

1 **STATE ENVIRONMENTAL COMMISSION**

2 **Meeting of May 10, 2001**

3 Nevada Division of Wildlife

4 Reno, Nevada

5 Minutes

6
7
8 **MEMBERS PRESENT:**

9 Melvin Close, Chairman

10 Alan Coyner, Vice Chairman

11 Terry Crawford

12 Demar Dahl

13 Mark Doppe

14 Fred Gifford

15 Paul Iverson

16 Joseph L. Johnson

17 Hugh Ricci

18 Steve Robinson

MEMBERS ABSENT:

Joey A. Villafior

19
20 **Staff Present:**

21 Deputy Attorney General Susan Gray - Deputy Attorney General

22 David Cowperthwaite - Executive Secretary

23 Sheri Gregory - Recording Secretary

24
25
26 Chairman Close called the meeting to order. He noted that the meeting had been properly noticed in
27 compliance with the Nevada Open Meeting Law.

28
29 **Agenda Item I. Approval of minutes from the February 15, 2001 meeting.**

30
31 Commissioner Coyner noted the correct spelling of the witness's name (Mr. Strack) on page 9 of the minutes,
32 is Donald Strachan.

33
34 Chairman Close called for further modifications. There were none. He called for a motion.

35
36 **Commissioner Ricci moved for acceptance of the minutes as amended.**

37 **Commissioner Gifford seconded the motion.**

38 **The motion carried unanimously.**

39
40 Chairman Closed moved to **Agenda Item II. A. Petition 2001-03**

41
42 **(Petition 2001-03** is a temporary amendment to NAC 444A.005 to 444A.470 to extend programs for
43 separating at the source recyclable material from other solid waste to include public buildings in counties with
44 populations greater than 100,000. The proposed temporary regulations add for public buildings the minimum
45 standards and a model plan, which were previously established for the source separation of recyclables at
46 residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 is
47 proposed to be amended to add public buildings and 444A.130 is amended to provide for a municipality to
48 make available a source separation of recyclable materials at public buildings.)

1 Les Gould introduced himself as the supervisor of the Solid Waste Branch in the Bureau of Waste
2 Management of the Division of Environmental Protection. He stated I'm presenting two distinct, but related
3 petitions concerning recycling of solid waste. In the development of these petitions the Division sent public
4 notices to approximately 275 stakeholders and held public workshops in Carson City and Las Vegas on
5 October 18 and 20 2000. As a result of the public comments during the workshops, the Division has modified
6 both of those proposed regulations. We also prepared a summary of the comments with the Division's
7 responses and mailed the summary and the revised draft regulation to the workshop attendees. The petitions,
8 the model plan, and the response to public comments are posted on the NDEP Website.
9

10 First is Petition 2001-03, Public Buildings Recycling regulation and Model Plan. This petition is intended to
11 implement a portion of Assembly Bill 564 passed in the 1999 legislature, which aims to make recycling
12 available at public buildings. AB 565 directed the State Environmental Commission to adopt minimum
13 standards and a model plan for separation at the source of the recyclable materials generated at public
14 buildings. The SEC previously adopted such standards and a model plan for providing residential recycling
15 services. Sections 1 and 2 of the petition establish definitions of a public building and paper and paper
16 products. Section 3, page 2, line 24, amends the existing standards in Nevada Administrative Code 444A.120
17 which pertain to the conditions of approval of municipal recycling programs by inserting the words "and
18 public buildings." The effect is to require that municipalities with populations over 100,000, that is Clark and
19 Washoe Counties, must adopt programs to include the collection of recyclable materials from public buildings.
20 On page 3, line 16, new language to NAC 444A.130 requires that such programs designate at least three
21 recyclable materials to be so separated. We are proposing to amend the petition by adding a Section 5 to
22 provide an effective date for this regulation.
23

24 David Cowperthwaite stated that's Exhibit No. 6.
25

26 Mr. Gould read Section 5, "The Board of County Commissioners in a county whose population is more than
27 100,000 or its designee shall comply with the provisions of Sections 1 to 4, inclusive, of this regulation by
28 July 1, 2002." This petition also requests adoption of the public buildings recycling programs' model plan.
29 This model plan has been developed as a guidance document for municipal governments, recycling contractors
30 and the owners and occupants of public buildings in the development of programs for recovering recyclable
31 materials from public buildings.
32

33 Chairman Close asked if there were any questions.
34

35 Commissioner Doppe asked are the definitions for paper or paper products located elsewhere and are they
36 consistent?
37

38 Mr. Gould answered yes. Those are also located in a section in the statute that defines paper and paper
39 products.
40

41 Commissioner Doppe asked in the very last paragraph, "shall designate at least three recyclable materials." Is
42 this your idea or is it out of the statute?
43

44 Mr. Gould answered the statute requires minimum standards to be established in the code and that is one
45 minimum standard. We had discussed in the workshops making that number 5, but the standard which
46 currently applies at residential recycling programs is 3 and partly to make it consistent with that existing
47 standard for residential programs we inserted the number 3 for that.
48

49 Commissioner Doppe asked doesn't that leave you in a position where it's either 3 or 0?
50

51 Mr. Gould asked what do you mean?
52

53 Commissioner Doppe stated I guess they have to do a minimum of three by definition.

1
2 Mr. Gould stated not necessarily. There will be some programs that will do more. In many cases, just as in
3 residential programs, other materials are marketable and would be collected also.
4

5 Chairman Close called for further questions.
6

7 Commissioner Gifford asked do you have any idea of what the economics of this program will be? I know
8 other places, UNR for example, when they started their recycling program on the campus they started out way
9 behind the eight-ball there, in terms of the economics and they may have caught up on it by now. I haven't
10 kept up on it so I'm not sure. Is this actually going to save money, or increase costs? What's your feeling on
11 that?
12

13 Mr. Gould answered I think that if it's done well it can be done at no significant additional cost. Potentially it
14 could be an opportunity for some recycling businesses to actually grow and profit from it. Especially when
15 you consider the amount that public buildings typically generate and that about 75 percent of their waste
16 stream is paper. Paper is one of the higher value products of the recyclable materials that are available. There
17 are well-established markets for paper and paper products. It remains to be seen, but if good programs are set
18 up at the public buildings at which large quantities or large portion of the waste stream is actually diverted and
19 made available for collection and the programs include as many public buildings as possible, I think there's a
20 good opportunity for recycling businesses to actually do it at no additional cost.
21

22 Chairman Close stated I recall when we talked about this a couple of years ago there was a glut on the market
23 for paper products and it really was not even resalable. You almost had to pay someone to take it. Has that
24 situation changed now?
25

26 Mr. Gould answered yes it has, although the markets do fluctuate and of course there was a time when people
27 were collecting vast quantities of newspaper and storing it in warehouses and that made headlines across the
28 country. But more and more of the paper mills have geared up to process recovered paper as opposed to virgin
29 materials. The markets overseas have grown also. So, I think that there are well-established markets
30 especially for paper. Potentially, the prices may go down and it could hurt the collectors and the marketers.
31

32 Chairman Close asked if that happens what happens to what we're collecting? If nobody wants it, what do
33 you do with it? If the collectors collect it and they can't get rid of it, what happens?
34

35 Mr. Gould answered in the case of paper it would probably continue to be marketed, but perhaps at a net loss
36 by the companies that are doing it. In that respect, there are other commodities that suffer the same types of
37 market fluctuations.
38

39 Commissioner Coyner asked does "public building" include a private building that houses a State agency that
40 rents space in that building?
41

42 Mr. Gould answered yes. I would have to go back and see what the definition says. I believe it says a
43 building, which is occupied by a public agency, and it lists the public agencies for the purposes of carrying out
44 public business.
45

46 Commissioner Coyner asked so the owner of the building would be responsible for setting up the recyclable
47 containers, etc. and maintaining them?
48

49 Mr. Gould explained this regulation actually applies to the municipality, not directly to the public building
50 owner. It basically requires that the program be available for collection of materials if the public building
51 owner wants to use it. Federal and State government buildings are required by other laws to establish
52 recycling programs. So, they would be required under other regulations and laws to do that, but not under this
53 regulation. This regulation would require that the municipality see that a collection service is available.

1
2 Comm. Crawford asked do the affected agencies and businesses have three recyclables?
3

4 Mr. Gould answered yes. At Environmental Protection, we actually use the local collection service for office
5 paper, cardboard, plastics, steel cans, aluminum and newspaper and magazines also. Of course the greatest
6 bulk is the office paper. So, potentially a minimum of three recyclable materials could include office paper,
7 newsprint and cardboard, which are three of the higher valued recyclable materials.
8

9 Comm. Crawford asked so each of those is separate?
10

11 Mr. Gould answered each of them would be separate, yes.
12

13 Comm. Crawford asked would be separate recyclables?
14

15 Mr. Gould answered yes.
16

17 Comm. Crawford asked what's the Department's plan in implementing advising people of this new
18 requirement?
19

20 Mr. Gould answered we see that we've got our work cut out for us there. We advertised our workshops pretty
21 extensively, but we didn't get a lot of people coming to the workshops. We plan to go out and make contact
22 to, first of all we'll have to send notices to agency heads and try to set up a meeting or a call and establish a
23 contact within the agency that we can work with on establishing these programs. The statutes also require our
24 agency to provide technical assistance in establishing these programs.
25

26 Comm. Crawford asked what's the size of the Division's program?
27

28 Mr. Gould answered we have two people in our recycling program and we may use a portion of another staff
29 position to do this over the next year. This is one reason why we put a longer implementation schedule on this
30 regulation and on the State agency regulation, which comes next, to allow us time to get out to the public
31 building owners and the State agencies to meet the requirements. We haven't decided on this yet, but there's
32 a potential that we may try to contract to engage someone with experience in setting up institutional recycling
33 programs to help us with this.
34

35 Comm. Crawford asked what's the funding source for the Division's activities?
36

37 Mr. Gould answered all of the Solid Waste program is funded through the tire fee. It's \$1 per tire sold at
38 retail.
39

40 Chairman Close called for further questions.
41

42 Commissioner Iverson stated I think the Chairman had an interesting point when he talked about the glut.
43 David and I both worked at an unusual state agency where this started to grow 20 years ago. It was called the
44 Department of Energy. Paper recycling was one of the programs that we initiated in this State 20 years ago
45 and I'm sure you still see the containers around the State. I haven't been involved with this for a long time,
46 but are there provisions in State and local governments, or in the public sector where we have to buy recycled
47 paper?
48

49 Mr. Gould answered yes there is. That's one of the requirements that are in place to help develop the markets
50 because the markets have been seen to be kind of a weak link in the system. The State Purchasing Division is
51 required to buy recyclable paper. I'm not sure to what extent that is being done right now. It is to some extent
52 and there are also provisions to allow purchasing agents in State government to purchase recycled materials
53 even if there is a 10 percent cost difference, or a 10 percent greater cost for that material. Another aspect of

1 aspect of this program that we'd like to put forward at the same time is a procurement policy to encourage
2 purchasing of recyclable materials

3
4 Commissioner Ricci asked is there a penalty for somebody not adhering to this?

5
6 Mr. Gould answered we'll just be on their case to the extent that we can. There are no enforcement provisions
7 in the statute and none were adopted and none are proposed today.

8
9 Commissioner Doppe asked is the Board of County Commissioners the only one that the time limit applies to,
10 just a county government?

11
12 Mr. Gould answered that's right. That tends to be a misunderstanding at first to people who are looking at
13 this. This is not a burden that's being established by law on somebody who owns a public building. It's a
14 burden to say that that building should have the opportunity to recycle the material and therefore the
15 municipality has to set up a program to make sure that service is available. The model plan that we're
16 proposing suggests some ways of doing that.

17
18 Commissioner Doppe asked and by inference then, it's the municipality, it is not the city that's forced to
19 comply or the State government, or the university, or anything else, it's the County Commission that sets up
20 the program?

21
22 Mr. Gould answered right. The statute uses the language "Board of County Commissioners in a county of a
23 population over 100,000 or its designee." So, for instance, in Clark County or Washoe County it could
24 designate the Solid Waste Management Authority, which as broad jurisdiction, that is the Clark County Health
25 District, for the whole jurisdiction to set up a program.

26
27 Commissioner Doppe asked and for all the rest of the State then, other than Washoe County and Clark County
28 and those governmental agencies that happen to reside in those two counties, there's no time limit at all when
29 this thing kicks in?

30
31 Mr. Gould answered it's not required in any area except for within those counties with populations over
32 100,000. So, it's not required in other areas of the State. We will be promoting it because we're going to be
33 talking to State agencies throughout the State.

34
35 Chairman Close called for further questions from the Commission. There were none. He called for testimony
36 from the public. There was none. He called for a motion

37
38 **Commissioner Doppe moved to approve Petition 2001-03 as amended.**

39 **Commissioner Gifford seconded the motion.**

40 **The motion carried unanimously.**

41
42 **Chairman Close moved to Agenda Item II. B. Petition 2001-04.**

43
44 **(Petition 2001-04** is a temporary amendment to NAC 232 and/or NAC 444A. The proposed temporary
45 regulation prescribes the paper and paper product recycling procedures for state agencies. The temporary
46 regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled
47 containers, establishes reporting criteria by state agencies and requires a building recycling plan to be
48 submitted to the Division of Environmental Protection.)

49
50 Mr. Gould stated this petition is to adopt procedures as mandated in Nevada Revised Statute 232.007 for
51 recycling by State government. While the previous petition lays the recycling program responsibility on the
52 municipal government, this petition places the responsibility on a specific class of waste generator, State
53 agencies, to recycle paper and paper products. These two regulations are complimentary in that one provides a

1 a collection service while the other ensures that there will be something to collect. On page 1, line 2 of the
2 petition, a requirement is established for each State agency to recycle paper at each of its occupied buildings.
3 The Division recognizes that there are some circumstances where recycling at State offices is not practical.
4 These circumstances are defined as criteria for exemption from the requirement.
5

6 At line 12 the regulation states that recyclable containers should be provided for both the building staff and the
7 visiting public. At line 15 the regulation requires each State agency to submit to the Division an agency
8 recycling policy signed by the agency administrator, the name of a designated recycling coordinator, a
9 building list, and a list of any buildings exempt from the requirement pursuant to the criteria noted above. In
10 order to facilitate this submittal the Division has prepared a form complete with the suggested policy statement
11 for submittal. On page 2 of the petition, line 1, the agency is required to prepare and submit the building
12 recycling plan to the Division. The plan must designate a building recycling coordinator, list the items to be
13 recycled, note the collection locations, any special handling requirements, designate someone to remove the
14 materials, designate the means of collection and transportation to a recycling center, describe how employees
15 will be informed of the program, and list any other agencies participating in the building recycling plan. In
16 order to facilitate this submittal, the Division will provide another form to the agency. Line 20 of the petition
17 provides for the agency to periodically review its recycling program every three years and resubmit the forms.
18 Section 2 of the regulation provides a 60-day compliance period. Based on some comments received after
19 submitting this petition, the Division requests to change Section 2 of this regulation.
20

21 David Cowperthwaite stated that is Exhibit No. 5.
22

23 Mr. Gould stated the change in the language is to read, "Each State agency shall comply with the provisions to
24 Section 1 of this regulation by July 1, 2002." The general effect of this petition will be to provide State
25 agencies with the framework for setting up recycling programs and for the Division to monitor progress of
26 each agency. It should result in increases in the volume of paper recovery in Nevada's urban areas.
27

28 Commissioner Doppe stated I'm impressed with this, but not in a good manner. Let me say why. Let me
29 contrast the way private industry might do this versus the way I see the public going about doing this. In my
30 office we provide soft drinks to folks and one day somebody said, "You know there's too many cans going
31 into the trash." So they went and they grabbed a box, an empty paper box, and they stuck it and they wrote
32 "Recycling" in magic marker on there and now that thing fills up with people throw them in there. Next to the
33 copy machine somebody put another box and it said "Recycling" and it fills up with wasted paper. It didn't
34 require a recycling plan. It didn't require a monitor to make sure that people were doing it properly. It's
35 probably about equally as effective as something like this would be and it doesn't cost near as much to
36 implement or create a burden on those people being regulated. It strikes me the State should tell each agency,
37 "You know you should make every effort to recycle. Every now and again we're going to check up on you to
38 make sure." I think that generally speaking in this day and age, that's going to work. I know it works in my
39 office and we didn't even have to twist anybody's arm. So, it just seems to me that this is too heavy in terms
40 of regulation.
41

42 Mr. Gould stated at the workshops that we held there were some State agency representatives who were
43 concerned about that issue. We did our best to address that by simplifying the requirements for monitoring
44 and developing a plan. And as I said, we prepared a form and it is not a complex form. It's a one-page
45 document used to identify the buildings so that somebody could assess their program throughout the agency.
46 Another form basically identifies who is responsible at the building, what materials are collected, and who
47 collects them. Now, whether you do this voluntarily, and by the way, that is done to a large extent in State
48 agencies right now. Our Division, as well as several other agencies, do it. However, it's kind of hit and miss
49 and there is not necessarily a public education program or a public information program for the employees
50 there and it's not necessarily done in a systematic way. We would like, as the agency that's also mandated to
51 assist other State agencies with implementing these programs, to be able to monitor it. We have put this
52 together as kind of a template on the basis that if somebody goes through the trouble of filling out this form,

1 which is in essence, the plan, they are going to identify the critical elements for a recycling program at their
2 building.

3
4 Commissioner Iverson stated it would be nice if all State agencies could do that without any type of program.
5 But again, this has been going on for 20 years and those that do it do it and those that don't want to do it
6 sometimes have to be coaxed to do it. I don't see any problems in a little paperwork. I also think from your
7 point-of-view it's good to have the opportunity to have something to monitor because one of these days
8 somebody's going to walk up to you and say, "What is the State of Nevada doing to help conserve energy?" If
9 I'm not mistaken, yesterday the Governor put out a conservation program. I think we all have to get behind
10 this thing and a little monitoring is not going to hurt us. Another nice thing that you have in the private sector,
11 that we can't do at the State, is that you can maybe take some of those dollars that are generated and have an
12 office party or even tell your people, "Boy you're doing a good job. I'm proud of you." And go out and, as a
13 manager, maybe give all of them a \$15 raise a year. Our incentive is, "You're supposed to do it. It's good for
14 the world and we all need to do it." I think from a Director's side we have an opportunity to say, "We are
15 regulated and we are managed to do it." In many cases that's the only way you're going to get compliance is
16 if people understand that they have to do it.

17
18 Comm. Crawford asked how about places like State parks? Is that a facility and so they're going to have to
19 provide for both employees and the public, not one trash bin, but two, three, or four and hope the public
20 recycles and separates and then if they don't the parks are going to have to do it? Is that how this is going to
21 work?

22
23 Mr. Gould answered we would like to see every agency implement the program to the extent practical at all of
24 its facilities. And, yes State parks would be included in that. However, there are criteria for exemption. A
25 facility such as the park up at Sand Harbor has a collection service, which I believe could also collect the
26 recyclable materials. One of the ones out in one of the rural areas of the State wouldn't have that collection
27 service available. I expect that they would write that facility in for an exemption under one of their criteria for
28 that. Probably because of our limited staff, we are not going to be going out and policing all of these things. I
29 guess we see ourselves primarily in an assistance role and kind of an encouragement role to help agencies
30 implement recycling as much as they practically can at these different sites. For instance I believe Sand
31 Harbor currently has some recycling going on, especially of aluminum.

32
33 Comm. Crawford asked why does the exemption come from the chief of the Budget Division and not from
34 DEP?

35
36 Mr. Gould answered it's in the statute. The statute says that the Budget Division can authorize an exemption
37 if the agency demonstrates that it's not feasible. We also inserted some criteria to facilitate that process
38 recognizing that there are some areas and some facilities where it simply wouldn't be feasible.

39
40 Comm. Crawford asked do you know what the wisdom of that decision was if there was any? Why them
41 instead of you if you're doing the implementing and monitoring of the program?

42
43 Mr. Gould explained I think it is because the Purchasing Division may have something to do with setting up
44 services for collection of the materials and what not and also may have some ability to determine whether or
45 not it's cost effective at a given site.

46
47 Comm. Crawford stated Mr. Chairman I'm very supportive of recycling. I do it personally. Where feasible,
48 most all of our agency is involved in it. But I have to agree with Commissioner Doppe. It's the right thing to
49 do. I think an education program would be a much better approach than implementing a program and
50 monitoring it and having the recycling police come by. Unfortunately, we've been handed an un-funded
51 mandate here by the legislature and I guess we don't have any choice. But I think an educational approach
52 would have been much better than the one we've got here.

1 Commissioner Coyner stated for example say I'm in an agency that's in a private building. You're telling me
2 to set up three containers inside my office. Who is responsible for emptying the containers and collecting the
3 materials? Is it the landlord? Or do I have to go out and make sure that happens?
4

5 Mr. Gould answered the agency is the one who is responsible for that. The agency obviously would want to
6 work through its landlord to hopefully get the whole building on the program. If the landlord says, "No, you
7 know there's no recycling here. We don't have space for it. We're not going to assist you with that and we're
8 not going to see that the service is provided." That may be a limitation that eliminates that building from
9 participating in the program. That's one of the ones that are listed in the proposed regulation.

10
11 Please allow me to comment on the distinction between an educational program and a mandatory, monitoring
12 program. We are trying to promote recycling throughout the State. A question that we are often asked when
13 we are trying to encourage private citizens, businesses and so forth to recycle, is what sort of programs does
14 the State of Nevada have in place? We do have a statute that has been in place for years that requires State
15 agencies to recycle and also to procure recyclable materials. But there hasn't been a systematic
16 implementation of that. We don't really know how effective we are at doing that. One of the important things
17 in recycling is to be able to assess your waste stream, to be able to assess how much material you can collect,
18 and to try to set up a program that is efficient and that will manage that as efficiently as possible. That's part
19 of the reason for the monitoring. The educational portion is in here. It's part of it. It's in the model plan also.

21
22 Commissioner Coyner asked was any thought given to a minimum in terms of agency personnel in a building?
23 I mean I'm sure Agriculture and Wildlife probably have buildings that house one, two, three people in places.
24 Was there any thought given to a minimum?
25

26 Mr. Gould answered yes. We don't intend to see that every single building that has one or two people has a
27 recycling collection program in place. I think that the intent is for the agency to set up a program that
28 addresses as many of its buildings as is practical.
29

30 Commissioner Iverson stated I disagree with the discussion that's going on as far as education being the
31 answer to this. I also want you to know that there was a systematic approach at recycling paper 20 years ago.
32 Every single employee in the State had a recycling box. Every office had a big box to put things in. At that
33 point, we were just coming out of an energy crisis and everybody was told they were going to recycle. It
34 wasn't an "if" and "and." It was every agency was going to recycle. It was part of the State energy
35 conservation plan and part of a plan that David wrote called The Energy Extension Service Plan. It was all a
36 systematic approach. What happened is as soon as we all got used to the energy crises being over and all went
37 back to our four-wheel drive vehicles that get 16 miles to the gallon, and everything else, the program died off.
38 Whenever you're talking about conservation and energy, the biggest thing that drives people is money, when it
39 starts hitting your pocketbook, and when there's a regulation or a law. We have spent years and years talking
40 about carpooling. I drive back and forth from Reno every single day in a single car. I see thousands of cars,
41 single passengers, driving back and forth. We put signs up at one time that said, "Please carpool."

43
44 I think we have to take California's lesson in this. The only way you can get people to carpool is in incentives
45 to put them off on the side of the road and let them go faster, or some kind of an initiative. I think as State
46 government we're supposed to set an example. We're asking everybody in the State to conserve and to help
47 save power so we don't have brown outs and black outs. And it's just good for the citizens. I think as a State
48 we should do everything even if it means a mandate. In fact, I think it's wonderful that the Budget Director is
49 the one that exempts us because if Allen tells me I have to do it, I may or may not listen. But if Perry
50 Comeaux tells me, "You do it" and I go in for a budget recommendation and he says, "The heck with you.
51 You're not a team player. Why should we play on your team?" In fact if it were up to me I'd let the Governor
52 exempt us. Let's see how well we are as team players. I think we owe it to our public to be a great example in
53 recycling, energy conservation, etc. The way you get it done is through education, but also there has to be a

1 has to be a little bit of hammer and that's why we have regulations and monitoring and forms we fill out.

2
3 Chairman Close stated you know as I think about this, some things seem easier to recycle than others,
4 especially in a building context. Aluminum cans are the easiest I think because that is something that people
5 can put into a can. But, when you have to separate cardboard boxes and paper and newspapers from print
6 paper, I don't know how practical that becomes. I was thinking, quite frankly, of my home. I've got plastic,
7 paper, and aluminum. If you're in a park setting I don't know how you possibly could come up with three
8 containers for recycling. I can see people putting their aluminum cans in a special container, but I don't see
9 anybody else separating out their paper products and things of that nature. You required three recyclable
10 materials to be separated. That's in a previous motion I recall. I know we've already taken care of that, but
11 why do you require that? I mean why can't you just have aluminum cans if that is something that is the most
12 convenient, rather than cardboard, paper and cans?

13
14 Mr. Gould explained the statute says all State agencies will recycle paper and paper products. It doesn't say
15 anything about the other materials, although it says the Environmental Commission may establish regulations
16 and procedures for the recycling of other materials also. So right now the burden on State agencies is for
17 paper and paper products. It's not for anything else and the reason, of course, is that government tends to
18 generate a whole lot of waste paper. As I said, 70 percent of the waste stream is waste paper.

19
20 Comm. Crawforth asked the Division to provide the Commission with an annual report on the status and
21 progress of implementation of both of the regulations

22
23 Mr. Gould agreed. He stated every year we do a report on the status of recycling which is submitted to LCB.
24 I anticipate that this will be a component of that report in the future. So, there will be some assessment of the
25 effectiveness of this public building recycling program and the State government recycling programs.

26
27 Chairman Close called for further questions.

28
29 Commissioner Dahl asked did you say there are some instances where the government would be required to
30 purchase paper?

31
32 Mr. Gould answered it's already in statute that the Purchasing director is supposed to be purchasing paper with
33 recycled content.

34
35 Commissioner Dahl asked what do they do with it if they purchase it under the market price? Do they just
36 store it and wait for the market to go up?

37
38 Mr. Gould answered what they're purchasing is the product. They're not purchasing the raw material that's
39 going to be recycled. They're purchasing finished product. A lot of the paper that State printing currently
40 provides is purchased through State purchasing and is recycled-content paper.

41
42 Commissioner Iverson stated one of the things we saw before, and I'm sure it's not happening now because I
43 know that private industry is not interested in making money, but as soon as there was a regulation passed that
44 we had to buy recycled paper, for some unknown reason, and I have no idea why the private sector would do
45 anything like this, recycled paper became more expensive than regular paper. It jumped overnight as soon as
46 there was a regulation adopted. So, I think it is a team approach and it's unfortunate we can only regulate only
47 one side of this, but those things do happen.

48
49 Chairman Close called for further questions. There were none. He called for public testimony. There was
50 none. He called the public meeting to a close. He called for further comments by the Commission members.

51
52 Commissioner Doppe stated my objection to this petition has not got anything to do with recycling. It's to do
53 with the issue of, in my opinion, a heavy-handed piece of regulation. Will it take us from 60 percent to 65

1 percent, or 60 to 70 percent? Does it take that to do it? Or can I not go to a competent agency administrator,
2 such as Mr. Iverson, who is shaking his head “no” and say, “Mr. Iverson for the good of the public and for the
3 good of the State you ought to be recycling. Would you please use your own best judgment to set up such a
4 plan and once a year let us know and if there’s anything we could do to help let us know.” Is that not a better
5 way to do it rather than to implement a new law a new regulation on people who are already busy and who
6 will now have to periodically pull out this log, dust it off, go step by step, assign somebody, create a
7 coordinator, submit to inspections? Is it worth it to do that to go from 65 to 68 percent efficiency? That’s my
8 argument and that’s why I’m going to oppose the petition.
9

10 Chairman Close called for further comment. There was none. He called for a motion.

11
12 **Commissioner Iverson moved to approve the proposed regulations as written and amended in Exhibit 5.**

14
15 **Commissioner Johnson seconded the motion.**

16
17 **Chairman Close: Aye.**

18 **Commissioner Crawford: Aye.**

19 **Commissioner Iverson: Aye.**

20 **Commissioner Johnson: Aye.**

21 **Commissioner Gifford: Aye.**

22 **Commissioner Dahl: Aye.**

23 **Commissioner Ricci: Aye.**

24 **Commissioner Doppe: No.**

25 **Commissioner Coyner: No.**

26 **The motion carried.**

27
28 Chairman Close moved to **Agenda Item II. D. Petition 2001-05.**

29
30 **(Petition 2001-05** is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control
31 permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new
32 classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5
33 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review
34 and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity
35 sources.)

36
37 DAG Gray stated Mr. Chairman there’s something that we need to (inaudible).

38
39 Mr. Cowperthwaite stated it was a part of the package. It isn’t clear to me in the record whether if in fact the
40 Model Plan for the Public Building for the recycling program has ever been adopted by the Commission.
41 Does this need to be acted upon by the Commission?

42
43 Mr. Gould answered yes it does. The model plan is basically a guidance document for public buildings to
44 establish recycling programs to recycle their materials and it doesn’t set up a specific way of it is required for
45 doing that, but what it does do is it provides some background information and suggested framework for
46 implementation. It also refers to existing statutes and proposed regulations for accomplishing that.

47
48 Chairman Close asked is this something that should be adopted or is this just your model plan that you’re
49 going to use for your in-house purposes?

50
51 Mr. Gould answered the statute does say that the . . .
52

1 Commissioner Johnson stated I don't believe that the model plan was noticed. It's not on the agenda. I mean
2 we could accept it as an exhibit.

3
4 Mr. Cowperthwaite stated the model plan is under 2001-03 proposed temporary regulations that public
5 buildings come into the standard, the model plan (inaudible).

6
7 Commissioner Johnson stated okay.

8
9 Mr. Cowperthwaite stated it was missed in the process.

10
11 **Commissioner Johnson moved to rescind the previous action on Petition 2001-03.**

12
13 **Commissioner Doppe seconded the motion.**

14
15 **The motion carried unanimously.**

16
17 Chairman Close again moved to **Petition 2001-03.**

18
19 Mr. Gould stated the model plan is a guidance document for municipal governments for public building
20 owners and for State agencies to implement public building recycling. It describes the proposed regulations,
21 etc. for accomplishing that. It makes suggestions and provides guidance.

22
23 Chairman Close asked isn't this something that you can put out yourself without having us adopt it? If we
24 adopt it, and you want to change one word, then we've got to come back and do the whole thing all over
25 again. It just seems to me this is something that you can promote and publicize and hand out and you can
26 modify it as appropriate, but whether or not we have to adopt this as we would adopt as part of a regulation, it
27 seems maybe not a wise idea because then that's going to stop you from ever modifying it without coming
28 back to us again?

29
30 Mr. Gould stated I agree that that seems to be the most reasonable way of doing it. My reading of the statute
31 was that the Commission should adopt it. There is the potential that during the next year when we're
32 implementing this program we may want to make modifications to the plan.

33
34 Chairman Close stated this seems like an informational document that you hand out to whomever. I think it
35 has a good goal, but whether or not the Commission, which casts it in stone, should adopt it I don't know if
36 that's the right way to go.

37
38 Commissioner Iverson stated I agree with you 100 percent. I don't think the Commission should adopt a
39 model, because a model is basically saying this is an idea you should follow. It's not saying that this is a plan
40 that you have to follow. I think we ought to go ahead and adopt the regulations as they're stated or the way
41 we had our recommendation and if nothing else put a seal of approval or a support on the model plan. But this
42 shouldn't be part of your regulation. If the regulations tell us to recycle and this is what you have to recycle
43 and this is what you have to do, then as a building administrator or a director, like Allen or any of us, it's up to
44 us to make sure it's done and not to specifically follow a plan that was developed. We should have that
45 flexibility. So, I agree with the Chairman. We should just adopt the regulations and support your plan.

46
47 Chairman Close stated if we're going to support this, but not adopt it, you probably should review it with us
48 because we would be supporting something that we haven't really looked at. Maybe just walk us through it
49 quickly then we can go forward.

50
51 Commissioner Gifford stated Mr. Chairman I wonder as a Commission whether we need to have that detail.

52

1 Chairman Close stated if we're not going to adopt it, I don't think we have to. But, if we're going to give our
2 approval to it as we are putting something in our minutes that say we approve this model plan, it seems to me
3 there ought to be as part of our notice of public hearing. I'm reluctant just to adopt it without having looked at
4 it.

5
6 Commissioner Gifford stated at this point, just because it's noticed doesn't mean that we have to act on it.

7
8 Chairman Close agreed.

9
10 Commissioner Gifford stated this could be easily tied with guidelines for example.

11
12 Chairman Close stated we don't have to act on it. That's exactly right.

13
14 Mr. Gould stated from our point of view we don't require that the Commission act it on.

15
16 **Chairman Close stated so let's go back and vote again then on 2001-03 without the inclusion of the
17 model plan.**

18
19 **Commissioner Doppe moved to approve Petition 2001-03 as amended in Exhibit 6. (Same original
20 motion.)**

21
22 **Commissioner Johnson seconded the motion.**

23
24 **The motion carried unanimously.**

25
26 Chairman Close moved to **Agenda Item II. C. Petition 2000-12.**

27
28 **(Petition 2000-12** (LCB R-117-00) is a permanent amendment to NAC 445B.001 to 445B.395, the air
29 pollution control regulations. Amended is NAC 445B.194, which limits the criteria for temporary sources.
30 NAC 445B.287 redefines the requirement when an operating permit or permit to construct is required.
31 NAC 445B.288 redefines insignificant activities. NAC 445B.290 requires new stationary Class I sources to
32 submit an application. NAC 445B.295 redefines the requirements for compliance plans. NAC 445B.316
33 amends the description of emissions trading to be modified to ensure consistency with 40 CFR Part 70 and
34 provides conditions governing a permit shield. And, finally, NAC 445B.331 is amended for change of
35 location fees for Class I and II sources requiring 10 days advanced notice.)

36
37 Mike Elges introduced himself as representing the Division of Environmental Protection, Bureau of Air
38 Quality. He stated on January 11, 1996 the Division was granted interim approval by U.S. EPA for
39 implementation of the State's Part 70 Title V operating permit program. The U.S. EPA granted interim
40 approval status rather than full approval because of regulation deficiencies identified. Because of these noted
41 deficiencies it is necessary for the Division to submit a revised Title V operating permit package to EPA by
42 June 1 of this year in order to obtain full Title V program approval. This submittal must include a revised
43 version of NAC 445B that addresses all deficiencies noted by EPA. Failure to do so will require EPA to
44 implement the sanction provisions of the Clean Air Act against the State of Nevada. I'm here today to present
45 proposed revisions to NAC 445B which address the degrees of deficiencies noted by EPA.

46
47 There are essentially two primary areas of concern in the proposed regulations that need to be revised to insure
48 that there are consistent federal provisions. The first that are of concern relate to specific inconsistencies in
49 the current rule and require a change to the provisions to be consistent with the federal regulations. NAC
50 445B.295 is being revised with respect to the contents of compliance plans. NAC 445B.316 is being revised
51 with respect to allowances for emissions tradings and NAC 445B.289 and 290 are being revised to clarify the
52 requirements for when a Class I application is required to be submitted. Again, these technical changes are to
53 insure consistency with the federal requirements and do not introduce any additional burden on the regulated

1 any additional burden on the regulated community. We have received no comment regarding these provisions.

3
4 The second area involves two other regulation changes that will have a more direct impact on regulated
5 sources. These changes are proposed in NAC 445B.288, which describes the insignificant activities, and
6 NAC 445B.187, which is the definition of a stationary source. NAC 445B.288 is being revised to identify
7 activities that are exempt from the permitting requirements as well as to identify those activities that are to be
8 treated as insignificant activities. NAC 445B.187 is being revised to clarify what constitutes a stationary
9 source or what makes up a stationary source.

10
11 The Division public noticed and held workshops for the proposed regulation revisions in late September and
12 early October 2000. The workshops were held in Las Vegas, Elko, and Reno. The Division received
13 substantial comments from the agricultural and the mining industry related to the regulation changes that we
14 are proposing today. The primary concern of the agricultural and the mining industry were the revisions
15 proposed which would remove specific categories of exemptions and insignificant activities in NAC 45B.288.
16 The Division continued to work closely over the last eight months with the industry to address all concerns
17 while still considering EPA's deficiencies and the issues that they've noted along the way. In doing so, the
18 Division has been able to leave many of the categories of insignificant activities in the rule, but we've had to
19 go beyond and clarify in more specific detail regulations specifications that better qualify in those categories.
20 But, again, we weren't removing them from the regulations in their entirety.

21
22 Because there's been so much confusion regarding how insignificant activities are to be treated under the
23 proposed revisions, I wanted to make sure that I clarified for the record today that EPA allows the states to
24 develop lists of insignificant activities for Part 70 programs as the Division has proposed in the 288 revisions
25 today. Identifying insignificant activities through the listings in the rules is intended to minimize paperwork
26 for requiring the sources to provide only a limited amount of information related to the insignificant activities.
27 Both Class I and Class II sources that have insignificant activities listed in the proposed rule may take
28 advantage of the reduced permitting burdens consistent with EPA's Part 70 regulations. Again, this is really
29 structured to help speed up the process more than it is to bog it down with specifics for activities that just don't
30 carry that much concern. In April of 2000 the Division again public noticed and conducted another round of
31 workshops in order to explain the revisions made to NAC 445B.288 and to solicit any additional comment.
32 While no negative comments were received from the workshops, the Division was provided comment by the
33 Department of Defense in early May regarding the proposed revisions to the stationary source definition
34 contained in NAC 445B.187. Following review of the concerns raised by the Department of Defense the
35 Division agreed to further amend the proposed regulations. Since this information has not recently been
36 provided to the Division, the proposal is not included in the packet that you have today. The Division would
37 like to introduce the following exhibit if we could David which contains the revised language which the
38 Division believes will address the DOD's concerns.

39
40 Mr. Cowperthwaite stated that is Exhibit 8.

41
42 Mr. Elges stated in Section 5 of that exhibit the Division is proposing to revise subsection 3 to include non-
43 road engines and non-road vehicles so that the stationary source definition will clearly exclude these units.
44 The Division believes that this will resolve the concerns raised by the Department of Defense and will not
45 interfere with EPA's approval process.

46
47 Also, the Division has not been able to work as closely with the Legislative Counsel Bureau as we would have
48 hoped because of the current legislative session and for this reason we would like to request the Commission
49 to consider a couple of other technical changes as well. In that same exhibit, section 8, the Division is
50 requesting that the third sentence in subsection 2(h) of 445B.288 be removed entirely. This language tends to
51 conflict with the balance of the provision and it was not something that I believe we expected to see in this
52 proposed package. So we would ask that that language be removed today. The last proposed amendment to
53 the proposed revisions is contained in Section 12. Again, the Division requests that the term "pursuant" be

1 the term “pursuant” be added to the second sentence near the end of the provision. This was inadvertently left
2 out by LCB.

3
4 I’m sorry. Back under Section 8 I’ve missed another clarification that we also would like revise today if we
5 can. Subsection 3 of 445B.288 the words “declared as” we would like to replace those with the word
6 “consider.” Again, this was language that was language that was changed by LCB and we’re not convinced
7 that that’s really what the intent there is and would like to ask the Commission to consider changing that
8 verbiage as well.

9
10 The other portion of this package that was not specifically tied to EPA’s deficiency requirements deals with
11 revisions that we’re proposing today to NAC 445B.290. The Division has looked very closely at ways to try
12 to streamline permitting of power generation sources and the provisions as they’re established today would
13 require any new power generation sources to go through our Title V or Part 70 permitting process
14 immediately. Essentially this means that there’s roughly a 12-month window for permitting of these facilities.
15 We’re asking today to revise 290 to allow these sources to come in if they are eligible and seek minor source
16 permits, which would streamline and speed up the permitting process. We believe this will certainly help
17 expedite permitting of new power generation sources within the State and allow these facilities to commence
18 construction and operation while still fulfilling the obligations that we have under the Part 70 provisions.
19 And, again, this has been discussed pretty heavily with EPA and they do not seem to have any concerns at this
20 point that this is not a doable approach.

21
22 With that, adoption of these regulations as proposed will correct all deficiencies noted by EPA and allow for
23 final approval of our Part 70 program. I haven’t gone through a line-by-line walk through of these provisions
24 and could certainly do so if anybody would like to do that.

25
26 Comm. Crawford stated we’re requiring people to keep a log for some of the activities that are exempted.
27 How will they know that they have to keep a log if they don’t have to have a permit?

28
29 Mr. Elges explained there’s a distinction that has to be made between what is exempt and what is an
30 insignificant activity. The first subsection of 288 outright exempts sources. These are specific processes or
31 industry-types that are not required to obtain a permit at all. Those exempted facilities or sources are not in
32 the arena to begin with so they don’t even have to worry about insignificant activities or have to keep logs.
33 Any other sources that would be required to get a permit can be eligible to list insignificant activities, which is
34 essentially the balance of 288. In doing so, they will have a permit and the information will be provided
35 through the permit clarifying that they are required to keep records on site if they are going to exercise any of
36 the insignificant activities provided under this regulation.

37
38 Comm. Crawford asked so everybody who is required to keep the log is going to have to have a permit?

39
40 Mr. Elges stated that’s correct.

41
42 Commissioner Iverson stated the Mining Association has an organized environmental committee that probably
43 worked with you on these (inaudible). The agricultural industry has had an environmental action committee.
44 They have had some concerns. There were also some concerns voiced by some of the folks out in the field.
45 You indicated that you had met with them and primarily worked out all of the differences and then you went
46 back to workshop. When you went back to workshop, basically, were those folks that were involved with this
47 and had concerns, did you get those problems resolved?

48
49 Mr. Elges answered yes we did. We have remained very active with all parties throughout this revision
50 process. In part, that’s why it took so long to be able to present it to the Commission today. Along the way
51 we had to balance EPA’s concerns and industry’s concerns and in doing so we continued to update all interest
52 parties with revised language. This continued right up until yesterday afternoon.

1 Commissioner Iverson stated I know when this first came out there was a tremendous interest and I haven't
2 heard a word for three months so I'm assuming that you worked out all of those differences.

3
4 Mr. Elges stated we're excited to be at this point because we spent so much time working on these revisions
5 and we believe that we have addressed all concerns.

6
7 Chairman Close stated I have a question on your amendment. The language is kind of confusing to me.
8 Maybe you can explain it to me. In Section 8 beneath the take out it reads, "An emergency generator that is
9 owned or operated by a Class II source and has potential to emit is calculated on the basis of less than 500
10 hours of operation does not qualify as an insignificant activity." What if its use was one hour? Wouldn't it
11 still be an insignificant activity?

12
13 Mr. Elges stated that is correct.

14
15 Chairman Close asked why don't we just say then that an emergency generator that is owned or operated by a
16 Class II source, why go on with less than 500 hours if 1 hour is not an insignificant source?

17
18 Mr. Elges answered the intricacy here starts when a source has to calculate emissions to determine whether
19 they're subject to Title V applicability or not. The EPA has provided guidance that says it's reasonable to use
20 a 500-hour benchmark for establishing those calculations. We have many facilities that we regulate that if
21 they relied on that 500-hour benchmark that would not give their calculated or potential emission levels. It
22 would not get them below the Title V threshold. So many of those sources have come to us and said, "We
23 would like to have the ability to seek limitation through the permitting process for hours of operation on our
24 emergency generators such that we can get our potential to emit down below the Title V threshold." If we had
25 crafted the language in this provision any differently we would not be able to afford them the opportunity to
26 come forward and seek limitation to lower those hours and to subsequently lower the potential to emit that
27 goes along with that.

28
29 Chairman Close asked if I have a generator that is calculated on the basis of 10 hours, is it still not an
30 insignificant source?

31
32 Mr. Elges answered that's correct Mr. Chairman. It would have to be pulled into the permit, a limitation
33 would have to be placed for that 10 hours, and then the calculated potential to emit based on that 10 hours
34 would go into the emissions inventory and effectively be able to keep the source out of Title V.

35
36 Commissioner Ricci asked are these going to be acceptable to the EPA?

37
38 Mr. Elges answered all indications that we have from the EPA is that this package will be acceptable. We've
39 worked very closely with them to ensure that we would be able to bring them a package that they would grant
40 approval on.

41
42 Commissioner Johnson stated I need you to go through the proposed amendments again, line by line.

43
44 Mr. Elges stated on page 1, Section 5 445B.187, we're proposing to modify subsection 3, which is on page 2,
45 line 4. That subsection is proposed to read, "The term does not include motor vehicles, special mobile
46 equipment, non-road engines or non-road vehicles. As used in this subsection, non-road engine and non-road
47 vehicle have the meaning ascribed to them in 40 CFR 89.2, as that section existed on December 31, 1997.

48
49 Commissioner Johnson stated explain to me how the non-road engine would correlate to the emergency
50 generators that you've covered in another section.

51
52 Mr. Elges explained these are two separate issues. This revision is primarily a result of our discussions that
53 we've had with the Department of Defense over the last few days. There is concern that the Clean Air Act

1 amendment definition of stationary source excludes non-road engines and non-road vehicles from the
2 definition of a stationary source. It basically does not let the Division regulate these types of activities. Our
3 proposed stationary source definition did not include these exclusions. And, so, today we're proposing to
4 bring them into the scope so that it is clear and that we're not trying to deviate from the federal definition of
5 stationary source. This again, it does not relate to emergency generators or insignificant activities. They are
6 two separate issues.

7
8 Commissioner Johnson stated I was just concerned that including one definition here and that there would be a
9 conflict.

10
11 Mr. Elges stated there should not be. We've looked at it pretty closely and this should not upset any of the
12 other changes that we've proposed. Did you want to walk through the other changes as well?

13
14 Commissioner Johnson answered yes.

15
16 Mr. Elges stated Section 8, page 3, line 14. We are proposing to amend subsection 2(h).

17
18 Mr. Cowperthwaite stated Exhibit 7.

19
20 Mr. Elges stated we're asking the Commission to strike the sentence that reads, "The potential to emit of an
21 emergency generator must be calculated based on 500 hours of operation per calendar year."

22
23 Commissioner Johnson asked the rationale for that is that you've previously . . .

24
25 Mr. Elges answered right. We believe it conflicts with the balance of the rule. This is some verbiage that we
26 got back from LCB that we're having a little difficulty agreeing upon. In subsection 3 of that same part in the
27 first sentence, we're asking the Commission to remove the words "declared as" and replace them with the
28 word "considered." Because, again, we don't believe that there's a declaration that needs to be made. We
29 just believe it's a consideration. In Section 12, page 16, there's a flush portion of the rule.

30 Commissioner Johnson asked and that would be in page 19?

31
32 Mr. Elges answered page 19, line 21. The last sentence there, "A permanent shield authorized pursuant to this
33 subsection" we're asking to insert the word "pursuant." The version that you have does not have that in there
34 now.

35
36 Chairman Close called for further questions. There were none. He then called upon Captain Rogers?
37 Captain David Roy Rogers introduced himself as Commanding Officer, Naval Air Station, Fallon. He stated
38 I'm here to address some serious military readiness issues that may result from the un-revised version of
39 Petition 2000-12. As most of you know, Naval Air Station Fallon has been in operation since 1942 and has
40 evolved into the Navy's primary graduate-level aviation training facility. The Naval Strike and Air Warfare
41 Center (inaudible) activity on the base trains over 55,000 military personnel a year including all of our carrier
42 air wings. Nine of the last ten air wings in the last two years to train at Fallon have ended up in combat
43 operations within the last four months of their leaving Fallon. Today I'm here on behalf of Rear Admiral Rick
44 Ruehe who is my real boss down in southwest region in San Diego who represents all the military services in
45 the State of Nevada for environmental matters as the DOD regional environmental coordinator. Rear Admiral
46 Ruehe has submitted detailed comments on this matter by letter to Mr. Allen Biaggi dated 4 May 2001 and I
47 believe Mr. Elges's proposed modifications were based on those comments. That's what he was referring to.

48
49
50 I will summarize the operational impact, some specific things that were in that letter and Miss Mary Kay
51 Faryan, Environmental counsel for Rear Admiral Ruehe will summarize some of the legal issues. We will
52 then both be available to answer any questions you may have. The specific issue I want to address is tactical
53 support equipment, also called ground support equipment. I draw your attention to the photographs of this

1 equipment found in Enclosure 1 of the exhibit, which David is passing out there. The function of this
2 equipment is motorized ground support gear, which is essential to the air operations conducted at NAS Fallon.
3 They are the color photographs you'll find in there as you page through. We're talking about aircraft tow
4 tractors, ground power units, aircraft start units, cargo loaders, and generators. TSE or GSE is portable and
5 routinely deployed to various locations throughout the United States and the world with squadrons from both
6 NAS Fallon and Nellis Air Force Base. TSE engine size ranges from 8-horse power to 215-horse power. At
7 Fallon we have a total of 128 pieces of various types of equipment that support our combat aircraft. I don't
8 have the Nellis numbers for you, but they're probably double those. Any regulations that would require DOD
9 to track specific air emissions from this type of equipment would be a tremendous administrative hardship.
10 This is because GSE or TSE routinely moves from base to base and onto aircraft carriers with air wings. With
11 the large numbers of squadrons rotating through NAS Fallon annually on training operations, record keeping
12 would be virtually impossible without increases in manpower, which we can ill-afford.

13
14 Secondly, military specifications prohibit altering or modifying TSE in order to maintain consistency of the
15 fleet throughout the world. As you can imagine, an airman in Nevada needs to be able to repair and operate
16 the same piece of equipment as an airman in South Korea. So, it's kind of a universal standard DOD has.
17 Therefore, again, from a regulatory perspective the military could not comply with any control technology
18 imposed on TSE or GSE. Lastly, the State of Nevada regulating this equipment as a part of the military
19 stationary source would cause adverse national precedent. We are in complete concurrence with Mr. Elges's
20 latest revisions that he briefed you on and at this point I'd like to turn it over to Miss Faryan for a bit of
21 legalese and then I'll entertain questions.

22
23 Mary Kay Faryan introduced herself as environmental counsel to Rear Admiral Ruehe, the DOD regional
24 environmental coordinator. First, I'd like to thank your staff, particularly Mr. Elges who worked
25 cooperatively and gave this matter attention in the last couple of weeks. I'd like to address some of the legal
26 issues impacting military readiness that may result from Petition 2000-12. In summary, there's clear statutory
27 and regulatory authority to exclude all military tactical support equipment and ground support equipment from
28 the military installation stationary source permits. Because these equipment are mobile sources regulated
29 under the non-road engine rule (inaudible) stationary sources. It's instructed that the DOD has engaged in a
30 number of other jurisdictions on this very same issue and at least nine additional jurisdictions have specifically
31 exempted all TSE GSE from stationary source permits from the State of Washington to Arizona, California,
32 etc. It's all in your written package as well as EPA Region IV and III. Conversation with your staff
33 yesterday, confirmed by Mr. Elges's presentation today, makes it clear that the State is in agreement with this
34 position. We urge you to accept staff's proposal to include non-road engines in its list of exemptions from the
35 definition of stationary source. Nevada Administrative Code 455B.187 subsection 3, this is consistent with
36 our written comments and we are appreciative of your staff's hard work on this. We have one implementation
37 issue I'd like to address for the record that may exist and that's with respect to turbine tactical support
38 equipment. As seen in our written submittal, federal law enables all states to regulate all new non-road
39 engines consistent with the State of California. California's program defines military tactical support
40 equipment to specifically include turbine engines. Turbine engines are simply a subsection of internal
41 combustion engines. California also exempted all registered tactical support equipment from emission
42 controls or limitations including inclusion in Title V or new source review applicability determinations. We
43 addressed this issue specifically recently with the State of Arizona and there is correspondence in your packet
44 where they were in agreement with the DOD's position.

45
46 As reflected in our comments written on this rule, the Federal Clean Air Act provides the State of Nevada can
47 regulate to the extent that California has. It is DOD's position that Nevada would need to promulgate
48 regulations to govern military TSE for both internal combustion engines and turbine if it intended to regulate
49 this equipment in any capacity. Again, we thank you for your attention to this matter.

50
51 Chairman Close called for further questions. There were none. He called for further public testimony. There
52 was none. He called the public meeting to a close. He called for comments by the Commission.

1 Comm. Crawford stated in section 8 of the proposed amendment there was some language that evidently was
2 not necessarily in agreement with the Legislative Counsel Bureau. "Consider" versus . . .

3
4 Mr. Elges stated I wouldn't say that we're not in agreement with LCB on the language. It's more of a
5 preference of how it should be written. The term "declaration" is of concern to us. It seems to imply that
6 there needs to be more than the intent that we want to see in the rule. We would rather see the term "consider"
7 or "consideration" be placed there and we feel that's something that we can negotiate with LCB. It was just
8 one of those things that kind of came out in the rule before we were able to get ahead of it and present it as
9 part of your package today.

10
11 Comm. Crawford asked it's a policy-content issue for you that it be considered rather than . . .

12
13 Mr. Elges answered that's correct.

14
15 Commissioner Johnson stated regarding the question about the approval of power plants, could you expand on
16 that a little bit for me? Why are you, by definition, classing a power plant at a lower requirement and then
17 later considering them for another status?

18
19 Mr. Elges explained the Part 70 program in Nevada is pretty unique from the perspective of we have an
20 integrated procedure. We have sources submit applications and get an operating permit rather than what is
21 typical of other jurisdictional areas where an applicant would come in and receive a construction permit and
22 then come back and get an operating permit. Our program has been structured from the beginning to be a one-
23 stop permitting process. With that uniqueness there has come some difficulties in transitioning from the
24 Federal Part 70 program provisions, which we believe were very much geared for a two-part permitting
25 process to a single-permit program. In doing so, our current regulations, in order to ensure that power
26 generation sources, which are termed "affected sources", obtain Title V permits. Our provisions were written
27 to say that they have to go directly to the Title V or Part 70 program right now. Other jurisdictions allow them
28 to go through a construction permit process first which doesn't force them into the Title V arena right off the
29 bat. What we're trying to do today is back up a little bit through subtle revisions in these rules and afford that
30 opportunity to those same facilities to allow them to effectively be able to come in, obtain a minor source
31 permit, allow them to construct and commence operation and then transition into the Title V realm and go into
32 full capacity of those plants. So it's intended to just try to free things up a little bit on the front end for getting
33 permits in the process and trying to get these projects started.

34
35 Commissioner Johnson asked will the present proposed legislation to expedite the process have any effect on
36 this regulation or are you integrating, assuming that it passes, it into this petition?

37
38 Mr. Biaggi stated Mr. Johnson I think you're referring to SB 362. It is intended to attempt streamline the
39 power permitting process. We have been working with Senator Titus and others in addressing the air quality
40 concerns because air quality is a little bit of a unique situation and sometimes the timelines for permitting
41 these facilities can be somewhat lengthy. So, we are attempting to integrate the permitting timelines for air
42 quality into that piece of legislation and we want to streamline these things as much as possible without
43 compromising public health issues. So, we're working with them to integrate it.

44
45 Commissioner Johnson asked would we expect to see a revision of this particular portion of the regulation if
46 that bill passes in its present form?

47
48 Mr. Biaggi answered probably not. We're attempting to make sure that the legislation is crafted to address
49 these requirements rather than the other way around.

50
51 Chairman Close called for further questions. There were none. He called for further comment from the
52 public. There was none. He then declared the public hearing closed. He called for comment from the
53 Commission members. There was none. He called for a motion.

1
2 **Commissioner Doppe moved to approve Petition 2000-12 as amended.**

3
4 **Commissioner Crawford seconded the motion.**

5
6 **The motion carried unanimously.**

7
8 Chairman Close moved to **Agenda Item II. D. Petition 2001-05.**

9
10 **(Petition 2001-05** is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control
11 permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new
12 classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5
13 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review
14 and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity
15 sources.)

16
17 Mr. Elges stated at an SEC hearing in September of 1999 the Division proposed fee increases for our air
18 quality program. The most substantial issue raised during the hearing was in regard to the economic hardship
19 presented by the Walker River Construction Company and other similar small businesses regarding the
20 proposed fee for applications and for air quality permits. The fee structure proposed was adopted at that
21 hearing with specific instructions to the Division to further consider the concerns and to return to the
22 Commission with recommendations for appropriate amendments to the rules. Today the Division is proposing
23 to streamline the permitting process and reduce the economic burden associated with the permit fees for
24 smaller sources. The Division is proposing to amend the permitting regulations in NAC 445B to establish a
25 third permit class for small sources of air pollution. The Class III program will provide a permitting process
26 for sources which are subject to the permitting regulations, but that emit or have the potential to emit 5 tons
27 per year or less of PM 10, NOX, SO₂, CO and VOC's. Emissions can be of any one or a combination of these
28 pollutants. Additionally, any emissions of lead must be less than 1,000 lbs per year. A Class III source cannot
29 be a temporary source as defined in NAC 445B.194. It cannot be located at or be part of another stationary
30 source or required to obtain an operating permit under the dust regulations in NAC 445B.365. A Class III
31 source cannot be subject to the requirements of Title V of the Clean Air Act, a new source performance
32 standard under 40 CFR Part 60, or a national emissions standard of hazardous air pollutants under 40 CFR Part
33 61.

34
35 The three primary advantages of this proposed Class III program are in the time required to review and issue a
36 permit, the environmental evaluation for these facilities, and the facilities associated with the application and
37 permit, and the costs associated with the application and the permit. The costs are the big issue here today.
38 Under the proposed regulations, the Division will have 10 days to determine if a Class III permit application is
39 complete and 30 days to issue or deny a new Class III permit. This is roughly half the time currently provided
40 for the Class II permits. Any revision to the Class III permit would follow the same time frame as that for a
41 new Class III permit, 10 days for review of completeness and 30 days for issuance or denial. The application
42 process will not require an environmental evaluation from the source. The Division has conducted an
43 environmental evaluation that is intended to consider the worst-case emission impacts from the sources
44 eligible for the Class III program. So we've done the work for them in the environmental evaluation
45 department. The evaluation conducted demonstrates that the proposed 5-ton per year upper bound threshold
46 for Class III sources will not have a negative impact on Nevada ambient air quality standards. Being able to
47 rely on this worst-case evaluation will reduce the workload and cost requirements for both the applicant and
48 for the Division.

49
50 Finally, we are proposing that the permitting fees be reduced for the Class III sources. I'd like to provide for
51 your review a fee comparison table that we've put together, if David would be so kind as to make that
52 available as an appendix.

1 Chairman Close stated Item No. 7.

2
3 Mr. Elges stated from this table what we've tried to do here is show you clearly what the differences are going
4 to be for the proposed Class III application and annual emission fees when compared to those of the current
5 Class II application and annual emission fees. Essentially, a new Class III operating permit will be \$300. Any
6 revision of that Class III operating permit would be \$200. Renewal of a Class III operating permit will be
7 \$250. The annual maintenance fee will be \$250 and we're not going to charge an annual emission fee. We
8 believe it's just too cumbersome to try to look at these sources because of their low emissions and try to
9 quantify some emission values. It's very labor intensive for us to do that so we've elected to try to get away
10 from that here. When comparing those fees to the Class II permits you can see they're substantially different.
11 A new Class II operating permit is \$3,000. Revision to the Class II operating permit is \$2,000 and so on down
12 the line. So, again, we're looking at a very substantial cost savings for these smaller sources coupled with a
13 faster permit review process.

14
15 The Division currently estimates that there are roughly 70 permitted Class II sources which will qualify for the
16 Class III program and will be phasing those sources into the Class III program as their permits expire. The
17 Division public noticed and conducted workshops regarding the proposed Class III revisions in December of
18 2000. Workshops were held in Las Vegas, Elko and here in Reno. Comments received at the workshops were
19 all in support of the program. We received no negative comments. We would have liked to have brought this
20 package in front of the Commission earlier, but we were concerned that there were overlapping issues or
21 language that may have affected the Part 70 regulations that we previously went over. So we've held this
22 package back until we ironed those issues out and, again, wanted to bring that in today on the heels of the Part
23 70 provisions as well.

24
25 Commissioner Johnson asked what is the rationale for excluding carbon monoxide on the annual emission
26 fees?

27
28 Mr. Elges explained carbon monoxide is currently excluded in our current provisions as it stands today. It's a
29 cumbersome pollutant to get your hands around, first of all, and most sources emit quite a bit of it. So, to keep
30 a balance in our structure we've elected to opt that out.

31
32 Commissioner Coyner stated it represents a decrease in revenue to the Division then overall. Is there some
33 other offset that you're going to do to increase revenue somewhere to cover that? Or is it just going to be a
34 decrease in revenue (inaudible)?

35
36 Mr. Elges explained we looked at the potential for offset when we went through this process. Our worst-case
37 estimates are somewhere about \$35,000 that we feel we would lose in revenue from making this change.
38 Given the other budget changes that we have we feel very comfortable that there are significant offsets and
39 savings in our budgets to compensate for that kind of change.

40
41 Chairman Close called for further questions. There were none. He called for comments from the public.
42 There were none. He then declared the public hearing closed. He called for further discussion among the
43 Commission members. There was none. He then called for a motion.

44
45 **Commissioner Doppe stated I commend the Division. I think it's a good responsible action and doesn't**
46 **do anything to degrade environmental quality in the State and it helps out business and therefore the**
47 **public at the same time. So, it's a good idea. I make a motion to adopt Petition 2001-05.**

48
49 **Commissioner Dahl seconded the motion.**

50
51 **Commissioner Coyner stated you said 70 Class II's would leave and if they're currently paying \$2,000**
52 **on their renewal and their new renewal would be \$250, that's about a \$1,800 differential times 70, I did**
53 **fast math, so check me here, I get about \$125,000, not \$35,000.**

1
2 **Mr. Elges stated when we looked at this transition we did not look at it as a straight, sources would**
3 **come in today and give up their existing Class II permits and transition over immediately to the**
4 **Class III program. We viewed it from the perspective that we would transition into those changes over**
5 **a five-year term of a permit. So, it's not a straight relation to revenue from that perspective.**
6

7 **The motion carried unanimously.**
8

9 Chairman Close moved to **Agenda Item II. E. Petition 2001-07.**
10

11 **(Petition 2001-07 is a temporary amendment to NAC 445A.810 to 445A.925, the underground injection**
12 **control (UIC) program. The proposed amendment provides that "other Sensitive Groundwater Areas" can be**
13 **determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada**
14 **Revised Statute references, the expansion of minor permit modification criteria and logistics, the expansion of**
15 **temporary permit criteria, methods to establish permit limits in the absence of specific standards, and the**
16 **prohibition on treated effluent is to be repealed. New definitions for cesspool, Class V Rule, delineation,**
17 **drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle**
18 **waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection**
19 **program, subsurface fluid distribution system, are proposed amendments. Restrictions are imposed on Motor**
20 **Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated**
21 **into the existing annual fee. This fee category is expanded to included major modifications.)**
22

23 Val King introduced herself as working for the Division of Environmental Protection in the underground
24 injection control program (UIC program) in the Bureau of Water Pollution Control. She stated for those of
25 you who aren't familiar with what UIC is, it's basically just the regulation of any kind of fluids into a well.
26 Examples of the types of wells that we permit in our program are: recharge wells when we're injecting potable
27 water into the aquifer; we've got geothermal wells; we've got remediation wells when we're looking at
28 environmental cleanup. The purpose of our UIC program is strictly just to protect underground sources of
29 drinking water from degradation due to injection activities. I'm here before you today because Nevada has
30 primacy over our UIC program and what that means is that we have the authority to enforce the program at the
31 State level as opposed to EPA enforcing it. But to maintain primacy we have to ensure that our regulations are
32 just as stringent as the federal regulations. EPA recently promulgated some new provisions that have changed
33 their program and, consequently, we have to pull those provisions over into our program and update them that
34 way. Also, since our regulations haven't been modified since 1987 when they were actually first approved,
35 what we want to do is just some general housekeeping. We've got outdated statute and regulation references
36 that are incorrect that we need to fix. We also want to provide clarification to our program to the regulation
37 that actually more clearly represent and reflect the program's activities that we're doing today and also we
38 want to propose to lower our permit renewal fees. So, if it's acceptable to the Commission what I'd like to
39 propose is just to be brief and try to hit on just the highlights of what the issues are and the more notable
40 modifications that we're proposing.
41

42 EPA recently promulgated new provisions to the UIC program. Specifically, it's identified as the Class V
43 Rule. The Class V Rule adds quite a few new definitions, but more specifically it addresses cesspools and
44 motor vehicle waste disposal wells. Cesspools have been banned in Nevada for many years now, so our focus
45 is primarily on the motor vehicle waste disposal wells. A motor vehicle waste disposal is a shallow well. It
46 could be as simple as a floor drain in an auto repair shop that just dead-ends into the ground. The reason why
47 it's a problem is because it's a direct conduit to the groundwater for whatever the well owner is choosing to
48 put in there, be it solvents, motor oil, gasoline, etc. That's why these things are a problem. That's why EPA
49 has brought them to the forefront. Prior to them promulgating this rule, Nevada took the position of actually
50 initiating a Class V injection well inventory on our own. So we're canvassing the State of Nevada and
51 currently we have all but two counties; those being Washoe and Clark County included in our inventory. And
52 it's looking like there aren't all that many. We're looking at less than 30 motor vehicle wells at this time. So,
53 in general, the Class V Rule makes good enough sense for Nevada with the exception of the other sensitive

1 groundwater areas issue that EPA has mandated. I think it's really important to bring to your attention that
2 these other sensitive groundwater areas, or we call them OSGWA's, weren't actually in the proposed rule
3 where the states have a chance to comment upon the rule. It just came out in the final rule. So, Nevada and all
4 of the other states in the country completely missed out on the opportunity to comment on this and it truly is
5 the only part of the rule that doesn't work well in Nevada.

6
7 OSGWA's are areas that each state is responsible for identifying and they over-lie a vulnerable water source
8 and it's up to the states to decide what and where. The reason why it doesn't make sense for Nevada is that if
9 a facility is determined to be in an OSGWA, then that facility has to meet drinking water standards at the point
10 of injection and this isn't always practical in Nevada for the simple case that as we're all aware, there are areas
11 in the State that have contaminants such as arsenic that just naturally are higher than what the drinking water
12 standards are. What this means is that if a facility is located in an OSGWA, even if the arsenic is at a
13 concentration greater than what the drinking water standard is, if a well owner pumped that water he or she
14 would then be responsible for treating that arsenic to drinking water standards before they put it back into the
15 ground. So, because of this what Nevada wanted to do is we wanted to take the approach of, "Okay we're
16 going to identify these areas." The reason why we wanted to come up with a mechanism to determine these
17 areas is that if we didn't by default, and this is an EPA mandate, the entire State would be declared sensitive.
18 So this would be a statewide mandate. This wouldn't be good for us because it takes away our regulatory
19 flexibility to do what's fair and what's right with the regulated community. What it does is it gives us a one-
20 size-fits-all approach. You know in Nevada with all of our diverse geology and geohydrology it doesn't make
21 common sense.

22
23 Basically, we feel if we went statewide and we didn't take the initiative to come up with a plan to delineate or
24 identify these OSGWA's that it would be counterproductive to what our environmental protection goals are.
25 So, we did come up with a plan and that plan was approved by EPA and it's going to work well in Nevada
26 because we're doing it on a case-by-case basis and with this classified injection well inventory that we're
27 conducting concurrently we will then be able to take these facilities, like I said, on a case-by-case basis and
28 determine if they are or are not in an OSGWA. If their water exceeds drinking water standards naturally, then
29 we would pretty much determine that it was not an OSGWA. In doing this EPA has mandated several
30 deadlines and time frames that we have to adhere to and those are all specified in our regulations. But I do
31 want to note that in section 16, on page 5, line 27 we have a proposed amendment and it was just an oversight.

33
34 Mr. Cowperthwaite stated that is Exhibit No. 1.

35
36 Ms. King stated I just wanted to make you aware that section 17 has been scratched out and we (inaudible) the
37 entire UIC regulations. Basically, what that says is that if you're not in a groundwater protection area or other
38 sensitive groundwater area, then you still have to get permitted and it specifies the whole realm of what our
39 regulations are. If you're going to inject, you have to have it permitted, just by statute, and that's all that says.
40 What we did was we modified our regulations and we had three public workshops. Notifications of the
41 workshops were sent to all of our permittees, to county officials in all of the counties in Nevada, to city
42 engineers, public works supervisors, trade organizations, small business development center, and they were
43 kind of a key group because they offer compliance outreach to small businesses so we thought they were a
44 good one to notify. We published the notification in all of the major Nevada newspapers and we also posted it
45 on our NDEP Web page. The workshops that we had were held in Carson City, Elko and Nevada. We had as
46 little as four people in Elko attend and as many as 12 people who attended in Las Vegas. The common thread
47 in the comments that we did receive through the workshops was that the regulated community did want
48 Nevada to maintain primacy and did not want EPA to enforce the program from a federal standpoint. When
49 all was said and done we didn't receive any written comments regarding any of our modifications.

50
51 What I'd like to do now is just briefly hit on just a few of the main housekeeping modifications that we're
52 proposing. And, again, these intentions are to clean up our regulations and just clearly make them reflect what
53 our program's activities are today. I'll just say again, our regulations haven't been modified since 1987 when

1 when they were originally approved. The first thing that we want to do, section 23, page 10 and it starts at line
2 19. What we want to do is we want to list the citation out of our general water regulations and they're
3 specifically in the corrective actions section and we want to place them directly into our UIC regulations just
4 to provide clarity of what our authority is. What this citation does is it, once placed in the UIC program, we
5 already have this authority, but one placed in the UIC regulations it clearly says that we have the ability to
6 establish permit limits when a specific standard is, in the absence of a specific contaminant standard. This
7 came about because there was a permit that was appealed to the State Environmental Commission questioning
8 our authority. The Commission unanimously upheld the permit. Although we have this authority, we just
9 wanted to make it very clear that it is in our regulations so we can avoid any future conflict or ambiguity.

10
11 The next thing we want to do is in section 30, page 13 and it starts line 17. What we're proposing to do here is
12 want to lift the prohibition on the injection of treated effluent. The reason why we want to do that is because
13 EPA expanded the definition of a well to include subsurface fluid distribution systems, which is just a fancy
14 way of saying leach fields. So now that leach fields has been brought into the universe of our UIC world, we
15 don't want our regulations to contradict themselves, which is what would happen if we left this in here.
16 Typically leach fields are associated with septic systems. We have large septic systems that drain to leach
17 fields. For instance, in our State prison systems. They're actually permitted to treat their waste this way and
18 discharge to a leach field. So, if we don't lift this prohibition we're saying that this activity is now illegal in
19 the State of Nevada and we don't think that's good so we're trying to get those out of there.

20
21 The last thing that I want to bring to your attention is section 32, page 15 starting at line 1. This is our fee
22 section. What we're proposing to do today is to decrease our renewal fees. As you can imagine, we got
23 plenty of support in the workshops. We would like to do this to make the fees consistent and straightforward.
24 We want to simplify our fee structures. We've conducted our cost analyses, fee analyses, these fees only hit
25 once every five years. They're not going to impact our program and they're still going to allow clarity on the
26 permittee's part.

27 Commissioner Johnson asked does a leach field also include a leach pad and mining operation?

28
29 Ms. King answered no sir. Those are different things. A leach field is strictly a subsurface fluid distribution
30 to somewhere. It goes into the ground. A heap leach, I believe those things are lined and so it doesn't have a
31 direct route into the ground. I am not familiar with mining procedures, but I don't believe that's an overlap.

32
33 Commissioner Johnson asked would it be under the injection wells?

34
35 Ms. King answered no. Our mining bureau would address those. I don't think that can be confused with a
36 leach field by this definition. However, we do have a modification in our regulations to address what you just
37 brought up which says that we will not over-regulate or duplicate regulatory efforts with any of the new
38 definitions that we have because we do have agencies and bureaus that do regulate things and do not need help
39 or us to do it twice.

40
41 Commissioner Ricci asked are the recharge programs that are done by municipalities covered under this Class
42 V?

43
44 Ms. King answered they are actually in an "other" section because our classified wells are broken down by
45 geothermal, remediation, if you look through it and there really isn't a section for aquifer recharge. They fall
46 in "other." So, it's kind of a catchall.

47
48 Commissioner Ricci asked municipal recharge programs for potable water?

49
50 Ms. King answered yes.

51
52 Commissioner Johnson stated the regulation that's here you're proposing that there would be perhaps an
53 approval of one of these, the wells related to . . .

1
2 Ms. King asked motor vehicle waste disposal wells?
3

4 Commissioner Johnson answered motor vehicle waste disposal wells. I can't conceive that we would allow
5 any of these to stay in existence.
6

7 Ms. King explained basically they're going to have a hard time doing so. We're pretty much just following
8 the federal mandates by incorporating just these huge requirements for these wells. These wells are going to
9 have to meet drinking water standards or natural occurring background levels prior to receiving a permit or
10 being authorized to exist. I think that's going to be difficult for quite a few of these and so the other option
11 will be to either close their well or convert it if they can demonstrate that they are going to be using it just as a
12 storm drain for when they are washing off the vehicles and things like that. And, again, the program is
13 developing, but if they can't demonstrate that they are not degrading groundwater then they cannot maintain
14 the activities in that well. We're pretty firm on that.
15

16 Commissioner Johnson stated it would seem then the local municipalities have sand/oil separators or related to
17 automobile washes and this sort of thing. But I just can't conceive that anyone's going to jump through these
18 hoops and get a permit. I mean are we just making it overly burdensome or should we just say that we won't
19 permit them or do we have the authority to say that?
20

21 Ms. King explained what we're doing there is we do have a program in place with the general permit and it's
22 not actually through the UIC program, it's through another branch of our Bureau of Water Pollution Control.
23 Where we do have a general permit for oil/water separators, and it's not at this point, it's only because we
24 perceive them as being a problem in the future. And so it's not to take these oil/water separator operations and
25 make them stick strongly to any kind of regulatory compliance. What it is, basically, is just to get our arms
26 around everything that's out there, get them on a general permit, which there's minimal sampling and
27 reporting. But what it's going to do is it's going to allow us time to build our program and figure out how
28 we're going to address these and in the meantime we've got everything roped in as best we can. So, that's
29 where we're at today with that.
30

31 Commissioner Johnson stated I'm less encouraged with your final statement and I would rather see an active
32 program to regulate these things rather than a monitoring program.
33

34 Ms. King stated well we're working towards that. Maybe I should clarify. The Class V Rule was brought to
35 us and it was codified in December of 1999. So we're gearing up to figure out how we're going to address
36 this. Before we were having a hard time, or we were just keeping up with the things we were doing in our
37 program. Now the whole universe of the UIC program has really expanded. So, I understand your concern
38 and I think ultimately that would probably be the best way but it may not be the most reasonable way when
39 you're looking at being flexible and allowing the regulated community the benefit of at least demonstrating
40 that they will not degrade ground waters.
41

42 Commissioner Johnson asked to demonstrate their ability to continue to pollute?
43

44 Ms. King stated well if that's the case sir when we do gear up, like I said at this time we're just trying to
45 inventory them. The general permit is more of an inventory for us right now. They have to report at this time.
46 But it's more of a way of just letting us get a feel and actual numbers of what's out there. Get them into our
47 program and then when we figure out clearly how we're going to approach this we will then do that. And
48 that's coming up quickly. But first we have to just ensure that we maintain our primacy or else EPA will do it
49 for us.
50

51 Commissioner Johnson stated I'm much happier to see you come into compliance. You say it was codified 18
52 months ago, essentially?
53

1 Ms. King answered right.

2

3 Chairman Close asked would you describe what a motor vehicle waste disposal well is?

4

5 Ms. King answered specifically to the EPA definition, it's a shallow injection well, kind of like a French-drain
6 sort of thing. But typically it's in an auto repair shop on the floor drain. And, so when they're cleaning up the
7 shop and they spill stuff they just brush it down the drain and it just dead-ends in the ground. So, it's not
8 hooked to any kind of treatment system. It's not hooked to the sewer. It just dead-ends in the ground.

9

10 Chairman Close asked where would one of these be allowed to exist, for example, downtown Las Vegas?

11

12 Ms. King answered I don't think so. In many of the places that are hooked up to sewers they're going to have,
13 just by building code, they're going to have a lot of the drains hooked up to sewer. We're investigating that
14 now is all I can tell you, but we are asking things like, "Are you hooked up to sewer? Or are you not? What's
15 the age of your building?" to help us eliminate areas that we think are not likely to have these and try to go
16 after the more rural areas that aren't hooked up to sewer and don't have treatment schemes in place.

17

18 Chairman Close stated with all of the problems we've had with leaking gasoline tanks and the huge uproar
19 about that and the tremendous problems that's given to everyone I can't imagine that we allow oil products
20 just to drain into the ground. Is that what I'm hearing?

21

22 Ms. King explained no, what we are saying is that if they can't meet drinking water standards or if the
23 naturally occurring groundwater is high in specific contaminants they can't meet those concentrations then
24 they cannot inject and it's going to be very difficult for them to do that. So, we are basically just folding
25 EPA's mandates into our regulations and that's what they say. You have to meet drinking water standards.
26 But I don't think we envision this as really maybe being practical for owners of these types of wells. And we
27 also aren't finding many of these types of wells in Nevada, which is encouraging.

28

29 Chairman Close who has to meet the drinking water standards?

30

31 Ms. King answered everyone does.

32

33 Chairman Close asked when you say they don't meet the drinking water standards, you mean the well doesn't
34 meet the drinking water standards? The surrounding area doesn't meet the drinking water standards? Who is
35 "they" that don't meet the drinking water standards?

36

37 Ms. King answered the holder of a permit. The drinking water standard is effective at the injection point. So
38 whatever's seeping into these wells that is the injection point. If whatever that fluid is, if it exceeds drinking
39 water standards, it's illegal.

40

41 Chairman Close stated it's going to. I mean, anything that comes off from a garage floor I'm not going to
42 drink. So I don't understand what we're talking about.

43

44 Commissioner Doppe stated let me ask in another way. What it says is that the motor vehicle well, per se, is
45 not illegal.

46

47 Ms. King stated right.

48

49 Commissioner Doppe stated but what gets injected into the ground has to meet drinking water standards,
50 which it logically will not. So you guys are going to be in the process of closing a whole bunch of them down
51 in the future, those that you're able to find.

52

53 Ms. King answered probably so. Yes.

1
2 Commissioner Doppe stated it's just the language. Basically, they don't come right out and say, "You can't
3 have one."

4
5 Ms. King stated right.

6
7 Commissioner Doppe stated but they do say that if you are going to have one you have to meet clean water
8 standards and good luck. You can sweep your garage floor and treat it before it goes into the water. You have
9 to pick it up before it hits the ground.

10
11 Ms. King stated that's right and that's part of the program that will hopefully be helping with the technical
12 assistance, which are best management practices.

13
14 Commissioner Johnson asked other than a property transfer, how are you ever going to monitor what goes
15 down that hole?

16
17 Ms. King stated well, hopefully there would be a sump and this is, we're envisioning, we haven't actually . . .

18
19 Commissioner Johnson asked who is going to sample the sump?

20
21 Ms. King answered the owners will be responsible for sampling the sump. There will be legal requirements
22 for them to do it properly.

23
24 Commissioner Johnson stated that's only after I have reported that I have one of these.

25
26 Ms. King stated no. We are conducting a Class V injection well survey throughout the State of Nevada and
27 we're actually doing a fairly good job of identifying these wells. So we are getting a good idea of who has
28 one. But of course if you have one and if for some unforeseen reason we didn't catch it, yes, of course it
29 would be when you brought it to our attention.

30
31 Commissioner Johnson asked how are you going to catch it? Do you inspect every suspect facility or do you
32 just ask that they self-report it.

33
34 Ms. King answered we're going to hopefully find them. The way we we're conducting our inventory is by
35 sending out surveys and there's survey forms and they're targeted, like I said we've eliminated people off of
36 the survey list and targeted people that we think may have the potential to own one of these things. And they
37 have to send it back. We've got the little return addressed stamped envelope and it's sent certified mail. It has
38 Allen Biaggi's signature on it and it states that there are certain legal repercussions if you lie about it. They
39 have to answer specific questions and they have to explain why they do or do not think that they have one.
40 And so we're taking the people who say, "Yes we have one" and that they're in the inventory, they get an
41 inspection. The people who say they do not; they are not immediately excluded from the inventory. They are
42 put into a separate list and they are spot-checked for quality assurance purposes. So we're doing the best we
43 can do at this point. But, you know, with this new mandate I think we're on top of it and I think that as it
44 starts unfolding that all these concerns are going to be flushed out. But right now we're just gearing up at the
45 foundation to start this.

46
47 Commissioner Doppe stated the petition addresses cesspools and motor vehicle wells primarily. Cesspools,
48 you stated at the beginning, are already illegal in the State?

49
50 Ms. King answered they are banned and have been in Nevada.

51
52 Commissioner Doppe asked how do we ban a motor vehicle well?

1 Ms. King answered new motor vehicle waste disposal wells are banned. As of April 5th they are banned. But
2 what we're dealing with is older existing wells.

3
4 Commissioner Doppe asked how do you treat older existing cesspools?

5
6 Ms. King answered well if we found one, they're illegal and so whatever repercussions would come from that.

8
9 Commissioner Doppe stated it just seems like what we're doing here is we're going through two steps to get to
10 the same point and that is fundamentally you cannot have a motor vehicle well because right now you can't
11 have it because it doesn't comply. There seems to be a shorter step to just say you can't have it at all because
12 we know it's not going to comply and let's not go through all of the stuff of having to report it, measure it, all
13 that kind of stuff. If there is one, it's illegal.

14
15 Ms. King stated I understand and agree with where you're coming from from one standpoint, but I also think
16 as a regulatory entity we're responsible to the regulated community to at least let them come to us and
17 demonstrate that they can or cannot meet the compliance requirement. I think it would be a little bit strong-
18 armed to just ban them entirely.

19
20 Commissioner Doppe stated I would give you a period of time to demonstrate that any of the 30 or 50 or
21 however many you ultimately identify can actually dump that stuff at clean water quality into the ground.
22 And if that ultimately proves out to be the case, hopefully then we'll come back and we'll stop this interim
23 step thing and say, "Look they don't work." Just say that. Perhaps we can get there.

24
25 Ms. King stated Mr. Drozdoff just pointed out the answer to your question is that we also would provide the
26 regulated community with the opportunity to treat their waste and there are mechanisms out there to treat prior
27 to injection.

28
29 Commissioner Doppe asked so there may be something?

30
31 Ms. King answered yes.

32
33 Chairman Close asked isn't there also a restriction on putting petroleum products into the sewer line?

34
35 Ms. King answered I believe so. There's a pre-treatment program.

36
37 Chairman Close asked which means it goes out to the Sanitation District and they have to treat it? I thought
38 there was a restriction against even doing that.

39
40 Ms. King answered well this is outside the realm of UIC so I can't be an authority here. But I do know that
41 there are pre-treatment programs out there that deal with those issues.

42
43 Chairman Close stated so you couldn't just have the well and then pipe it into the sewer line because you're
44 putting into the sewer line untreated petroleum products.

45
46 Ms. King stated there are actually drain well floor drains that do go into the sewer and they run through a pre-
47 treatment program.

48
49 Chairman Close asked before it gets into the sewer system?

50
51 Ms. King answered before it goes into the sewer.

1 Chairman Close stated I don't disagree with Mark says. You know if you know can't meet the standard and
2 everything you've told me indicates that I'm not going to meet the standard if I'm just letting it leach into the
3 groundwater or the ground basin. It seems like it's fairer really to say in two years or three years or whatever
4 you're not going to do this anymore.
5

6 Ms. King stated and Mr. Chairman I understand what you're saying, but I think that also doesn't give the
7 regulated community the option to treat and meet those standards if you just take that option away from them.
8

9 Chairman Close asked so if we adopt this today then can you commence another workshop to maybe terminate
10 this practice totally?
11

12 Ms. King stated Mr. Drozdoff just said we are conducting more public outreach and public education. But at
13 this time this is where we're at and at this point we're not ready to be stricter than EPA. I mean EPA has
14 allowed us to do this because we've developed or come up with a plan for determining other sensitive
15 groundwater areas. So now we have the flexibility to at least give these people a fair chance to demonstrate
16 that they can maintain compliance. It's where we're at right now. You know, we're putting the burden on the
17 well owner. If the well owner can demonstrate they can meet drinking water standards, then we will work
18 with them and really don't want to put them out of business.
19

20 Commissioner Dahl stated Mr. Chairman it seems to me like the important question is whether or not the
21 technology is available to treat these products to bring it to drinking water standard. Is it available?
22

23 Ms. King answered it is available.
24

25 Commissioner Dahl stated then if someone opts to treat it, then it should be legal I guess.
26

27 Ms. King stated yes. That's what we believe. We think that it would be counterproductive to our
28 environmental goals to strong-arm the regulated community into doing something that they actually could do
29 and meet the compliance restrictions.
30

31 Chairman Close called for further comments and questions. There were none. He called for public comment.
32 There was none. He called the public hearing closed. He called for discussion by the Commission.
33

34 **Comm. Crawford stated Mr. Chairman I chaired the hearing that we had on the injection and while we**
35 **thought the agency had the regulatory authority, we suggested that they clarify and improve on the**
36 **regulation so I compliment them for coming back and getting that done and I would move for adoption**
37 **of 2001-07 with the amendments presented to us today.**

38 **Commissioner Dahl seconded the motion.**
39

40 **Commissioner Coyner asked Ms. King could you give me an estimate on the impact to the Department**
41 **on an annual basis due to the reduction of the fee? How many dollars are we talking about essentially**
42 **rebating back to the regulated community based on the reduction?**
43

44 **Ms. King answered the money wouldn't actually go back to the regulated community.**
45

46 **Commissioner Coyner stated I phrased that wrong and I apologize. What's the impact to the Division's**
47 **budget based on lowering the fees?**
48

49 **Ms. King answered we're roughly estimating less than \$10,000 a year.**
50

51 **Commissioner Johnson stated I'm going to vote against the adoption of this regulation and I have some**
52 **concerns about the procedure in the OSGWA plans and we'll address that later.**
53

1 **Chairman Close called for further comments. There were none. He called for the vote.**

2
3 **Chairman Close voted aye.**

4 **Commissioner Coyner voted aye.**

5 **Commissioner Crawford voted aye.**

6 **Commissioner Dahl voted aye.**

7 **Commissioner Doppe voted aye.**

8 **Commissioner Gifford voted aye.**

9 **Commissioner Iverson voted aye.**

10 **Commissioner Ricci voted aye.**

11 **Commissioner Johnson voted no.**

12 **The motion carried.**

13
14 Chairman Close moved to **Item No. III Petition 2000-10.**

15
16 **(Petition 2000-10 (LCB R-104-00)** is a permanent amendment to NAC 445A.119 to 445A.225, the water
17 pollution control standards for water quality. The amendment adds new water quality standards and beneficial
18 uses for Walker Lake and amends the standards for various reaches of the East and West forks of the Walker
19 River. A new control point is proposed to be added on the east Walker River at Bridge B-1475 at the state
20 line with California. Amendments are proposed for NAC 445A.159 to 445A.169, inclusive including
21 Sweetwater Creek and Desert Creek of the Walker River. Amendments vary for each reach defined above,
22 but include: temperature, pH, total phosphates, nitrogen species as N, Dissolved Oxygen, suspended solids,
23 turbidity, color, total dissolved solids, chloride, sulfate, the sodium adsorption ratio, alkalinity and Escherichia
24 coli. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach
25 from Walker Lake to Weber Reservoir. (Adopted by the Environmental Commission on February 15, 2001
26 and heard and acted upon by the Legislative Commission on April 17, 2001)

27
28
29 Chairman Close noted it was returned to us from the Legislative Commission and now from the legislature.

30
31 Mr. Biaggi stated given some recent developments that occurred early this morning I was wondering if we
32 couldn't take a 10-minute recess so that we could discuss this with the Commission's counsel in terms of some
33 legislation that appeared late last evening.

34
35 Chairman Close called a 10-minute recess. He reconvened the meeting after the recess.

36
37 Mr. Biaggi stated Petition 2000-10 refers to a remission back to the State Environmental Commission by the
38 Legislative Commission for the standards for Walker River and Walker Lake. Let me give you a little bit of
39 background, although I know you're all intimately aware of what's transpired over the last couple of years.
40 The State Environmental Commission had two meetings previously. One was in Yerington and one was in
41 Carson City. The Commission heard over nine hours of testimony from both sides of this very contentious
42 issue and as you'll recall there was a balancing act that needed to be made between fish and wildlife issues,
43 agricultural interests, tourism, and wildlife concerns. This body approved the proposed package with revisions
44 on a vote of 5 to 4. Per State law, the Legislative Committee reviews each set of regulations passed by an
45 executive agency prior to their codification into the Nevada Administrative Code. The Legislative
46 Commission considered these regulations on April 17, 2001 who voted unanimously to remand the regulations
47 back to this body. I also would like to point out that that was based upon discussions solely on the lake system
48 and not on the river. The letter from Brenda Erdoes of the Legislative Counsel Bureau Legal Division is in
49 your packet outlining the policies and procedures for remanding these requirements back to the SEC. I would
50 also like to point out that this is the first time that this has ever happened to the State Environmental
51 Commission. So, from that perspective we're in uncharted waters. From the Division's perspective we
52 believe that the recommendation we came forward with was appropriate, was science-based and consistent
53 with all of the appropriate statutes and regulations governing water quantity, water quality, historical irrigation

1 historical irrigation practices and the balance of business, industry, and agriculture. Obviously, the Legislative
2 Commission does not concur with that recommendation.

3
4 One development that occurred late yesterday afternoon is that a piece of legislation was introduced to the
5 Nevada legislature, which hopefully you all have by now. I just saw it for the first time this morning as I
6 walked in the door. That's SCR 40 and it outlines the decision of the Legislative Commission and affirms that
7 those regulations, by their decision on April 17, 2001, could not move forward. Additionally, I've provided to
8 you a letter that I received late yesterday afternoon from the Sierra Club outlining their comments and
9 concerns regarding the regulations.

10
11 So, where does that leave us right now and what do we need to do in terms of going forward? I think, as
12 you're all aware, not moving forward with water quality standards on the lake and the river has significant
13 ramifications from a legal perspective, not only for this body, but for the State of Nevada in general. As we
14 said prior to the previous meetings, no matter what decision is made with regard to these water quality
15 standards, there's likely going to be some sort of a litigation that arises out of it. Obviously if standards aren't
16 approved, ultimately they may be taken out of the hands of this body and of the State of Nevada and will be
17 adopted by either federal EPA or the court system.

18
19 With regard to recommendations that we would provide you for today, I think we see two avenues of ways to
20 move and I'm going to refer to your legal counsel for a little bit of clarification on one of these. But we see
21 two options. The first option is to hold off, not take any action today. Let us review what SCR 40 means and
22 what the actions of the Legislative Commission means. The other option is to move forward and re-adopt the
23 river only. There is general agreement that there's no controversy with regard to the river itself. You didn't
24 hear a lot of testimony on it. In fact, in one respect the river standards actually relax the pH standards for the
25 river and may get us out of some impairment issues with regard to certain stretches of the Walker River. But I
26 think those are our two options today. Susan, maybe you want to talk a little bit more about the option of
27 delay.

28
29 DAG Gray stated this being an unusual situation in which the legislature acts on the Legislative Commission's
30 decision prior to giving the State agency an opportunity to revise and resubmit it kind of leaves us holding our
31 hands in the air going, "Well what do we do then? Is it too late? Do we simply have to start the process all
32 over again?" And we don't really know the answer to that question. Because of that, I don't know if we could
33 ever find the answer to that question. There may not be an answer in that this just has not happened before. If
34 we had the option to talk to the legislative counsel, perhaps she could give us some guidance. However, the
35 other suggestion being that we simply revise the river standards by bifurcating it from the Walker Lake
36 standards and attempting to resubmit it. There's no guarantee that LCB would accept it, but we could at least
37 make the attempt. Or we could simply wait until the next meeting and maybe have some more information
38 then.

39
40 Chairman Close asked Allen did you have the opportunity to listen to any of the arguments made in the
41 legislature regarding this matter and if so what was said?

42
43 Mr. Biaggi answered I made testimony to the Legislative Commission as did Mr. DePaoli, representing the
44 Walker River Irrigation District and I don't think that there was anything new in either of our arguments that
45 you didn't hear in that nine hours of testimony. Now with regard to SCR 40, I think it just came out in the last
46 day or so. I don't believe there have been any hearings on that piece of legislation and so I have nothing
47 further to add in that regard.

48
49 Chairman Close asked what did the Legislative Commission say in their deliberations before they took their
50 position?

1 Mr. Biaggi answered there was a substantial amount of discussion with regard to historic irrigation practices
2 and water rights. One of the legislators also asked in a number of ways whether or not this was a public health
3 issue, or was this just dealing with issues of recreation, wildlife, tourism and business and industry. One of the
4 legislators, Senator Titus, did make a comment with regard to losing control of the standards process and
5 having the standards initiated by a court or by federal EPA. But by far the majority of the testimony was with
6 regard to historic irrigation practices and water rights issues.

7
8 Commissioner Iverson asked Mr. Biaggi to repeat the two choices again.

9
10 Mr. Biaggi stated the two choices that I think we would suggest you consider today: (1) is not do anything
11 today to allow both your legal counsel and us as the program staff to make inquiries and determinations of
12 what exactly the new piece of legislation, SCR 40, means and what ramifications it does have to these
13 standards. The other option is to move forward with the river standards only. To bifurcate off the lake, which
14 is the controversial part, and move forward with adoption of those today. We will then take those to the
15 Legislative Counsel Bureau and back to the Legislative Commission to be reconsidered. I've been in
16 conversation with members of the Walker River Irrigation District who are here in attendance today and that
17 was an option that was agreeable to both of us, but with the determination and the finding of SCR 40 this
18 morning, it puts a little question into moving forward in that regard.

19
20 Commissioner Iverson asked when you're talking about pulling off the river regulations and separating them
21 from the lake, I think from day one the issue has been, and you bring it up, the impacts on irrigation upstream
22 and can we go ahead with adopting regulations upstream, separating them off, without having those kinds of
23 impacts? They're concerned about it. Again, I think there's going to be a balancing act here when you talk
24 about public health versus recreation and fish compared to historic water rights and impacting a community
25 there has to be some value put on all of these things.

26
27 Mr. Biaggi answered I think those are very good and very valid questions. As you'll probably recall from
28 Tom Porta and John Heggeness's testimony back in Yerington, Walker River standards have been in place for
29 many, many years, for a couple of decades. So I don't see any problem of cleaving off the Walker River
30 standards and modifying them and the Commission just wouldn't go forward with lake standards. That would
31 essentially be a status quo that's been in place for the last 20 years. With regard to the health issue, it was
32 recognized, and we testified before the Legislative Commission that this is not a public health issue. It's an
33 issue of tourism, wildlife, irrigation, etc. So there's not a public health component to this as we see it.

34
35 Commissioner Johnson stated I don't think that those two options are necessarily all that we need to consider.
36 The lake is still there whether we wish to address it again is controversial and raise the standard to 20,000 or
37 put it in at 5,000. That's within our prerogative. I think there are several points. I would read into the record
38 the letter that we have on file from LCB that is addressed to David Cowperthwaite from the Legislative
39 Counsel Bureau. In the second paragraph the last page it says, "The concern appears to derive in part from
40 comments made by Committee members and a witness that during years of drought the standard for total
41 dissolved solids established by regulation would be difficult, if not impossible, to meet without curtailing
42 current water allocations for other beneficial use in the area including irrigation for agriculture." I clearly
43 think that within the regulation we had made a statement about those water rights and nothing within these
44 standards would interfere with those rights. I think that there's a misperception on the part of the Legislative
45 Commission, perhaps, on that basis, not that that removes anything from their action. But, lastly, on SCR 40
46 the justification for segmenting this it says, "Quality standards for Walker River and Walker Lake." The
47 entire document was returned to us and rejected. So, it either leaves that we can act on any or all parts of it, or
48 none of it. I mean we're not constrained by there only being controversy on the lake portion. That's the part
49 that drove this for sure and the part that let this Commission be divided on the issue. But I don't think that we
50 need to necessarily think that that's all the options we have.

51
52 DAG Gray stated there is one more option, which essentially would be to start the process over again with
53 both the lake the river. Do the public workshops, the public comment, and essentially draft new regulations.

1 We all know what that process is like. We just went through it and we would just have to do it again and hope
2 that the Legislative Commission reviewed it and they would accept it.

3
4 Commissioner Iverson stated if I'm not mistaken the reason that the Legislative Commission was set up is so
5 that bodies like this, bodies like my regulatory body at the Department of Agriculture, Alan's regulatory body,
6 we don't pass regulations that they don't have a chance to look at. And if I'm not mistaken, they have to give
7 final approval. We cannot pass regulations that can't get through this committee. I'm not so sure in looking at
8 the controversy that was brought up on this and the questions that are in this letter if you can get this through
9 the Legislative Commission without having the opportunity to sit down with that Commission and talk to them
10 about some of the issues that this body brought up. In all of the nine hours of hearing that we had, you're not
11 going to adopt regulations on the lake that I could see, that's not going to impact upstream users. An option
12 you haven't talked about is to not act on these today, but to understand what the letter says and to maybe set
13 up a meeting with the Legislative Commission where this body could sit down with them and discuss some of
14 those issues. Maybe they need to understand why a decision was made the way it was.

15
16 Mr. Biaggi stated I agree. That is another option and we would be happy to set that meeting up if that's what's
17 desired. To respond to Mr. Johnson's question, I just wanted to remind you that the language which was,
18 "Because Walker Lake is a body of water without a natural outlet, the Commission recognizes that water
19 quality can be significantly impacted by climatic conditions and thus attainment of standards may not be
20 achievable at all times" I think that's what you're referring to? That was omitted on the regulations by this
21 body.

22
23 Comm. Crawford stated I think we added the part about the water rights when the regulation was adopted.
24 There was some additional language that I think . . .

25
26 Mr. Biaggi stated we'll have to research that and I do recall that discussion about the water rights and it's
27 foggy in my mind because we had it in the original petition and then . . .

28
29 Commissioner Johnson stated I would read right off the front, "LCB File No. R104-00 Section 2. Water
30 quality standards established in NAC 445A.070 to 445A.348 must not be construed to amend, modify, or
31 supercede rights to quantities of water which have been established by the State engineer, or by applicable
32 court decree." We accepted the Irrigation District's amendment on that issue and that portion is in there and
33 right by our regulation we said that it doesn't affect, and primarily right off in the lead paragraph this is what
34 the Counsel Bureau . . .

35
36 Mr. Biaggi stated but Mr. Johnson you have to recognize that that is what was sent as a description over to
37 LCB and my testimony before the Legislative Commission specifically addressed the statutory requirements of
38 this body and the water quality regulations that it establishes to not impinge or impact historic irrigation
39 practices, water rights, or other things that are done by the State engineer. That was not a compelling
40 argument to them and that's where they voted unanimously to remand them back to you.

41
42 Commissioner Johnson stated I understand. I'm just saying that perhaps an Attorney General's Opinion about
43 this particular thing in the application and the concern that's expressed there might be appropriate.

44
45 Commissioner Ricci stated as you will recall when we had the vote on this particular one I abstained as a result
46 of the litigation that we were involved in. I'm not sure if that litigation is done, at least it's done with the
47 Nevada Supreme Court. The Nevada Supreme Court denied the writ of petition of mandamus against the
48 Walker Lake Working Group from Mineral County and in favor of the Division of Water Resources,
49 Department of Conservation and Natural Resources. They recognized that this public trust element that they
50 were seeking to invoke to get additional water to Walker Lake did have some terrific ramifications on the
51 economics of the area. While at the same time, it was a unanimous decision, excuse me there's where I'm a
52 little foggy on it, I can't remember exactly how they did it, but there was basically an opinion written and
53 signed by three of the judges that indicated that even though the public trust issue hasn't been ever addressed

1 in the State of Nevada that it might be time now in which to do so and the very argument that we made in the
2 Supreme Court argument is the very people that need to make that decision is the legislature. So now they
3 have said, "Well the Environmental Commission can't make the regulations." Maybe what they're going to be
4 confronted with next session is this public trust element and then they're going to have to figure out what to
5 do.

6
7 Commissioner Iverson asked was there very much discussion about the science that was used to base some of
8 this data on? I know we had lots of discussion here about that. Also, the idea that kept coming up over and
9 over again at the hearing in Yerington is that we're establishing guidelines and regulations we may never be
10 able to attain. Can we adopt regulations when we know we can't attain it? Is that worthwhile doing? Was
11 there any discussion on the fact that we needed to get going on something?

12
13 Mr. Biaggi answered the issue of attainable standards did come up and it was discussed quite a bit. Mr.
14 DePaoli brought it up, obviously. From his perspective he didn't feel that these regulations, as were adopted
15 by this body, were attainable. I think the legislature heard that fairly clearly.

16
17 Commissioner Iverson asked did they understand the idea that something needs to happen?

18
19 Mr. Biaggi answered absolutely. I think they did and I think that goes to the heart of Senator Titus's comment
20 saying that if the State of Nevada doesn't do something that it will be taken out of their hands and will be
21 decided by the courts or by federal EPA. If you'd like, we've got an EPA representative here in the audience
22 today and she can speak to perhaps a little bit of the process of what happens if the State doesn't act and what
23 can happen. So, I'll leave that as an option if you'd like to hear from her.

24
25 Commissioner Iverson asked was that person at the Commission hearing and at the Commission . . .

26
27 Mr. Biaggi answered no she was not.

28
29 Commissioner Iverson stated sometimes I think we forget what EPA rules, that you don't make all the
30 decisions in the world, and that there is sometimes a larger body out there. I really think there's an
31 opportunity to sit down with that Commission and to have you bring in experts that can talk to them so they
32 understand where this body is coming from too.

33
34 Chairman Close stated this is a tough decision because you've got a 60 – 0 vote out of the legislature and
35 having been there I know that those are not usually obtained. It's very difficult to obtain. There is a strong,
36 strong feeling. I don't care what we're thinking about up here. We have our responsibilities and they have
37 their constituencies and that's the bottom line. Sixty to zero is strong. And to send something back to these
38 guys . . .

39
40 Mr. Biaggi stated Mr. Chairman I think we need to clarify here that the Legislative Committee is a
41 subcommittee of both the Senate and the Assembly and there's maybe 25 of them.

42
43 Chairman Close stated except SCR 40 was 60 – 0.

44
45 Mr. Biaggi stated I wasn't aware of that. Has it already passed?

46
47 Chairman Close stated yes and it was 60 – 0.

48
49 Commissioner Johnson stated I'd like to remind you that in the politics of this it is simply that the Ex-Speaker
50 was the person who presented this issue before the Commission and it is significant.

51
52 Chairman Close stated you know I don't want to give him too much credit or too much blame. But surely he
53 had an impact. I won't deny that. But to return something to them after we've got a 60 – 0 vote without some

1 modification that is going to convince them that we have not just sent them back what they sent down to us,
2 it's like the Supreme Court. If the District Court makes the decision and the Supreme Court turns it back to
3 them and the District Court rules again, the Supreme Court is not going to be happy when it comes back up the
4 second time. So unless we can do something that is significant to take care of the concerns that I presume
5 exist in the legislature and in the Commission then I think that we're going to have the same result as we have
6 right now. We're going to have nothing. If we're going to do something we have to do it in a way that it is
7 going to pass inspection by those who have authority over us. That's the bottom line.

8
9 Commissioner Dahl stated I think another important consideration is that we're appointed and they're elected.

10
11 Commissioner Doppe stated I think that's a very important consideration.

12
13 Commissioner Iverson stated I doubt very much with a 60 – 0 vote, and looking at the members of that
14 Commission, and I think what Mr. Johnson brings out, until there's some more comfortable feelings
15 concerning upstream water use and impacts on the economy out there, you may be looking at starting over
16 again and going through this whole process and coming up with a whole new set of regulations and submitting
17 them and having them rejected again. I really think there needs to be compromise and some negotiations
18 involving some people like yourself who have been there. Some people from the private sector and some
19 folks like you and Demar Dahl or Mark that can sit down with these legislators and talk to them. It's nice for
20 us in the government agencies to be there to provide some technical background, but there's some real politics
21 in this issue.

22
23 Chairman Close stated there are and if we just adopt the river standards now that it has been rejected and send
24 it back to them, I think it's going to be looked at with some question as to whether or not this does not
25 continue to accomplish things the legislature deems to be inappropriate. Maybe you convince them that it
26 doesn't maybe because there's always standards on the river at the present, maybe you can convince them of
27 that maybe you can't. I don't know. But you would have a hard sell when it's 60 – 0.

28
29 Commissioner Johnson stated I think that it must be of note that SCR 40 remands two other regulations back
30 to the source, not only this one. And the process is one that at this particular time of the legislature they take
31 the Committee's recommendation. There is very little discussion on the issue and remanding these issues
32 back. I personally would not vote again for 12,000 ppm standard on the lake. I don't see that this
33 Commission would find a majority that would agree on any standard or even the Irrigation District's variable
34 standard. From my point of view, I would like to see us address the river standards. I'd like to see us address
35 the issue of beneficial use on the lake and I see that there's no majority opinion on the standards for the total
36 dissolved solids standards on the lake. There may or may not be. But I think that we ought to progress with
37 what we have. I don't see that whatever we adopt, if it's not of concern to the Irrigation District, that the
38 Legislative Commission will disapprove the issue. In the sequence of things it will be two years before it
39 would be reviewed. It may be held in abeyance, but it wouldn't be returned to us.

40
41 Mr. Biaggi asked does the Legislative Commission meet when they're not in sessions?

42
43 Commissioner Johnson explained yes exactly, but they only say, "We don't accept it" and it then goes to the
44 legislature in the next session.

45
46 Mr. Biaggi stated in the next session. That's right.

47
48 Commissioner Johnson stated this happened because they were in session. As I recall legislative history on
49 this, and I may be wrong, that if they take this action during the session and there's reasonable time, it has to
50 go to the legislature. That's why you have these three regulations that were returned.

1 Mr. Biaggi stated I think that's a question in our mind and Susan and I have been talking about that. I left a
2 message this morning with Brenda Erdoes who is the head of LCB Legal Division to see what her take on this
3 is. I think that's one of the questions that we need to understand is what's the timing?
4

5 Commissioner Doppe asked how long do we have before the EPA steps in and takes over? They say, "The
6 State of Nevada is at an impasse."
7

8 Stephanie Wilson introduced herself as being with the Environmental Protection Agency Region IX out of San
9 Francisco. She stated what we would do is, depending on what action was taken, review that action and then
10 decide what the threat to the resource was as to what course we would take. So it would take us a while to
11 make that decision. But that also would depend on what action was taken.
12

13 Commissioner Doppe asked has the EPA done the work with regard to Walker Lake to determine a baseline
14 beneficial use so that you can determine whether or not it's being threatened? How far along are you?
15

16 Ms. Wilson stated we haven't done anything at this point, except for working with the State and reviewing
17 what they have done. It's been our policy that the State should set the standards. If no action is taken or if we
18 feel that the State's standards are not protective then we can promulgate. So at this point we haven't done
19 anything. The Clean Water Act requires that the beneficial uses at a minimum protect aquatic life, wildlife,
20 and recreation and then consider public health, irrigation, and agriculture. So, that would be the baseline that
21 we would use.
22

23 Commissioner Dahl asked would you repeat what you just said please?
24

25 Ms. Wilson stated the Clean Water Act requires that at a minimum that the beneficial use is considered
26 protection of aquatic life, wildlife, and recreation and then they may also consider other uses such as public
27 health, irrigation, agriculture and others. But those are the minimum that is required for beneficial uses.
28

29 Commissioner Iverson asked recreation comes above public health?
30

31 Ms. Wilson answered for the Clean Water Act, yes.
32

33 Chairman Close asked is your concern in the order that you've given to us? I mean aquatic life takes
34 precedence over farming needs and farming uses?
35

36 Ms. Wilson answered that's the way it's written in the Clean Water Act. The exact language is, "Revised or
37 new water quality standards shall consist of the designated uses of the navigable waters involved and the water
38 quality criteria for such waters based upon the uses. Such standards shall be such as to protect aquatic life,
39 wildlife and recreational uses and then they may also take into consideration public water supply, propagation
40 of fish and wildlife, recreation, agriculture industry." So that is how we have to look at it.
41

42 Commissioner Dahl stated I've never liked the argument that if we don't do something then the federal
43 regulations are going to come in and take care of the problem, or regulators will, because there are some things
44 that are patently ridiculous and those regulations that never get addressed, if we always take the position that
45 we've got to fall right in line or else they're going to come and straighten us out. And so I just want to express
46 my opinion about how I feel about taking that approach.
47

48 Mr. Biaggi stated Mr. Dahl we agree. I mean it's not something that we take lightly and that we like either.
49 But, in this case this is not a hollow promise. The EPA and the courts have done this many, many times in
50 other states and I've always taken the opinion that it's better that Nevadans regulate Nevada business,
51 industry, agriculture, etc. than the courts and federal EPA. As I've mentioned to you in the past with regard to
52 the TMDL issues, Nevada is one of the few states that hasn't been sued over TMDL's and had them imposed
53 and foisted upon us. So, unfortunately in this situation it's not a hollow threat and it is likely and probably

1 probably will be done eventually if things do not move forward.

2
3 Commissioner Dahl stated I agree with you that it's not a hollow threat, but it joins the issues that lead to them
4 and the issues are addressed where otherwise they may not be.

5
6 Commissioner Crawford asked do the current water quality standards for the river expire? Or are they in
7 place absent this regulation and would continue? Would that be the State's word on it?

8
9 Mr. Biaggi answered that's right. They don't expire.

10
11 Commissioner Crawford asked ad infinitum if this regulation doesn't pass?

12
13 Mr. Biaggi answered that's right. They don't expire. They don't have a shelf life on them. We are required
14 to do a tri-annual review of all water quality standards, which we have done.

15
16 Commissioner Crawford stated I'm assuming that the current water quality standards do not meet newer
17 criteria then?

18
19 Mr. Biaggi stated as you heard in the testimony there are some revised changes from EPA's standpoint. For
20 example, EPA is recommending a broader range of pH requirements in order to protect the beneficial uses.
21 That's one of the recommendations we have made in the revised standards. So, as you will recall the river
22 were wholesale revisions. They were relatively minor technical corrections.

23
24 Commissioner Crawford stated I know there are some people that feel that the rules that were stayed from
25 EPA and what their guidelines are on aquatic life and etc., we ought to be considering human health and etc.
26 first. But is it a fair statement that the hierarchy of that, if you will, is that if you protect aquatic life that will
27 be a higher standard, if you will, than human health and agriculture and etc?

28
29 Mr. Biaggi stated I think you're correct and I think you also need to put this into the context of the Clean
30 Water Act and beneficial use identification in that when they say "public health" they're talking about
31 drinking water. Now the Humboldt River, for example, has never been used as a surface water source for
32 drinking water purposes to my knowledge. So, in that situation, you know, the public health concern there is
33 the fact that a community does not use it for drinking water purposes.

34
35 Commissioner Crawford stated it was stated earlier that we would start working on it from EPA and that it
36 would be a while before. . . could you get us in the ballpark for when "a while" is? Are we talking two
37 decades, or two years or?

38
39 Ms. Wilson answered no. The administrator in Washington has to make the decision. So what would happen
40 is we would review the river standards as they currently stand, if they aren't changed, to see if there was
41 anything that was not up to Clean Water Act criteria now. Then we would look at the lake and the fact that it
42 has no standards. Then we would make a decision as to whether to promulgate. We have to follow the same
43 process that the State does. So we would have to put in the federal register draft regulations and we would
44 have to hold public hearings and then we would have to finalize the regulations based on the comments. So
45 we would go through that same process. The decision as to whether or not to promulgate would probably
46 come within six months and then we would have all of the background information. We would have to do the
47 same process, go through all of the data and everything else. So it would take us a while to promulgate as
48 well. But we would make the decision fairly soon.

49
50 Commissioner Crawford stated if you would allow me a disclosure, when we met in Yerington a number of
51 months ago we were concerned about the achievability of the standard at 10,000 ppm for Walker Lake.
52 Several Commissioners were concerned and I specifically remember Commissioner Doppe being concerned
53 that we were already exceeding 10,000 ppm. So how could we ever achieve this? The regulation passed at

1 12,000; however, we're now in exceedence of that. Some of you may be aware of that and some of you are
2 not. But the TDS at Walker Lake today is about 12,800 or 12,900. So, it's gone up better than 2,000 ppm
3 while we've been talking about it. We've recently stocked fish there and experienced increased mortality
4 because of that TDS in our stocking.

5
6 Commissioner Doppe asked wouldn't this just about be the low water point of the year though, prior to the
7 runoff? Runoff hasn't really occurred yet, has it?

8
9 Commissioner Johnson answered yes, but they're not getting more.

10
11 Commissioner Crawford answered it's pretty well done for this year. There's not much water in the system
12 and the irrigation season has started. I don't know what it is today, but a couple of weeks ago there were
13 about 5 feet per second hitting the lake, so . . .

14
15 Commissioner Doppe stated I got a little bit of my confusion about the meeting in Yerington cleared up with
16 the meeting that I was fortunate enough to have with the Division later on in Las Vegas when they happened
17 to be down there. I asked some specific questions. What is our charge? What is our responsibility? It made
18 me reasonably comfortable that our first responsibility was to protect, you know if we don't do it the EPA is
19 going to uphold the Clean Water Act as it existed. But we had always discussed as a group, and you guys I
20 think wisely in Carson City when you adopted the thing, you said, "We're going to set the standard. But that
21 standard is not meant to say, look we are going to go and start yanking the water out from people up the river."
22 And I think we were very clear about that. What we tried to do is say, what I thought, and my intent was that
23 that standard was meant to spur on creative new ways to stop giving new issuances of water and to start seeing
24 if there are ways that we can work with the people upstream to conserve to come up with programs to get them
25 to do stuff like line channels and stuff like that. Not compel them to, but to make it worth their while, all
26 aimed at putting more water into the system. Not trying to grab their water, but trying to come up with and
27 say, "Look you have to separate the target from where we are and if we keep the moving the target up to a
28 failed system, then we're never going to get there." But if we set it to where it ought to be, or at least
29 compromise to where it ought to be, and I think the 12,000 was a reasonable compromise, then we work
30 towards it and come up with some creative ways and that's what I thought that we were doing and I thought
31 that that was a good compromise.

32
33 Mr. Biaggi stated yes, and just to sort of follow up on that and sort of respond to Joe's question probably half-
34 an-hour ago is that you did amend the regulation and you specifically stated that it wouldn't impact or hinder
35 water rights and then you added the words, "Or by applicable court decree." So, the regulation as it did go
36 over to the Legislative Commission specifically indicated that it was not to impact water rights.

37
38 Commissioner Iverson stated Allen you gave us two options. You're the full-time administrator and you've
39 got a professional staff that works on this. You're familiar with the politics between you and Mike
40 Turnipseed. You've been involved with this. You know the people on the Commission. You know the
41 legislators. What do you want to do? That would help me make a decision.

42
43 Mr. Biaggi stated well up until the moment I walked in the door this morning my recommendation to this body
44 was going to be to move forward with the river standards and let us work with the Irrigation District and some
45 of the folks on the downstream side and see if we can come up to some resolution with the lake standards. I
46 think SCR 40 throws a big monkey wrench into that.

47
48 Commissioner Iverson asked so what do you want to do?

49
50 Mr. Biaggi answered I haven't had time to think about this. I've learned about this two hours ago. I think
51 your legal counsel has given you what her opinion is and I think that that may be some sage advice.

52
53 Chairman Close asked is there any urgency on the river standards being adopted?

1
2 Mr. Biaggi answered not really.

3
4 Chairman Close stated the river standards were probably looked at because of the Walker Lake situation and
5 as part of the entire package you looked at the river and the lake. From what I understand there's nothing the
6 EPA is going to come down and compel us to do because of Walker River. They are most concerned about
7 the lake. There's not enough water. I don't know how they can treat the water, if there's not enough of it. If
8 there isn't any urgency in adopting the river standards that we have considered, I would think that we ought to
9 reconsider what we're doing so that when this thing is looked again from the legislative aspect they're going
10 to say, "Well they've done something. They haven't just sent back to us what we have rejected." They
11 probably did not even look carefully at the river standards, you know, but still we're sending back to them
12 what they just gave back to us and I think that it's not going to be a good relationship.

13
14 Commissioner Iverson stated I think the issue has got to be between you and this Commission because I don't
15 think you'll ever get to the point with the people on that body of that Commission and the people on the body
16 of this Commission where you'll come up with a compromise on it.

17
18 Chairman Close stated well they've been trying to come up with a compromise for months. I mean you've
19 been working on this for a long, long time.

20
21 Mr. Biaggi stated for over two years.

22
23 Chairman Close stated they've been working on it over two years.

24
25 Mr. Biaggi stated Mr. Chairman that's another thing that concerns me greatly is that we have a relatively small
26 staff that does review of these water quality standards and we have spent two years now doing Walker Lake,
27 and, quite frankly we need to move on to other river systems. We're working on the Humboldt right now. So,
28 I have to give some consideration to our workload. Quite frankly, we can't balance doing two major river
29 systems and their standards at the same time. We have to really focus on one. So, that's a consideration I
30 need to throw out there as well.

31
32 **Commissioner Gifford stated I would agree with Paul. I mean having sat through all of the hearings,**
33 **having sat through all of the discussions that we've had as a Commission, at this point I think I would**
34 **be very much in favor of doing nothing, putting it aside, letting it go and go on to the next river system**
35 **and have a good time there. I mean you're starting the whole two-year process all over again, well, you**
36 **might short cut it by half the time or something, and we have all the hearings again, we have this ping-**
37 **pong-ball effect. It goes off, it bounces right back to us again. In fact, at this point I would make it a**
38 **motion just to force the issue. I move that the Commission do nothing with respect to this petition.**

39
40 **Commissioner Dahl seconded the motion.**

41
42 **Commissioner Ricci asked if the EPA does step in, do they have any clout under the Clean Water Act to**
43 **do exactly what this Commission didn't want them to and that is to take water rights away to make the**
44 **lake standards be able to be met?**

45
46 **Mr. Biaggi answered absolutely not. The Clean Water Act specifically prohibits the use of impinging,**
47 **just like State law does, on the existing water rights or irrigation practices.**

48
49 **Chairman Close stated let me just tell the audience something, and you may have to withdraw your**
50 **motion, is that we have people out here from Walker Lake and River and I think they're here and we**
51 **should give them an opportunity to be heard even though it may be that what we'll do is exactly what**
52 **you're motion suggested. Is there any objection if we don't take a vote on that until after we hear from**
53 **the audience?**

1
2 **There was no objection**

3
4 **Chairman Close called upon William Schaeffer.**

5
6 **William Schaeffer stated actually in light of the comments that have been made I would just echo that**
7 **we suggest that we do nothing and go back to the drawing board. I represent the Dynamic Action on**
8 **Wells Group DAWG and you guys are familiar with me. I've been here before. I would like to take a**
9 **little bit of issue with folks and echo what Mr. Dahl said. The federal EPA can't do any more than the**
10 **State can do. They are governed by the Clean Water Act which has similar language to the State act,**
11 **although ours says specifically "reasonably attainable" and the federal act, as I pointed out in my**
12 **comments back in December 5th, says "attainable." That being the case, I believe the Division has the**
13 **duty, and I've been saying this, I feel like I'm beating a dead horse, has the legal duty to show how the**
14 **standards can be met without impacting agriculture and the fact that you don't necessarily take**
15 **anybody's water rights away does not impress me. The Owens Valley water rights were not taken**
16 **away. But it's nothing like it was at the turn of the last century. That is where the problem is. That is**
17 **what I believe the Legislative Commission is wrestling with. If you set these standards the way you did,**
18 **or anything close thereto, and not show how you're going to do it without taking away the use of the**
19 **water for agriculture, you're going to impact on places like Dini's Lucky Club, owned by the speaker**
20 **who just happened to sit on the Legislative Commission and all of the businesses which don't have water**
21 **rights. That is where the issue is. The existing upstream industries that depend on the agriculture are**
22 **affected. They are a part-and-parcel of your jurisdiction that you're supposed to consider both under**
23 **the federal act and under the State act. That I believe is why you are in this quandary. Before you**
24 **come back to this issue, please figure out how you're going to do it without taking water that agriculture**
25 **depends on. If they can do things in better ways, as you said, fine. But make sure you know they can do**
26 **that before you set the standard. Tell them how you're going to do it before you set the standard.**

28
29 **Chairman Close called upon Mr. Strouse.**

30
31 **Glen Strouse stated when I first walked through that door this morning I had no idea that I would be**
32 **here talking to this Commission and as I continue to listen I find that I'm just on the cutting edge of**
33 **what's going on. I implore you gentlemen that we are also a part of your contingency as well from**
34 **Mineral County. As I said before, I'm with the Walker Lake Working Group. Mineral County is**
35 **greatly dependent upon the fisheries of Walker Lake. The tourists that come in from all over, not only**
36 **the State, but from all over the United States come to Walker Lake. Not only that, but it's an essential**
37 **and unique area. It's one of the only terminal lakes in the world that supports a fishery. And it also is a**
38 **place for recreation and of scenic beauty and without water quality Walker Lake is dead. The problem**
39 **is that if the total dissolved solids increase to the extent of over 14,000 parts per liter, the life in the lake**
40 **becomes so stressed that in some species they will no longer exist. Some of the species in which feed the**
41 **trout which is a great extent one of the parts of our, which is an important factor in our county's**
42 **economy. So, I implore you gentlemen, do not forget Mineral County. Do not forget Walker Lake in**
43 **your decision because we are a part of your responsibility and I do implore you to consider this.**

45
46 **Chairman Close called for further public comment.**

47
48 **Dale Ferguson introduced himself as legal counsel for the Walker River Irrigation District. He stated**
49 **like Allen, I received a copy of SCR 40 just this morning after I had been here for a few minutes. I**
50 **think your legal counsel has told you that she is somewhat unsure of the import of SCR 40 on what**
51 **we're doing here today. At this point, without having the chance to take a look at that language and to**
52 **take a look at the underlying NRS 233B.0675 which is cited in there, I also am a little bit unsure about**

1 how this piece of legislation impacts what comes out of this meeting today. And so I would ask you to
2 take no action until we can make a determination about that. At the same time, I don't think that
3 anyone wants to just sit around and do nothing. I think that the presentation that we made at the
4 hearing back on February 5th had information in it about special habitats, but that information was not
5 complete and needs additional research. This would also give us time to perhaps see if some of that
6 could be accomplished or at least get in the direction where we would be headed towards looking at
7 that.

8
9 Commissioner Iverson stated you make a mention that, and I think everyone probably agrees with this,
10 is that these regulations were basically passed two months ago by this Commission and then they started
11 through the legislative process. Hopefully those people who are going to have an impact, and the
12 science, the data, the Irrigation District, the Mineral County folks are all doing things to improve the
13 water quality down there. I would hope that no matter what happens with this document that's in this
14 book, that those efforts continue to go forward because I don't think there's anybody, agriculture,
15 mining, Mineral County, Yerington folks, that want to do anything to hurt. I think that those people
16 are trying to do things now to improve it. I hope no one says, "Look, SCR 40 we've got to quit doing
17 what we're doing to try to improve." I would encourage all those people to continue what they're doing.
18 But I agree with you, we need to take a look at this and figure out where we're at on it.

19
20 Mr. Ferguson stated the district has expended a substantial amount already in biologists to look at the
21 Walker Lake ecosystem in preparation for these hearings. Some of the information that came out of
22 that is very useful and with some further looking into could prove to be very helpful. I don't think
23 there's any intention to just do nothing.

24
25 Mr. Strouse asked if he could speak again.

26
27 Chairman Close called him back to the podium.

28
29 Mr. Strouse stated some of the things Commissioner Doppe said were quite excellent, the way that the
30 Walker Lake Working Group thinks that we should work together and try to find some ways of
31 conserving more water. We certainly don't want to take away anyone's livelihood. We just wonder
32 how we can share water and to find creative methods in which we can get together and do this is one of
33 our goals. But yet the lake must survive. The present ecology and the ecosystem of the lake at its
34 present form and better quality should survive. That's what we're about -continue fisheries in Walker
35 Lake.

36
37 Chairman Close called for further public comment. There was none. He called for comments from the
38 Commission members.

39
40 Commissioner Doppe stated let me start by saying that I agree. The Division has spent 18 months on
41 this issue. Our Commission has spent six months on the issue. I don't know what the intent of the
42 legislature was when they just said, "no." I don't know if they wanted us to do, try again? It's
43 confusing to me, but it's not logical having spent 18 months of public hearings and discussion that we're
44 going to come up with a very different answer the next time than we did the first time. So I think to try
45 it again would be a waste of time. I think we've come up with an answer that is reasoned and worked
46 out, negotiated, heard, argued over, but it makes sense and it offers some protection. I think that what
47 has to happen is in conjunction with us doing nothing I also believe that what Paul said needs to take
48 place too and that is we need to go back and say, "You know, fine, it's not in affect. But you have to
49 understand that the EPA does have a clock running on there and exactly what Senator Titus said is
50 likely to happen and that is sooner or later this issue is going to get resolved. It's either going to get
51 resolved because we come to agreement and the State of Nevada decides there is no easy answer, but this
52 is the one that we've worked out. Or if we can't find the guts to say that, then what's going to happen is

1 happen is either a court is going to say it, or the EPA is going to say it.” And it strikes me as though that
2 if the legislature could find the courage to tackle the issue as we have done then perhaps we can still yet
3 make the decision in the State of Nevada. But it seems to me that in fact if you have two sides that talk a
4 good game, but really aren’t willing to come together and compromise and meet on the issue and let
5 their politicians know that they’re doing that then what they’re inviting is that okay fine it’s out of our
6 hands. So, I would just ask if, I don’t know if it needs to be an amendment to the motion or if it just
7 needs to be understood to go along with the motion, that at the same time we’re doing nothing as a
8 Commission, you’re definitely doing something as a Division to try and pass that message on. If need be
9 I’m sure that there are members of the Commission who can speak from our perspective and say, “You
10 know it’s not as if we just tossed a number up there and ignored the status quo. That wasn’t it at all.”
11 And if they have to hear that from the voice of some Commissioners, then I’m perfectly willing to do so.

13
14 Commissioner Iverson stated I think there needs to be a voice from this Commission meet with that
15 Commission and I think Allen can arrange that. I think the voice of the Commission, because of the
16 politics behind this thing, and because we’re in session, needs to be voiced by Fred and Mark and you
17 and Demar Dahl who are from the private sector who can say exactly that. That this was not just
18 numbers that we threw out in the air; that we went through nine hours of debate. We listened to all
19 sides. And there are a lot of issues that need to be resolved here. But at least to make that attempt to
20 resolve a problem or this thing will never get resolved. I’m really concerned what’s going to happen in
21 the next river system.

22
23 Commissioner Doppe stated well, it won’t get resolved by us. But it will get resolved.

24
25 Commissioner Iverson stated it will get resolved. And as far as working with people, I think our DEP
26 has a reputation for working with our own constituents and our Nevada citizens and I think all of us,
27 including those at the legislature, would much rather have Allen involved with this than having the
28 federal EPA involved with this. I think having primacy and having our own force working with these
29 people is much better and I think somebody needs to express that. But more importantly, I think EPA
30 understands that.

31
32 Commissioner Crawford asked is the motion intended that we not take any action and that this not be
33 brought back to us? We don’t want the Division to be working on this anymore and move on to the
34 Humboldt?

35
36 Commissioner Gifford stated for clarification, the motion as I made did not intend anything on Allen’s
37 part. If Allen elects to do something, fine. If he wants to invest another two years, that’s fine. But the
38 motion did not include that. The motion is simply that at this point in time the Commission does
39 nothing with petition.

40
41 Mr. Cowperthwaite stated you’re tabling this.

42
43 Chairman Close stated no you’re not.

44
45 Commissioner Crawford asked by tabling do we intend to have it brought back at some point in time?

46
47 Commissioner Gifford stated if tabling infers that, I don’t want that as part of my motion. Somebody
48 else can make that a motion.

49
50 Chairman Close stated I think the motion is that we take no action on this measure.

51
52 Commissioner Gifford stated yes. We’ve already done it.

1
2 **Chairman Close stated we're taking no action on Petition 2000-10.**

3
4 **Commissioner Johnson stated I have an additional question about the options that federal EPA can**
5 **take. Particularly, what a court action on this issue, this in effect is not a violation for adopting**
6 **inadequate standards, but it's the State of Nevada refusing to comply with the Clean Water Act. Is**
7 **there some potential for challenge of delegation of authority?**

8
9 **Ms. Wilson answered no. The water quality standards program is not per se a delegated program. The**
10 **Clean Water Act lays out how the standards should be developed. The primary responsibility should be**
11 **with the State. There's a provision within there that if the administrator determines that revised or new**
12 **standards that are brought to us by the State are inadequate under the Clean Water Act or if they do**
13 **not pass standards that the administrator feels are necessary to protect that water body, that we can**
14 **promulgate standards. But it is not a delegated program.**

15
16 **Commissioner Johnson stated so we're simply saying that we were refused to take action on this and**
17 **essentially give it back to federal EPA.**

18
19 **Ms. Wilson stated and we would look at it and say, "Are standards necessary for that water body to**
20 **protect it under the Clean Water Act that are not there."**

21
22 **Chairman Close asked so what if you said the only way you can protect Walker Lake is to put more**
23 **water into the lake? What would you do?**

24
25 **Ms. Wilson answered the goal of the standards are not to come up with an implementation plan per se**
26 **for those standards. The standards are goals for that water body. Then if they don't meet those goals,**
27 **the State would list them as impaired and at that point a strategy would have to be developed under the**
28 **TMDL process to address that. It would not have anything to do with water rights. It would be another**
29 **strategy, whatever technology or whatever practices they thought would benefit that impairment. So**
30 **the standards per se would not be used for that. It would be a follow up.**

31
32 **Commissioner Crawford stated you know I think we did a very good job. We had an opportunity to be**
33 **proactive on a collaborative play, the Commission's roll and a long collaborative process here and**
34 **frankly we're going to blink and I don't think we have any choice because the 800-pound gorilla has**
35 **spoken. But there will be another 800-pound gorilla in this before it's over. As several have mentioned,**
36 **we discussed this at the last meeting, Nevadans always want to take responsibility for their own actions**
37 **and we don't want our federal brethren coming in and telling us what to do. And so we have an**
38 **opportunity to be responsible here and take that action and we're not going to take it and we're not**
39 **going to be allowed to take it. I think that's really unfortunate because the collaborative solutions for**
40 **the health of the Walker River system I still believe are available to us. But the State's not going to take**
41 **that opportunity and at the rate, as I mentioned, the TDS of Walker Lake has increased by 2,000 ppm**
42 **while we've been talking about it. It's not looking good. So I think, are we all willing for that lake to**
43 **wink out on our watch? I guess we are and we don't have any choice.**

44
45 **Commissioner Ricci stated along that line with what Terry just mentioned, I'm not sure if there's any**
46 **requirement for this Commission or Environmental Protection to send anything back to the Legislative**
47 **Commission, but I think what should happen is there should be a letter addressed and probably signed**
48 **by the Chairman that says, "Look we've done all of these things" and we had an opportunity, like Terry**
49 **said, to do something and, you know, as politely as you can say, it's kind of like, "Well it's not going to**
50 **be our fault if anything happens, it's going to be your fault." Put the blame where it is.**

1 Chairman Close stated but the bottom line is, it's not any of our fault, but the fact is that river is over-
2 appropriated and to the extent that it is and it's not going down to the lake, there's not much we can do
3 about it. You need more water in that lake and if there's all these different categories of people who
4 have litigated this thing now for 70 years and we're not blinking. It's not our responsibility to create
5 more water. There is no more water to create. And you can set all the standards you want to set, but if
6 there's not more water going into the river and it's not going to flow down to the lake, then there's
7 nothing that's going to happen.

8
9 Commissioner Dahl stated and everybody recognizes that it's a terminal lake and it's not our
10 responsibility that it is.

11
12 Chairman Close stated but I don't disagree with what you've said and I think we should write a letter
13 back to the legislature or the counsel bureau and tell them what our position is. I don't disagree with
14 that.

15
16 Commissioner Iverson stated I go along with Fred's comments and his motion; however, I think there is
17 some reason and I think Terry brings it out a little bit, I still want to sit down with this Commission and
18 discuss the process that we went through and why those decisions were made. Terry brings up the point
19 that we went through this. But if you'll remember the vote, the vote was swung by one vote. It was not
20 unanimous on this and I think we could probably sit here all year long and debate the issue and Fred
21 and Mark and Terry and Demar Dahl, and myself, we're all going to have different decisions and that's
22 what makes the Commission so valuable. But it wasn't a unanimous vote and there's some real issues
23 here. I go along with that, but I definitely think there needs to be an opportunity for this body to sit
24 down with that Commission and explain what we went through. And Mr. Johnson's shaking his head
25 saying, "It won't do any good." I'm not so sure it will do any good, but I do think that it puts us in a
26 position that someday if Allen decides to bring this thing back, that we've done the best we can do on it.

28
29 Commissioner Doppe asked Commissioner Johnson you have as much experience with the legislative
30 body as anyone, what were they thinking? What did they want us to do? I mean what are they
31 expecting to happen at this point in time?

32
33 Commissioner Johnson stated I would hope not to answer that question and I've been quiet. At issue is
34 the issue of upstream water and historically Speaker Dini has ably represented the interest of the
35 agricultural community and this is, in part, loyalty to the Speaker and appreciation of his ability to
36 legislate and I shake my head at talking to this particular Commission. At this time they aren't really
37 interested in dealing with this. They have budget shortfalls and time frames that are very short and in
38 the next legislative session there will be a new Legislative Commission and we're going through
39 reapportionment, which adds all to that. I think the tabling or not considering this proposal is
40 appropriate. From the standpoint of the legislature, we won't see anything from this legislature on
41 anything that we do. So I think it's appropriate that we don't consider action. It's purely time-wise. If
42 it were at the beginning of the session, I would say yes go talk to them and explain our process in the
43 considerations if there was an agreement with the Walker River Irrigation District, and I could assume
44 that there probably wouldn't be an objection from the Legislative Commission.

45
46 Commissioner Coyner stated Allen correct my memory from the last Commission meeting, following the
47 EPA findings or their promulgation they will list it as impaired and I believe there was testimony at that
48 Commission meeting that we already have a fair amount of impaired streams and lakes in the State
49 currently? What's happened on those? I mean essentially the EPA declared them impaired. Are water
50 rights being sold and bought and property rights exchanging over those issues that are already in
51 existence?

1 Mr. Biaggi stated you're correct in your memory that the major water systems in Nevada have some
2 segments that are impaired, every one of them: the Humboldt, the Carson, the Colorado, the Truckee.
3 Most of those are impaired for nutrients: nitrogen, phosphorus and sometimes total suspended solids.
4 It's the State of Nevada that declares those that are impaired. What that does then is it triggers the
5 TMDL process. Many of our water bodies have TMDL's on them. Probably the most notable is here in
6 the Truckee Meadows in the Truckee River. Implementation plans are then established and best
7 management practices are employed and other techniques to restore that water back into compliance
8 with the standards. In some areas of the State we've been very successful with that. In the Las Vegas
9 Wash in Lake Mead things have improved. Things have improved on the Truckee significantly. We
10 still have areas where we need to work on other river segments elsewhere. So, what impairment does is
11 it triggers the need for evaluation of TMDL's and working on ways to get water quality back in line
12 with the beneficial uses.

13
14 Commissioner Coyner asked is there a different process that would be followed when the State declares
15 it impaired versus when the EPA declares it impaired?

16
17 Mr. Biaggi answered the State would still declare it impaired given the water quality standards that are
18 in place whether those standards were adopted by the State or by the federal government.

19
20 Commissioner Crawford stated I just wanted to clarify on the motion that we don't want to see it back
21 again and the motion doesn't include any instructions for the Division to go do anything and it doesn't
22 include us talking to the Legislative Commission. That's not in the motion?

23
24 Commissioner Gifford stated that's right. It is not.

25
26 Commissioner Crawford stated I think we've spoken on the science. The Legislative Commission has
27 spoken on the politics and I think they know of our discussions and it's over and we're going to provide
28 a new definition for a terminal lake.

29
30 Commissioner Robinson stated Mr. Chairman a follow up on that as to what I heard and maybe it's
31 relative to what Terry just said, I heard that we were almost in a position of asking Allen to maybe go
32 over and negotiate which I think establishes probably a precedent that we wouldn't want to get into so
33 that each time we send something over to them we were anticipating what they might do. I don't think
34 we want to get into that area. But if it's maybe just sending a letter, are we going to send a letter then?
35 Is that part of the motion, that restates what we did? Or is that not even necessary?

36
37 Commissioner Gifford stated I think the letter would be a second motion wouldn't it?

38
39 Chairman Close stated it's not in the motion.

40
41 Commissioner Doppe stated just to clarify, my only point in sending something back to these people is to
42 let them know that what they have done in their infinite wisdom is to take a solution and toss it in the
43 trash and hand the decision over to the EPA. That's exactly the way I see what they've done, because
44 they're not going to be back for two years. They're not going to address the issue for two years and
45 that's exactly where they've left it. Two years from now this issue is going to be decided. They're going
46 to come back to a set of standards that are already in place, more than likely us working on the
47 implementation plan, which may be where we need to be anyway, I don't know. It probably is. But the
48 fact of the matter is I sure wish it was us making the call instead of the young lady from San Francisco
49 because I'm afraid that that's what is going to happen and I'm not sure that they understand that. Now
50 if they understand that, then we're wasting our breath and our letter.

51
52 Chairman Close called for the vote.

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Chairman Close: Aye.
Commissioner Coyner: Aye
Commissioner Dahl: Aye.
Commissioner Doppe: Aye.
Commissioner Gifford: Aye.
Commissioner Iverson: Aye.
Commissioner Johnson: Aye.
Commissioner Ricci: Aye.
Commissioner Robinson: Aye.
Commissioner Crawford: No.
The motion carried.

Commissioner Gifford stated I would like to make another motion if I may. Would you make in terms of what you were proposing on your letter a while ago, if you're still in favor of it?

Commissioner Ricci stated actually, I misspoke a little bit earlier when I said send a letter to them to say that it's not our fault it's your fault. The letter should say, "It's not our fault. If anything happens, it's not our fault." So if you're asking me to make a motion I would make a motion to follow up with a very brief summary of all of the time that it took and to the point of where we are and the speculation as to what may happen as a result of our inaction with our concerns and just let it go at that and at least that puts it . . .

Chairman Close stated Allen you can draft a good letter, you'll draft a very good letter and it will express our concerns and to let them know that this was a carefully studied, although it was a 4 – 5 vote I think, but it was a carefully studied matter. I think that Allen can draft a letter and I'll be glad to sign off on it.

Mr. Biaggi asked just for the process, so that I know, we'll go ahead and draft a letter and then submit it to the Chair for consideration?

Commissioner Crawford stated we haven't got a second on the motion yet.

Commissioner Gifford seconded the motion.

Commissioner Dahl asked would you include in there that it was a 4 – 5 vote?

Mr. Biaggi answered I will. And you know quite frankly, the Legislative Commission was aware of that as well.

Commissioner Dahl stated I realize that they are.

Commissioner Doppe stated all I'm thinking of is that it memorializes what the final step of this Commission has taken. If we don't send anything back to them, what does that say? It just says, "Okay we'll agree to anything you say. That's what happens."

Comm. Crawford stated that's what we've done.

Commissioner Johnson stated the point is that we have agreed to take no action and I don't think we need to explain that. I mean our action speaks for itself. We can say whatever we want to the Legislative Commission, we're going to get blamed at some point in time for not taking action.

1 Commissioner Dahl stated it goes back to the fact that they're the elected representatives. We're just
2 appointed. Is it really our place to say, "Hey, you did something dumb here?"

3
4 Commissioner Ricci stated somebody should probably say that, but probably not us. But, let me follow
5 up though. Like you said, it's almost impossible to divine what their intention was, but I think that
6 what we can say and I think what we should say is, "It came back on our agenda, we've spent 18 months
7 working on it. We've taken testimony at two different locations. We consider no further action
8 necessary."

9
10 Commissioner Doppe stated I don't have a problem saying that because at least we looked at it and
11 we're done with it and that's how I would say we're done with it.

12
13 Commissioner Dahl asked we just did that with our vote, right?

14
15 Commissioner Doppe stated yes and I would tell them that.

16
17 Commissioner Dahl asked well didn't we just say that?

18
19 Commissioner Doppe stated well we said it to ourselves, but I would put it on the record in the form of a
20 letter to them because apparently they're trying to tell us something.

21
22 Chairman Close called for the vote.

23
24 **The motion died.**

25
26 Chairman Close mentioned that it was lunchtime. He acknowledged Mr. Biaggi's request to make a quick
27 announcement.

28
29 Mr. Biaggi announced that he wanted to recognize an employee who was leaving the Division. He stated
30 Adele Basham, who I think all of you know, has been a tremendous asset for the Division in our Water
31 Quality Section and has worked hard not only in the Walker River standards, but all of our standards for
32 many, many years and has been with the Division since 1987, will be leaving us. She will be going to the
33 State Health Division to work on the drinking water programs under the grants and loans program. So, I
34 would just like to have the Commission recognize Adele and have her stand up and acknowledge her hard
35 work and her wonderful dedication to the Division since 1987 and wish her best of luck for the future.

36
37 Chairman Close stated we're going to miss you Adele. We've enjoyed your testimony all your help all these
38 many years. He then called for a lunch break at 1:00 p.m. and reconvened the meeting at 2:00 p.m.

39
40 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**

41 **A. Priske-Jones; Notice of Alleged Violation #1459.**

42
43 Jolaine Johnson introduced herself as the Deputy Administrator for the Division of Environmental Protection.
44 She stated Allen will give you some details on some concerns that we have for staffing, but I am a product of
45 those concerns and am filling in for some of the compliance work in air quality due to numerous vacancies in
46 that group. So, I'm here today to present the settlement agreements that the agency has come to with various
47 regulated industries regarding violations of the air pollution control laws. The first one is the Priske-Jones
48 Company. This is a land development company. They were developing High Country Estates. It's a
49 subdivision in Fernley. Due to a fugitive dust complaint that we received from a neighbor of this area, we
50 inspected the facility on September 8th. We did not observe dust when we visited the site. However, on
51 further review of the site we determined that they did not have a permit, the surface area disturbance permit for
52 those operations which are required for any disturbance of areas over 5 acres.

1 The facility had started excavating about three months before our inspection. We issued Notice of Alleged
2 Violation No. 1459 because a permit had not been obtained. But a permit has since been obtained, and they
3 are now in compliance with the rules. The penalty was based on a major deviation from the regulations in that
4 they did not have a permit for this operation. A minor potential for harm, we did not observe any emissions.
5 We established a base penalty of \$600 rather than a daily basis, we put that on a monthly basis multiplied it by
6 the three months that they've been operating and settled on a penalty of \$1,800. We recommend that this
7 Commission ratify the negotiated settlement at this time. I'd be happy to answer any questions.

9
10 Commissioner Gifford asked how many acres over the 5 had they disturbed?

11
12 Ms. Johnson stated I believe that they were not much over the 5 acres, about 7 acres when we inspected.

13
14 Chairman Close called for further questions. There were none. He called for public testimony. There was
15 none. He called the public meeting to a close. He called for a motion.

16
17 **Commissioner Gifford moved to accept NOAV 1459.**

18
19 **Commissioner Iverson seconded the motion.**

20
21 **The motion carried unanimously.**

22
23 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**
24 **B. CB Aggregate; Notice of Alleged Violations #1461, 1462, 1463.**

25
26 Ms. Johnson stated the next item on the agenda is CB Aggregate. This is a crushing and screening facility
27 located near Gold Canyon north of Dayton. On July 27th we performed a scheduled inspection at this facility
28 and during that inspection we observed 100 percent opacity emissions from three separate emission units
29 operating at that facility. The permit limit for each of those units is 20 percent opacity. So, we noted
30 violations in that case. We noted that problems on that day were due to very dry materials and insufficient
31 control. They simply were not adding controls to reduce the dust emissions from those operations. Three
32 NOAV's were issued, one for each of those emission units. Those are NOAV's 1461, 1462, and 1463. On
33 reinspection of the facility on August 25th we confirmed the corrective action measures that they had taken
34 and they had installed adequate controls at that point to reduce those opacity emissions to the regulated
35 requirements.

36
37 In considering a penalty for these violations we considered it a major deviation from the regulatory
38 requirements. It indicated a moderate potential for harm. There were high emissions coming from this
39 facility, low toxicity and there was a fairly low public health risk due to the remoteness of the location of this
40 facility. We negotiated a \$3,600 penalty for one day and therefore a total of \$3,600 with no adjustments.

41
42 Chairman Close called for questions. There were none. He called for public comment. There was none. He
43 called for a motion.

44
45 **Commissioner Ricci moved for approval of NOAV's 1461, 1462 and 1463.**

46
47 **Commissioner Doppe seconded the motion.**

48
49 **The motion carried unanimously.**

50
51 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**
52 **C. A & K Earthmovers; Notice of Alleged Violation #1465.**

1 Ms. Johnson stated the third item for your consideration is a violation by A & K Earthmovers. They operate a
2 crushing and screening plant and they develop land for future subdivisions. They were excavating a 13-acre
3 site in Fernley and on September 26th we performed an inspection there. That inspection had not been
4 scheduled, but the inspector noticed the disturbance as she was on her way to another scheduled inspection.
5 On subsequent file review we found that this facility did not have a permit for the surface area disturbance of
6 the 13 acres. Again, those permits are required for anything greater than 5 acres.

7
8 During an enforcement conference on October 4th we determined that this disturbance had operated for two
9 months prior to our inspection. NOAV 1465 was issued and since that time a permit has been obtained for this
10 operation. The penalty was negotiated on the basis of the major deviation from the regulatory requirement and
11 a minor potential for harm. We did not observe emissions when we were on site that day. Base penalty of
12 \$600, and again we applied that on a monthly basis for two months. We added a 25 percent factor for past
13 history of noncompliance. You have in your package indications of their compliance history from the years
14 1999, 1997 and 1995. We came up with a total negotiated penalty of \$1,500 for this violation.

15
16 Commissioner Gifford asked twenty acres on this one?

17
18 Ms. Johnson answered this one was a 13-acre disturbance.

19
20 Chairman Close called for public comment. There was none. He called for a motion.

21
22 **Commissioner Iverson moved to ratify the settlement agreement.**

23
24 **Commissioner Robinson seconded the motion.**

25
26 **The motion carried unanimously.**

27
28 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**
29 **D. Rees's Enterprise; Notice of Alleged Violation #1468.**

30
31 Ms. Johnson stated the next is Rees's Enterprise. This is a portable crushing and screening operation. They
32 have various locations throughout Nevada. This facility did have a COLA for a temporary facility in Mound
33 House. COLA is a Change of Location Allowance. On October 6, 2000 an inspection was performed. We
34 stopped to do that inspection on the way by to another inspection. Emissions from Highway 50 were observed
35 at this facility. A 23 percent opacity was measured over a 6-minute period from a conveyor out of the jaw
36 crusher. That was mostly dust. The permit limit on that facility is 15 percent. During an enforcement
37 conference it was determined that the problem was due to dry material being excavated and inadequate
38 controls being operated on that facility. NOAV 1468 was issued on October 9th. A reinspection occurred and
39 we confirmed compliance with the requirements. At that point corrective action had been required to have a
40 plan submitted to perform their own visible emission readings at facilities on a more regular basis. Penalty
41 negotiations were based on a major deviation from the regulations. There was a minor potential for harm.
42 There was a low release, low toxicity, and low health risk. The base penalty was calculated at \$1,200 per day,
43 one day of violation. There was a 50 percent factor added for history of noncompliance. Again, you'll find
44 their compliance history in your packets with violations previously noted in 1997, 1996, 1995, etc. So we
45 added a 50 percent factor for that history and came up with a total negotiated penalty of \$1,800. Again, we'd
46 recommend ratification of that negotiated settlement.

47
48 Commissioner Iverson asked when you talk about a conference committee are you talking about people in
49 your agency who go through your checklist and determine what the fine should be? This is for a settlement.

50
51 Ms. Johnson explained the enforcement conference that we speak of here is a conference between our
52 compliance staff and representatives of the regulated facility. That is an opportunity for that facility to explain
53 to us what has been going on there so we get all the information that we need to really determine whether this

1 whether this warrants a Notice of Violation. At that point, some negotiations carry forth. However, we really
2 calculate the penalty later and present that to them shortly after that enforcement conference.

3
4 Commissioner Iverson asked so during an enforcement conference you don't necessarily go in and say,
5 "Here's what we could fine you." You negotiate this down to a fine that both of you accept?

6
7 Ms. Johnson answered depending on the past history of the source sometimes we do go in there saying,
8 "Here's what we could fine you up to \$10,000 a day for a violation."

9
10 Commissioner Iverson asked have they accepted the settlements? Have they said, "Yeah, this seems fair?"

11
12 Ms. Johnson answered yes. Before we come to you with a recommendation to ratify a settlement they have
13 accepted the terms of that settlement. David have they signed those documents?

14
15 Mr. Cowperthwaite answered yes.

16
17 Commissioner Ricci stated this has intrigued me now. Do they request a settlement conference? Do they
18 think that they shouldn't be fined or shouldn't get a Notice of Violation? Is that why they have a settlement
19 conference?

20
21 Ms. Johnson answered no. We hold an enforcement conference routinely. It is a part of our enforcement
22 process and again, the purpose of that, we call them into the office to provide them with an opportunity to
23 provide us with all the information we need to actually make a decision. Sometimes we come out of those
24 conferences believing that they didn't have control over the situation or for whatever circumstances a violation
25 isn't warranted.

26
27 Commissioner Iverson asked do they always come when you ask them to come in and . . .

28
29 Ms. Johnson stated I believe they always have, yes.

30
31 Commissioner Iverson stated that's great. Okay.

32
33 Chairman Close called for further questions. There were none. He called for public comment. There was
34 none. He called for a motion.

35
36 **Commissioner Gifford moved to accept NOAV 1468.**

37
38 **Commissioner Doppe seconded the motion.**

39
40 **The motion carried unanimously.**

41
42 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**
43 **E. Frehner Construction Co.; Notice of Alleged Violation #1473.**

44
45 Ms. Johnson stated the next item is Frehner Construction. Frehner operates portable asphalt plants around the
46 State. They have a Change of Location Authority for a temporary facility located in Mound House. On
47 October 6th of 2000 an inspection was performed and, again, this was due to observations of emissions from
48 Highway 50 as our inspector was in the area.

49
50 During the inspection it was observed that 30 percent opacity was coming from the bag house for the asphalt
51 drum dryer. There was a blue smoke-type emission from that unit and the permit limit on that unit is 20
52 percent. During the enforcement conference it was determined that the exceedence of opacity was due to

1 product composition changes, the location of the oil injection point, and the smoke point of the supplied oil.
2 NOAV 1473 was issued for violating the permit limit. Corrective action and a penalty have been negotiated.

3
4 Corrective actions that have been agreed to include the designation of environmental managers to ensure
5 environmental compliance. Those managers will conduct a compliance evaluation during initial or test
6 production, operations, startup and make necessary adjustments prior to full production. So, that should
7 resolve the concern that they have the wrong oil and that there may be some problems with the way the facility
8 is set up. They also will increase facility inspections whenever product composition changes are made. A
9 penalty has been negotiated for this violation. We based the penalty negotiations on a major deviation from
10 the regulatory requirement, moderate potential for harm. There was somewhat of a low volume, medium
11 toxicity; there were gaseous emissions in addition to particulate emissions from this facility and a medium
12 health risk.

13
14 Based on those criteria, the base penalty was \$3,600 a day. We have adjusted that by 105 percent for past
15 noncompliance history. Again, you have the details of the compliance history for Frehner Construction in
16 your packets. The total negotiated penalty is \$7,380. There is a representative from Frehner here today if you
17 have questions of him or certainly I'd be happy to answer any questions about this enforcement action.

18
19 Commissioner Coyner asked the adjustment factor is at 105. Is that the maximum?

20
21 Ms. Johnson answered I don't believe so. There are ranges for certain types of violations and so forth, but for
22 things like degree of cooperation there aren't limits on how much that increase is. Generally, we talk in the
23 order of 25 to 50 percent. We can take into account mitigating factors and we will use whatever we think is
24 appropriate in that case.

25
26 Commissioner Coyner asked so the 105 is a sum of several factors . . .

27
28 Ms. Johnson answered it is.

29
30 Commissioner Coyner stated and it comes up to a total percent that then is multiplied.

31
32 Ms. Johnson stated exactly. We also base it on the number of previous violations within the past five years.
33 So, I think that's probably what has brought these numbers up so high. They certainly have been cooperative
34 with this compliance.

35
36 Commissioner Dahl asked did you say five years?

37
38 Ms. Johnson answered yes.

39
40 Commissioner Dahl asked but you go back to 1988?

41
42 Ms. Johnson explained that's the history for your information. But in our calculations, let me verify this,
43 history of noncompliance, for 5 percent had there been similar violations to this one in the past, was their most
44 recent violation in the last year, within the last five years, and then the number of violations we multiply the
45 number of previous violations by 5 percent. Actually, I'm sorry, I misspoke. It doesn't say within five years.

46
47
48 Commissioner Ricci asked is this environmental manager that currently was agreed upon the same type of one
49 that Granite was talking about?

50
51 Ms. Johnson answered it is very similar.

52
53 Commissioner Ricci asked but there's going to be one of these places then, correct?

1
2 Ms. Johnson answered no. There isn't going to be one at each location and I would allow the representative
3 from Frehner to speak. I believe they're setting these people up on a regional basis to be able to go around to
4 their various facilities in the region.

5
6 Commissioner Coyner stated Demar touches on an interesting point though. If it's 5 percent times all of their
7 previous violations, so if they have 10 violations, it would be 50 percent.

8
9 Ms. Johnson stated yes.

10
11 Commissioner Coyner stated for that factor. And you add some other percents from others and you come up
12 to 105. They'll never escape the previous violations. They'll never be mitigated for that.

13
14 Ms. Johnson stated unless they stay in compliance today and we don't have to look back at those.

15
16 Commissioner Coyner stated forever, I mean 50 years from now that percent will just keep going higher based
17 on every violation they've ever had.

18
19 Ms. Johnson stated I have clarification from the staff that knows what's going on that we only look at the last
20 five years.

21
22 Commissioner Coyner stated okay. Or else you'd be haunted forever.

23
24 Chairman Close called for further questions. There were none. He called for public comment. There was
25 none. He called for a motion.

26
27 **Commissioner Iverson moved to ratify the settlement agreement.**

28
29 **Commissioner Johnson seconded the motion.**

30
31 **The motion carried unanimously.**

32
33 Chairman Close moved to **Agenda Item No. IV. Settlement Agreements on Air Quality Violations.**
34 **F. Round Mountain Gold Corporation; Notice of Alleged Violations #1508, 1510 and 1511.**

35
36 Ms. Johnson stated the last item on this agenda item is Round Mountain Gold Corporation. This facility mines
37 and processes gold-bearing ore rock for the production of gold. The Smokey Valley Common operation is
38 located up a dead-end canyon just northeast of the old town of Round Mountain, Nevada.

39
40 The NDEP reviewed reports submitted by Round Mountain Gold on January 5th of 2001 and January 17th of
41 2001. These were excess emission reports sent to us by Round Mountain Gold Company, as required by their
42 permit. The January 5th report stated that on January 4th the facility night shift operator disconnected the
43 primary crushing systems' bag house and continued to operate for 7 hours. So, that was definitely an
44 intentional effort to bypass the control system. The January 17th 2001 excess emission reports say that then
45 on January 16th the night shift operator of the truck dump system operated without the required water sprays
46 for 8-1/2 hours and in addition for 15-1/2 hours on January 16th and 17th the system II radio stacker operated
47 without their water sprays. These are all in violation of both their permit condition and State law that requires
48 facilities to operate the controls listed in their permits.

49
50 On January 30th an enforcement conference was held to discuss these violations. Round Mountain Gold
51 provided documentation that the permitted throughput limits were not exceeded and the excess emissions from
52 each event did not exceed the national ambient air quality standards. So they did an evaluation of the

1 emissions that would have occurred while these controls weren't in effect and determined that it would not
2 have caused a violation of the ambient air quality standards.

3
4 Notice of Alleged Violations 1508, 1510, and 1511 were issued for these violations, prohibitive conduct.
5 Round Mountain Gold has shown us that they have a clear policy and procedure that prohibits operating air
6 pollution equipment without those required controls. They took appropriate reprimand action against the
7 employees that by-passed these controls. These violations represent major deviations from the regulations and
8 a minor potential for harm. A base penalty fine in the amount of \$1,200 per day for one day of violation was
9 determined. We adjusted that down because they self-reported these violations and that resulted in a \$1,020
10 penalty for NOAV 1508. Similarly, a base penalty in the amount of \$800 was adjusted down by 15 percent to
11 \$680 for NOAV 1510 and for NOAV 1511 a base penalty of \$1,800 for two days was determined and, again,
12 adjusted down 15 percent for self-reporting. This brings us to a total for these three violations agreed upon
13 settlement of \$3,060. They generally have a good compliance history. We haven't had a lot of difficulties
14 with this facility along the way.

15
16 Commissioner Iverson stated they just had some problems with their night shift.

17
18 Ms. Johnson stated they did have problems with their night shift.

19
20 Chairman Close called for questions. There were none. He called for public comment. There was none. He
21 called for a motion.

22
23 **Commissioner Iverson moved for approval of the settlement agreement.**

24
25 **Commissioner Ricci seconded the motion.**

26
27 **The motion carried unanimously.**

28
29 Chairman Close moved to **Item No. V. Review of Commission Rules of Practice Pursuant to**
30 **NRS 233B.050(d).**

31
32 Mr. Cowperthwaite introduced himself as the Executive Secretary for the State Environmental Commission.
33 He stated pursuant to the Administrative Procedures Act, there is a clause that requires that a review be done
34 of the Rules of Practice of any particular agency who is included within the context of NRS 233B, which is the
35 Administrative Procedures Act. I'm going to read into the record Item D of the Administrative Procedures
36 Act. It is 233B.050(d) "Review its Rules of Practice once every three years and file to file with the Secretary
37 of State statements setting forth data in which the most recent review of those rules was completed and
38 describing any revision made as a result of the review." You should have the Rules of Practice before you.
39 The Rules of Practice for the Commission are very short. I've agendized them as an action item if you believe
40 that there needs to be some revisions somewhere. I've gone through these rules and at this point I don't
41 believe that there needs to be any updates done to them. But I'm certainly open-ended to preparing the
42 permanent regulation. Our last review was done as of July 1, 1998. So the three-year clock is up at this
43 meeting. The purpose of this is to write back to the Secretary of State telling him whether, in fact, the review
44 has been completed.

45
46 Chairman Close asked Susan are you aware of any necessity of changing our rules?

47
48 DAG Gray answered I haven't seen them. I have reviewed them before though. I haven't ever seen any
49 problems in my review in the past.

50
51 Mr. Cowperthwaite explained there have been brief times that we've had to deal with them. We've had a hard
52 time trying to grapple with the issues of subpoenas, specifically, the matter of Nevada Slag in which we were
53 under a tight 20-day slot. The Bureau of Air Quality essentially dissolved Nevada Slag's issues. The area of

1 area of subpoenas is one that could eventually require work. I think one of the issues we had was if I have to
2 go and serve it, in this case it was out there in Ely, you know to be able to make that subpoena effective,
3 you've got to serve it. So you've got to give it to somebody to serve, especially if you're dealing with rural
4 counties being able to have somebody who is able to process it. It can be a very difficult process because you
5 have to go to the sheriff and you have take money out of your budget to be able to do that. We did sort of
6 issue subpoenas, but you know they were not really defined in the documents in the sense that they were not
7 served correctly. But all the parties in this case, they were public officials who were in fact served who were
8 all more than happy to be compliant with the subpoena. We probably didn't even have to serve the subpoenas.
9 We probably just sort of had that and requested them to be opposing counsel the one is that subpoena
10 (inaudible) the Commission will (inaudible) so we are trying to satisfy the (inaudible). So that was the only
11 area in which I had sort of an issue in terms of reasonable in terms of the Rules of Practice and how to be able
12 to deal with that. Plus, who is to issue the subpoenas is another issue too. That's not clarified by the
13 regulations. In this case we had to share who went forth and initialized and executed the subpoenas for us.

14
15 DAG Gray stated I think the problem at that time was they did comply with the five days, but I think it fell on
16 a weekend and so therefore there wasn't enough time to get these subpoenas out to, was it Ely?

17
18 Mr. Cowperthwaite answered yes. That was in Ely. Part of the issue here is that under the statutes we're
19 under a 20 day clock due to hearings that puts a real crunch to be able to organize a hearing and get all the
20 logistics in place and then also pull in and do activities like this. So it becomes a real crunch, a real scramble
21 to be able to make that happen.

22
23 Chairman Close stated I don't see how you can give less than five days notice. I mean I think that's very
24 minimum.

25
26 Mr. Cowperthwaite stated as well as the public notice too. You're also pushing out a public notice at the same
27 time that has requirements for five working days.

28
29 DAG Gray stated this actually says five days prior to the hearing.

30
31 Mr. Cowperthwaite stated five days prior to the hearing.

32
33 DAG Gray stated which the questions have been raised whether the person that you subpoena would even
34 have an obligation of showing up because you know they say you could have reasonable notice in order to
35 have to comply with subpoenas.

36
37 Chairman Close stated I think five is the least possible time you could have. I don't see how you could reduce
38 it down from that. And I think you've got to get it served however you've got to get it served, if it's the
39 sheriff or whoever. You've got to have it personally served.

40
41 Mr. Cowperthwaite stated so those were my only comments regarding this. Again, unless there are any
42 comments, what I will do is I will prepare a letter for the Secretary of State telling him that the Commission on
43 this date has gone ahead and reviewed the Rules of Practice. I mean certainly if you want me to try to get back
44 to them (inaudible).

45
46 Chairman Close stated so if they work well, unless Susan sees something by the next meeting, you don't need
47 to look at them now, but if you see something by the next meeting that you think we should modify then we'll
48 do so. Otherwise, I think you can give your certification.

49
50 Mr. Cowperthwaite stated okay. We'll start the three-year clock over again.

51
52 Chairman Close stated but then you can look at it at your convenience and see if there's anything you think we
53 should modify.

1
2 DAG Gray stated just from my review of them from the past in applying them I've never seen problems, but
3 that doesn't mean that in fact under a close review something won't come up.
4

5 Chairman Close stated okay.
6

7 Commissioner Coyner asked since I was involved in that little time crunch, if you were to change it from 20
8 days, what would you suggest?
9

10 Mr. Cowperthwaite answered well if we were to go back and open the statute I would say you could do a
11 hearing in 30 to 45 days. Forty-five days would allow for bringing together all of the parties and making it
12 happen and it would be much more efficient than the 20 days. Thirty days is the base. That rule then is
13 imbedded in statute and that's not . . .
14

15 Chairman Close asked what section is that?
16

17 Commissioner Coyner answered NAC 445B.891. "The secretary to the Commission will schedule a hearing
18 to be held within 20 days after receiving a request for a hearing."
19

20 Mr. Cowperthwaite stated and the foundation of that is in statute.
21

22 Chairman Close asked is that required by NAC?
23

24 Mr. Cowperthwaite answered NRS.
25

26 Commissioner Coyner answered NRS.
27

28 Chairman Close asked NRS requires 20 days? So there's nothing that we can do about that. I guess we could
29 request a Bill Draft and suggest there be more than, of course this applies to every State agency right? Not
30 just to us?
31

32 Commissioner Coyner asked everybody's got their 20-day clock?
33

34 Mr. Cowperthwaite answered I would have to go back and look at that. I think that it was distinctive to the
35 functions of the Commission and it was embedded, if my recollection serves me, in 445B, which is where the
36 source of authority for the Commission resides. The Commission is sourced out of the Air Pollution Control
37 statutes because those were the first ones that were the foundations for the creation of the Commission.
38

39 DAG Gray stated I think that because this was a violation, it's specific to whatever agency it is. I know some
40 other agencies are 30 days. If it was a petition for a hearing, that would be 30 days under the APA.
41

42 Chairman Close asked then what you're suggesting then is that maybe for the next session we could request an
43 extension of this 20-day time limit?
44

45 Mr. Cowperthwaite answered to broaden it to a little bit further and certainly take the tension off of it. The
46 practicality of it is that we have found that in very, very rare circumstances will everybody be able to come to
47 the table. I mean physically come to the table to be able to get the opposing counsel, to be able to get the
48 State's counsel, to be able to get the Commissioners and everybody all lined up to be able to make that happen
49 within a 20 day period becomes a very challenging thing. It gets to be done. It needs to get done. But
50 generally everybody is willing to back off and recognizes that and then we're able to make it happen.
51

52 Commissioner Doppe stated continuances are allowed you know.
53

1 DAG Gray stated they're generally asked for.

2
3 Commissioner Doppe stated yes. So if they ask for it, it's permitted. Has anybody ever asked to go outside
4 the 20 days?

5
6 Mr. Cowperthwaite stated in the Nevada Slag case. We've also had some in the past where they've gotten in a
7 hurry to be able to make that happen. Generally, what will happen is by the time you get to the hearing
8 nobody's prepared to be able to do it. The State generally is prepared, but the opposing counsel never gets
9 prepared. So then it begins. All of a sudden, I mean there's a light bulb that goes off somewhere, somebody
10 figures out this isn't going to happen. It isn't working right now, so they generally back off. The provision is
11 in NRS 445B.350 "Appeals for Commission hearings to 20 days after receipt of notice of appeal provided in
12 NRS 445B.340 the Commission shall hold a hearing. Notice of the hearing shall be provided to all parties no
13 less than five days prior to the start of the hearing." And you can sit in panels of three's and then it goes on
14 from there.

15
16 Chairman Close stated I would think then to make it easier for everybody we ought to ask for an extension of
17 time. We can do that at the next session. So I think put that on your agenda and . . .

18
19 Mr. Cowperthwaite asked is to be able to prepare them (inaudible) that kind for continuances? Or (inaudible)
20 30 day base clock for a hearing?

21
22 Chairman Close answered 30 days.

23
24 Commissioner Doppe answered 30 to 45 just to begin with.

25
26 Chairman Close stated you know, whatever is reasonable and then ask the legislature during the next term to
27 modify that rule.

28
29 Mr. Cowperthwaite stated okay.

30
31 Chairman Close moved to **Agenda Item No. VI. Status of the 2001 Legislative Session.**

32
33 Mr. Biaggi stated you should have in your packets a handout that has a little matrix on it. These are the bills
34 that the Division of Environmental Protection is tracking that have direct implications to its programs. We
35 have a much larger list of all things that we're interested in and I don't know, David, there's probably what, 45
36 - 50 bills on that one?

37
38 Mr. Cowperthwaite answered some of them dealing with the Open Meeting Law, things like that. But we'll
39 wait until they process through before talk about this internally.

40
41 Mr. Biaggi stated so these are the bills that have direct impact to the Division of Environmental Protection. I
42 just want to point out a couple of them that I think of are particular note. We talked a little bit this morning
43 about SB 362, which is on the bottom of the first page and this consolidates and revises processes for
44 reviewing applications for permits, licenses, and other approvals required to construct certain utility facilities
45 and this is an attempt to streamline the permitting process for electrical generation facilities. Hugh Ricci,
46 Mike Turnipseed and I are working with bill sponsors to the extent that we can to recognize the unique
47 situations that are involved with permitting from an air quality standpoint and then from a water right
48 standpoint from the State engineer. So, hopefully we can get that reflected in the bill. The other one I wanted
49 to quickly point out is Senate Bill 534, which is halfway down the second page. And this is a bill related to
50 the air quality concerns in Clark County and what role the State of Nevada should play in overseeing local air
51 quality air programs. There's a number of provisions in this bill which would, insert the State into the local air
52 programs from the perspective of regional haze, from SIP preparation, from priority identification for funding,
53 for the development of incentive programs for alternative fuels, for the development of a program for repair of

1 repair of high emitting vehicles and it goes on and on. Obviously, this cannot be done with the existing
2 resources we have in the Division and we've prepared a fiscal note and Jolaine and Colleen have been very
3 active in not only this bill, but also all the air bills from Clark County. Colleen's estimate on the cost of these
4 programs range to anywhere from about \$900,000 to something in excess of \$3 million. And obviously we all
5 know that there's about a \$121 million shortfall in the budgets right now. So there is a high likelihood that
6 this bill will be substantially reduced if not completely gutted in order to make it not have a significant fiscal
7 note and we're going to watch that carefully and work with the legislative staff and bill sponsors in order to
8 get an acceptable version of that.

9
10 If you'll notice on this listing of the 15 bills that are on here, 9 of them are air quality related. So that has been
11 the major focus of the Division's legislative efforts at this session. I want to recognize Jolaine and Colleen
12 because they have really come to the plate and done a lot of work in working off the legislative session with
13 the SB 432 committee which was overseeing the Clark County air regulations and now that the session is in
14 place, dealing with this myriad of bills that are before us concerning Clark County.

15
16 On the Clark County issue, just to deviate from legislation a little bit, I think there are some positive things
17 going forward. Christine Robinson is now the director in Air Quality for the county. She brings a very strong
18 breath of fresh air in credibility, integrity, enthusiasm and I think she is on the right track of getting that
19 program back into place and the legislative body has also recognized that as well.

20
21 Commissioner Johnson stated it comes to mind that some years ago we took action on the Las Vegas Valley
22 Wash. What's the progress of the restoration of that body?

23
24 Mr. Biaggi stated on my birthday of this year I went down to Las Vegas and participated in the opening of the
25 Clark County Wetlands Park. That's one piece of a larger overall plan to address the erosion and water quality
26 issues of the Las Vegas Wash and Lake Mead. Right now three erosion control structures have been installed
27 at the Wash. They're backing water up nicely, recreating wetlands, dropping out silts and sediments, and the
28 very necessary first step in the total of 15 total erosion control structures that will also maybe put in that area.
29 Also, this wetlands park creates a tremendous amenity for recreation, walking paths, wildlife habitat and other
30 things. So I think things are progressing down there very nicely. I'm very happy with the progress that's
31 ongoing. I think the thing that I'm really heartened to see is that local, state, county, and federal agencies are
32 now working together and not butting heads like they were five years ago.

33
34 Chairman Close called for further questions. There were none. He moved to **Agenda Item VII. Status of**
35 **Division of Environmental Protection's Programs and Policies.**

36
37 Mr. Biaggi stated I haven't reported to you for three meetings on some of the things going on at the Division.
38 So, I wanted to bring you up to speed on that. First are our budgets, with regard to this legislative session in
39 fiscal year 2002 and 2003. The Governor mandated no new programs, no new fees, and no new taxes. I'm
40 happy to say that we have complied with that and as you heard today there are actually some programs that
41 have actually reduced or dropped their fees. With that said, we have asked for four new positions within our
42 budgets for these next two years. We asked for a new bureau chief for Air Quality. This is our largest bureau
43 right now within the Division. It has a staff of 30 – 31 people and Colleen is stressed to the max. Her
44 workload is about as high as someone can get. She has handled that stress level very well and is doing great
45 job with the workload, but we would not like to burn her out. So we're asking for a bureau chief and break off
46 the air program, just like we did with the water programs about 10 years ago. So it will be into a planning
47 function as one bureau and then a regulatory and permitting function into another. So that's what this new
48 bureau chief position will do.

49
50 We're asking for a new person for our Information Management Systems. The Division has an extensive
51 computer system. We have obligations to report to federal agencies, state agencies, etc. on the things that we
52 do. More and more of our accounting functions are going to a computerized system and we need some

1 additional help with our information management services. We're asking for a new accountant because of the
2 burdens that are being placed on us on the federal and state levels in terms of accountability for our money.

3
4 And, finally, we're asking for a new position with our State revolving loan fund in our injection control
5 programs in Water Pollution Control. It looks like all of our budgets have passed committee with the
6 exception of one and that is Budget Account 3187 which is our Waste Management Bureaus, Corrective
7 Actions, and Federal Facilities. That budget account we're transitioning into special use categories and some
8 of the legislators on the Assembly side had some concerns with transitioning because it was a very complex
9 budget account into that form of cost accounting. So what we find ourselves in with 3187 is that it has passed
10 the Senate side, but it has yet to pass the Assembly. So I think in probably the next week or two we'll be
11 going to a conference committee to get that resolved. I don't see that as a major stumbling block.

12
13 Moving on to staffing, it's a very significant concern to me right now. We're seeing a tremendous turnover
14 within the Division as we're seeing in many other agencies within State government. One of the primary
15 reasons for that is because of compensation and retirement and benefits and that sort of thing. I don't think it's
16 any secret that State employees are lagging significantly behind their counterparts in private industry and local
17 governments. This concern is the greatest in our Bureau of Air Quality where we have recently lost three of
18 our four supervising managers in the program. That's why Jolaine was up here. Eric Taxer has moved on to a
19 local government position in the State of California. We have also lost a senior permits writer in our Air
20 program. Right now we have 12 open positions within the Division. The majority of those are engineers and
21 environmental scientists. So it's a great concern to me and I know it is to other administrators and we're
22 heartened by the support the Governor has shown towards State employee raises which I think will help
23 reduce this loss that we're having to local and private industry.

24
25 Electrical generation is of grave concern to us. We've talked a little bit about it today and this has the greatest
26 potential impact to our Bureau of Air Quality. Again, because of our staffing reductions in there it has placed
27 that bureau under a tremendous amount of strain. We are seeing a number of proposed generation facilities
28 coming to us for information over applications. Additionally, we're seeing power generators that are already
29 in place at mines, hospitals, casinos, etc. asking for modification of their permits to operate more often or to
30 operate with different or alternative fuels. We're also having a request from the Mohave Generating Station to
31 once again review their opacity variance, which this body heard twice last year in order for them to generate
32 more electrons during times of electrical emergency. So, the Division is taking a high priority for these
33 electrical generation issues. The Governor has stressed to us in no uncertain terms that we are to make them a
34 priority. So, automatically electrical generation facilities go to the top of the list. As a result, however, other
35 facilities are falling to the wayside. We're getting pressure from the mining industry and others that they need
36 their permits as well and so we have to balance this workload. We're trying to address our resource concerns
37 by bringing on some independent contractors to help us out with permitting. We're looking to EPA to maybe
38 get us a little bit of grant flexibility and to focus some of our energies and some of our resources into these
39 priority areas and in other ways in order to not only address the electrical generation concerns, but also our
40 permitting backlogs.

41
42 With regard to the Mohave Generating Station, Jolaine went out to a meeting a week ago last Monday in
43 Laughlin to a town board meeting. There's quite a bit of concern of some of the residents of the Laughlin area
44 with regard to potential health impacts of this variance. We're currently waiting for Southern California
45 Edison to provide us with a variance that they wish to go forward with the opacity considerations. As of yet,
46 we haven't received that. We're questioning now maybe their feeling that maybe that's not the best avenue
47 for them to go given the concerns in the communities. We hope that if a variance does come forward it will
48 come forward soon so that, Dave, you've got one?

49
50 Mr. Cowperthwaite stated no, but I'm getting signals that they're going to go for it.

51
52 Mr. Biaggi stated once we get that variance we are going to schedule a meeting in the town of Laughlin in
53 order for this body to hear that. I'm sorry about having to go to Laughlin in June, but I think we really do

1 need to be responsive to the citizens of the area and have the meeting out there where you can hear their
2 concerns first hand, rather than by telephone like we did it last time.

3
4 Commissioner Coyner asked are they still on schedule? As I recall when we talked with them during the air
5 fee increases they testified that they were going to install extensive pollution control equipment, which would
6 lower their emissions, which would then reduce their fee. They are the largest fee payer in the State. Are they
7 still on schedule with that sort of a plan?

8
9 Mr. Biaggi answered they are on schedule. They have to remain on schedule because that's a court-ordered
10 requirement that they put those emission controls on. And this is something that we put into our budget and
11 have tried to make the legislative body well aware of, that next session we're going to have to come forward
12 with some revised revenue sources in order to make up the shortfall that we're expecting by 2005, 2006 time
13 frame.

14
15 Commissioner Coyner asked would it ultimately make these opacity variances not needed?

16
17 Mr. Biaggi answered ultimately it will, yes. I touched a little bit on the Las Vegas air quality issues. Some of
18 the very positive things that are going on as I mentioned is that they have a new air quality director, Christine
19 Robinson, on board. There's a bill before the legislature to consolidate Clark County Health District's Air
20 Quality program and Comprehensive's Air Quality planning programs, which I think will be a great step
21 forward and have one consolidated air program rather than two disjointed parts. There's a proposal for fee
22 increases to help fund that agency and we have started an air quality forum in the Las Vegas area. In fact, Paul
23 was at our air quality forum this week, where we try and bring together all of the federal, state and local
24 officials, as well as the public, to discuss these very difficult air quality issues in the Las Vegas basin and try
25 and get people to talk and work together. It's a format similar to something we did about three or four years
26 ago with water quality and it's been very successful in bringing people together. So, we're going to continue
27 that effort and Jolaine has been heading that up.

28
29 Okay, a couple of updates on some of our legal actions that we and you have pending. First of all, there's
30 Jarbidge. As you'll recall this is something that has been appealed to the State Supreme Court; however, the
31 Division and Elko County have been talking about ways to modify the regulations to make it acceptable for all
32 parties and address the concerns of Judge Wagner and avoid a prolonged litigation. We had a conference call
33 with Elko County officials this week and we'll be meeting with some of their representatives in the next
34 couple of weeks in order to continue down the path of crafting an acceptable regulation to all parties to bring
35 before this body in the future.

36
37 I'm happy to report we've reached a settlement with a new operator about two weeks ago for Western Elite,
38 which is the big trash pile out in Lincoln County. We still have to sign that settlement, but I'm hopeful that
39 this new operating entity will be able to reduce the 750,000 cubic yards of waste out at that facility and begin
40 to recycle and make a usable, viable, economic product out of it. The gentleman's name is Scott Seastrand. I
41 think his father was mayor of North Las Vegas at one point and has been working with us over the last six
42 months or so in order to get this settlement agreement reached.

43
44 We have a very large case going on. It's called Robert Hager versus NDEP. This is a result of Mr. Hager's
45 lack of commitment and lack of action in the clean up of an underground storage tank release at Lake Tahoe.
46 The Division of Environmental Protection, through the State petroleum fund, has undertaken that cleanup and
47 has expended about \$800,000 in cleaning up that facility. Many of you know the Lake Tahoe area will know
48 this is the Manny's Cave Rock facility. So it's got a long and checkered history of environmental problems.
49 We have attempted to settle this case, but I don't think settlement is going to be fruitful. And we're scheduled
50 to go into Douglas County Court I believe on June 10th to hear this case. I'm fairly confident that we will
51 prevail in that one.

1 And finally, 3809, these are the hard rock mining rules that were initiated by BLM under the Clinton
2 administration. The State of Nevada, through the Division of Environmental Protection, the Department of
3 Minerals, the Attorney Generals' office, the Governor's office, issued an action against BLM for some of the
4 provisions of 3809. The Bush administration has since pulled those back and asked for reconsideration of
5 them. That did not waylay the State's actions, however, and that lawsuit is moving forward.

6
7 A couple of other things, Fallon, as we all know, has a very serious cancer cluster that is a very tragic situation
8 and our office is not directly involved in that. That investigation is ongoing through the State Health Division.
9 We have exchanged files with them. We've given them outlines of everything we permit in the Fallon area
10 from a water and air perspective. We participated in Marcia DeBraga's hearings early in the legislative
11 session concerning this issue and two weeks ago the Division met with the Agency for Toxic Substances,
12 Disease Registry and the Center for Disease Control on their investigative activities with the Fallon cancer
13 cluster. So, as information is needed the Division is ready, willing and able to participate and help out in any
14 way we can.

15
16 A couple of new rules coming out from EPA that we're watching very carefully: one is TMDL's, which we
17 talked about a little bit today. The TMDL Rule has been modified under the Clinton administration and will
18 become effective on October 1st of this year. One of the interesting things about the TMDL Rule is that we
19 can't ask EPA any questions about it because a funding appropriation rider was placed on the last days of the
20 last Congress and EPA cannot spend any money in interpretation of the TMDL regulations. So, we can ask
21 the questions, but they're not talking so we're sort of interpreting these things ourselves in trying to determine
22 what it means for us right now. As of October 1st we'll be able to ask questions of EPA and hopefully they
23 can begin to answer us. But it has serious ramifications to the State and particularly where the funding is
24 going to come from for implementation plans associated with the new TMDL rules.

25
26 It's been in the papers that the Bush administration has pulled back on the arsenic rule pending an evaluation
27 of the science of it. It doesn't have a whole lot of implication to the Division of Environmental Protection, but
28 we're watching it very carefully because it may have issues related to discharge standards for the future. And
29 then finally, under the Toxic Release Inventory, where Nevada rocketed from number 45 to number 1,
30 primarily because of the inclusion of mining in the TRI reporting requirements, a lawsuit has been filed and
31 the first round won by the mining industry in the State of Colorado. EPA has appealed that and we're
32 awaiting hearing of that. If the Mining Association is successful, Nevada will likely drop many, many points
33 and fall down perhaps back down to our previous position at 45.

34
35 We have undertaken a program that's sort of unique to the Division. It's called the AB 198 Program and it
36 provides grant assistance to drinking water programs in the State of Nevada. This came to us as a result of
37 Mike Turnipseed's dissolution of the Division of Water Planning and Hugh picked up some of their programs
38 and we picked up the 198 program. In a way it's a good fit for us because we operate a revolving loan fund,
39 although that revolving loan fund is for wastewater concerns. This program, in our opinion, is a better fit with
40 the State Health Division. There have been some concerns with Health taking it over at this time, so at least
41 until the next legislative session we'll be continuing to operate the AB 198 grant program. We have also
42 asked the Nevada legislature to increase the bonding capacity by \$19,000,000 of that program. It looks like
43 that's going to be a successful effort and will continue to have money available for issues such as the revised
44 arsenic rule for the next couple of years.

45
46 Finally, our AG status. You're lucky; you've had AG's fairly consistently for this body. We have not been
47 that fortunate. The AG, just like many other entities in State government, has experienced dramatic turnover
48 primarily because of pay issues. We've gone through 8 or 10 deputy attorney generals in the last 8 or 10
49 years. So we've been turning them over about once a year. As of Monday of this week, Amy Banales started
50 with us. She will be our AG 100 percent of the time. Chuck Meredith has left us. Gabrielle Carr has left us at
51 least temporarily and Bill Frey has returned back to service with us in terms of our legal representation. We
52 also have the assistance of Chuck Meredith at certain times under some of our cases that he's been handling
53 for quite some time. So, I think I see some stability coming, but we'll just have to wait and see and sort of

1 sort of watch it and make sure that we can have some consistency with our legal representation. Obviously
2 that's very critical especially in the mining arena where we're dealing with 34 different bankruptcies and
3 where bankruptcy is a whole different realm of the law and it really takes someone a long time to get up to
4 speed on bankruptcy-type issues.

5
6 Commissioner Coyner stated you misspoke yourself Allen. Thirty-four bankruptcies, 34 properties are a
7 subset of a number of bankruptcies. But my point would be what is your FY 02 and 03 attorney generals cost
8 allocation? Just so that this Commission can know, there's no free lunch when you start talking with the
9 lawyers.

10
11 Mr. Biaggi stated in our budgets I think we're approaching \$250,000 to \$300,000 a year for the entire Division
12 in paying for AG services. Al, as I think you're alluding to, we recently got some information from the AG
13 that they're going to tack on some additional allocations to that for FY 02, FY 03. Interestingly enough in FY
14 02 our allocation goes down \$2,000, but in FY 03 it goes up \$87,000. For this Board the allocation for FY 02
15 is something low. I don't think there's any additional allocation.

16
17 Mr. Cowperthwaite stated the way they arranged it is something like \$150 and then at the very end of the
18 budgetary process they said, "Oh, we made a mistake. You owe us \$39,000."

19
20 Mr. Biaggi stated it's actually \$37,000.

21
22 Mr. Cowperthwaite stated \$37,000. Your budget, by the way, is only about \$38,000.

23
24 Mr. Biaggi stated that's right. So for the Environmental Commission the entire budget is \$36,000, but we're
25 being assessed \$37,000 in attorney general's fees. I've met with Wayne Howell from the AG's office. I've
26 asked for all of the billings going back since 1997 for us to review. I've asked them to submit all future
27 billings on a monthly basis to us so we can track this. It's a rather complicated system how they assess it. It
28 goes back two and a half years on an hourly basis and the Attorney General's office doesn't even do the work.
29 It's done through a contractor through the budget office. So even the AG's office couldn't adequately explain
30 it. So we're going to keep a very close eye on that in the future. We're going to see what sort of relief we can
31 get for the next couple of years because obviously our budgets can't take those kinds of hits for legal services.

32
33 Chairman Close called for public comment. There was none. He asked Mr. Cowperthwaite if there was
34 anything else to be discussed.

35
36 Mr. Cowperthwaite stated we were looking at scheduling the next meeting to consider Southern Cal Edison's
37 variance request in Laughlin during the week of June 18th, probably the 19th 20th or 21st.

38
39 **Meeting adjourned at 3:00 p.m.**

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