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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
STATE ENVIRONMENTAL COMMISSION

IN RE THE MATTERS OF:

JOHN BOSTA, ANTONIO GUERRA
MARTINEZ, AMARGOSA CITIZENS
FOR THE ENVIRONMENT (ACE),

Appellants,
and

Pollution Control Permit
#NV0023027

NEVADA DIVISION OF
ENVIRONMENTAL PROTECTION,
BUREAU OF WATER POLLUTION
CONTROL,

Respondents,
and

ROCKVIEW FARMS, INC.
(PONDEROSA DAIRY),

Intervener.

_____ /

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEC APPEAL HEARING

THURSDAY, JULY 9, 2009

RENO, NEVADA

Reported by:

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1 RENO, NEVADA, THURSDAY, JULY 9, 2009, 9:02 A.M.

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4 ACTING CHAIRMAN COYNER: All right. Good
5 morning, everyone. Let's bring this meeting of the State
6 Environmental Commission Appeal Panel to order.

7 I'd like to first notice that the appeal has
8 been properly noticed to be held on this day at this
9 place, and I'd like to thank you all for joining us on
10 such a beautiful Nevada day. I mean, I would rather be
11 somewhere else. In fact, I'm sure all of you would be, as
12 well. We're going to be spending some time together and
13 hopefully the air conditioning works well for us.

14 My name is Alan Coyner. I'm the Administrator
15 of the Nevada Division of Minerals. To my left is
16 Stephanie Zimmerman, and Stephanie is a member of the
17 State Environmental Commission. And to my right is Pete
18 Anderson, who's our State Forester.

19 I think it might be appropriate -- I have a
20 matter I'll dispose of in a moment, but I would like to go
21 around the room and introduce -- have everyone introduce
22 themselves. As I said, we're going to be spending some
23 time together over the next little while, and in a cordial
24 Nevada way, I think it's nice if we kind of know who all
25 the folks in the room are.

1 So you've heard our three names. Rosemarie is
2 our Deputy Attorney General, and Carrie is our Court
3 Reporter.

4 So we'll start over on that end.

5 MR. LAZARUS: Good morning. I'm Jay Lazarus
6 with Glorieta Geoscience on behalf of Ponderosa Dairy.

7 MR. ZIMMERMAN: John Zimmerman, attorney with
8 Parsons, Behle and Latimer on behalf of Rockview Farms,
9 Ponderosa Dairy.

10 MR. BUTLER: And I'm also Tim Butler. I'm
11 also with Parsons, Behle and Latimer. We're here on
12 behalf of the dairy.

13 MR. FREY: Bill Frey on behalf of NDEP.

14 MR. MARSHALL: John Marshall, Counsel for the
15 Appellants.

16 MR. BARRACKMAN: Bill Barrackman with ACE. We
17 intervened on behalf of these gentlemen.

18 MR. BOSTA: I'm John Bosta. I'm an Appellant.

19 MR. MARTINEZ: I'm Antonio Guerra, and I'm an
20 Appellant.

21 MR. WALKER: I'm John Walker. I'm a staff
22 with the SEC.

23 MS. REBERT: Kathy Rebert, staff also.

24 ACTING CHAIRMAN COYNER: In the back?

25 REDDY GANDA: I'm Reddy Ganda from Glorieta

1 Geoscience. I represent Ponderosa Dairy.

2 THE REPORTER: Could you spell your name? I'm
3 sorry.

4 REDDY GANDA: R-e-d-d-y G-a-n-d-a.

5 MR. PALM: I'm Jon Palm. I'm with NDEP.

6 ACTING CHAIRMAN COYNER: And in the back?

7 RYAN GANDA: Ryan Ganda, Intern with the
8 Attorney General's Office.

9 TOM PORTA: Tom Porta, Deputy Administrator,
10 NDEP.

11 MR. TINNY: Alan Tinney with NDEP.

12 ALEX LANZA: Alex Lanza with NDEP.

13 THE REPORTER: What was your first name? I'm
14 sorry.

15 ALEX LANZA: Alex.

16 THE REPORTER: Alex. And Lanzo (sic)?

17 ALEX LANZA: Lanza, L-a-n-z-a.

18 BRUCE HOLMGREN: Bruce Holmgren, NDEP.

19 ED GOEDHART: Ed Goedhart. I'm associated
20 with the dairy, as well as owner of Goedhart Alfalfa in
21 Amargosa Valley.

22 DOUG BUSSELMAN: I'm Doug Busselman. The
23 Executive Vice-President of the Nevada Farm Bureau.

24 ACTING CHAIRMAN COYNER: Thank you all. Thank
25 you all. And, Carrie, thank you for getting everybody

1 down.

2 That's not that we can identify those that are
3 keeled over, or don't exit the room, or -- you know, as
4 far as chairing appeal panels, I've chaired those in
5 Laughlin where I was nearly tarred, and feathered, and run
6 out of town by some power plant opponents. So this should
7 be a piece of cake for me this morning.

8 With that note, though, obviously you will
9 recognize that I am not Lew Dodgion, who was scheduled to
10 be the Chairman of the Appeal Panel. We have a situation
11 where Lew's mother passed away last night, and so we're
12 certainly thinking of him today.

13 I am of the opinion, and Counsel concurs, that
14 the change in make-up of the panel is well within statute
15 and regulation and shouldn't affect the outcome of today's
16 hearing. Mr. Anderson is certainly qualified to serve,
17 but I will make this opportunity available for Counsel to
18 put on the record their concern, opposition, play the game
19 under protest, whatever.

20 I mean, you can reserve that right to do it
21 later. I'm -- I'm making that position clear that my
22 intention is to proceed with the hearing.

23 MR. FREY: I -- Mr. Chairman, I'd like to
24 object. And I also am discouraged by the fact that you've
25 already pre-judged this prior to hearing any objections on

1 the matter.

2 The State and the Intervener spent a
3 tremendous amount of resources on briefing this matter, on
4 briefing several other issues that have come before this
5 panel.

6 Now, Mr. Dodgion has not retired or been
7 replaced on the Commission. He's still available as a
8 Commission member. A personal family matter came up that
9 he has to attend to do, the death of his mother, but that
10 should not mean that he is replaced on this panel, either.
11 He's still a member of the SEC and still available for the
12 hearing in the future.

13 Now, what -- we've done a tremendous amount of
14 briefing that, with all due respect to Mr. Anderson and
15 all of Commission members, was done to educate the members
16 of this panel. And now we're just sort of ignoring that
17 and the purpose for -- of it and saying, "Well, ah, that
18 was convenient, but so what? We didn't really need it.
19 We can proceed without it."

20 Now, there's no harm suffered by delaying this
21 until Mr. Dodgion can be back on this panel, but the only
22 harm that I can think of is to the dairy, because it's
23 their permit that's being questioned.

24 The Appellants, they're getting what they want
25 by delay, in that the dairy isn't constructing a new

1 dairy. So they're suffering no harm other than they
2 showed up here today.

3 Now, if we have to reschedule it at some time
4 in the future, I'm all for having it down in Las Vegas,
5 closer to where they live. I don't know why it wasn't
6 scheduled there in the first place. But I object to going
7 forward, because we put in tremendous resources in
8 briefing and in other prior hearings on this matter that
9 Mr. Anderson, with all due respect to him -- this isn't
10 personal with him -- wasn't part of.

11 And since Mr. Dodgion is available, just not
12 today or tomorrow, but he is still available as a member
13 of the Commission, we should wait and have him rejoin us.

14 ACTING CHAIRMAN COYNER: By that statement,
15 Mr. Frey, are you questioning the ability of Mr. Anderson
16 to reach an impartial decision?

17 MR. FREY: I've been clear that this is not
18 personal to Mr. Anderson, and, in fact, the only person
19 that I actually referenced as having pre-judged this is
20 you, because you have already indicated that you're going
21 forward irrespective of the argument.

22 ACTING CHAIRMAN COYNER: Comments from the
23 Appellants' side?

24 MR. MARSHALL: I think our concern is making
25 sure that the panel has an opportunity to review all of

1 the information that's been presented, not only today, but
2 also that had -- you know, the briefs in the past. And
3 Mr. Anderson, unfortunately, is in the position of being
4 called in at the last minute.

5 I guess our suggestion would be that we
6 continue with the hearing today, maintain the panel as it
7 is composed, and essentially treat this as an evidentiary
8 hearing for today, maybe have argument, as well, and then
9 have an opportunity for -- basically close the hearing
10 today and then come back at a later point, after which
11 Mr. Anderson and everybody has the opportunity to review
12 the entire record, so that the decision that you reach can
13 be based on the entire record, not just what was presented
14 orally today.

15 I think that educates all members equally, and
16 allows all members to have the ability to view the full
17 record, and allows us to continue today, since we do have
18 a large number of people here, and we can move forward.
19 That would be my suggestion as a way to ensure that
20 Mr. Anderson is fully informed of the contents of the full
21 record, which is where I think the vulnerability might be
22 if we proceed today, and all he has the opportunity to do
23 is listen to the testimony which, at least from our
24 perspective, will just be a summary of what we've already
25 submitted in a written form.

1 So the written form, for us, is more important
2 or just as important as what is being presented orally
3 today. That's our concern.

4 ACTING CHAIRMAN COYNER: And do you represent
5 that the final panel should be comprised of Mr. Dodgion,
6 and myself, and Ms. Zimmerman?

7 MR. MARSHALL: I would suggest that if
8 under -- that the panel be composed of the three people
9 here today, if they -- if we moved forward and the
10 testimony is -- and testimony is heard today, and argument
11 is heard today. And then -- and then you just basically
12 either continue the hearing or close the hearing today and
13 have another hearing where you deliberate and make a
14 decision, so that -- at least the opportunity is there for
15 all panel members equally to inform themselves of the
16 entire record. So that --

17 ACTING CHAIRMAN COYNER: Any other comments
18 from the Appellants with regards to this matter?

19 MR. MARTINEZ: They said that we don't lose
20 anything by being here, but I say that if the dairy
21 complied with what needs to be complied, we don't have no
22 reason to be here to begin with. The reason we are here
23 is because they're not complying.

24 ACTING CHAIRMAN COYNER: Okay. But with
25 regards to make-up of the panel --

1 MR. MARTINEZ: I'm okay with it, the way that
2 our lawyer explained it.

3 ACTING CHAIRMAN COYNER: Intervenors or the
4 dairy?

5 MR. BUTLER: Mr. Chairman, I've had a chance
6 to consult with my clients, and we would join in the
7 State's objection.

8 First of all, let me put on the record
9 condolences to Mr. Dodgion. This is unfortunate. We
10 certainly understand his absence. And again, meaning no
11 disrespect to Mr. Anderson, it's just that, as the State
12 says, there's been a substantial amount of briefing on
13 this, and a substantial amount of history of this case.

14 I mean, this case goes back -- the decision --
15 the permit decision was made in 2007. The initial appeal
16 was made in 2007. We had a hearing in 2009 considering
17 some related issues, and where ACE was allowed to
18 intervene. The intervention was granted with Mr. Dodgion
19 presiding, and there was some limitations placed on that.

20 So I think the dairy is prejudiced in a couple
21 of different ways. And in the first way, it's not --
22 again, it's not a question of impartiality. It's a
23 question of being fully informed and able to participate
24 in the hearing.

25 It's not just that we're putting evidence in

1 the record. There are some issues that have to be
2 decided. And if we go ahead with the hearing, you know,
3 right out of the gate, we -- it's not just we're going to
4 be hearing testimony. We've got some motions that have
5 been briefed, at least by us, and we're going to make some
6 other motions that relate to the history of the record.

7 And let me give you two examples. The first
8 is we filed a motion to dismiss based on lack of standing.
9 When we saw the briefing filed by the Appellants we
10 thought that they didn't meet the minimum statutory
11 standard. That brief is there. Presumably Mr. Dodgion
12 and the other panel members have had a chance to look at
13 that. It's not been responded to. We think that's a
14 preliminary matter that the Commission, this panel, needs
15 to take a look at.

16 The second thing we'll do right, out of the
17 gate, is one of the limitations that was placed on the
18 Appellants, when ACE was allowed to intervene, was that
19 they were limited by the scope of the original appeals.
20 That is, the appeals filed by Mr. Bosta and Mr. Martinez
21 in 2007. And that's an issue that Mr. Dodgion was key in
22 imposing that limitation as Chairman of the panel.

23 We believe that in their briefs, and in the
24 proposed testimony, they have gone far afield of that
25 original limitation. That's the second thing that you're

1 going to hear from us.

2 So those are issues that have history, that
3 have background, and that Mr. Dodgion was intimately
4 involved in. And so my preference is, I believe, to join
5 in the State and wait until he can rejoin us on the panel.

6 Having said that, and talked to a bit about
7 these motions that are pending, you know, we -- we are
8 concerned about not moving forward. I think one thing
9 that the Commission could do to make some progress is say,
10 well, what are these -- what are these pending motions or
11 what motions are going to come up? Can we brief those in
12 the next few weeks, so that when we -- when the Commission
13 is able to reconvene, with Mr. Dodgion here, we've made
14 that step forward, those motions are presented, they're
15 briefed, and they can be dispensed of at the beginning of
16 the proceeding.

17 Thank you. Do you have any questions?

18 ACTING CHAIRMAN COYNER: Let's wait. We may.
19 Thank you, Mr. Butler.

20 Anything else from the Intervener's side?

21 Okay. Commission, you've heard the arguments
22 here for a delay.

23 Rosemarie, comment? Does that legally
24 jeopardize us at all to proceed? My statement --

25 MS. REYNOLDS: No.

1 ACTING CHAIRMAN COYNER: My statement out of
2 box was it's my intention to proceed with the hearing on
3 the appeal.

4 MS. REYNOLDS: Correct. I mean, the primary
5 concern that I'm hearing their objection is based on is
6 the fact that they've done these briefs. And this -- we
7 don't -- we've got a Commission member who hasn't had a
8 chance to review the briefs.

9 This has been scheduled for a two-day hearing
10 to address that argument. You could adjourn for, say, two
11 hours, reconvene at 11:00, which would give him a chance
12 to study the briefs.

13 As far as the preliminary matter where the
14 Chairman was present, I don't believe that it's necessary
15 to have him hear this case just because he was part of the
16 panel that decided the preliminary matter in terms of
17 granting ACE's petition to intervene. That is over and
18 done with. And if my memory is correct, you were actually
19 the person who was pushing on confining the issues, as
20 opposed to Chairman Dodgion, when you were concerned about
21 granting them their intervention at this late date.

22 This panel has not made any substantive
23 decisions on the merits of the appeal yet. So from that
24 standpoint, to substitute a new member on the Commission
25 to hear the arguments -- I mean, you're in a better place

1 than if the arguments had proceeded, and then you had to
2 come back another day, because there's less record for him
3 to have to review to become familiar with.

4 So, like I said, one possibility would be to
5 delay the start and allow him a chance to read the briefs.
6 You could call them back. But, once again, I mean, it
7 should be noted that the Commission went above and beyond
8 to scramble and get someone here to be the third member of
9 the panel receiving this information this morning.

10 ACTING CHAIRMAN COYNER: I'm further concerned
11 about the costs involved. The State has budget issues,
12 furlough issuance, and we have issues that surround this
13 in terms of getting the people together in one place at
14 one time. I mean, if there's any progress that can be
15 made today on any front, I would prefer to do that.

16 Also, don't -- people are substituted on
17 juries, and -- I mean there's --

18 MS. REYNOLDS: And you will find, you know,
19 judges substituted, where they will have heard pre-trial
20 motions, and perhaps there's a change in assignment in a
21 court, and a new judge will come in and actually conduct
22 the trial. I mean, judges do get substituted frequently.

23 ACTING CHAIRMAN COYNER: Well, Commission,
24 I'll save you. Ms. Zimmerman, do you have a thought on
25 this?

1 MEMBER ZIMMERMAN: I guess it's my feeling
2 that if all three parties have concerns, we should think
3 about waiting until Mr. Dodgion can participate.

4 MR. MARSHALL: What three parties?

5 MEMBER ZIMMERMAN: Well, the Appellant, the
6 Intervener, and the State. The Appellant had concerns.
7 That's what I heard.

8 MR. MARSHALL: You know, our concern was not
9 necessarily that -- with Mr. Anderson not being
10 unfamiliar, but having the opportunity to familiarize
11 himself with the entire record. Whether that is before
12 the hearing starts or -- we think it can be done after the
13 hearing. It's just a matter of making sure that he's
14 acquainted with the full record. So that was our concern.

15 MR. FREY: I would like --

16 MR. BARRACKMAN: I don't think the final
17 decision's going to be made here this morning, anyway.
18 You guys are going to take whatever is presented here
19 under review and --

20 ACTING CHAIRMAN COYNER: Well, I wouldn't go
21 so far as to presume what we will and won't do. We're
22 just hearing from parties.

23 MR. FREY: I would like to just object to
24 Mr. Marshall's proposal, in that what I hear him saying is
25 that we go forward, ignoring all the motions to dismiss,

1 or summary judgment. We, again, put those in abeyance.

2 We have a whole hearing, and then we're -- the
3 purpose of the motions to dismiss, and summary judgment,
4 or any motion, is to get that resolved prior to the
5 hearing. And now we want to have us go forward with the
6 hearing and then decide the motions, which makes no sense
7 to me.

8 ACTING CHAIRMAN COYNER: I concur.

9 MR. FREY: Okay. So that was my only
10 objection to his proposal.

11 But if there's a way to make progress between
12 what Mr. Butler proposed, in that there have been issues
13 that have been focused, I think, on process and on
14 technical issues, if you will.

15 Some of the process issues, I think, are at
16 the point where if it's a motion for summary judgment or a
17 motion to dismiss, if that's in writing, that may aid us
18 in having a much shorter hearing in the future rather than
19 a two-day hearing. I think if the process stuff was
20 resolved, by motion, that would guarantee a one-day
21 hearing. That's just my -- from my reading of it.

22 ACTING CHAIRMAN COYNER: So is it your opinion
23 that we could proceed to hear the motion to dismiss, for
24 instance, and not be prejudiced by Mr. Dodgion's
25 non-participation?

1 MR. FREY: No, because --

2 ACTING CHAIRMAN COYNER: Is that what I hear
3 you saying?

4 MR. FREY: I -- I don't -- I don't think so,
5 because Mr. Anderson isn't familiar with the issues that
6 are in the motions to dismiss. I mean, that was the
7 point -- the point of doing all of this in writing.

8 ACTING CHAIRMAN COYNER: That's a fair
9 statement, Mr. Butler, in your opinion, we can't proceed
10 with the motion to dismiss, which would --

11 MS. REYNOLDS: Well --

12 ACTING CHAIRMAN COYNER: -- which I think is
13 the first matter; is it not?

14 MS. REYNOLDS: That's correct, and just to be
15 clear, that was not something that the Commission asked
16 for. You took it upon to file a motion to dismiss in
17 writing.

18 MR. BUTLER: Absolutely we did.

19 MS. REYNOLDS: I just wanted -- I thought,
20 Bill, you were saying that this was something that the
21 Commission asked for.

22 MR. FREY: No, but it's in writing.

23 MS. REYNOLDS: Right. It is in writing.

24 MR. FREY: The other documents were asked for.

25 MS. REYNOLDS: Yes. I just wanted --

1 MR. BUTLER: The Commission set up a briefing
2 schedule. I think -- I think it would facilitate the
3 Commission's consideration of these preliminary motions,
4 given the fact that Mr. Dodgion is not able to be here
5 this morning, if they were briefed in writing rather than
6 just laid out in front of you today.

7 I mean, I -- I think that we'll spend quite a
8 bit of time on preliminary motions, to try and narrow the
9 focus. And I think in order to fully consider what those
10 motions are, the Commission needs to be familiar with the
11 briefs that have been filed and what they've been -- what
12 has been said. Because, again, I think some of these
13 preliminary motions are going to say some of the issues
14 raised in the Appellants' brief aren't appropriate for
15 this hearing. And that's -- that's, you know, hard to
16 digest without an understanding of the briefs.

17 ACTING CHAIRMAN COYNER: So am I correct in
18 stating that you don't think we can render a decision on
19 the motion to dismiss without Mr. Dodgion? Is that, in
20 essence, your --

21 MR. BUTLER: Well, the question -- obviously,
22 you can.

23 ACTING CHAIRMAN COYNER: I understand.

24 MR. BUTLER: But I think our preference would
25 be to proceed with those motions, with Mr. Dodgion on the

1 panel.

2 What I'm saying is that if you're concerned
3 about time, maybe we could address those, through filings
4 after today, on some schedule that this panel sets, and so
5 that those would be resolved before, or at the beginning
6 of the next panel meeting.

7 And as Bill says, I think we can cut this down
8 to a one-day hearing once those things are pared down.

9 ACTING CHAIRMAN COYNER: Just a second.

10 (Discussion off the record)

11 MS. REYNOLDS: Ask Mr. Marshall if he's got
12 any response to what's --

13 ACTING CHAIRMAN COYNER: Well, let me -- I'll
14 save you one more time.

15 Mr. Marshall?

16 MR. MARSHALL: We all want to hear from the
17 man.

18 MR. BARRACK: Maybe he's already made his --

19 ACTING CHAIRMAN COYNER: Mr. Marshall?

20 MR. MARSHALL: I -- I think, fundamentally,
21 kind of what everyone's talking about, in one form or
22 another, is due process concerns. I mean, there may be
23 advantageous -- some parties might think it might be
24 advantageous to have one person versus another member, but
25 that's kind of gamesmanship.

1 I think what's critical to the process is
2 whether or not all -- you all are informed on the basis of
3 your decision. And so I think that's what the panel
4 should ensure should happen.

5 We believe you can do that by moving forward
6 with today. I think our presentation -- I think we can
7 have a one-day hearing, anyway, because I don't think,
8 fundamentally, that -- I think the issues have been
9 briefed. We're going to summarize those issues for you,
10 and then I think we can be out of here in a day. And then
11 Mr. Anderson can have the opportunity to read the briefs,
12 and maybe we come back tomorrow morning and have a
13 decision or we reschedule for another time.

14 So I think it -- I think we can accomplish, at
15 least our primary concern, which is to have an adequate
16 process, so there isn't a complaint at the end that people
17 did not have the time to acquaint themselves with the
18 record.

19 I don't think it is necessary to delay the
20 hearing so that a particular Board member or Commission
21 member can be here. I agree with your Counsel that there
22 is no requirement, just because that person participated
23 in earlier proceedings, that they participate in this
24 merits proceeding.

25 You know, we're ready to go forward and talk

1 about these preliminary issues if that's what the
2 Commission would like to hear first, but that will also
3 involve testimony, because it's fundamentally about how
4 these people are affected by the dairy.

5 So, you know, I really think you have -- you
6 have a broad discretion to proceed. My only concern is
7 that you provide adequate time for Mr. Anderson to
8 acquaint himself with the entire record.

9 MR. FREY: May I make one further comment --

10 ACTING CHAIRMAN COYNER: Sure.

11 MR. FREY: -- to Rosemarie's -- Ms. Reynolds'
12 comments about substituting in judges. I don't want you
13 to be misled that -- if a judge is in the middle of a
14 trial, and he dies, a new judges just walks in through the
15 door, and picks up, and they continue on. Yes, a new
16 judge is selected, but they start over. On appeals
17 courts, when a judge retires, yes, they fill in a new
18 judge, but that judge is no longer available.

19 In this case, Mr. Dodgion is available. He's
20 just not available today. So to equate it with somebody
21 retiring, or passing on, or getting a new job and no
22 longer being a judge, is not quite on target, because we
23 still have Mr. Dodgion available, just not at this precise
24 time. So it's completely different than that.

25 And even if it was the same, which I've argued

1 it's not -- even if it was the same, things would be
2 delayed to give the new person an opportunity to come up
3 to speed on all of the issues.

4 MEMBER ZIMMERMAN: The Appellant has the
5 issue.

6 ACTING CHAIRMAN COYNER: Say it so she can
7 hear it.

8 MEMBER ZIMMERMAN: The Appellant has the
9 issue. So if the Appellant feels comfortable in moving
10 forward, then maybe we should, but I agree that he needs
11 to become familiar with the material. I don't -- I mean,
12 it took me a while to get through this material. There's
13 a lot of material to go through. I don't think overnight
14 is going to allow him enough time to get familiar with it.
15 I mean, there's regulations. There's all sorts of other
16 things that are involved in this.

17 So I -- and I don't know if that would be
18 presented in this meeting, but I -- I don't think that
19 gives him enough time to get familiar.

20 ACTING CHAIRMAN COYNER: Well, we've almost
21 run out of people.

22 Rosemarie, any other thoughts, guidance?

23 MS. REYNOLDS: No.

24 ACTING CHAIRMAN COYNER: I came in committed
25 to going forward, because the State -- the wheels of the

1 State cannot stop based on one individual. I -- that's
2 just, to me, kind of runs against my grain.

3 Well, we'd better let you talk, I guess. You
4 don't have to.

5 MEMBER ANDERSON: Well, Mr. Chairman -- Pete
6 Anderson for the record.

7 It sounds to me like there's quite a magnitude
8 of material to cover, and being totally unfamiliar with
9 where we are in the past hearings, I would prefer to have
10 some time to get up to speed. I would feel much more
11 comfortable if I knew the background.

12 ACTING CHAIRMAN COYNER: Well, now, it's two
13 against one; isn't it? It's two against one to have --
14 you know, with both my parties, my fellow Commission
15 members indicating a desire to delay.

16 Is there any evidence or any things we can
17 dispose of today that would be -- I mean, I'm even
18 thinking of the expert witnesses that have traveled
19 distances to be here and incurred expense to be here. But
20 I -- I recognize that it would be improper to introduce
21 evidence ahead of -- ahead of its point in the
22 proceedings.

23 MR. FREY: I'd take Mr. Butler up on his offer
24 to write -- to do -- to do what we would have done, orally
25 today, in writing, so that when we reconvene all motions,

1 for whatever they are, are before the Commission in
2 writing, so that we can bring through them relatively
3 quickly with a minimum of argument.

4 MR. MARSHALL: We have a -- I mean, it's just
5 a -- I guess we have a substantial frustration with -- I
6 understand that people can come to certain realizations
7 many years after an appeal has been filed, but the whole
8 purpose of setting up the briefing schedule was to frame
9 the issues and not to have last-minute issues that are
10 coming up and people being forced to respond to.

11 And so, you know, I understand the Commission
12 is -- and understandably Mr. Anderson would like time. I
13 would suggest that if you -- if your intent is to delay,
14 that -- not to have a change in the panel once you start,
15 you know. If we're going to have some testimony today,
16 and then Mr. Dodgion comes back, that we just continue
17 everything, rather than try to have some testimony today.

18 You know, I think our frustration is -- with
19 these motions, is that we were supposed to, you know,
20 brief all those ahead of time with our series of papers.
21 That's what was the intent, at least I understood the
22 intent to be, if someone had an issue with standing, or
23 with, you know, the scoping broader than we put out, then
24 those would be raised and briefed.

25 You know, so we're a little frustrated that

1 that didn't happen, apparently. But, you know, we can
2 adjust, and we'll do whatever the panel thinks is best to
3 arrive at a good sound decision to allow everyone to have
4 the opportunity to read, and digest, and to, you know,
5 really understand these issues.

6 Because I do agree with the panel that these
7 are complex issues that really need to kind of sink your
8 teeth into, because they are critical, not only, I think
9 to the dairy's fiscal interest, but to the Appellants'
10 lives. And so we want to make sure that you have an
11 adequate time to really understand what is being brought
12 forth today, however that may be.

13 So I guess we kick it back to you to tell us
14 what we should do.

15 MEMBER ANDERSON: Mr. Butler?

16 MR. BUTLER: Mr. Chairman, I have to speak to
17 something Mr. Marshall said. I think the dairy's a lot
18 frustrated, but our frustration stems from the way
19 Mr. Marshall and the Appellants did their briefing.

20 The reply brief, the last in the series,
21 raised an entirely new issue. It's almost devoted
22 exclusively to air emissions. That's not something we
23 could have addressed until we had that in hand.

24 The standing issue, we expected to see some
25 evidence to support that in their briefing. It wasn't

1 there. That's why we filed the motion to dismiss.

2 So I want to make it clear that the reason for
3 these preliminary motions today is as a result of the
4 briefing, not things that could have been done a month ago
5 or could have been done during the briefing and weren't.

6 ACTING CHAIRMAN COYNER: As a personal
7 observation on the briefs, I recognize some inadequacy,
8 but I was perfectly comfortable with moving forward with
9 the various issues and having them either augmented by
10 verbal argument, or testimony, or not.

11 I'-- I'm comfortable with the level of briefs
12 as they are today. So I don't know that further briefs
13 would be helpful, from my personal opinion. I was
14 perfectly comfortable with moving forward with those
15 today. So that, notwithstanding.

16 Damages by delay of the entire proceeding,
17 other than financial for travel, et cetera, for two weeks
18 rather than scheduling? Is there --

19 MR. MARSHALL: I think it's going to be.

20 ACTING CHAIRMAN COYNER: Let's go here.

21 MR. MARSHALL: Obviously we have expended
22 resources to bring people here.

23 ACTING CHAIRMAN COYNER: Right.

24 MR. MARSHALL: So -- but I think we're willing
25 to absorb that if the Commission thinks it's best to

1 delay. The --

2 ACTING CHAIRMAN COYNER: Go ahead.

3 MR. MARSHALL: The -- you know, unfortunately,
4 I think it would be longer than two weeks, just given --

5 ACTING CHAIRMAN COYNER: The summer schedule?

6 MR. MARSHALL: Yes.

7 ACTING CHAIRMAN COYNER: You should be on the
8 Bango thing. It's like trying to land a slot machine.
9 Excuse me.

10 MR. FREY: The 28th?

11 MR. MARSHALL: So I think as I understand it,
12 the permit is in effect until it's not stayed, until the
13 Commission, if it chooses to overturn it, overturns it.
14 So -- you know, so just looking at it, I'm not certain if
15 there is -- you know, our interest is in moving forward
16 today. I don't want to argue too hard that there isn't a
17 whole lot of --

18 ACTING CHAIRMAN COYNER: I understand. Well,
19 let me just say --

20 MR. MARSHALL: -- damages in delay.

21 ACTING CHAIRMAN COYNER: -- I would be very
22 sympathetic to moving it for setting it -- very
23 sympathetic based on what happened today, because I'm very
24 appreciative of personal expense in this, and given the
25 State still has fiscal issues, but I think, you know, to

1 put the Appellants through additional personal expense
2 is -- is significant, yes.

3 MR. BARRACKMAN: The only comment I would make
4 is this, is that life being what it is, all of us may not
5 be able to be at the next hearing, for whatever reason.

6 ACTING CHAIRMAN COYNER: Yeah, we talked about
7 that earlier. We were still able to take nourishment, but
8 we can't guarantee that --

9 MR. BARRACKMAN: Yeah. Some of the major
10 participants may be not able to be there.

11 ACTING CHAIRMAN COYNER: I understand.
12 Financial damage to the State for delay, Bill?

13 MR. FREY: None.

14 ACTING CHAIRMAN COYNER: None as you can see,
15 other than perhaps a change in venue would cause travel
16 expense, to southern Nevada, et cetera, et cetera.

17 MR. FREY: Yeah.

18 ACTING CHAIRMAN COYNER: Okay. Financial
19 damage to the --

20 MR. BUTLER: Well, we've got --

21 ACTING CHAIRMAN COYNER: Are you facing some
22 sort of imminent deadline that --

23 MR. BUTLER: No.

24 ACTING CHAIRMAN COYNER: -- have to do this,
25 have this do that?

1 MR. BUTLER: You know, obviously there entire
2 proceeding has been a financial burden on the dairy, but
3 this permit is critical to their continued operation.

4 So the dairy's interest is in making sure that
5 this is done properly and that we get a good outcome. I
6 mean it -- Jay and Reddy have traveled here from New
7 Mexico, but wherever you schedule the hearing -- and we
8 are also sympathetic to a location that's closer to the
9 operation.

10 That's -- I'm not going to look back at my
11 client, because it's his money, but our preference is to
12 make sure that we do it right.

13 ACTING CHAIRMAN COYNER: Would you like to
14 host the next proceedings at the dairy? Maybe that would
15 be appropriate.

16 MR. FREY: I've got no objection.

17 MR. BUTLER: Well, you know, we did -- if you
18 want to put them in southern Nevada or Amargosa Valley, I
19 assume we're fine with that. Aren't we, Mister --

20 ACTING CHAIRMAN COYNER: Well, I'm being what
21 facetious.

22 MR. BUTLER: Well, I mean, it's -- it is a --

23 ACTING CHAIRMAN COYNER: It might be
24 interesting to compete with the mooing.

25 MR. BUTLER: Well, I -- you know, that's a --

1 if that's a question --

2 ACTING CHAIRMAN COYNER: I'm not asking you to
3 respond to that.

4 MR. BUTLER: But we're -- I'm sure we're happy
5 to host you there.

6 ACTING CHAIRMAN COYNER: Well, okay, I've been
7 left very crippled here, because my Commission member to
8 my left has indicated he's not sure we need to move, and
9 my Commission to the right has basically admitted that he
10 would feel more comfortable without moving forward. So if
11 I move forward, I'm really ignoring both of those people.

12 Rosemarie, any other legal jeopardy issues?

13 MS. REYNOLDS: No.

14 ACTING CHAIRMAN COYNER: Boy, this is like
15 kissing your sister.

16 Well, I guess I'll ask for a motion, then, if
17 we're at that point. Are we at a point that we need a
18 motion to continue or not continue? And I'll ask you not
19 to make it, Mr. Anderson, because you're the vulnerable
20 one here. So I guess it's kind of you and me, and --
21 because I think we need a motion of some sort for a
22 continuance, or delay, or proceeding, or -- that's the
23 only way we're going to come to a head here.

24 MS. REYNOLDS: (Nodding).

25 ACTING CHAIRMAN COYNER: Or do you want to add

1 something more, Stephanie?

2 MEMBER ZIMMERMAN: I don't.

3 MR. MARSHALL: I'd like to at least have in
4 the mix that -- you know, find some way to -- maybe
5 adjourning -- I think there was a suggestion to adjourn
6 for a couple of hours, and read the briefs, and, you know,
7 move forward today. I think that's a possibility that you
8 can all consider. So I think there's multiple options to
9 proceeding, you know, getting a witness in the chair and
10 starting off right away.

11 ACTING CHAIRMAN COYNER: Well, then it's
12 always a question of adequacy, Mr. Marshall. Is an hour
13 adequate? Is a half a day adequate? Is 10 minutes
14 adequate? I'm faced with that sort of problem, as well.

15 MEMBER ZIMMERMAN: I'm just a little
16 uncomfortable. I guess I could get comfortable with being
17 a -- it would be nice to have the presentations on the
18 same day or the same days that you're making the decision.
19 Having some distance between those two puts you at a
20 little bit of a disadvantage. It's like starting over
21 again when you get back or sort of revisiting things. So
22 either we do it or -- or, in my opinion, we need to do it
23 or not.

24 ACTING CHAIRMAN COYNER: That is certainly my
25 preference. I don't like the piecemeal approach of the

1 partial testimony and then have to revisit all that.

2 But, boy, Mr. Walker, as far as -- you're very
3 experienced with scheduling. How hard was it to schedule
4 this hearing for today? How long did it take you to do
5 this?

6 MR. WALKER: For the record, John Walker.

7 They're very difficult to schedule, and if
8 we -- if it's decided that we reschedule, I would try to
9 pick a month that everyone could agree to. You know, like
10 September or November, something like that. Then we can
11 narrow the schedule, and time, and place, because that's
12 what's really important. You know to get everyone back
13 together is very difficult. It's just the way it is.

14 So I would ask that a month be picked that
15 people come back together, if it's decided to do that.
16 And I can say that October is probably not a good month,
17 since we're going to have a full SEC hearing in October.
18 October 8th, I believe.

19 MEMBER ZIMMERMAN: And Rosemarie or --
20 Rosemarie, I'm sorry. Is it possible to have the
21 conversations today to further define or clarify exactly
22 what the Appellants want? Because I did read that
23 second -- the answer by you, and it did bring up
24 additional issues.

25 And I was a little confused as to what the

1 Appellant was asking for, and if we could define the
2 scope, and what it is they're asking for today, maybe that
3 would help us move forward if, in fact, we were to
4 continue this.

5 Because I was feeling a little, you know, like
6 we're starting to -- the thing's growing, and what is it
7 exactly we're trying to make a decision on today or some
8 other day? Is that something you can do?

9 MS. REYNOLDS: You're talking -- are you
10 talking about in connection with the motion to dismiss,
11 trying to decide the motion to dismiss?

12 If my understanding is correct, though, you've
13 got testimony that you wanted to present, Mr. Marshall?

14 MR. MARSHALL: That's correct.

15 MS. REYNOLDS: So you could certainly say,
16 okay, we're going to hear the preliminary -- I would still
17 go ahead and perhaps have some adjournment, because some
18 of those issues in the motion to dismiss, I'm sure that
19 you wouldn't want to --

20 ACTING CHAIRMAN COYNER: Going down the road
21 that --

22 MS. REYNOLDS: -- have him, you know --

23 ACTING CHAIRMAN COYNER: He doesn't have
24 background on it. I'm certain that's going to get into
25 it, if we get into that.

1 MS. REYNOLDS: Right. So if you have a brief
2 adjournment to allow that to happen, and then have brief
3 testimony only on the issues as far as what's presented in
4 the motion to dismiss. I don't know. Are there other
5 preliminary motions that you intended to make other than
6 what's been stated in the motion to dismiss on standing?

7 MR. FREY: Yes. Briefly, yes. There's
8 probably four -- if you look through the briefing, there's
9 probably a total of six issues. There would probably be a
10 motion to dismiss made on four of them.

11 But if I can make just a thought -- I mean,
12 maybe the first thing to consider is if you want to
13 reschedule and have Mr. Dodgion rejoin you, or if you want
14 to reschedule and just continue with Mr. Anderson, because
15 maybe you can schedule a meeting. I don't know -- but
16 that may be an -- an initial thought to deal with whether
17 you want to reschedule -- whether you want Mr. Dodgion's
18 involvement in the future or if you want Mr. Anderson.

19 ACTING CHAIRMAN COYNER: Based on the fact
20 that Mr. Dodgion may be less available than Mr. Anderson?

21 MR. FREY: No, no.

22 ACTING CHAIRMAN COYNER: Is that what you're
23 saying?

24 MR. FREY: No. I mean, if Mr. Dodgion's going
25 to rejoin the group, then Mr. Anderson doesn't have to do

1 any preparation or review any documents.

2 ACTING CHAIRMAN COYNER: I may have them come
3 just so we have a standby hitter here.

4 MR. FREY: Well, that goes back -- yes, that's
5 what Ms. Reynolds was talking about with juries. They
6 have the substitutes there for the entire trial, for all
7 of it. So that's why they can be substituted in. They
8 don't just show up one day.

9 MR. MARSHALL: May I make a suggestion as to
10 how to proceed, just process-wise? It seems the
11 Respondents, NDEP, and the Intervener have objections to
12 the scope of the issues that were raised in the briefing,
13 and they also have this motion to dismiss, which was a
14 separate thing from the briefing, which we did not have --
15 did not respond to in writing yet.

16 And so it may be that, you know, just to
17 facilitate us kind of moving forward is that we provide an
18 opportunity like was suggested by dairy's Counsel that
19 they file, and the State can file some sort of paper that
20 says, "Here's the issues we think are outside the scope,"
21 and then we can respond, in writing, to the standing issue
22 and the scope issue.

23 And then we can have another hearing or
24 reschedule this hearing for September or some time, and
25 just move forward. It seems, you know, if that's -- we're

1 willing to accept that, reluctantly, if that's -- if that
2 will at least move us forward to a decision point.

3 Because I -- you know, we disagree, obviously,
4 with those positions articulated, but we haven't seen the
5 motions regarding the scope yet, assuming those will be
6 oral, but they can be put in writing, I'm certain.

7 MR. FREY: I would second that suggestion from
8 our -- from all of the --

9 ACTING CHAIRMAN COYNER: So --

10 MR. FREY: -- party side, in the sense that
11 what -- what Mr. Marshall has done, on behalf of his
12 client, was to focus the hearing down from sort of the
13 universe of everything, down to what I characterize as six
14 issues, whatever the number is.

15 And those six triggered a reaction from the
16 folks at this table, and we said, well, if these are the
17 issues, some of these we think are suitable for
18 disposition by motion, maybe with attached supporting
19 documentation, but we didn't do that because the idea of
20 the briefing was just to do the focusing of what the
21 issues were.

22 So we had -- from the State's perspective, we
23 had talked about trying to file some sort of motion to
24 dismiss in advance of the hearing, but the timeframe was
25 so close that it wouldn't have given Mr. Marshall an

1 opportunity. It would have been in the last week that we
2 would have needed to file it, I believe, the last two --

3 MR. MARSHALL: I guess I didn't quite perceive
4 that as what was happening. I think the intent of the
5 parties, and what I think we agreed upon at the hearing
6 was not -- was to have briefs that would focus the issues,
7 and then you would then decide those six issues.

8 And if we needed to have additional evidence
9 in the first part of the hearing, that that was -- then
10 we've -- we have an opportunity for parties to present
11 additional evidence, if they needed to. And then we'd,
12 you know, have argument from both sides regarding the
13 issues that were raised, and then it would be put to you
14 for debate and a decision.

15 I don't think we agreed or nor do I agree now
16 that we should have another briefing schedule so that you
17 can decide issues just on papers and not have a hearing,
18 because ultimately we want to have a hearing to argue
19 them, and then we might as well as just have a hearing.

20 So I was assuming that they were going to
21 raise some issues regarding, I think, what Commissioner
22 Zimmerman articulated as a concern over, you know, what
23 exactly are the suite of issues that the Commission should
24 address, not to try to get rid of those issues on the
25 merits beforehand.

1 MS. REYNOLDS: And in connection with that --
2 I mean, your rules of practice don't really address all of
3 these. You have the authority under the rules of practice
4 to call for briefs, but all of this outside, pre-hearing
5 motion work, your rules of practice are silent on.

6 And so -- I mean, just so that you know. But
7 in the past you certainly have come forward and have
8 argued motions to dismiss, orally, and things like that.
9 But it's just -- we have never gone through and done this
10 much extensive briefing on -- say, you mentioned a motion
11 for summary judgment, a motion to dismiss. That's just
12 not been the way the Commission's practiced.

13 MR. FREY: The Commission has had motions for
14 summary judgment or dismissed for as long as I've appeared
15 before them, and I thought 233B stated that the
16 Commission -- any commission, or any public hearing,
17 contested case hearing generally followed the Rules of
18 Code of Civil Procedure.

19 So that -- certainly by those rules, you're
20 entitled to bring matters before a body, by motion. And
21 the intent of motion is really to clarify, and narrow the
22 scope, and whittle it down so that the hearing can proceed
23 in an orderly sensible fashion.

24 So I've never heard -- I've never heard before
25 the SEC that you aren't allowed to do that.

1 MS. REYNOLDS: No, I'm just speaking to the
2 fact that, yes, you've come forward, and you've made your
3 motions. Typically the Appellants are not represented by
4 Counsel. So you've come -- come to the SEC, and you've
5 made those motions orally at the beginning. It's not
6 something that that's been done formally in writing, where
7 the panel's had a chance to consider those before --
8 before the hearing has begun. Just --

9 MR. FREY: I guess I want to object to that.
10 I guess typically they are represented by Counsel. I
11 mean, the ones that we all -- stand out in our minds are
12 ones where they're not, but when --

13 MS. REYNOLDS: Where the Appellants are
14 represented by Counsel?

15 MR. FREY: Yes.

16 ACTING CHAIRMAN COYNER: Okay, okay, okay.
17 I -- I would render an opinion, yes, that the briefs in
18 this case have helped to focus. And I think I heard you
19 mention that we brought it down from the universe to a
20 somewhat limited number, and there may be disagreement
21 about it. And Stephanie alluded to the fact that some of
22 them may have gone -- now, I'm getting confused that
23 things have grown or mushroomed. And that may be typical.
24 That may be typical of the process.

25 But I also feel that bringing it to focus, to

1 the hearing, get it on, get the business of this whole
2 thing taken care of, is critical to making that happen.
3 And as I previously stated, I was more than comfortable
4 with going forward this morning with the level of briefs
5 that we had.

6 And I'm not sure that trading briefs to -- to,
7 you know, and I'll use the number-of-angels-dancing-on-a-
8 pin argument for the lawyers, that, you know, that
9 ultimately, that's going to be productive. It might be
10 somewhat productive, narrowing this just a little more.

11 MR. BUTLER: Mr. Chairman -- and I think
12 that's fine. I wasn't -- I was just saying if you -- I
13 made that as a suggestion, that if the Commission felt
14 that it would make some progress during the continuance,
15 that was a suggestion. I -- again, that's your call,
16 whether you think that's helpful or not. We're willing to
17 do it, if you do. We're willing to address these things
18 orally if you don't.

19 ACTING CHAIRMAN COYNER: And then I'll also
20 add -- not trying to prejudice myself, but at the end of
21 the day it's going to be a determination as to whether the
22 ground water is in the state of being impaired, of being
23 affected. That's the bottom, bottom, bottom line.

24 There are other issues that I think, quite
25 properly, we have to do deal, with the matter of standing,

1 so forth, and so on. But when it's all said and done all,
2 and the smoke clears, the bottom line's going to be what
3 impacts, and are we, under this permit, properly prepared
4 to know that, "yes" or "no"? And that's going to be where
5 it's going to be for me at the end of the day.

6 Does the permit allow us, as a state, to know
7 if the operation of the dairy is or is not impairing the
8 waters of the state. And I may be over-simplifying things
9 a little bit, but that's kind of where it comes to for me.

10 I intend to continue to be a member of the
11 panel. Both my parents are dead. God rest their souls.

12 Stephanie, yes?

13 MEMBER ZIMMERMAN: How about this? You know,
14 Pete is the one that we -- we don't know whether he's
15 fully informed or not. And it's my understanding
16 Mr. Anderson has some background in what we're talking
17 about today. Maybe he either knows now, or if we do give
18 him some time -- because maybe looking at the documents he
19 is familiar enough with regulations, or the background of
20 this subject matter, to be able to read the information
21 and move forward.

22 But he could make -- maybe he could make that
23 call. Maybe he knows right now where he's at with this,
24 but if we did adjourn and give him some time to read it,
25 maybe he could determine whether he's familiar yet enough.

1 I did a lot of work and a lot of reading on
2 this, but maybe with his background it wouldn't require as
3 much.

4 ACTING CHAIRMAN COYNER: Well, you're allowing
5 him an opening, but I heard him say before that he was a
6 little overwhelmed by the volume.

7 MEMBER ZIMMERMAN: Okay.

8 ACTING CHAIRMAN COYNER: And I don't want him
9 to have to put himself in a position of -- you know, him
10 sort of being the one to make the call on this sort of
11 thing.

12 MEMBER ZIMMERMAN: Okay.

13 ACTING CHAIRMAN COYNER: I -- I am -- despite
14 the fact of having coming in here very willing to move
15 forward, I am now somewhat more towards reconvening at a
16 later date with Mr. Dodgion, and specifically I would say
17 in southern Nevada.

18 I'm not real firm on continued briefs. I
19 mean, I think they might help. They might not. I still
20 think it's going to come down to the hearing, and I don't
21 know that I want to put through -- because there's a
22 financial impact to the Appellants, by having their
23 Counsel prepare additional briefs. There's time involved
24 with the State. I'm not sure that would help.

25 I'm back to looking for a motion, and I think

1 I've got to left -- I can make the motion, myself. Why
2 don't I be the bad guy?

3 I'm going to move that the appeal panel be
4 suspended reconvened at later date, starting from this
5 date, preferably in southern Nevada, when Mr. Dodgion, and
6 Ms. Zimmerman, and Mr. Coyner can be in attendance, so
7 that there's no -- no -- to the best of their ability, to
8 be in attendance. And I will also ask in that motion that
9 Mr. Anderson be allowed to join the panel if that's -- if
10 that's available to us.

11 I mean, I realize it says a three-person
12 panel, but I don't think it says anything about another
13 Commission member sitting in.

14 MS. REYNOLDS: It doesn't.

15 ACTING CHAIRMAN COYNER: Okay.

16 MEMBER ZIMMERMAN: Unless it's two-two.

17 ACTING CHAIRMAN COYNER: I'm sorry the motion
18 is taking so long. The guts of it would be to suspend to
19 a later date, at this point, that the panel at that time
20 be Dodgion, Coyner, and Zimmerman, that it be held in
21 southern Nevada -- I won't dictate where, and that
22 Mr. Anderson or another member of the Commission be
23 invited to join, because we can't -- we can't have this
24 again. This is just not appropriate.

25 So that's my motion.

1 MEMBER ZIMMERMAN: And I will second it.

2 ACTING CHAIRMAN COYNER: I've moved and
3 Ms. Zimmerman has second the motion.

4 You get to vote, because you're here.

5 MR. ANDERSON: I know.

6 ACTING CHAIRMAN COYNER: Do you understand the
7 motion?

8 MR. ANDERSON: I do.

9 ACTING CHAIRMAN COYNER: Is the motion clear
10 on the recording --

11 THE REPORTER: Yes.

12 ACTING CHAIRMAN COYNER: -- as far as you're
13 concerned?

14 Rosemarie, is the motion clear, in your
15 opinion?

16 MS. REYNOLDS: The fourth person, kind of like
17 the panel alternate --

18 ACTING CHAIRMAN COYNER: Correct.

19 MS. REYNOLDS: -- has not been named?

20 ACTING CHAIRMAN COYNER: Non-voting.

21 MS. REYNOLDS: Non-voting, but --

22 ACTING CHAIRMAN COYNER: And this would be --

23 MS. REYNOLDS: Has not been named, because
24 if -- if you're talking about holding this in southern
25 Nevada, then logically it should be someone who is in

1 southern Nevada, because --

2 ACTING CHAIRMAN COYNER: And that's why I say
3 or another member of the Commission.

4 MS. REYNOLDS: Okay.

5 ACTING CHAIRMAN COYNER: I'm not particularly
6 saying that it should be Mr. Anderson.

7 MS. REYNOLDS: Okay.

8 ACTING CHAIRMAN COYNER: Any objection out
9 there from that side? Intervener? State?

10 MR. BUTLER: No.

11 ACTING CHAIRMAN COYNER: State?

12 MR. FREY: No.

13 MR. MARSHALL: I'm sorry. Say that again.

14 ACTING CHAIRMAN COYNER: Mr. Marshall, I'll
15 open this reluctantly to discussion from outside the
16 Commission. Is that motion unbearable to you, or is it
17 just something you can't live with, or you're --

18 MR. MARSHALL: We would prefer to proceed
19 today. That's our preference.

20 ACTING CHAIRMAN COYNER: I understand.

21 MR. MARSHALL: But if the will of the panel is
22 to continue it, then we will adjust.

23 ACTING CHAIRMAN COYNER: Recognized and so
24 noted.

25 Further discussion?

1 MEMBER ANDERSON: No.

2 ACTING CHAIRMAN COYNER: Then I guess I'll
3 call for a vote. All in favor say, "aye."

4 ("Aye" responses)

5 ACTING CHAIRMAN COYNER: Aye.

6 Opposed say, "nay."

7 (No response)

8 ACTING CHAIRMAN COYNER: Okay. Sorry is all I
9 can say.

10 (The vote was unanimously in favor of motion)

11 ACTING CHAIRMAN COYNER: The appeal panel is
12 adjourned until a -- and I recognize that you asked for a
13 month, and I didn't ask for that. So before I adjourn,
14 then, I'll recognize that the motion stands approved, by
15 three-to-zero. With that, let's continue and ask for a
16 month.

17 Does anyone have any opinion on when we could
18 next reconvene?

19 I mean, you don't have to give me one if you
20 don't want to, but we might as well as try and narrow it
21 out of the gates, or maybe there's just no -- no good one.

22 MR. FREY: First half of August, second half
23 of September.

24 ACTING CHAIRMAN COYNER: Second -- I guess
25 I'll ask the Stephanie for sure. Do you have your

1 calendar with you?

2 MEMBER ZIMMERMAN: I don't, but the second
3 half of September sounds reasonable.

4 ACTING CHAIRMAN COYNER: The week of the
5 21st -- the week of the 14th is out for me. The week of
6 the 21st is in. The week of the 28th is in. Otherwise
7 we're looking at October, being the week of the 5th is out
8 for me. The week of the 12th and 19th is available for
9 me. I'm just throwing my stuff out there.

10 MR. FREY: Those are all right.

11 MR. BUTLER: The -- really, the critical path
12 in our schedule is Mr. Lazarus, and, you know, he's got
13 weeks here and there. He doesn't have an open month.
14 He's got some time, he says, perhaps late in September,
15 but if we could focus on -- from our side, it's his
16 schedule that's going to be important.

17 ACTING CHAIRMAN COYNER: Do you happen to know
18 if the week of the 21st is one of the weeks that --

19 MR. BUTLER: Of September?

20 ACTING CHAIRMAN COYNER: September.

21 MR. LAZARUS: I --

22 ACTING CHAIRMAN COYNER: I'm not asking you
23 for a commitment.

24 MR. LAZARUS: I'm sorry. I didn't anticipate
25 bringing my September calendar with me. I know that the

1 last week of September, towards the -- I think that -- I
2 don't remember the dates, but maybe after the 27th or
3 28th.

4 ACTING CHAIRMAN COYNER: Is the last week, but
5 it's only a two-, three-day week, and then we're in
6 October.

7 MR. LAZARUS: Okay. After the 28th of
8 September I'd be available.

9 ACTING CHAIRMAN COYNER: So the 21's out for
10 you, the week of the 21st, which is the last full week in
11 September.

12 MR. LAZARUS: I could probably do the -- it
13 will be really difficult.

14 ACTING CHAIRMAN COYNER: Okay. The week of
15 the 21st of September?

16 MR. BARRACKMAN: What are you saying?

17 ACTING CHAIRMAN COYNER: The week of the 21st
18 of September?

19 MR. BARRACKMAN: Let's do it.

20 MEMBER ZIMMERMAN: Or the 28th. Were you
21 saying the 21st was out?

22 MR. LAZARUS: The 21st would be very
23 difficult. I have other plane reservations that week, but
24 the following week, which is --

25 ACTING CHAIRMAN COYNER: The 28th.

1 MR. LAZARUS: The 28th -- if -- starting the
2 29th, on that week, I'd become available.

3 ACTING CHAIRMAN COYNER: Tuesday?

4 MR. LAZARUS: I could travel on that Tuesday.
5 The latter part of the week would be better than the
6 beginning of the week.

7 ACTING CHAIRMAN COYNER: The latter part,
8 which would be the first days of October. October 1 and
9 2?

10 MR. MARSHALL: I -- I think that would be
11 okay. We're going to have to dance around a little bit.
12 Mr. Barrackman's harvest is about that time, but --

13 MR. BARRACKMAN: I'll work around it.

14 ACTING CHAIRMAN COYNER: I'd love to run the
15 combine.

16 MEMBER ZIMMERMAN: We'll do that first.

17 MR. BARRACKMAN: The tree shaker.

18 ACTING CHAIRMAN COYNER: We'll do the
19 pistachios. That will be -- yeah.

20 MR. MARSHALL: We'll try to work with the
21 parties to -- and --

22 MR. BARRACKMAN: I'll work my harvest around
23 this.

24 ACTING CHAIRMAN COYNER: Well, justice delayed
25 is justice denied. Somebody said that; didn't they? Some

1 famous -- some famous person. I'm not sure.

2 MR. BARRACKMAN: Alan Coyner was his name.

3 ACTING CHAIRMAN COYNER: Okay. So we're kind
4 of targeting the September 30th, October 1, 2, so that
5 Wednesday, Thursday, Friday, and you've at least got some
6 people nodding their heads.

7 MR. BOSTA: My wife is flying out to the
8 Philippines on October 1, I won't be available. I have to
9 take her to the airport.

10 MR. MARSHALL: The 1st --

11 ACTING CHAIRMAN COYNER: So the 1st is
12 somewhat problematic for you?

13 MR. BOSTA: Yes.

14 ACTING CHAIRMAN COYNER: She should take a red
15 eye.

16 MR. BOSTA: But I have to take her to the
17 airport on October the 1st, put her on the airplane.

18 ACTING CHAIRMAN COYNER: Get you a driver.

19 MEMBER ZIMMERMAN: Is the 2nd a Friday or --

20 ACTING CHAIRMAN COYNER: No, the 1st is a
21 Thursday.

22 MEMBER ZIMMERMAN: The 1st is a Thursday?

23 MR. BARRACKMAN: Is everybody going to be in
24 southern Nevada, or is it going to be a teleconference?

25 ACTING CHAIRMAN COYNER: I would -- no. I am

1 going to very much insist on it being in southern Nevada.

2 MR. BARRACKMAN: Everybody.

3 ACTING CHAIRMAN COYNER: Everybody.

4 MR. MARSHALL: May I suggest that maybe we
5 focus on that week, we would work with Mr. Walker to come
6 up with two days where we can block it?

7 ACTING CHAIRMAN COYNER: Well, we could start
8 on Wednesday. We could harvest pistachios on Thursday.

9 MR. BARRACKMAN: Come back on Friday.

10 ACTING CHAIRMAN COYNER: Come back on Friday.
11 That's the way I see it.

12 MR. BARRACKMAN: Don't drink the water while
13 you're there.

14 MEMBER ZIMMERMAN: What about the 29th and
15 30th?

16 ACTING CHAIRMAN COYNER: The Tuesday -- I
17 think Mr. Lazarus said if it was Tuesday, he could maybe
18 start it. He's got a commitment on Monday, the 28th of
19 September.

20 MEMBER ZIMMERMAN: So the 29th and 30th might
21 work?

22 ACTING CHAIRMAN COYNER: So the 29th and 30th
23 might work.

24 (Discussion off the record)

25 MEMBER ANDERSON: Of course, we don't know

1 Mr. Dodgion's --

2 MR. BARRACKMAN: Are we going to have it at
3 NDEP's office in Las Vegas?

4 ACTING CHAIRMAN COYNER: I doubt that, knowing
5 it's right next to my office and it wouldn't even hold
6 this crowd. So --

7 MR. WALKER: We'll have to find a location.

8 ACTING CHAIRMAN COYNER: We'll see. We'll
9 see, and I'm not so unsure. It might be the Amargosa
10 Community Hall.

11 MR. BARRACKMAN: You might have a hundred
12 people there.

13 ACTING CHAIRMAN COYNER: Well, like I say,
14 I've done those hearings before.

15 MR. BUTLER: We could start -- we could start
16 on the 30th. And, again, it's our intention that this,
17 whenever it happens, is not going -- is going to be done
18 in a day.

19 MR. BARRACKMAN: Did he say "is" or "is not"?

20 ACTING CHAIRMAN COYNER: Well, he -- they
21 would prefer the 30th, which is Wednesday.

22 MR. BUTLER: I'm just saying we could -- you
23 were looking to try and expand that timeframe. I'm just
24 saying, in terms of Mr. Lazarus' schedule, he could start
25 as early that week as the 30th.

1 ACTING CHAIRMAN COYNER: But not the 29th,
2 Tuesday?

3 MR. LAZARUS: It would be preferable not to
4 start on the 29th, based on my plane schedules that are
5 already made.

6 MEMBER ZIMMERMAN: Fly in late that night.

7 MR. WALKER: Just a note that we're not --
8 we're assuming that Mr. Dodgion can be available, and he
9 is a hunter. I'm not a hunter. When is deer season?

10 ACTING CHAIRMAN COYNER: I'm going to be
11 non-sympathetic to that. I can tell you that right now.
12 I know he's pretty insistent on it, but, yeah, if he's got
13 a tag that's drawn, it's like --

14 MR. WALKER: It will take precedence. I can
15 tell you.

16 MR. MARSHALL: That's why I suggest we not --
17 maybe narrow down a week. It sounds like the latter half
18 of that week, or maybe rolling over into the first week of
19 October, we just -- I think it's not a good use of our
20 time right now to try --

21 ACTING CHAIRMAN COYNER: We can't do the week
22 of October 5th?

23 MEMBER ZIMMERMAN: And August is out, right,
24 the whole --

25 MR. MARSHALL: August doesn't work?

1 MR. WALKER: And sorry to interrupt again, but
2 remember we have a full SEC hearing on October 8th.

3 ACTING CHAIRMAN COYNER: Yeah, and I'm out the
4 first part of that week. So, yeah.

5 Okay. So the target is still the week of
6 October -- September 28. And September 21 is right out?
7 Did we come to that conclusion, because of Mr. Lazarus?
8 September 21, the week of September -- if that changes, at
9 all, would you please let us know?

10 MR. LAZARUS: If they decide not to get
11 married, I promise I'll let you know.

12 MEMBER ZIMMERMAN: How about one week earlier?

13 ACTING CHAIRMAN COYNER: No, I can't do it
14 then. And the 7th is the holiday week, and mine is -- I
15 don't see any reason to try to look forward of that.

16 MR. WALKER: You can go back outside of
17 October, into the, you know, the week of the 12th, 19th,
18 26th.

19 ACTING CHAIRMAN COYNER: In October?

20 MR. WALKER: Yeah, if you want.

21 ACTING CHAIRMAN COYNER: Well, yeah, I mean,
22 if you want to go into 12, 19, 26, I have available, too.
23 So why don't we say the preferred week is the --

24 MR. BARRACKMAN: How about when the hunter is
25 going to be available?

1 ACTING CHAIRMAN COYNER: Well, we'll narrow
2 that down. The week of the 28 -- the latter part of the
3 28th is -- recognizing that the 1st is a bad day for you.

4 MR. BARRACKMAN: Me?

5 ACTING CHAIRMAN COYNER: John.

6 MR. BOSTA: I just have to put my wife on an
7 airport in Las Vegas. I think that at 4:00 o'clock or
8 5:00 o'clock on October 1. And if the hearing is in
9 Amargosa Valley, well, then I will have to -- you know, at
10 4:00 o'clock, I would assume maybe the meeting would be
11 over, but it takes two hours to get to the airport, and
12 you have to be there two hours before the flight.

13 ACTING CHAIRMAN COYNER: Yep, yep. So what --
14 we recognize that, and then so that's the target week.
15 Then the fallback is October 12 and 19 after that.

16 Okay. Anything else for --

17 MR. BOSTA: So when's going to be the date?

18 MR. MARSHALL: We can work it out.

19 ACTING CHAIRMAN COYNER: We will work it out
20 to the satisfaction of all parties. I appreciate the
21 levity, even though I've been somewhat -- that it is an
22 important hearing. There's a lot involved here. There's
23 a huge record involved. So we have to treat it that way.
24 Anything else?

25 MS. REYNOLDS: You might want to clarify

1 whether or not -- are you guys going to file your motions
2 for summary judgment?

3 MR. FREY: Mr. Coyner said he didn't need it.

4 MS. REYNOLDS: Okay.

5 ACTING CHAIRMAN COYNER: In my personal
6 opinion --

7 MS. REYNOLDS: Okay.

8 ACTING CHAIRMAN COYNER: I don't know if I
9 need to hear from Mr. Anderson but Ms. Zimmerman, perhaps,
10 I was fully prepared -- I think the briefs are adequate.
11 You know, the briefs you could rehone, and rehone, and
12 rehone, but we've brought it down a long way. And that's
13 maybe enough lawyer time registered for a while now.

14 And I really don't know that further briefs
15 would do a whole lot. It's still going to fall down to
16 the jury ultimately, anyway. And I recognize that it
17 costs money to have these guys on the clock.

18 MS. REYNOLDS: Right.

19 ACTING CHAIRMAN COYNER: It costs money to
20 have you on the clock.

21 MS. REYNOLDS: Whether or not the parties want
22 it, you mentioned you were concerned about one of the
23 issues that was raised in the reply brief. Did you want
24 to respond to that in writing, or would you prefer to do
25 it --

1 MR. BUTLER: Well, I presume that, you know,
2 we can -- if we decide to file a motion, obviously we
3 had -- you know, we had this hearing coming up. It wasn't
4 really timely. I don't know the answer to that. We'll go
5 back and think about it.

6 MS. REYNOLDS: Okay.

7 MR. BUTLER: But I assume we're not precluded
8 from filing anything.

9 MS. REYNOLDS: Right.

10 ACTING CHAIRMAN COYNER: Correct.

11 MR. BUTLER: What the Chairman has said is he
12 doesn't see a need for setting a schedule, and for asking
13 for those, I think we'll consider, internally, whether we
14 think that we want to go forward with that.

15 MS. REYNOLDS: Okay.

16 MR. BUTLER: And I just -- I can't tell you
17 right now.

18 ACTING CHAIRMAN COYNER: That's the way I'm
19 going to leave it. I'm not going to require anything
20 further. If you voluntarily want to add additional
21 supplemental explanations to the current status of the
22 briefs, I wouldn't oppose that, but I'm certainly not
23 going to require it, and I still think that it's going to
24 come down to --

25 MR. BUTLER: Well, my thinking it's not to

1 supplement the existing briefs. My thinking -- and,
2 again, just to be clear, is that these would be on --

3 ACTING CHAIRMAN COYNER: Points raise in the
4 existing --

5 MR. BUTLER: They would effectively go to
6 summary dismissal of some of the issues that have been
7 raised. Again, as Bill said, that the briefs to date,
8 have narrowed the issues somewhat. And, again, we've
9 taken the universe -- we've come back to a narrow pile.

10 Some of those may, in fact, be suitable for
11 summary dismissal, and -- that's -- that's the question.
12 It's not just to go on and continue to brief what's there,
13 to respond, and reply, and respond, and reply, at
14 infinitum, but to say, okay, this issue -- this issue's
15 been briefed. We think, based on the briefs, it's
16 suitable for summary dismissal. That -- just so it's
17 clear, that we're talking about.

18 ACTING CHAIRMAN COYNER: Okay. Anything else?

19 Okay. I'll declare the hearing closed. Thank
20 you all.

21 (Proceedings concluded at 10:13 a.m.)

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25 STATE OF NEVADA

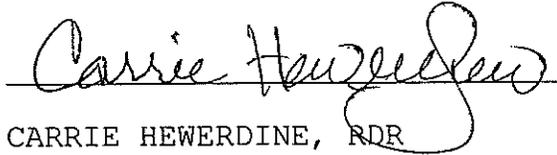
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COUNTY OF CARSON CITY)

I, CARRIE HEWERDINE, Court Reporter for the State of Nevada, State Environmental Commission Appeal Hearing, do hereby certify that the foregoing pages 1 through 61, inclusive, comprise a full, true and correct transcript of the proceedings held on Thursday, the 9th day of July of 2009, in the matter of the above-entitled matter.

Dated this 17th day of July, 2009.


CARRIE HEWERDINE, RDR
Nevada CCR No. 820