 3d marked for  
17 Identification)  
18 BY MS. HESS:  
19 Q Thank you. Would you take a turn to Exhibit  
20 3d, Mr. Tinney? Could you tell me what this particular  
21 document is?  
22 A That's the draft permit.  
23 Q And why do you prepare a draft permit?  
24 A It's in accordance to provisions within the  
25 Nevada Administrative Code.

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1 Q And was this prepared in advance of the public  
2 notice?  
3 A Yes, it was.  
4 Q Does it have the proposed effluent elimination?  
5 A Effluent limitations, yes, it does.  
6 Q And where is that?  
7 A That's on page 24 of Exhibit 3d.  
8 Q And where was this draft located?  
9 A This draft was located in the NDEP Bureau of  
10 water Pollution Control files.

11 Q And what are the hours that the NDEP is opened?

12 A 8:00 to 5:00, Monday through Friday.

13 (Exhibit No. 4 marked for

14 Identification)

15 BY MS. HESS:

16 Q Okay. If you would turn please to Exhibit 4, I

17 would ask you if you can identify the first two pages, page

18 three-oh -- I mean 36 and 37, date stamped.

19 A That is the public attendance record for the

20 hearing.

21 Q And when that was hearing? When was the --

22 A August 1st, 2007.

23 Q And I ask you to turn to page 36 and ask you

24 what is -- what is the -- what are the -- 38. I'm sorry,

25 38. What are the particular documents in there?

26

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□

1 A Those are three speaker request cards.

2 (Exhibit No. 5 marked for

3 Identification)

4 BY MS. HESS:

5 Q If you would turn to the next exhibit, which is

6 Exhibit 5?

7 A (Witness complying)

8 Q Are you aware of what this particular document

9 is?

10 A Yes.

11 Q And what is it?

12 A This is the certified copy of the hearing

13 transcribed.

14 Q And who spoke at the public hearing that were  
15 members of the public?

16 A Mr. Smith, Mr. Bennett, Mr. Nolte, Mister --  
17 sorry if I say the name wrong -- Haug --

18 MR. HAUG: Haug.

19 THE WITNESS: And Ms. Larsen.

20 (Exhibit No. 6 marked for  
21 Identification)

22 BY MS. HESS:

23 Q Also, as well, would you turn to Exhibit 6, and  
24 would you tell me what this particular document is?

25 A This is also a copy of the transcribed -- of

27  
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1 the August 1st audio recordings with the people who  
2 actually attended it from NDEP. We saw a couple of errors,  
3 so we corrected the errors, and you can see within the  
4 document where we thought some corrections were.

5 Q Such as "fact sheet" instead of "back sheet"?

6 A Exactly.

7 Q Okay. Thank you.

8 A And "vectors" instead of "factors."

9 (Exhibit No. 7 marked for  
10 Identification)

11 BY MS. HESS:

12 Q Would you please turn to Exhibit 7?

13 A (Witness complying).

14 Q Now, what is that document?

15 A This was the Power Point presentation given by  
16 NDEP at the August 1st, public hearing.

17 MS. HESS: And I would submit to the Board that  
18 this was added because there was a mention in the  
19 transcript that the appellants wanted this particular  
20 document to be added, and so that was why this is in here.

21 Q I would ask that you turn to page 139. Could  
22 you tell me what this is a picture of?

23 A This is a picture of the Minden-Gardnerville  
24 District effluent on Muller Lane.

25 Q And then also, as well, would you turn to page

28  
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1 140, and tell me what that is?

2 A This is also a picture of the same pond from a  
3 different view.

4 Q And then also, as well, this has -- this is not  
5 the pond that we're in here about with the Appellant; is  
6 it?

7 A No.

8 Q would you please tell me what is on page 141,  
9 what that is?

10 A One-forty --

11 Q 141.

12 A 141? The Bently Effluent Holding Basin and  
13 Construction, 2001.

14 Q And is there anything unusual about that  
15 photograph?

16 A It's -- the photograph is -- is the holding  
17 basins being lined.

18 Q And what is 142?

19 A 142 is the -- the Bently Effluent Holding

20 Pond -- I'm not sure what date later -- holding effluent.

21 (Exhibit No. 8 marked for

22 Identification)

23 BY MS. HESS:

24 Q Now, would you please turn to Exhibit 8,

25 please?

29

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1 A (Witness complying).

2 Q Would you mind telling me what this particular  
3 document is?

4 A This is a document from NDEP to Carl  
5 Ruschmeyer, Douglas County, regarding the North Valley  
6 Wastewater Treatment Facility, dated August 28th, 2007,  
7 with the Renewal with Modifications of the Nevada Discharge  
8 Permit NEV60025 for the North Valley Wastewater Treatment  
9 Facility.

10 Q And how many officials received copies of this  
11 particular document? If you could look on page 144, and  
12 then I'll ask you another question later.

13 A We had five Douglas County officials.

14 Q And then how many members of the public  
15 received notice?

16 A I count 24.

17 Q And was there anything they received, as well?

18 A The 24 additional people received the Notice of  
19 Decision enclosed with this letter.

20 (Exhibit No. 9 marked for

21 Identification)

22 BY MS. HESS:

23 Q I'd ask you to turn to Exhibit 9, and ask you  
24 to tell me what this is.

25 A This is the Notice of Decision.

30

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1 Q And what permit is this regarding?

2 A Permit Number NEV60025.

3 Q And what did you respond to in the Notice of  
4 Decision?

5 A We responded to all comments we received during  
6 public notice and also comments received during public  
7 hearing.

8 Q I notice that -- would you -- where is  
9 Mr. Bennett's information in the letter?

10 A Where is Mr. Bennett's information?

11 Q Yes. Where is the responses to Mr. Bennett?  
12 where does that start?

13 A It starts on page 146 of the Exhibit 9.

14 Q Now, would you take a look on page 152, and who  
15 is being responded to on that particular document, on that  
16 page?

17 A On page 152, same exhibit, middle of the page  
18 is an email from John Haug.

19 Q How about his letter? Did you respond to that?

20 A Also bottom of the page a letter from Mr. John  
21 Haug.

22 Q Okay. would you turn to page 159, and I would  
23 ask you if you responded to a letter from Mr. John Nolte?

24 A Yes, we did, middle of the page.

25 Q And how many pages was devoted to that?

1 A Starting on -- page 159, 160, 161 -- so, what,  
2 three?

3 Q And then I would ask you to look on 162 and ask  
4 you whose public comments you responded to or NDEP  
5 responded to?

6 A Top of the page on page 162 of the same exhibit  
7 it was comments from Steve Bennett, right below that  
8 comments from John Nolte, and right below that comments  
9 from John Haug.

10 (Exhibit No. 10 marked for  
11 Identification)

12 BY MS. HESS:

13 Q Now, if I could have you turn to the next  
14 exhibit, which is Exhibit 10, and have you seen this  
15 document before?

16 A Yes.

17 Q And what is this document?

18 A This is the final permit.

19 Q And does the duration of this permit not exceed  
20 five years?

21 A That's correct.

22 Q Is there monitoring and reporting that is in  
23 this permit?

24 A Yes, there is.

25 Q Does it discuss, as well, the flow in gallons

1 per day?

2 A Yes, it does.

3 Q Now, with the permit, were there other things  
4 that you -- no, strike that.

5 MS. HESS: At this time, before I continue with  
6 the questions, I'd like to move to have the exhibits  
7 introduced into Evidence.

8 COMMISSION CHAIRMAN DODGION: Any objections?

9 MR. NOLTE: I have no objections.

10 COMMISSION CHAIRMAN DODGION: Intervener?

11 MR. MORRIS: No objections.

12 COMMISSION CHAIRMAN DODGION: All right.

13 (Exhibit Nos. 1 through 10 received into  
14 Evidence)

15 MS. HESS: All right. Then I'll continue --  
16 thank you. I'll continue with my -- with my examination  
17 here.

18 Q Did you consider anything else having to do  
19 with that particular permit before you go on?

20 A Well, we considered all the information we  
21 received during public notice and public hearing, to the  
22 best we could.

23 Q And did you consider any parts of the law?

24 A We considered all the facts of NAC 445A, NRS  
25 445A.

1 Q Now, I would like to go over some of the  
2 petition issues with you, as well, if I may.

3 If -- I think that, by comparison,  
4 Mr. Bennett's with -- with Carl Larsen's, they are pretty  
5 much alike, and, as well, there's only one thing that's  
6 added to Mr. Nolte. So let me just address this, please.

7 They are -- the Appellants are saying that the  
8 provisions of the permit are insufficiently detailed to  
9 assure nearby residents that the effect of odors will be  
10 properly handled.

11 Of what do you say in response to that?

12 A Our permit is -- is -- is -- is strictly  
13 both -- let me fix my binder here for a second. It's  
14 coming apart on me.

15 Q It's falling apart?

16 A Our permit is specifically for water pollution  
17 control, but we do have some statements in our permits that  
18 deal with odors and vectors.

19 Q And what is going to be done to handle the  
20 odors?

21 A The odors will be handled in multiple ways.  
22 Number one, when the effluent pond is built, it will have  
23 some solar mixers that we worked with Douglas County to  
24 install. Also in Phase II there will be some odor controls  
25 done at the headworks, and they've also agreed that if the

□

1 solar power mixers are not sufficient, that we will add  
2 some more mixers into the ponds at a later date.

3 Q Would you define for the record what the  
4 headworks are?

5 A Headworks is the beginning of treatment plant,

6 where all the collection lines come into it.

7 Q Now, there's also an mention in some handouts.  
8 Did NDEP require that -- that the plant be modified or was  
9 that the Applicant's decision?

10 A That was placed on the Applicant's application.

11 Q Now, what have you -- what do you have to say  
12 about pests, such as mosquitos, that the Appellants are  
13 complaining about?

14 A We have a comment within our -- within our  
15 permit that says they have to control vectors, but we also,  
16 again, worked with Douglas County to place this area within  
17 the Douglas County Mosquito Abatement Group.

18 Q And why did do you that?

19 A We listened to the public, and we thought  
20 maybe, you know, if there's a problem, we can jump ahead of  
21 it, try to put some kind of work on it -- at the front.

22 Q Now, it states in here that the permit leaves  
23 the matters, such as pests and odors, for further  
24 submission. What do you have to say about that?

25 A There's -- there's two -- there's two lines

□

1 within the permit that says that they have to comply with  
2 that at the issuance of the permit.

3 But there's also additional lines within the  
4 scheduled compliance that requested -- requires Douglas  
5 County to submit an O&M Manual, I believe. I have to go  
6 back and look, but after the permit is issued, so many days  
7 after the permit is issued, that they must submit an O&M  
8 Manual that tells us how they're going to comply with odors

9 and mosquitos.

10 Q Have you addressed -- has the odors and pests  
11 ever been addressed before with these Appellants? Has NDEP  
12 ever addressed those issues before?

13 A There was no -- there's no -- nothing on record  
14 that we have.

15 Q I meant in this particular hearing, in this.

16 A Oh.

17 Q In the particular case.

18 A That's correct. We addressed it during public  
19 hearing and the Notice of Decision.

20 Q Now, they also -- the Appellants are saying  
21 that they were denied an opportunity to be fully informed  
22 on these future conditions because the O&M Manual was going  
23 to be submitted at a later time. Could you respond to  
24 that, please?

25 A All of Bureau of Pollution Control, NDEP's

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1 records are public information, and at any time, once those  
2 dates and once that information is submitted, they can get  
3 copies, or come down and review them.

4 Q As well, have you addressed that particular  
5 issue with them before?

6 A That's correct.

7 Q And --

8 A During --

9 Q Where was that?

10 A During the public hearing and also the Notice  
11 of Decision.

12 Q Now, they're also talking about an adjacent  
13 private party, and that could be, I suppose, one or two,  
14 but have you -- what do you have to say about -- they're  
15 talking about it depends upon an application form and an  
16 amendment of an Effluent Management Plan by an adjacent  
17 property owner.

18 A That would be, I'm sure, the Bently Kirman  
19 Tract Permit, and that is one of five locations they can go  
20 with their effluent.

21 Q And where else can they go?

22 A The four others, which would be the wetlands,  
23 on-site construction reuse water, the effluent pond, or the  
24 future Rapid Infiltration Basin.

25 Q And how unusual is it to do a permit and not to

□

1 do the -- why were the permits separated?

2 A Well, it's two complete different applications  
3 and applicants. This is an applicant that is treating the  
4 waste water, and they've requested five locations that they  
5 possibly can go to, and one would possibly be the Kirman  
6 Tract. That would be a separate permit.

7 Q And was that Kirman Tract Permit handled any  
8 differently than the one that you handled in the NDEP  
9 permits?

10 A Oh, absolutely not. There was public notice,  
11 and it was handled exactly the same way.

12 Q Now, as well, the Appellants -- and have you  
13 addressed that before any place? Has NDEP addressed that  
14 before with the Appellants?

15 A Oh, yes.  
16 Q And when that was?  
17 A During the public hearing and also the Notice  
18 of Decision.  
19 Q And it also says that the effluent storage  
20 reservoir is -- and associated piping to the private party  
21 is predicated on approval of the Kirman Permit. Is there  
22 anything unusual about that?  
23 A No. We require any -- any drawings or any  
24 engineering specifications to be submitted and approved  
25 prior to construction, and all that would be public

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1 information.  
2 Q And how is the piping going?  
3 A Pardon?  
4 Q How is the piping going at this particular  
5 time, Mr. Tinney?  
6 A I don't think that they're putting in any  
7 piping right now.  
8 Q Okay.  
9 A I think they're starting some effluent pond.  
10 Q It says that these -- once again, that these  
11 permits are improperly disconnected, such as the Bently and  
12 the Douglas County. And, again, what is your response to  
13 that? That is also Appellants' contention.  
14 A You know, that would just be one of five  
15 locations that they could probably go with their effluent.  
16 It will solely depend on Bently's permit being submitted,  
17 public noticed, approved, going through the whole process

18 before they can go there.

19 Q Now, it states also in there that the final  
20 permit has not been available for review for the  
21 Appellants. What is your response to that?

22 A Once again, all of Bureau of Water Pollution  
23 Control, NDEP's records are open for public review.  
24 They're in the file.

25 Q They also state in here that the -- the fact

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1 sheet was not available. What is your response to that?

2 A The fact sheet was sent out during public  
3 notice, and has been on the website since the public  
4 notice, and still is on the website.

5 Q Now, there is -- there is one additional thing  
6 that is mentioned in Mr. Nolte's that isn't mentioned any  
7 place else, and it talks about desert habitat. What is  
8 your response to -- about desert habitat?

9 A No, we just don't have authority on the land  
10 use, and esthetics, and property values, and locations of  
11 treatment plants.

12 Q And, as well, in the handout that I received  
13 today, it talks about -- that the plant expansion was  
14 required by NDEP. What is your comment about that?

15 A I don't believe we require any expansions.

16 MS. HESS: Let me just take a look at my notes  
17 and --

18 (Proceedings paused briefly)

19 BY MS. HESS:

20 Q Now, in this particular process for this

21 Application, what did you comply with, Mr. Tenny?

22 A We complied with all of the applicable NAC or  
23 Nevada Administrative Code 445A and the statutes of 445A.

24 Q And did you do anything above and beyond that?

25 A We believe so.

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1 Q And what was that?

2 A We believe that we worked with Douglas County  
3 to add additional mixers in the ponds. We also worked with  
4 Douglas County to place this area within their Mosquito  
5 Abatement Zone, and we also worked with Douglas County that  
6 if the mixers within the effluent the pond is not  
7 sufficient, that future mixers would be placed in there.

8 Q And one more time, why did you do that?

9 A We heard the public, during public notice and  
10 public hearing, that that was some of their concerns. So  
11 we sat down with Douglas County, and we all worked together  
12 to try to get the best solution we could.

13 MS. HESS: Okay. Hold on just a minute.

14 (Discussion off the record)

15 MS. HESS: I have no further questions of this  
16 witness. I'd hand him over for cross.

17 COMMISSION CHAIRMAN DODGION: Mr. Nolte?

18 MR. NOLTE: Okay.

19

20 CROSS EXAMINATION

21 BY MR. NOLTE:

22 Q Let's go back to -- let's see. It was the  
23 authorization to discharge, page 24. I'm sorry. What's

24 your name again? I'm --

25 A Alan.

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1 Q Alan?

2 A No problem.

3 Q Okay.

4 A Twenty-four?

5 Q Alan, the authorization to discharge mentioned  
6 five outflow locations. The -- I think Outflow Location  
7 Number 2, Incline Village, do you know what the present  
8 capacity is there?

9 A Do I? No, I don't know.

10 Q Okay. The report says that right now we're  
11 discharging somewhere on the order of about 300,000 gallons  
12 per day.

13 A (Witness nods head.)

14 Q Do you know where that 300,000 gallons per day  
15 is going?

16 A It's supposed to go to the wetlands.

17 Q Is it mostly or almost all going into the  
18 wetlands?

19 A Almost all going into the wetlands.

20 Q Now, the holding basin is another location?

21 A That's correct.

22 Q At a million gallons per day of effluent  
23 production how long -- do you know how long that holding  
24 basin would be suitable as an outflow location?

25 A No, I do not. I don't have that calculation.

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1 Q Would six months probably be reasonable, five  
2 months?

3 A It's a thirty -- I can tell you the size of it.  
4 It's a 39-acre holding basin, 14-foot deep.

5 Q Okay. The Outflow Location Number 3 is a Rapid  
6 Infiltration Basin?

7 A Correct.

8 Q Am I correct in saying that the information  
9 provided on the permit was insufficient at the time for you  
10 to grant them the permission to actually use that basin  
11 under any circumstances other than as an experimental  
12 basin?

13 A It's a pilot study.

14 Q It's a pilot study?

15 A That's correct.

16 Q That pilot study -- for instance, if this basin  
17 fails to provide the necessary filtration to the secondary  
18 effluent, will that basin be able to be used as a location  
19 for disposal?

20 A If the pilot study shows that there's some  
21 issues with it, in the future it will be shut down. That's  
22 correct.

23 Q So then we also have the outflow to on-site  
24 landscape reuse areas and dust control construction. Do  
25 you know how much outflow is going there?

1 A No, I do not.

2 Q Is it significant, in your professional  
3 opinion?

4 A You know, they're constructing a lot of land,  
5 and there's going to be a lot much dust control. So  
6 probably maybe upfront it helps a little bit. I don't know  
7 what "significant" means.

8 Q But long term, is this a viable outflow  
9 location for a significant portion of the storage?

10 A well, it's available outflow, but it's probably  
11 not a high-end use.

12 Q would you effectively say that in the event  
13 that the North Valley Wastewater Treatment Facility decides  
14 to discontinue their contract with Incline Village, that  
15 eventually the outflow is going to go into the holding  
16 basin, and thereafter either into the Rapid Infiltration  
17 Basin in conjunction with the Bently -- Bently Kirman  
18 Tract?

19 MS. HESS: Objection. It calls for  
20 speculation.

21 COMMISSION CHAIRMAN DODGION: I think that  
22 Mr. Tinney's qualified to speculate a little bit about  
23 this.

24 THE WITNESS: If the wetlands disappears, if  
25 Incline Village stops the wetlands, then the major flow

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1 should probably go into the Rapid Infiltration Effluent  
2 Holding Basin or to a future Kirman Tract.

3 BY MR. NOLTE:

4 Q So the holding basin -- let me ask you this:

5 Does the holding basin have a finite limit of outflow that  
6 it's able -- capable of receiving?

7 A Yes.

8 Q In effect, if the Rapid Infiltration Basin  
9 doesn't work out, and they reach the finite limit of the  
10 holding basin, where will that effluent go, assuming that  
11 the Bently Kirman Tract is permitted?

12 A If the Bently Kirman Tract is permitted, and  
13 they have the wetlands, and they've filled up their holding  
14 basins, and their R and B's not working, then it probably  
15 will end up at the Kirman Tract. I think I -- I think I  
16 caught your gist of your question.

17 Q So it's within -- entirely probable that there  
18 is a set of circumstances under which we would have a waste  
19 treatment facility that's discharging all of their effluent  
20 into the Bently Kirman Tract via the storage basin; is that  
21 correct?

22 A There is a possibility of that, yes.

23 Q Okay. Let's talk about the Bently Kirman  
24 Tract. Has that permit been applied for yet?

25 A Yes. For the renewal, yes.

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1 Q Has the public notice gone out on it yet?

2 A No.

3 Q The Bently Kirman Tract Permit, is it correct  
4 to say that the basis of that permit is an effluent  
5 management plan which is predicated on taking effluent from  
6 the holding basin at North Valley Wastewater Facility?

7 A If -- Bently Kirman Tract was issued a permit

8 to receive the effluent water from the -- effluent basin  
9 from the North Valley Wastewater Treatment Plant. They  
10 would have to -- they would be required to -- to submit an  
11 effluent management plan. That's correct.

12 Q Now, the effluent management plan deals -- I  
13 assume it deals with basically what happens to the effluent  
14 when it gets to the Bently Kirman Tract.

15 A It's --

16 Q Is that correct?

17 A Yes, it is. Yes, it describes the -- the  
18 beneficial use of effluent on a piece of property.

19 Q Is it true that the reason that they can  
20 discharge effluent openly onto the Bently Kirman Tract is  
21 because it will be used for irrigation, and the very crops  
22 that they are growing there would serve as a mechanism to  
23 extract some of the harmful elements in the water, for  
24 instance, nitrogen and phosphorous before it percolates  
25 down to the groundwater? Is that essentially the mechanism

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1 that allows that disposal?

2 MS. HESS: Objection. I object to the  
3 characterized term of "harmful."

4 COMMISSION CHAIRMAN DODGION: Change --

5 MR. NOLTE: Huh?

6 COMMISSION CHAIRMAN DODGION: Change the word  
7 "harmful" for me, please, and rephrase the question.

8 MR. NOLTE: All right.

9 COMMISSION CHAIRMAN DODGION: Or just leave it  
10 out.

11 MR. NOLTE: Well, let me -- let me rephrase the  
12 question then.

13 Q Is it true that Bently can receive this  
14 effluent and openly discharge it on the fields for  
15 irrigation purposes, because the crops, themselves, reduce  
16 the nitrates and the phosphorous in the action of growing?

17 A Well, Bently can't take it right now at all,  
18 because they have -- they're not permitted to take this  
19 additional flow amount at this point in time, and they  
20 won't be able to until we go out to public notice for that  
21 additional flow that Bently would have to request.

22 And so if that was all done, and we issued a  
23 permit for an additional amount, a certain amount of flow  
24 would go into Bently's sites for beneficial use to grow a  
25 crop, and -- and that -- that effluent management plan

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1 describes the type of crop and the type of uptake of  
2 nutrients. However, this plant is -- is -- is delivering a  
3 total nitrogen of below 10 to -- to wherever they would go.  
4 So it's a low nitrogen already, in value.

5 Q Well, let me ask you this. If Bently received  
6 that effluent, could they receive it without growing crops?

7 A No. It's got to be used for beneficial use.

8 Q So the crops do serve some purpose in the  
9 treatment of the effluent?

10 MS. HESS: Objection. This is an agronomist's  
11 kind of decision, which is certainly not Mr. Tinney's  
12 exercise.

13 COMMISSION CHAIRMAN DODGION: I think it's well  
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14 within the purview of the permit, and Mr. Tinney is  
15 certainly qualified to respond to it, or someone within the  
16 Division should be.

17 THE WITNESS: So please -- can he ask the  
18 question again, please?

19 BY MR. NOLTE:

20 Q What I'm saying is if -- since Bently cannot  
21 openly discharge the water without the crops, then the  
22 crops, themselves -- is it correct to say that they serve  
23 as a mechanism for reducing the amount of nitrates and  
24 phosphorous to that water so it can be discharged on that  
25 land?

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1 A It reduces the reduced nitrogen already,  
2 farther, and it also uptakes other nutrients.

3 Q Let me ask it another way. Without the crops,  
4 can they -- can Bently discharge that water onto their  
5 property?

6 A No.

7 Q If Bently receives this permit -- if all of the  
8 I's are dotted, T's are crossed, and Bently's permit is  
9 approved, a few years down the road -- mother nature is  
10 fickle -- if those crops fail during the growing season  
11 will Bently be allowed to continue his discharge the water  
12 onto that land?

13 A That will be described in the effluent  
14 management plan, any -- any possible, you know, actions  
15 along the way, and we would have to review that at the  
16 time.

17 Q So based on what you know now, if those crops  
18 failed in the growing season, and they had no other  
19 mechanism for discharging that water, would they be allowed  
20 to discharge that water openly onto the fields?

21 A I'm not sure how to answer that question.

22 COMMISSION CHAIRMAN DODGION: I think it's been  
23 asked and answered.

24 THE WITNESS: Yeah, I'm not sure where we are  
25 going with that.

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1 BY MR. NOLTE:

2 Q Okay. You mentioned the effluent management  
3 plan. Does that effluent management plan exist as of this  
4 date?

5 A If the -- from the flow from North Valley  
6 Wastewater Treatment Plant, the effluent management plan  
7 takeout flow does not exist. There's an effluent  
8 management plan in existence for the Bently Kirman Tract  
9 right now, but not taking flow from the North Valley  
10 Wastewater Treatment Plant.

11 Q So we really don't know -- there really is no  
12 effluent management plan that sufficiently describes how  
13 they will deal with the outflow from the North Valley  
14 Wastewater Treatment Facility?

15 A Not at this moment.

16 Q So is it safe to say that in the event there is  
17 a problem, if Bently is granted this thing, if there were a  
18 problem on their property, the answer to that problem would  
19 lie in the effluent management plan?

20           A     If there's a problem with the crops, it would  
21 lie in the effluent management plan.  If it's a problem  
22 with flow, it will lie within the North Valley Wastewater  
23 Treatment Plan System.

24           Q     That's -- we talked about a set of  
25 circumstances where it's possible, given that the County --

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1     or the North Valley Wastewater Treatment Plant, either  
2 chooses not to discharge effluent to Incline Valley or  
3 cannot, because of the passing of the Incline Valley, for  
4 whatever reason that there's a possibility, however remote,  
5 that all -- most of the -- a significant portion or most of  
6 the effluent would thereafter be discharged onto the Bently  
7 Kirman Tract.

8           Now, with that in mind, if there's a problem on  
9 Bently Kirman Tract, that's, you know, unable to be  
10 resolved even under the effluent management plan, is it  
11 correct to say that effluent is going to back up into the  
12 storage pond because there is no other significant site for  
13 disposal?

14           A     North Valley -- North -- Douglas County would  
15 have to deal with that flow problem at the time, if all of  
16 those things that you said happened.

17           Q     So would you say, then, that if those  
18 situations are possible, that this whole process is  
19 actually mutually dependent -- the process of discharging  
20 the effluent to the Kirman Tract and the process of them  
21 being able to successfully dispose on their tract, would  
22 you say there's a strong mutual dependence there?

23           A     I would say that there's a dependence on the  
24     Bently Kirman Tract taking the flow, but it's separated  
25     from a North Valley Wastewater Treatment Plant permit

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1     because they know that if they get to a certain point and  
2     they go to a flow, they've got to have some place to go  
3     with it. So they can't get there -- they won't be allowed  
4     to go there unless they have some place to -- to put that  
5     effluent.

6           And if something happens along the way with one  
7     of their -- any one of their effluent disposal allocations,  
8     they would have to deal with it at that moment in time, any  
9     of the places, all five of them.

10          Q     Is there anything in writing now that we can  
11     look at in this permit that's been -- that's been already  
12     approved to the North Valley Wastewater Treatment Facility  
13     which speaks to that -- that possibility that -- that  
14     those -- that those outflow locations would drop off to the  
15     point where they would have no place to put the effluent?

16          A     If their outfalls or their locations do not  
17     accept the flow, they will have -- they cannot discharge  
18     that amount of flow. The discharge location -- their  
19     discharge limits is based on being able to go some place  
20     with them. If they have no place to go with them, they  
21     can't discharge that amount.

22          Q     All right.

23          A     I'm not sure if that answers.

24          Q     No, that -- that answers it.

25                     So the North Valley Wastewater Treatment

1 Facility has asked for, you know, and been granted a permit  
2 to expand their facilities?

3 A That's correct.

4 Q And this is based on the fact that they have  
5 these five outflows?

6 A That's correct.

7 Q And I guess what I'm -- I want to say is that  
8 there are circumstances -- one of them is the outflow.  
9 Some of them are insignificant. One is a pilot basin.  
10 There's really -- would you agree that there's only really  
11 three viable outflow locations or outfall locations? The  
12 storage basin in Incline Village and the Bently Kirman  
13 Tract? Those are essentially the viable outfall locations;  
14 is that correct?

15 A Those are the ones that probably could take the  
16 most outflow.

17 Q Yeah. Okay.

18 A If that's answers --

19 Q I hate to beat this to death. You mentioned  
20 that when the treatment facility reaches its limits, the  
21 permit requires them to take measures. Are those measures  
22 actually described within the permit, or is it just a  
23 general statement requiring them that they cannot exceed  
24 those limits, and that -- that they have to take measures  
25 to ensure that they do -- don't?

1 A (Witness nods head.)

2 Q So we have no way of knowing how they're going  
3 to deal with that situation?

4 A The possibility -- the possibilities of  
5 situations we do -- we don't have a knowing that if A or B  
6 or 1 or 2 goes down or -- we don't have the language in  
7 there that talks about every possible situation.

8 Q So would that -- would that information most  
9 probably be located in the O&M Manual?

10 A That if something goes down, how will they  
11 treat it? Yeah, that might be a place to find it.

12 Q Can you say where else we might find those?

13 A You know, it's -- it's hard for us to guess at  
14 every possible location of -- every possible issue that  
15 might happen within this whole treatment scheme. If -- you  
16 know, the bottom line is: If they don't have a place to  
17 go, if they don't have a location to put effluent, they  
18 can't produce that effluent. They can't back it up in the  
19 hole, what's a whole health issue. They can't just -- you  
20 know, if they go anywhere beyond the five locations, it's a  
21 violation of the permits.

22 Q Does the -- I didn't see anything in the permit  
23 that speaks to the intention of waste -- of the waste water  
24 treatment facility plant to discontinue the use of  
25 discharge to the Incline Valley site. Is that required in

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1 your permit?

2 A No.

3 Q So if for economic reasons they choose to  
4 discontinue that conduct and not discharge to the Incline  
5 Village site, would that substantially require the permit  
6 to be reviewed?

7 A No, because they -- it's up to them. We've  
8 given them authority to go to wetlands, which is -- they're  
9 already going there. If they discontinue going to the  
10 wetlands -- you know, as long as they have a place to go  
11 with their total effluent, within the five locations, they  
12 can do that. It's totally up to them. They have authority  
13 to go to all five locations with whatever flow amount.

14 MR. NOLTE: I don't have any other questions.

15 COMMISSION CHAIRMAN DODGION: Does the County?  
16 Douglas County, do you --

17 MR. MORRIS: Just a few. Thank you,  
18 Mr. Chairman.

19

20 CROSS EXAMINATION

21 BY MR. MORRIS:

22 Q Now, I take it that the reason that the MGSD  
23 and Bently effluent ponds were included in the Power Point  
24 was to show that there are effluent ponds in the area that  
25 are working?

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1 A That's correct.

2 Q And from that experience do you know of any  
3 odor problems or mosquito problems from those two effluent  
4 ponds?

5 A What we understand there's none.

6 Q And you've said in some of your answers that  
7 there's an existing use of putting effluent on the Kirman  
8 Tract currently.

9 A I believe so, yes.

10 Q And that's from IVGID?

11 A That's from one of their other places they're  
12 permitted to take effluent from. It's not from North  
13 Valley.

14 Q So then -- so what Douglas County is suggesting  
15 is that they're probably going to use Kirman Tract instead  
16 of the current user?

17 A That's correct. Again that would be up to  
18 Bently, though.

19 Q And that would be under a separate permit from  
20 this one?

21 A That's correct.

22 Q And I have to apologize for not knowing all the  
23 technical requirements, but when Douglas County's North  
24 Valley Wastewater Treatment Plant gets to 85 percent of  
25 permanent flow, don't we have to advise NDEP and say we

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1 need to expand?

2 A It's -- that's based on -- it's kind of a  
3 trigger that we use that says that, "Hey, you're getting  
4 close to the upper amount, and that if you guys want to  
5 continue to grow," which is your decision --

6 Q Right.

7 A -- "then you need to probably do something."  
8 It's kind of a trigger saying, "we're getting close."

9 Q And -- I believe that's happened, or we're  
10 getting very close to it?

11 A I think you're about .3 or .45 of -- maybe a  
12 little higher than that -- .33 million gallons per day is  
13 what you're discharging right now.

14 Q Now, while I understand that the permit sets  
15 allowable places for discharge. It's basically up to  
16 Douglas County to decide where they're going to discharge.  
17 Then we come and modify the permit to ask if that's an  
18 appropriate place, from NDEP?

19 A That's correct.

20 Q So it's basically a choice of Douglas County,  
21 outside of this permit, where we discharge?

22 A As long as you're permitted to go there, that's  
23 correct.

24 Q And so while there are five discharge areas in  
25 the permit, Douglas County is not limited to those if they

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1 come back and request a change?

2 A That's correct. They could modify their  
3 permit.

4 Q And basically that's the County's obligation to  
5 follow through on that?

6 A That's correct.

7 Q And it's really not part of this permit?

8 A That's correct.

9 (Discussion off the record)

10 MR. MORRIS: Thank you.

11 COMMISSION CHAIRMAN DODGION: Questions of

12 Mr. Tinney? Ira?

13 COMMISSIONER RACKLEY: I have one.

14 COMMISSION CHAIRMAN DODGION: Okay.

15 COMMISSIONER RACKLEY: Mr. Tinney, in the  
16 existing plan is there an effluent storage pond on site?

17 THE WITNESS: No. There's a treatment pond on  
18 site, but not an effluent storage pond. The one they're  
19 building is an effluent storage pond.

20 COMMISSIONER RACKLEY: So the -- the 432.2,  
21 according to the fact sheet, pond is part of the next  
22 expansion.

23 THE WITNESS: That's part of what they're  
24 wanting to do right now. I think they've actually broke  
25 ground to do their 40-acre effluent holding pond.

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1 COMMISSIONER RACKLEY: Okay. Do you know -- is  
2 there a facility plan on this plat?

3 THE WITNESS: Yes, there is.

4 COMMISSIONER RACKLEY: And in the next --

5 THE WITNESS: well, they -- let me correct  
6 that, if you don't mind, Mr. Commissioner. They submitted  
7 with their letter on Exhibit 1, a preliminary design report  
8 that they submitted.

9 COMMISSIONER RACKLEY: Does that include any  
10 further -- any additional ponds?

11 THE WITNESS: Not at this point in time, no.  
12 Phase II will be additional ponds, an additional treatment  
13 pond, and also RIB, and also some headworks, which I  
14 described earlier, and some odor control.

15 COMMISSIONER RACKLEY: Okay. The timing in  
16 your preliminary design report, does it have a schedule of  
17 when the flow increase will happen? In other words, it  
18 goes from .3 to .5. How long will that take?

19 THE WITNESS: You know, I don't think I have a  
20 timing, but the permit requires them, that prior to any of  
21 construction of those, they have to submit total plans  
22 prior to construction, operation, and that's also in the  
23 permit under a footnote.

24 COMMISSIONER RACKLEY: And where are they in  
25 that process? what level of plans have you seen?

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1 THE WITNESS: we've only seen the first part of  
2 the pond plans --

3 COMMISSIONER RACKLEY: So it's in the very --

4 THE WITNESS: -- and 10 percent of everything  
5 else --

6 COMMISSIONER RACKLEY: All right.

7 THE WITNESS: -- of the preliminary design for  
8 it.

9 COMMISSIONER RACKLEY: Okay. The question was  
10 brought up about, you know, effluent discharge. I guess if  
11 everything else fell apart, and they didn't have any of the  
12 outfall Number 5, or Outfall Number 4, or -- I think it is,  
13 anyway -- if they could not go to the Kirman Tract, I guess  
14 you'd -- Douglas County would have to come back in and get  
15 some kind of revision or modification of the permit in  
16 order to handle that effluent.

17 THE WITNESS: whatever flow they treat to, they

18 will have to find a way to dispose of.

19 COMMISSIONER RACKLEY: Right. And that's their  
20 responsibility?

21 THE WITNESS: That is their responsibility.  
22 That's correct, and if they go overflow, or if they  
23 discharge to non-locations within the permit, then  
24 they're -- they're outside of the permit.

25 COMMISSIONER RACKLEY: And once the effluent

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1 leaves their plant, do they have an agreement, in essence,  
2 with Bently -- really Bently takes charge of that.

3 THE WITNESS: Once it hits their property line,  
4 that's correct.

5 COMMISSIONER RACKLEY: So they're really  
6 responsible for handling that and making sure that the soil  
7 structure, plant uptake, and everything is accounted for.

8 THE WITNESS: That's correct.

9 COMMISSIONER RACKLEY: And that's parts of the  
10 effluent management plan?

11 THE WITNESS: That would be a part of the  
12 effluent management plan.

13 COMMISSIONER RACKLEY: It's my experience that  
14 having a permit like this, with the expansion and effluent  
15 management plan separate are really common.

16 THE WITNESS: That's correct.

17 COMMISSIONER RACKLEY: So it's a fairly  
18 standard process, and --

19 THE WITNESS: Yeah. We can't have all permits  
20 tied together simultaneously, because a lot of plants go to

21 different locations all over the state, and we would have  
22 permits -- double, and triple, quadruple permits going out  
23 at the same time, and have to reopen permits that Kirman --  
24 Bently might not ever want this water.

25 COMMISSIONER RACKLEY: That's right. And I

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1 know from the effluent management plans that I've been  
2 associated with there's also some kind of seasonality to  
3 it.

4 THE WITNESS: That's correct.

5 COMMISSIONER RACKLEY: So there has to be some  
6 accommodation in there for the non-growing season, for  
7 example.

8 THE WITNESS: That's correct.

9 COMMISSIONER RACKLEY: And you'll see that in  
10 the --

11 THE WITNESS: Yes. They just requested the  
12 ability to go there. Bently's got to follow through. He  
13 might not ever put a permit application in to take the  
14 water, and it's their responsibility to use the other four  
15 for their total flow.

16 COMMISSIONER RACKLEY: I agree. No other  
17 questions.

18 COMMISSIONER RICE: I have a few. Does the NRS  
19 or NAC require NDEP to cover contingencies under the  
20 permit?

21 THE WITNESS: To cover what?

22 COMMISSIONER RICE: Contingencies.

23 THE WITNESS: Contingency requirements?

24 COMMISSIONER RICE: For example --

25 THE WITNESS: Not that I know of.

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1 COMMISSIONER RICE: -- if Bently falls through,  
2 you know, or if they're reaching their 85 percent, what are  
3 they going to do with the effluent?

4 THE WITNESS: Then they'll have to figure that  
5 out at that point. The permit just allows them to go to  
6 one of five locations. If they can't go there, for some  
7 reason, for whatever reason, they have to either modify  
8 their permit or lower their treatment ability. I mean, if  
9 they go over their flow, they have no place to put it,  
10 they're in violation of the permit. So that's the  
11 contingencies of over the flow.

12 And if they go to some place that's not within  
13 the permit, then they're also in violation of permit. So  
14 they will have to understand their permit and deal with it,  
15 what they've requested, what we've approved to do. They  
16 cannot go outside that.

17 COMMISSIONER RICE: Can you give me a timeframe  
18 when the permittee will have to have it submitted for O&M  
19 Manuals?

20 THE WITNESS: Yes, that's in the permit. Let  
21 me find that for you.

22 That would be in Exhibit 10, bottom of page 168  
23 and page 169. If you go to -- on page 169, c, "within 90  
24 days of the completion of the effluent holding basin the  
25 Permittee shall submit an updated O&M Manual prepared in

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1 accordance with guidance document TWS-2," which is on the  
2 Internet -- with minimum information, and that will be one,  
3 two -- one through six below that.

4 COMMISSIONER RICE: Is this a typical  
5 requirement of all permits?

6 THE WITNESS: Yes. Most treatment plants, it  
7 is required, an O&M Manual.

8 COMMISSIONER RICE: Can you tell me how the  
9 Department defines "objectionable"? How is that  
10 quantified?

11 THE WITNESS: You know, it just depends on --  
12 it is a waste water treatment plant. So that's why it's  
13 hard to describe "objectionable." Some people, their  
14 objectionableness is different than others. So we don't  
15 define it. It depends on -- we go out there. We send  
16 inspectors out there when we get notified that somebody is  
17 not liking the smell. We do send inspectors out there, and  
18 we do look at it. If the treatment plant is working  
19 correctly, then there's really not much they can do to the  
20 odor. If it's not working correctly, then we order them to  
21 fix whatever is not working correctly.

22 But it is a waste water treatment plant. It's  
23 hard to completely -- completely mask all odors. So that's  
24 why it's -- there is, you know, definable objectionable  
25 over time.

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1 COMMISSIONER RICE: And the last question: You  
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2 indicated that it would be placed with the Mosquito  
3 Abatement District.

4 THE WITNESS: Uh-huh.

5 COMMISSIONER RICE: Would you further describe  
6 the purpose for doing that, how you're hoping to accomplish  
7 the objective of making sure that the vectors are not an  
8 issue.

9 THE WITNESS: It's -- it's already within the  
10 District. We have them -- it's already in the District.  
11 So if there's any issues in the future, the Abatement  
12 District, through Douglas County, would have to go out  
13 there, and review, and see if there's mosquito issues. And  
14 they've already told us what kind of insecticide they would  
15 use. An insecticide they've used -- I think it was  
16 Halocide (phonetic). And then if there's adult, I think  
17 they would spray also some -- again, I forget, but it just  
18 makes the process quicker if there is a mosquito issue.

19 And so instead of, you know, them getting a  
20 phone call and saying, "Well, you're not in our district,  
21 we can't come out there and look," we've kind of assured  
22 that they're already within in the district, and that when  
23 the phone calls come in they go and look right away.

24 COMMISSIONER RICE: So the District will go out  
25 and look to verify whether there is a vector issue?

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1 THE WITNESS: If there's a mosquito issue.

2 COMMISSIONER RICE: And then the District  
3 will --

4 THE WITNESS: will spray accordingly, if  
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5 necessary.

6 COMMISSIONER RICE: All right. Thank you.

7 THE WITNESS: Because there's other stuff  
8 besides mosquitos that show up at some of these places.

9 COMMISSIONER RICE: That's all.

10 COMMISSION CHAIRMAN DODGION: I've got a couple  
11 questions, Alan. Getting back to the five outfalls --

12 THE WITNESS: Uh-huh.

13 COMMISSION CHAIRMAN DODGION: -- and the  
14 relationship to the capacity of the plant. Is there  
15 anything in the permit that specifies that if Bently  
16 doesn't sign off or apply for the use of that effluent,  
17 that that limits the capacity of the plant to a certain  
18 level?

19 THE WITNESS: No.

20 COMMISSION CHAIRMAN DODGION: Don't you think  
21 there should be? In other words, the capacity of the plant  
22 is -- you know, or the hole, if the headworks aren't big  
23 enough, you can't get the permitted gallons through there.  
24 If the discharge and the application site and the disposal  
25 sites aren't big enough, you can't get it. So if you don't

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1 have the capacity to dispose of that many gallons a day,  
2 then your capacity is not a million gallons a day. It's  
3 something less than, depending on what the capacity of the  
4 outflow of this exists is.

5 THE WITNESS: Yes. I understand your question,  
6 but there's --

7 COMMISSION CHAIRMAN DODGION: And that's --

8 THE WITNESS: -- nothing in the permit right  
9 now.

10 COMMISSION CHAIRMAN DODGION: Perhaps we're  
11 confused. I think you said you didn't know what the  
12 capacity of the various outfalls was.

13 THE WITNESS: No, not off the top of my head, I  
14 don't.

15 COMMISSION CHAIRMAN DODGION: But you --

16 THE WITNESS: There is --

17 COMMISSION CHAIRMAN DODGION: I believe --

18 THE WITNESS: I think --

19 COMMISSION CHAIRMAN DODGION: -- it should be  
20 specified in the permit, and that something in permit  
21 should also specify that if these outfalls are not  
22 available, that the capacity of the plant is reduced  
23 accordingly, and that the County then does not generate  
24 more effluent than they have capacity to physically dispose  
25 of.

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1 THE WITNESS: I think there's inherent spot to  
2 that in the permit, but I'm not sure if they're  
3 specifically exactly the way you said it. That is correct.  
4 That's not in the permit, but there's an inherent part to  
5 that, that -- you're right, their headworks has got to  
6 equal -- their treatment plants has got to equal their  
7 effluent, and as they grow in effluent, and they grow in  
8 their treatment plant, and they grow on their flow, they've  
9 got to have enough effluent locations.

10 If Bently doesn't come in, then it's going to  
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11 be up to them, before they get to that flow of their ponds,  
12 plus wetlands, plus on-site use, plus whatever else -- if  
13 they can't go there, and Bently says, "I don't want your  
14 water," then they're going to have to come in and go  
15 through the whole process again to take that flow.

16 COMMISSION CHAIRMAN DODGION: I understand  
17 that. I'm asking --

18 THE WITNESS: But you're right.

19 COMMISSION CHAIRMAN DODGION: -- you, you don't  
20 agree that should be specified in the permit?

21 THE WITNESS: Do I agree it should be? It  
22 probably should be.

23 COMMISSION CHAIRMAN DODGION: Thank you. Now,  
24 you also -- this is waste water we're treating. There's  
25 going to be some odors. And I know you've been in the

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1 waste water treatment business for a long time. And I've  
2 been around. I've never seen a plant yet that didn't have  
3 odors?

4 THE WITNESS: That's correct.

5 COMMISSION CHAIRMAN DODGION: And I think that  
6 the County and the Division need to be very aggressive  
7 about controlling those odors, and it needs to be -- maybe  
8 it's going to exist, and maybe the O&M Manual will address  
9 this, but I think if the residents out there need to be  
10 assured if there are odors -- and I would define  
11 "objectionable" as that objection is coming from the people  
12 who live out there.

13 THE WITNESS: Absolutely.

14 COMMISSION CHAIRMAN DODGION: They have to  
15 co-exist with this facility. So I would expect something  
16 in the O&M Manual that would aggressively address it  
17 perhaps even before --

18 THE WITNESS: Well, exactly. And that -- we  
19 think we have. Maybe we haven't been aggressive enough,  
20 but we believe this is a low B.O.D. treatment plant, the  
21 B.O. -- the biological, bioindex -- B.O.D. is what smells.  
22 This is a low B.O.D. plant. So by time it gets to the  
23 pond, it's low B.O.D. And then we're aerating it on top of  
24 that, and it -- that makes it where it doesn't go to a  
25 septic smell, septic.

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1 So we have to done that. We also got a backup  
2 plan if that's not enough. And we're actually going to  
3 aerate it, because these are mixers we're putting in, and  
4 we're going to aerate it later. So we have a backup plan  
5 on that. But you're exactly right, and then the O&M  
6 Manual, we will review it, because we made it a specific  
7 scheduled compliance item, that they've got to put an odor  
8 plan within their --

9 COMMISSION CHAIRMAN DODGION: Their solar  
10 mixers don't contain -- control the odors?

11 THE WITNESS: That's correct.

12 COMMISSION CHAIRMAN DODGION: Then the backup  
13 plan is to put it in aerators?

14 THE WITNESS: Yes.

15 COMMISSION CHAIRMAN DODGION: And they'd have  
16 to be specked up, procured, and installed, and so on, so

17 you've got time limits.

18 THE WITNESS: We actually told them to go ahead  
19 and do that, to get all that pre-looked at, pre- how they  
20 wanted to go about doing that. So that was should be  
21 probably described in the O&M Manual, because we asked them  
22 to go ahead, so there is not a lapse in time.

23 COMMISSION CHAIRMAN DODGION: There will be a  
24 lapse in time.

25 THE WITNESS: There will -- I agree, there will

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1 be, but we're going to try to shorten it.

2 COMMISSION CHAIRMAN DODGION: Shorten it?  
3 Okay. Another question I have, that hasn't been addressed  
4 here is the solids disposal.

5 THE WITNESS: They have a solids holding pond  
6 on-site, and after they produce enough solids, they remove  
7 them from the site and take them to, I believe, landfill.

8 COMMISSION CHAIRMAN DODGION: Sledge holding  
9 ponds are notorious for odors.

10 THE WITNESS: This has got a water cap on it.  
11 So, you know, we've told them -- and that's probably  
12 what -- if they're smelling right now, that -- it's either  
13 one of two things, because there's nothing out there except  
14 a treatment pond, a plant headworks, and sludge disposal.  
15 So if there's smells today, it's probably some of the  
16 headworks. We're hoping to deal with that under Phase II,  
17 and then some sludge, but we try to get them to keep the  
18 water cap on it, to keep the smell down.

19 COMMISSION CHAIRMAN DODGION: And when the O&M  
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20 Manual is submitted is that available for public -- do you  
21 put it out a notice? Do you notify interested parties  
22 that, hey, it's here, and you can have a chance to review  
23 it?

24 THE WITNESS: No. That's why we try to put a  
25 date on the permit, so that they know -- or a date or a

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1 time line, so the public knows, okay, it should be in the  
2 building. So we know -- but we don't go back out to public  
3 notice with the O&M Manual.

4 COMMISSION CHAIRMAN DODGION: Okay.

5 THE WITNESS: No.

6 COMMISSION CHAIRMAN DODGION: Interested  
7 parties which request such notification, is that granted?

8 THE WITNESS: Sure.

9 COMMISSION CHAIRMAN DODGION: I have nothing  
10 else. Thank you.

11 COMMISSIONER RACKLEY: Can I ask more question  
12 on follow-up?

13 COMMISSION CHAIRMAN DODGION: Sure.

14 COMMISSIONER RACKLEY: In the fact sheet, in  
15 the permit, it speaks to the pilot RIB.

16 THE WITNESS: Uh-huh.

17 COMMISSIONER RACKLEY: And the groundwater  
18 monitoring that's associated with it. If I read it  
19 correctly, there's one monitoring well between that pilot  
20 RIB and the river.

21 THE WITNESS: Yeah, the RIB is actually  
22 surrounded by monitoring wells all the way around it,

23 because we had to get what's upstream, what's downstream.  
24 And we have one also between the RIB and the wetlands. We  
25 have one between the RIB and the river, and we have one

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1 between the RIB and the plant.

2 COMMISSIONER RACKLEY: But when do you expect  
3 the -- how long's that monitoring program going to be?

4 THE WITNESS: I think they -- two years, and I  
5 think they should be installing the monitoring wells here  
6 like right now, before anything goes in.

7 COMMISSIONER RACKLEY: So you're going to have  
8 a base line --

9 THE WITNESS: Uh-huh.

10 COMMISSIONER RACKLEY: -- prior to the pilot  
11 RIB being in place?

12 THE WITNESS: Yeah. Some of the monitoring  
13 wells are actually already in, but we added a few because  
14 of some of the comments of wetlands and river, and so we  
15 wanted to make sure that we caught anything going in either  
16 direction. And that's why called it a pilot RIB also.

17 COMMISSIONER RACKLEY: Thank you.

18 COMMISSION CHAIRMAN DODGION: Any other  
19 questions?

20 Redirect?

21 MS. HESS: Yes, please.

22

23 REDIRECT EXAMINATION

24 BY MS. HESS:

25 Q Is there any -- do you normally put in any

1 amount of discharges in any permit for any particular`--  
2 (someone's cell phone ringing)

3 I'm sorry.

4 when it comes to -- (cell phone ringing) when  
5 it comes to how much is going to go in Output 1, Output 2,  
6 Output 3, Output 4, is there any requirement that you put  
7 in the amount of discharge in the permit, the amount that  
8 is discharging to each one of those outputs?

9 A Just a total flow. It's just a --

10 Q So it's not required; is that correct?

11 A That's correct.

12 Q Now, is there anything that is unusual about  
13 having the O&M Manual submitted at a later time from that  
14 particular permit?

15 A No. That's -- that's actually normal.

16 Q Now, if -- isn't there requirements that if  
17 there is an emergency, that the -- that you are notified of  
18 that in the permit; is that correct?

19 A That's correct.

20 Q And isn't there also NRS's that say that  
21 permits can be modified, suspended, and revoked; is that  
22 correct?

23 A That's correct.

24 Q So it's up to Douglas County, as well, to not  
25 do anything to modify -- not do anything to violate the

1 permit; isn't that correct?

2 A Correct.

3 Q well, that would be to their advantage; is that  
4 correct?

5 A Absolutely.

6 MS. HESS: Hold on just a minute.

7 (Discussion off the record)

8 MS. HESS: I have no further questions.

9 COMMISSION CHAIRMAN DODGION: Thank you. Alan,  
10 you're free to go.

11 THE WITNESS: Oh, I thought we were going back  
12 around.

13 COMMISSION CHAIRMAN DODGION: Ms. Hess, do you  
14 have further witnesses?

15 MS. HESS: No, I don't, Mr. Chairman.

16 COMMISSION CHAIRMAN DODGION: Do you wish to  
17 rest your case in chief?

18 MS. HESS: Yes.

19 COMMISSION CHAIRMAN DODGION: Thank you very  
20 much.

21 Let's take a about a five-minute, ten -- let's  
22 take a ten-minute break, and then we'll proceed with the  
23 Appellants.

24 (Proceedings recessed from 11:12 a.m. until 11:22 a.m.)

25 COMMISSION CHAIRMAN DODGION: All right. I

1 think it's time we get started again. Everybody all set?

2 All right. Mr. Nolte, if I understand

3 correctly you prefer not to put on your in case but to  
4 limit --

5 MR. NOLTE: We'd save our comments for closing.

6 COMMISSION CHAIRMAN DODGION: For closing  
7 arguments. As far as I'm concerned -- the panel agrees?

8 COMMISSIONER RACKLEY: That's fine.

9 COMMISSION CHAIRMAN DODGION: I see no problem  
10 with that at all.

11 So that moves to Douglas County, if you wish to  
12 put on witnesses in your case.

13 MR. MORRIS: Thank you, Mr. Chairman. I don't  
14 really have witnesses. I have two documents that I'd be  
15 interested in submitting. One is a letter of approval for  
16 the North Valley Wastewater Treatment Plant, and --

17 COMMISSION CHAIRMAN DODGION: I think that if  
18 you wish to put those into the record, you might want to  
19 put Ms. Pool on as a witness --

20 MR. MORRIS: All right. I'll do that.

21 COMMISSION CHAIRMAN DODGION: -- have her  
22 identify the records, and therefore she would be -- and the  
23 records would be subject to examination on appeal.

24 MR. MORRIS: All right. So I to call Cathe  
25 Pool then.

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1 (Douglas County Letter marked for  
2 Identification)

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CATHERINE POOL,

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having been previously duly sworn,

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was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. MORRIS:

Q Would you please state your name and spell your last name for record, please?

A Cathe Pool, P-o-o-l.

Q You might as well spell your first name because it's different, right?

A Cathe, C-a-t-h-e.

Q I've shown you a document. Do you recognize this?

A Yes, I do.

Q And how do you recognize it?

A It's the approval letter from the Special Use Permit for the North Valley Wastewater Treatment Plant.

Q And do you know where it is currently, the actual original?

A I happen to have the original here.

Q Okay.

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1 COMMISSION CHAIRMAN DODGION: Do you have  
2 copies?

3 MR. MORRIS: Yes, if I could pass those out.

4 BY MR. MORRIS:

5 Q Just briefly, do you recall attending a  
6 Planning Commission meeting about the North Valley  
7 Wastewater Treatment Plant's Special Use Permit?

8 A Yes, I do.

9 Q And could you briefly describe what changes  
10 were made to the -- your request based on public comment  
11 during that meeting?

12 A The changes that were made based on the public  
13 comments that we received at that meeting were to move the  
14 plant -- the pond a hundred feet farther to the north,  
15 so -- a hundred feet farther away from the Saratoga Springs  
16 subdivision, and to install the aerator upfront, not wait  
17 for odor complaints.

18 Q And are you aware, after the approval by the  
19 Planning Commission, if there was an appeal --

20 A Yes.

21 Q -- of this matter?

22 A Yes, there was an appeal of the Planning  
23 Commission decision, and it was appealed to the County  
24 Commissioners, and that's the --

25 Q Was any --

□

1 A -- this is the reason.

2 Q Was there another public hearing at that point  
3 in front of the County Commissioners?

4 A Yes, there was.

5 Q And they listened to public comment at that  
6 meeting, as well?

7 A Yes, they did.

8 Q And their decision was to uphold this Planning  
9 Commission approval --

10 A Yes, it was.

11 Q -- as modified?

12 A As modified, by moving the pond and putting in  
13 the odor control.

14 MR. MORRIS: We'd ask admission of this  
15 exhibit.

16 MS. HESS: No objection, Mr. Chairman.

17 MR. NOLTE: No objection.

18 COMMISSION CHAIRMAN DODGION: Admitted.

19 (Douglas County Letter received into  
20 Evidence)

21 MR. MORRIS: I'm a little worried about this  
22 other document. My understanding is you said that the  
23 Appellants weren't going to present anything at this point.

24 COMMISSION CHAIRMAN DODGION: That's correct.

25 MR. MORRIS: Basically what this document is,

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1 is cross-examination of them. It's Saratoga Springs  
2 Development that has homeowners association, and there are  
3 CC&R's for that homeowners association that they've all  
4 received and signed. There's a specific section here that  
5 says:

6 "Owners are purchasing the property  
7 with the understanding that a sewage  
8 treatment plant, operated by Douglas  
9 County, Nevada is located north of the  
10 Saratoga Springs Estates, and represent  
11 they will not take any legal or any  
12 equitable action against Douglas County, or  
13 declarants, its agents, entities or  
14 employees as a result of the location of

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said plant."

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And the idea was that if they were going to testify about this, I thought it was important that to show that they've bought their property with a full understanding that there is a plant, and they basically agreed not to contest the location. So I would like to offer this as an exhibit, as well.

MS. REYNOLDS: You can take it, again, for whatever weight it deserves.

COMMISSION CHAIRMAN DODGION: Any objections?

MR. NOLTE: I don't know how to answer that.

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I'll stipulate that we accepted the fact that there was a plant there. We knew about it. We bought our property, but there -- at the time a lot of us bought our property there was nothing to show us that there was going to be an effluent pond there. I mean -- but even if there was, it's possible -- plants grow. There's -- there's certainly, you know, a growth in any community that requires a plant to, you know, to expand, but I -- I don't think that we gave up our legal rights to dispute that type of expansion.

COMMISSION CHAIRMAN DODGION: All right. Thank you. Do you have any objections?

MS. HESS: I have no objections.

COMMISSION CHAIRMAN DODGION: I would just note that they have not protested the permit on the basis of the location of the treatment plant --

MR. MORRIS: Okay.

COMMISSION CHAIRMAN DODGION: -- but more on

18 the operation of it.

19 MR. MORRIS: It just strikes me --

20 COMMISSION CHAIRMAN DODGION: Fine. You're  
21 welcome to --

22 MR. MORRIS: It -- if they're the Appellants  
23 and don't present evidence, it concerns me that it appears  
24 as they're not carrying their burden on the appeal, and so  
25 I'm just slightly concerned about the process we're going

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1 through.

2 COMMISSION CHAIRMAN DODGION: I believe they  
3 have that right, and they presented an opening statement.  
4 They presented their appeals in writing, presented closing  
5 statements pertinent to have all the information available  
6 to us.

7 MR. MORRIS: Thank you.

8 COMMISSION CHAIRMAN DODGION: If you wish to  
9 enter that, go ahead and do it.

10 MR. MORRIS: Yes, I would.

11 COMMISSION CHAIRMAN DODGION: Enter it through  
12 Ms. Pool in case anybody wants to cross-examine.

13 (Saratoga Springs Estates CC&R's marked  
14 for Identification)

15 MR. MORRIS: Excuse me. Let me just show it to  
16 them first before I have Ms. Pool do that.

17 (Proceedings paused briefly)

18 MR. MORRIS: Can I just go ahead and introduce  
19 them?

20 MR. NOLTE: Yes.

21 MR. MORRIS: If they don't have any objection,  
22 I would just introduce the copy without going through  
23 Ms. Pool.

24 COMMISSION CHAIRMAN DODGION: I'd rather go you  
25 through Ms. Pool, so I know what your purpose is.

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1 MR. MORRIS: Okay.

2 COMMISSION CHAIRMAN DODGION: And in the event  
3 that Ms. Hess or any member of the panel wants to questions  
4 her -- we're not allowed to cross-examine you.

5 MR. MORRIS: Actually, Ms. Pool, doesn't know  
6 that much about these.

7 COMMISSION CHAIRMAN DODGION: This will be fun  
8 then.

9 BY MR. MORRIS:

10 Q So I've shown you a document. Could you  
11 briefly describe what it is?

12 A This is the Declaration of Covenants,  
13 Conditions and Restrictions of Saratoga Springs Estates,  
14 Space 7 of Planned Development.

15 Q Okay. Looking at the face of the document, is  
16 there recording data on it to show that this is a recorded  
17 document?

18 A Yes, it is.

19 Q Do you have the document number there?

20 A It's 0587127.

21 Q And turning to page about 4, is there a Section  
22 21 that's titled, "Sewage"?

23 A Yes, there is.

24 Q And would you mind reading the sentence  
25 starting with "Owners are purchasing"?

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1 A Okay.

2 "Owners are purchasing this property  
3 with the understanding that a sewage  
4 treatment plant, operated by Douglas  
5 County, Nevada, is located to the north of  
6 Saratoga Springs Estates and represent  
7 that they will not take any legal or any  
8 equitable action against Douglas County,  
9 Nevada, or declarant, its agents,  
10 entities, employees, or declarant, as a  
11 result of a location of said plant."

12 Q Now, are you aware where the Appellants live?

13 A I believe that in their -- in the documents  
14 that they have, they live on La Cresta Circle.

15 Q And where is that?

16 A In Saratoga springs. I'm not sure if it's  
17 Phase VII. I assume it is.

18 MR. MORRIS: We'd offer these -- this exhibit  
19 at this time. There's actually two -- two sets of CC&R's  
20 for Phase VI and Phase VII.

21 COMMISSION CHAIRMAN DODGION: We'll accept it  
22 for the purpose of this hearing.

23 (Saratoga Springs Estates CC&R's  
24 received into Evidence)

25 COMMISSION CHAIRMAN DODGION: Do you have any

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1 questions?

2 MS. HESS: No, I have no questions.

3 COMMISSION CHAIRMAN DODGION: Mr. Nolte?

4 MR. NOLTE: Yeah, I have some questions. As  
5 long as we've got this Special Use Permit thrown into  
6 the --

7 COMMISSION CHAIRMAN DODGION: Actually, you're  
8 cross-examining Ms. Pool.

9 MR. NOLTE: Yes.

10

11 CROSS EXAMINATION

12 BY MR. NOLTE:

13 Q It says here that the -- "the site plan shall  
14 be revised to show the effluent treatment pond be relocated  
15 100 feet to the north"?

16 A (Witness nods head.)

17 Q Do you recall during -- well, let me ask you if  
18 you were at the Planning Commission hearing regarding this  
19 Special Use Permit?

20 A Yes, I was.

21 Q Do you recall a discussion by the -- the  
22 Commissioners that stated that plant would be moved  
23 200 feet to the north?

24 A I -- I think the location was discussed. I  
25 don't remember specifically discussing 200 feet, but it may

1 have been. They may have discussed it.

2 Q Okay. It says here, "the plans" -- this next  
3 statement:

4 "The plans for the effluent treatment  
5 pond shall be revised to include an  
6 aerator for odor control. The aerator  
7 shall be installed during the first phase  
8 of construction."

9 Is that consistent with what the -- the permit  
10 that's currently being challenged by us?

11 A Yes, it is.

12 Q My understanding is that the permit says that  
13 solar bee mixers will be installed, and the aerators will  
14 be only be installed if the solar bee mixers don't work.  
15 However, this statement says that they're to be installed  
16 during the first phase of construction, regardless.

17 Now, am I correct in saying that that is not  
18 consistent with what the permit says?

19 A We -- we consider the solar bee mixer as sort  
20 of aeration system.

21 MR. MUZZY: What sort of --

22 THE WITNESS: It's not your typical mechanical  
23 mixer. Mechanical mixers are -- use a lot higher horse  
24 power, more energy, and they're a lot louder. And we,  
25 since part of the pond is close to your subdivision, didn't

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1 want to go with that upfront, if we could control the odors  
2 with a more passive mixing. It's quieter. It's energy  
3 efficient, and if it works, then I think it will be to your  
4 benefit.

5 MR. MUZZY: Is the solar bee mixer an aerator?

6 THE WITNESS: It's not a mechanical aerator.

7 It does have -- will put additional oxygen into the pond by  
8 just by the mixing, but it's more of a passive system.

9 BY MR. NOLTE:

10 Q well, you testified or you spoke at the  
11 Planning Commission -- the aerators that were in question,  
12 then, were you referring to solar bee aerators at that  
13 time?

14 A Yes, I was.

15 MR. NOLTE: Those are the only questions I  
16 have.

17 COMMISSION CHAIRMAN DODGION: Do you have any  
18 questions, either of you? No? Of Ms. Pool. Very well  
19 then.

20 THE WITNESS: Thank you.

21 COMMISSION CHAIRMAN DODGION: Unless you have  
22 any.

23 MR. MORRIS: No, I don't. I would just ask  
24 that -- the admission of the CC&R's, and we would rest at  
25 this point.

□

1 COMMISSION CHAIRMAN DODGION: Thank you.

2 MR. MORRIS: I believe the approval -- the  
3 special use approval was accepted as an exhibit?

4 COMMISSION CHAIRMAN DODGION: Yes.

5 MR. MORRIS: Yes. We would have nothing else,  
6 your Honor -- Mr. Chairman.

7 COMMISSION CHAIRMAN DODGION: what would be the  
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8 pleasure here, go to closing arguments or --

9 (Discussion off the record)

10 COMMISSION CHAIRMAN DODGION: I think then what  
11 we will do -- we're ready for closing arguments, unless I  
12 skipped a step or two here.

13 And we will break for lunch at this time and  
14 return from lunch. We'll take up closing arguments  
15 starting with Ms. Hess. Try to be back here ready to go by  
16 1:00 o'clock.

17 (Proceedings recessed from 11:38 a.m. until 1:00 p.m.)

18 COMMISSION CHAIRMAN DODGION: All right. Let's  
19 reconvene. At this time I would like to ask the State to  
20 make closing argument.

21 MS. HESS: Yes. Thank you.

22 NDEP met all of the statutory and the  
23 regulatory requirements and had no choice but to issue a  
24 permit. The Application for the permit was on the required  
25 form. It was prepared by the Division, which is -- all of

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1 that is required by NAC 445A.230. It was also complied as  
2 far as with the signature requirements. That is 445A.231.  
3 The fees were, in fact, paid. Therefore those are the  
4 requirements about the permit.

5 It's up to the permittee to decide where it is  
6 that they're going to put their effluent. It if it turns  
7 out that someone doesn't go to, like -- the agriculture,  
8 it's up to them to come in and modify their permit. There  
9 are all kinds of things in the permit that have to be  
10 allowed. If there's any kind of emergency, they have to

11 notify NDEP of the emergency. They can come in for a  
12 modification if they need to put the effluent in another  
13 location.

14 Also, as well, NDEP has the authority to revoke  
15 a permit, to submit -- to suspend a permit, to go in.  
16 There is in the permit the right of inspection. They can  
17 go out there and look at anything that they want to look  
18 at. They can run their own test if they want to run their  
19 own test. They have that authority, as well.

20 When you take a look at Exhibit 2a, that was  
21 also required, a letter that was required to go out. That  
22 is required by 4 -- NAC 445A.2384, that they have to be --  
23 that the applicant has to be notified of when there's going  
24 to be a hearing, and how the public is going to, in fact,  
25 participate in that, as well as other documents that are

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1 supposed to go with it, and those other documents did go,  
2 in fact, out.

3 As well, when you take a look at their notice,  
4 their notice that was prepared complies with NAC 445A.234,  
5 that requires that there be a 30-day period that you be  
6 allowed -- that the public is allowed to respond. There is  
7 also various things that they're supposed to have in that  
8 notice, which it does have. So it meets all the  
9 requirements of that regulation, as well as 445A.238 and  
10 445A.239, which has everything in there that is needed.

11 As well, that was published in the newspaper,  
12 which is required. It was also sent out to anyone that  
13 requested it, special mailing lists, as well for other

14 lists, as well. So the residents were allowed to get that,  
15 as well.

16 The fact sheet is also required, and it had  
17 everything in there that needs to -- needs to be in there  
18 by 445A.238, that talks about how the discharge has to be  
19 described, and various things that have to be in that, and  
20 they complied with that.

21 There is also a presumption that -- that with  
22 the preparation of the fact sheet that it works as a -- the  
23 Director's certification that there will not be any adverse  
24 impact on the water quality, and that is NAC 445A.245.

25 They made a determination, that they were

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1 supposed to with the fact sheet, that on whether or not  
2 they will issue a permit. So they prepared -- they decided  
3 that that would be what would happen with everything being  
4 met at this time. They were required to draft a permit by  
5 two -- by 445A.233 NAC. That was, in fact, done. There  
6 was a -- there is the proposed schedule compliance, interim  
7 dates. All of that is included, as well as the -- as well  
8 as it's required by -- "the Director shall make this  
9 determination and draft this permit," so that was  
10 delegated.

11 As well, you can see in Exhibit 4 people came  
12 in. They were given an opportunity to speak at the  
13 hearing, which is required. There's a sign-in sheet.  
14 There's notice of people that did, in fact, speak at the  
15 hearing. There was also a mention of all the people that  
16 did come in to speak at that hearing. There's a

17 correction, as well, to the transcript that was admitted.  
18 There's also indication that there are other holding ponds  
19 out there in the area, as you can see by Exhibit 7.

20 Exhibit 9, once again, required that this  
21 particular letter, in fact, go out, and it did, and it was  
22 given with the Notice of Decision which is a policy  
23 decision. It's not required by NAC or NAC. It is just a  
24 policy in NDEP to, in fact, do that, and it addressed all  
25 of those concerns at that particular time, as well as the

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1 witness testified that there were added things that NDEP  
2 did that were not statutorily issues, to get concessions  
3 from -- from Douglas County, to protect those residents,  
4 because they listened to what, in fact, did -- did occur at  
5 that particular -- at the hearing.

6 Then there is the permit -- permanent permit.  
7 In the permanent permit, if it turns out that it's --  
8 there's no requirement that there be any specific amount  
9 that's going to go into -- into any of these -- these --  
10 the locations. There is no requirement for there to be the  
11 quantity that goes in there. Instead, it's up to Douglas  
12 County to be sure that they don't violate that permit,  
13 because as I mentioned, there's plenty of authority that  
14 they don't have the right to have a permit.

15 The permit does need to go out if they've met  
16 everything, but if they don't continue to meet it, there's  
17 plenty of ways to, in fact, resolve that. They have to  
18 notify in case of emergency. There are various other  
19 things that can happen. It's -- it's their responsibility

20 to determine where this treated effluent is going to go.  
21 It can be modified to include other locations if it needs.  
22 If they need other locations, that can, in fact, occur. It  
23 may never go to Bently or -- a lot of it may go to Bently.  
24 If not, they'll come in and modify the permit.

25 There's been steps taken for the odor

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1 reduction. There's been steps taken for the mosquitos, and  
2 it isn't that NDEP is out of the regulation aspect of this  
3 simply because a permit has been issued. It's only the  
4 beginning of some regulatory issues. As well, there's  
5 nothing unusual about having the -- the operation manual  
6 submitted at a later time. Also that can be grounds, as  
7 well, for a suit. I've done that in District Court, as a  
8 matter of fact.

9 I would just request, on the basis of taking  
10 care of all the issues of law and addressing beyond the  
11 NAC's and NRS's the Petitioner's issues, that this  
12 particular permit decision be affirmed by NDEP, and  
13 pursuant to NRS 445A.605, and that the transcribing  
14 proceedings of the Commission be taxed against the  
15 Petitioners.

16 They've been addressed. All of their concerns  
17 have been addressed, time and time again, by -- by the  
18 NDEP, and they've done everything that they possibly could.  
19 Thank you.

20 COMMISSION CHAIRMAN DODGION: Thank you.

21 Mr. Nolte?

22 MR. NOLTE: I'll have a few comment, and then

23 I'll be followed by -- by them.

24 You know, this hearing actually has been quite  
25 informative. One of the things we -- I guess we didn't

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1 realize is that there's a perception, I guess, on the part  
2 of the state in the way they process these permits. What  
3 they see -- they deal with what's given to them.

4 Our biggest concern was that what we saw was an  
5 eventual situation where most if not all of the effluent  
6 was eventually going to be diverted over to the Bently  
7 Kirman Tract. Maybe we had blinders on. Maybe not. But  
8 this is what we saw. We saw it for a number of reasons.

9 We think there's a financial interest for the  
10 County to discontinue the diversion of effluent to Incline  
11 Village, because they pay a substantial fee, and if they  
12 can do that, it would certainly be -- make sense for them  
13 to do that. But by doing so we saw that this would put  
14 them in a situation where if the RIB doesn't work, almost  
15 all of their effluent goes to the Bently Kirman Tract.

16 When we looked at that we said, "well, how if  
17 such a -- you know, this situation is plausible, how can  
18 the state actually look these -- at these two permits and  
19 disconnect it?"

20 In my own mind, if -- I think if Douglas County  
21 had come to the state with the permit application and said,  
22 "well, now what we want to do is use a pilot RIB. I want  
23 to store the effluent in the pond and hopefully the RIB  
24 will work, and then we can use other ones, and if that  
25 doesn't, all the rest of the effluent will go to the Kirman

1 Tract." I think that the state would have looked at  
2 that -- at that permit to the Kirman Tract with a bit more  
3 of a jaundice eye by that there really is a linkage here.  
4 They wouldn't have allowed them to separate these issues in  
5 that respect, because that's -- you know, in that  
6 situation, it's the only game in a town.

7 But that's not what the state saw. The state  
8 saw -- or the NDEP saw a permit application that said  
9 there's five possible outfalls. In our own minds we only  
10 saw one realistic one. This was really the basis for our  
11 appeal. Even at this date, even with all we've heard, we  
12 still think it's plausible that that may happen, but we now  
13 understand that there's avenues for redress. We now  
14 understand that -- there was information that we gleaned  
15 that there -- you know, they have to deal with that.  
16 Essentially what the state is saying is you can only grant a  
17 permit based on what you give us. We don't think that the  
18 permit was clear enough, but we understand what the state  
19 is saying in this respect.

20 And the other issue, as far as the positivity of  
21 information, a lot of what we need to know is embodied in  
22 an EMP or an O&M, which we're not privy to now. They don't  
23 even exist at this point. So we have -- when we say we  
24 were given incomplete information, we have no idea what  
25 happens in certain situations, because, in point of fact,

1 the documents with the contingency plans that cover those  
2 situations, they don't exist right now. This was our  
3 thinking. This was the basis of our appeal. I want to  
4 bring this out.

5 And we still -- we still have misgivings about  
6 the fact that something might not happen. I mean, it's --  
7 if, in fact, we get to the situation where everything's  
8 going to the Bently Kirman Tract, we don't -- without this  
9 information, we don't know what they will do in the event  
10 there is a crop failure, as I alluded to. That was the  
11 basis of our appeal, and That's what we were thinking when  
12 we appealed.

13 I'd like to turn it over to Lynn. He wants to  
14 address the matter of the actual existence of the plant.

15 MR. MUZZY: I want to thank you very much for  
16 having us today. We appreciate the fact that you took time  
17 from your busy schedules to run this hearing, and we  
18 appreciate it very much, and thank you all, too, folks very  
19 much.

20 We want to make something clear. That is that  
21 the CC&R's don't prevent us from following an  
22 administrative remedy to follow up on what we consider to  
23 be faulty engineering on the basis of the County to expand  
24 an existing facility. We understand precisely what the  
25 CC&R's say.

□

1 Also, as you probably guessed, this is a highly  
2 skilled group of engineers, two are which are represented

3 here today, who happen to have -- be very fortunate to have  
4 living in our neighborhood, including folks who have done  
5 exactly what you folks have done.

6 So it wasn't something that we just did off the  
7 top of our head or something that we did in a casual  
8 manner. We had these concerns, and we continue to have  
9 them, and, again, thank you very much. We appreciate the  
10 opportunity.

11 COMMISSION CHAIRMAN DODGION: Thank you.  
12 Mr. Morris?

13 MR. MORRIS: Thank you, Mr. Chairman. I, too,  
14 would like to thank the Commission for allowing Douglas  
15 County to participate. We would ask that you uphold the  
16 permit as it has been issued. And I think the reason for  
17 that is that the process has been proper in this case. We  
18 also look forward to continuing the process and working  
19 with NDEP as this project moves along.

20 There are three main issues raised in the  
21 appeal. I'd just like to briefly talk about the three.  
22 One was odors and pests, and the Appellants speculate how  
23 it may be a problem under the way the language of this  
24 permit is written. Well, I'd have to say I'd agree with  
25 Ms. Hess that the public process has worked in this -- in

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1 this arena, and it's worked in Douglas County, as well.

2 I have to thank the Appellants for pushing as  
3 hard as they did, because they did cause changes in the  
4 design. It ended up that the pond was moved further away.  
5 The solar bees were planned, and these additional

6 requirements the County agreed to and have been  
7 incorporated into the permit. So I think the process does  
8 work, and I think also that in the permit, itself, there  
9 are controls to make sure that Douglas County does have a  
10 program in place, and it will deal with these odors and  
11 pests.

12 The second issue was the Bently permit, and  
13 it's hard to discuss this because it really is a separate  
14 permit. The -- the issue that I want to make clear is that  
15 it's the County's job to make sure that we have adequate  
16 discharge areas.

17 we've asked for five under the permit. That  
18 doesn't necessarily mean there aren't others that we could  
19 look at. I believe when the initial permit was issued,  
20 there was no concept of using Kirman Tract as an effluent  
21 discharge area. And it may be now that with Clear Creek  
22 going forward, IVGID might want to use their effluent water  
23 there, opening up some more possible use in the wetlands.  
24 It's a dynamic situation that's constantly moving, and I  
25 think it's up to the County to decide what's the best use,

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1 the best way they can use their facilities, and engineering  
2 to take care of the discharge.

3 The final issue was that the permit was  
4 basically vague and that it was too broad. And I think the  
5 important part is that the permit clearly calls out the  
6 standards that Douglas County must meet. They're very  
7 clear, but I also think the permit has to be broad enough  
8 to allow Douglas County some flexibility in how they meet

9 those permit requirements.

10           There was discussion about how to maybe limit  
11 the amounts to specific discharge areas. Well -- and the  
12 permit has an overall cap, and so I think it's -- that's  
13 the kind of flexibility that the County's looking for is  
14 that there might be reasons for why certain things work  
15 sometimes, like during the season -- the wintertime it  
16 would be clear that we would want to try and use the  
17 storage as opposed to trying to use irrigation, but I think  
18 the idea is that you have this very tight ring around this  
19 discharge, but -- but you are giving the County the ability  
20 to meet that in a way they think is best in running the  
21 plant.

22           So I'd again thank you for your time and ask  
23 you to uphold the permit. Thank you.

24           COMMISSION CHAIRMAN DODGION: Thank you. The  
25 State gets another bite here, if you wish to rebutt

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1 anything that has been -- as far as closing arguments.

2           MS. HESS: I would just ask, as well, that the  
3 Petitioners take a look at the Nevada appeal and -- and  
4 also see when the next permit is coming up, and then they  
5 will know that, also, as well, to contact NDEP if they want  
6 copies of various things, and to come down and request  
7 those in person any time if they want to, 8:00 to 5:00,  
8 Monday through Friday. Thank you.

9           COMMISSION CHAIRMAN DODGION: All right. With  
10 that, then, we will close the hearing, and the panel will  
11 take it under advisement and have our discussions.

12 COMMISSIONER RACKLEY: Thank you, Mr. Chairman.  
13 I think, first of all, I'd like to thank the Appellants  
14 also, you know. It's really almost refreshing to see some  
15 public involvement, to be able to bring something like this  
16 and get the questions answered.

17 But I -- and even though I'm going to really  
18 vote to uphold the permit, I want to let you know that, you  
19 know, this is a cycling thing. Five years from now there  
20 will be an application for renewal of the permit and  
21 address the operations conditions, whatever is in place at  
22 that time. It's a normal cycle.

23 And the fact that this has -- the County has  
24 indicated the fact that you have certain odor control and  
25 vector controls now addressed in the permit, and I suspect,

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1 you know -- and we can confirm with NDEP if we need to --  
2 but that you'll see in the Operation and Maintenance Manual  
3 that these types of things will be addressed. And once the  
4 design is completed -- you really can't do an O&M until the  
5 design is completed.

6 And as an Mr. Biaggi -- Mr. Tinney said, you  
7 know, it's -- the design now is at the beginning stages.  
8 And that's normal, because a permit like this, you can't  
9 have an engineer design a plan if he doesn't know what the  
10 standards are to be designed around, and that's why you do  
11 these things in this kind of a step, one of the reasons.

12 The effluent management plan, it's the same  
13 thing. Until they know and get the agreements completed  
14 with the Bently people, we don't know what how to quantify

15 that amount of effluent that they would want. And it's  
16 very normal to have a permit with these many outfalls.  
17 I've seen more. So it's -- sometimes these things do get a  
18 bit complicated, but it's -- you know, the cycle, the  
19 review period -- you know, normally NDEP will start an  
20 administrative review of the permit probably two years, 18  
21 months prior to the permit being actually renewed and  
22 issued in the next round. So don't lose sight of that,  
23 that there will be another opportunity for you to be  
24 involved with it to see how it goes.

25 So thank you.

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1 COMMISSIONER RICE: I, too, would like to thank  
2 the Appellants, because it is really refreshing to see  
3 somebody who cares and is willing to step up to the plate  
4 and be involved in the process.

5 And I think just by what we've heard is that we  
6 have had some changes, and I would encourage you to stay  
7 actually involved with Douglas County, and when the  
8 Department to move through the issues that you do have. So  
9 when the permit for -- if the permit comes up, is that you  
10 actively take a role in that. When the O&M Manual comes  
11 up, that you can take a look at that, and open up a  
12 dialogue, you know, rather than sitting back and being  
13 frustrated by the whole process.

14 You know, Douglas County, I'd like to encourage  
15 you to continue to work with the Appellants and the  
16 concerned citizens, because you don't reach consensus if  
17 you don't reach -- and you don't reach a point where you

18 can say, "well, we agree to disagree," politely and still  
19 work together unless that door is kept open and  
20 communication is kept open.

21 The issues that the Appellants brought forward,  
22 there's the tests, and Bently permit, and the vague  
23 language that you feel is present are something to be  
24 concerned about, but on the other hand NDEP has done their  
25 job, according to the NAC and NAC, and there -- they have

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1 to work within that structure, and so there are some issues  
2 that they just can't address.

3 So I appreciate the process, and I appreciate  
4 everybody, all of you taking time to come and speak at  
5 this, and I, too, will vote to uphold it.

6 COMMISSION CHAIRMAN DODGION: I still have a  
7 thought and concern that we don't know how much effluent  
8 that reaches these outfalls will take and that you have no  
9 ties to the Bently permit. I don't see that that can  
10 separate. If the Bently permit doesn't go through, or if  
11 the Bently desire for effluent is 10 percent of what you  
12 think it might be, then you're in a situation where you  
13 have an authorization for them to generate million gallons  
14 of sewage a day without an adequate area or adequate means  
15 of disposing of it.

16 I think there needs to be a linkage between the  
17 two permits such that if this doesn't happen, they get a  
18 minute amount of what they expected to dispose of there or  
19 use there, that the capacity of the plant is limited to  
20 what they can dispose of, with the other options, until

21 such time as they exercise their discretion to come up with  
22 another proposal of what to do with it.

23 Other than that, I think that you've addressed  
24 the issues. I think these people have a right to be  
25 concerned, particularly about odors, and no matter what you

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1 do in your O&M manual and so on, there's probably going to  
2 have to be times when they have objectionable odors, and I  
3 would hope that you would respond to those in a very rapid  
4 manner when they do happen, and maybe you would get ahead  
5 of them.

6 Other than that, that was the only comment that  
7 I had.

8 COMMISSIONER RACKLEY: Mr. Chairman did you  
9 want to uphold the condition that if the quantities of the  
10 outfalls changes significantly, that the permit would be  
11 revisited?

12 COMMISSION CHAIRMAN DODGION: I think that goes  
13 without saying, actually. But what I would -- I think what  
14 the Appellants are concerned about, and what I'm concerned  
15 about, as well, is that you might could reach a point, the  
16 way the permit is written, where the generation would  
17 exceed the amount that they can dispose of.

18 COMMISSIONER RACKLEY: That's true.

19 COMMISSION CHAIRMAN DODGION: And I think there  
20 should be some linkage between those two permits, to be on  
21 top of that, to mandate action before such a thing happens.  
22 And that ties back into the -- the effluent storage pond,  
23 because if you can't get the effluent to Bently, it's got

24 to go into the pond. And the pond has a finite storage  
25 capacity, if it's so many days, so many weeks, so many

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1 months, and then it's going to overflow.

2 And it will not -- if you're already generating  
3 more capacity than and more flow than you've got room to  
4 dispose of, you're not going to have a whole lot of time to  
5 find, and design, and get permitted a sixth outfall or a  
6 seventh outfall. That's my concern.

7 COMMISSIONER RACKLEY: Very good point.

8 COMMISSIONER RICE: I want the County to think  
9 about these things so that, you know, if the Bently project  
10 doesn't work out as one of your outfalls, and can't be  
11 relied on for effluent, that you are prepared to step in  
12 and do something, because you're still going to be creating  
13 effluent, and you don't want to get into a situation where  
14 you have to cease operations as you have no place to send  
15 effluent, except with some very exorbitant transportation  
16 costs.

17 COMMISSIONER RACKLEY: I guess maybe I don't  
18 know. Well, Mr. Chairman, I think I'll -- I would move to  
19 uphold the permit. There's been a discussion, and we  
20 thought about it.

21 COMMISSION CHAIRMAN DODGION: Okay. Your  
22 motion is to uphold?

23 COMMISSIONER RACKLEY: Uphold.

24 COMMISSIONER RICE: Second.

25 COMMISSION CHAIRMAN DODGION: I would still

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1 like to see something -- obviously I'm also going to uphold  
2 the permit, but I was looking perhaps for a condition.

3 COMMISSIONER RACKLEY: That's why I say let's  
4 call for a question, because I -- I agree with what you've  
5 said, and I think that, you know, your experience in these  
6 matters is really showing, and it's something that we don't  
7 want to leave to chance. And I -- I'm not exactly sure  
8 where to put it -- ask that they modify the permit? That  
9 seems like it would initiate a whole new process. And then  
10 so could we cover this.

11 COMMISSION CHAIRMAN DODGION: Just -- we have  
12 the right to modify this permit?

13 MS. REYNOLDS: Right. I was going to say under  
14 NAC 445B.896, the Commission has to make findings of fact  
15 and recommendations. And what I would suggest to you is in  
16 the way you're structuring this, is that you revisit each  
17 of the three issues the Appellant has raised and decide on  
18 that issue, and then move to the next.

19 COMMISSIONER RACKLEY: Issue by issue?

20 MS. REYNOLDS: Issue by issue, and from what I  
21 understand, the Chairman's concerns kind of fall into the  
22 number -- I think it's the second of the three.

23 COMMISSIONER RACKLEY: Yes. I should withdraw  
24 my motion?

25 COMMISSION CHAIRMAN DODGION: No. There's a

2 issue of the odors. It's on the record that the County had  
3 modified their plans to install the solar bee mixers in the  
4 pond, upfront, as opposed to delaying for problems. That  
5 will address them, and -- it may not be in my words, but  
6 you would address it in your O&M Manual. And if the solar  
7 bees didn't provide adequate odor control, you intended --  
8 you intend to go forward with aerators.

9 And there is going to be a gap between the time  
10 that you find out these things, if established, and you  
11 will find that they're not adequate. And until you can get  
12 the aerators installed, there's going to be a period of  
13 time, and you could do pre-planning, and pre-specification,  
14 and pre- -- you know, so on and so forth, and it's still  
15 going to take time. Now, there are other things that you  
16 can do for odor control in the interim, adding chemicals to  
17 the pond, for instance. And that would be something that I  
18 would like to see addressed in the O&M Manual.

19 with respect to the mosquitos, vectors, I -- I  
20 think that the inclusion and actions to make certain that  
21 the treatment plant in that area is included in the  
22 Mosquito Abatement Program --

23 COMMISSIONER RACKLEY: Yes.

24 COMMISSION CHAIRMAN DODGION: -- is as much --  
25 probably adequate for mosquito control for this facility.

1 You cited the other plants, ponds that are also in Douglas  
2 County, and there's been no evidence to indicate that  
3 there's any problems with -- actually with odors or with  
4 vectors at those ponds. I think that takes care of those

5 two issues.

6 And so then we come back to, I guess, the  
7 second question, which is -- or where I think there needs  
8 to be a linkage between the two permits. And the linkage  
9 that I would propose is that the discharge permit recognize  
10 and specify that the capacity of this plant is limited to  
11 whatever, but less than one million gallons, until such  
12 time as that outfall is available.

13 COMMISSIONER RACKLEY: There are around .3 in  
14 GD right now, and it's currently permitted at .5, but --

15 COMMISSIONER RICE: But perhaps there -- you  
16 know, when you do reword it that it only be a discharge of  
17 what they have the capacity to actually deal with. That  
18 way you're not giving up too many and -- but you're  
19 allowing them some way to be responsive, and I also would  
20 recommend that you can seriously consider larvicides, which  
21 is far more effective as a treatment.

22 COMMISSION CHAIRMAN DODGION: I don't know.  
23 You probably do --

24 COMMISSIONER RICE: Many of these are, and  
25 they're largely not as effective as that is.

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1 COMMISSION CHAIRMAN DODGION: well, they hit  
2 the groundwater cycle.

3 COMMISSIONER RICE: Yes.

4 COMMISSION CHAIRMAN DODGION: You can also  
5 determine that the -- struggling with this point is not on  
6 the Board, and we can uphold the permit with the  
7 understanding that these things happen.

8 COMMISSIONER RACKLEY: I'm not sure how to  
9 modify the permit. I don't think anybody can right now,  
10 but you're absolutely correct, other than specifying  
11 that --

12 COMMISSION CHAIRMAN DODGION: what do you  
13 think?

14 I think, Ira -- as far as the third thing goes,  
15 Ira went through that very logically and very thoroughly as  
16 to why these things have to be in the final phase of the  
17 design. I think that's adequately covered.

18 MS. REYNOLDS: Okay.

19 COMMISSIONER RACKLEY: Adequately.

20 COMMISSION CHAIRMAN DODGION: All right. we  
21 have a motion on the table and a second.

22 COMMISSIONER RACKLEY: Aye.

23 COMMISSIONER RICE: Aye.

24 COMMISSION CHAIRMAN DODGION: Aye. All right.  
25 The permit is upheld with the understanding that one of the

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1 things that you've been lectured about that, you'll take  
2 care of.

3 MR. MORRIS: I took notes.

4 COMMISSION CHAIRMAN DODGION: All right. we  
5 have no public here, so we have no reason to open to the  
6 public comments. With that, John, we're through. The  
7 meeting is adjourned.

8 Thank you all very much.

9 (Proceedings concluded at 1:33 p.m.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF NEVADA, )  
4 CARSON CITY. ) ss.

5

6 I, CARRIE HEWERDINE, Official Court Reporter  
7 for the State of Nevada, State Environmental Commission, do  
8 hereby certify:

9 That on Monday, the 15th day of October, 2007,  
10 I was present at 100 North Carson Street, Hearing Room,  
11 Carson City, Nevada, for the purpose of reporting verbatim  
12 stenotype notes the within-entitled hearing;

13 That the foregoing transcript, consisting of  
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14 pages 1 through xxx, inclusive, includes a full, true and  
15 correct transcription of my stenotype notes of said  
16 hearing.

17

18 Dated at Carson City, Nevada, this 18th day of  
19 October, 2007.

20

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22

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CARRIE HEWERDINE, RDR  
Nevada CCR #820

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