

1 **STATE ENVIRONMENTAL COMMISSION**
2 **Meeting of December 11, 2001**
3 Nevada Division of Wildlife
4 Reno, Nevada
5 Draft Minutes
6

7
8 **MEMBERS PRESENT:**

9 Melvin Close, Chairman
10 Tim Crowley
11 Paul Iverson
12 Joseph L. Johnson
13 Hugh Ricci
14 Steve Robinson
15 Joey A. Villaflor
16

MEMBERS ABSENT:

Alan Coyner, Vice Chairman
Terry Crawford
Demar Dahl
Mark Doppe

17 **Staff Present:**

18 Deputy Attorney General Susan Gray - Deputy Attorney General
19 David Cowperthwaite - Executive Secretary
20 Sheri Gregory - Recording Secretary
21

22 Chairman Close called the meeting to order. He noted that the agenda had been properly noticed in compliance
23 with the Nevada Open Meeting Law. He introduced Tim Crowley as a new Commission member.
24

25 **Agenda Item I. Approval of minutes from the September 18, 2001 meeting.**
26

27 **Commissioner Johnson moved for adoption of the minutes.**

28 **Commissioner Villaflor seconded the motion.**

29 **The motion carried unanimously.**
30

31 Chairman Close moved to **Agenda Item III. Regulatory Petitions, Petition 2002-01.**
32

33 **(Petition 2002-01 (LCB R-096-01)** permanently amends NAC 445A.070 to 445A.348, the water pollution
34 control program by amending 445A.100 the definition for “point source” by adding language that defines earth
35 moving equipment, and 445A.309, the definition for “diffuse source” to incorporate runoff in various subsections
36 of the definition. In addition, the definition for “diffuse source” clarifies provisions regarding urban area runoff
37 and earth moving activities. The regulation will assist regulated communities in determining when water
38 pollution control permits are necessary.)
39

40 Leo Drozdoff introduced himself as the chief of the Bureau of Water Pollution Control for the Division of
41 Environmental Protection. He stated I’m here to present Petition 2002-01, LCB File No. R-096-01. This
42 regulation clarifies point source and diffuse source in the Nevada Administrative Code. It also helps the Division
43 and the State Environmental Commission settle our long-standing activities associated with Elko County and their
44 reconstruction of the South Canyon Road in Jarbidge, Nevada.
45

46 On July 20, 1998 Elko County undertook the reconstruction of a segment of South Canyon Road in Jarbidge,
47 Nevada following a vote by the County Commission that an emergency existed. The emergency was based on a
48 1995 flood and a pending plan from the United States Forest Service to change the road to a trail. Following a
49 warning letter issued by NDEP, NDEP issued an order to stop work and get a permit on July 23, 1998. The
50 Division’s order was appealed to the State Environmental Commission. On September 16 and 17, 1998 Elko
51 County’s appeal was heard by a three-member panel of this Commission and the Commission’s order contained

1 10 findings of fact and 9 conclusions of law upholding the Division's action. The 7th conclusion of law in that
2 order was that rolling stock includes heavy construction equipment and bulldozers. Elko County then appealed
3 the State Environmental Commission's order for judicial review. On February 1, 2000, members of the Division
4 of Environmental Protection and the Attorney General's office appeared before Judge Wagner in Elko County.
5 Judge Wagner affirmed in part and overturned in part the SEC order in his order of July 3, 2000. Specifically,
6 Judge Wagner affirmed the findings of fact but he overturned one conclusion of law. Specifically, Judge Wagner
7 ruled that rolling stock was related to locomotives, passenger and freight cars. Thus he concluded the SEC erred
8 in finding that equipment used in this matter was rolling stock.
9

10 Based on Judge Wagner's decision to overturn the State Environmental Commission's order, the Division
11 appealed to the State Supreme Court. We felt that we could cite and did cite many instances where rolling stock
12 is defined more broadly and includes specifically items such as bulldozers and heavy equipment. We also felt
13 there was ample case law in other states and in the federal courts that Judge Wagner chose not to consider that
14 demonstrate that heavy equipment in streams is, in fact, a point source.
15

16 Now it's important to note what our motives for this appeal were. It wasn't that we had some grudge with Elko
17 County, but rather it was based on discussions and in some cases, directions from not only the Environmental
18 Protection Agency, but also other major permittees in this State. We have a delegated program in the State of
19 Nevada to implement the Clean Water Act and to put it bluntly; we were told that if the Nevada Division of
20 Environmental Protection has difficulty implementing certain aspects of the Clean Water Act, various steps could
21 be taken, most serious would be losing our delegated program. Now that was a very big deal that affected nearly
22 everyone. That was why some of our major permittees were interested in our appealing to the State Supreme
23 Court because it was fairly unanimous in our regulated community that Nevada losing its delegated status to
24 implement the Clean Water Act would be a major blow for the State of Nevada.
25

26 From Elko County's perspective I believe they understood that if EPA were to somehow implement the Clean
27 Water Act they clearly would not be constrained by Nevada case law and the decisions by a State judge. So, there
28 was a reason to keep talking. In November 2000 we met with the Supreme Court mediator, which is a
29 requirement in all appeals to the State Supreme Court. That actually was sort of a breakthrough event. Following
30 that meeting, both the mediator, the Division of Environmental Protection, the Attorney General's Office and
31 Elko County felt that a regulation change would be a good route for settlement. So over the next several months
32 the Division of Environmental Protection did develop a proposed regulation and sent that to Elko County and
33 their consultants for comments. This process went back and forth for a couple of months. We would gain some
34 ground and lose some ground. We felt the best thing to do would finally be to meet in a place and see if we could
35 hammer this agreement out.
36

37 In an event we have collectively coined the "Winnemucca Summit of June 14, 2000" members from the Division
38 of Environmental Protection, the Attorney General's Office, Elko County Commissioners, Elko County District
39 Attorney representative and consultants for Elko County all met and after several hours we actually developed a
40 regulation that met all of our needs. We're quite pleased with that event. We, in turn, followed our traditional
41 public notice process. We placed a public notice in a variety of papers: Elko, Las Vegas, Reno and Carson. We
42 also held a workshop on August 21, which was attended by Elko County and the Attorney General's office. All
43 provided comments that the regulation as we've crafted was consistent with our discussions in Winnemucca on
44 June 14. We then entered the phase of working with the Legislative Counsel Bureau and this took a little bit of
45 time as well. The Legislative Counsel Bureau made some changes to our regulation, not for content, but for
46 grammatical changes and LCB style. However, the regulation as written was different than what we crafted in
47 Winnemucca and this raised some concerns, initially on all parts, and then finally primarily from Elko County.
48

49 The reason you have a revised regulation in front of you, which again is dated December 5, is on December 5 we
50 had a conference call with LCB, the Attorney General's office, Elko County officials and NDEP. We went
51 through the various grammatical changes point by point over what you have in your folder. There's really just
52 one change and that is in Section 3 on the FLUSH line, on page 2, there's a term in the one you have now that
53 says "items." The term used in the November 19 version was "activities." Elko County's concern was that

1 “activities” is discussed in a couple of the diffuse source specific activities are discussed in the preceding eight
2 elements of diffuse source and they wanted it to be clear that that FLUSH line corresponded or went with all eight
3 activities, not just the two that had the word “activities” in it. Therefore, there’s the change, one word. From
4 “activities” to “items.” So, at long last, we now had consensus, not just with us and Elko County, but the
5 Attorney General’s office and the Legislative Counsel Bureau. So with that that’s the historical overview.
6

7 There are two parts to the regulations. First, we wanted to clearly define what a point source is. If we were going
8 to have to live with this current definition of rolling stock we wanted it to clearly define a point source. Secondly,
9 we wanted to make it clear, and this is sort of the balancing part of the regulations that we worked with with Elko
10 County, we wanted to make it clear that the diffuse source exception is still maintained and clarified. What I
11 mean by that is diffuse sources, since there isn’t a discernable point source, a permit is not needed and the county
12 and we wanted to make clear that nothing has changed in that regard. And so, on the first point about clearly
13 defining what a point source is, the Nevada Administrative Code has three places where point source is defined.
14 Those are NAC 445A.0586, 100 and 372. The definition in all cases has been changed as you see in front of it.
15 Not only does it cite the point source has the meaning ascribed to it in the statute, but it also now includes, “the
16 term includes wheeled, track, stationary or floating equipment used for earthmoving activity from which
17 pollutants are or may be discharged.” What that does now is it makes it clear, regardless of what you think rolling
18 stock is; a point source could be a bulldozer in river, for example.
19

20 On the second point, which Elko County requested, it now makes it clear that the diffuse sources are still
21 maintained and clarifies it in all eight cases what a diffuse source is and that the diffuse source exists even if
22 equipment is used in those diffuse source activities. Also since diffuse source is something where a discernable
23 point source can’t be found, as I mentioned, we now make it clear that the regulations describe runoff from
24 construction activities, building roads, etc. Again where a discernable point source cannot be located.
25

26 These regulation changes allow for a mutually-agreeable solution that has taken a great deal of resources, not just
27 from us, but from Elko County, the Attorney General’s Office, etc. As we learned when we went before Judge
28 Wagner, in court you have one winner, you have one loser, it’s a litigious environment, there’s some level of
29 animosity. Most importantly, there’s no guarantee of success. We have always felt that our case was strong, but I
30 couldn’t guarantee to this Commission or my boss or anybody else that we would absolutely win. Also the
31 specter of a State suing a County in State Supreme Court is probably something that I don’t know that there
32 would be any winner with. So now in this document we have concurrence from LCB, the Attorney General’s
33 office, Elko County and NDEP. I would submit to the Commission that that’s not a small feat, but I also would
34 submit that perhaps you could take some comfort in the fact that this regulation has truly been reviewed and re-
35 reviewed. It sets the stage for us to get back to a good relationship with Elko County and maintaining a good
36 relationship with the various other counties in the State. It also keeps EPA satisfied that our program is secure
37 and we’re able to implement the Clean Water Act.
38

39 As a final point in the last couple of days I’ve had several discussions with Assemblyman Carpenter, Brad
40 Roberts, who is an Elko County Commissioner, Doug Busselman and all basically have agreed with our approach,
41 but they all wanted assurance that we’re not changing the game. I’m here on the record stating that we are not. I
42 know that we have never in the past taken such extreme positions about, for example, a pickup truck through a
43 watercourse requiring a permit or a farmer or a rancher working on an agricultural ditch requiring a permit. I
44 think our record is clear; we’ve never done that. I’m stating for the record that this regulation does not allow us to
45 do that and we have no intentions to implement this regulation in such a way. I’d like to give you two letters of
46 support. One is from Bill Fray of the Attorney General’s Office dated December 10 and one is from Nolan Lloyd
47 who is the Chairman of the Elko County Board of Commissioners all expressing concurrence with our approach.
48

49 Chairman Close stated if there’s no objection, we’ll make that part of our record.
50

51 Mr. Drozdoff stated if the Commission is convinced that this is the proper way to go and you approve and adopt
52 these regulations, this would be our settlement. We will drop our appeal to the State Supreme Court. Elko

1 County is interested in moving forward in this regard. I think it's as good an ending as we can hope given the
2 length that we've been involved in this project.

3
4 Commissioner Ricci asked the term "rolling stock" I realize it doesn't appear here anywhere so that becomes a
5 term of art now and unless you put a railroad train inside water that means that you . . .

6
7 Mr. Drozdoff answered yes. That's what Judge Wagner ruled. It does become a term of art. What we tried not to
8 do is certainly put a finger in Judge Wagner's eye and say, "No, rolling stock means something else." I don't
9 think we have the ability, I don't know if the Commission has the ability to do that. Like I said there's plenty of
10 caseload that goes the other way so it does become a term of art. I think we have successfully sort of dodged that
11 hot potato by focusing our attention where it should be which is what a point source is.

12
13 Commissioner Iverson stated you had indicated that in the last several days you had spoken to Carpenter and
14 Doug Busselman and a gentleman from the County Commission. I appreciate you putting that on record as the
15 idea that this is not a change from the way we're doing business now and that equipment in an irrigation ditch is
16 not considered involved in this and would not require a permit. I did have some concern, though, in your County
17 Commissioner calling you indicating that during the Winnemucca Summit, when you worked with the county
18 commission was that the entire county commission or was it a select group? Is this commissioner who called you
19 up to speed with what's happened in the negotiations?

20
21 Mr. Drozdoff explained yes he was. For a while in both our activities and Elko County's activities with the
22 federal government my understanding is the Elko County Commission appointed a two-member body of their
23 commission to represent them. Originally those two people were Roberta Skelton and Mike Nannini. When
24 Roberta Skelton did not win reelection, Brad Roberts took Roberta's place representing the Commission. So
25 when we met in Winnemucca it was with Mike Nannini and Brad Roberts, both of which were dually authorized
26 by the Elko County Commission to represent the county in this regard.

27
28 Commissioner Iverson asked did those two commissioners understand what you basically have put on record
29 here?

30
31 Mr. Drozdoff answered they did. The phone call we had where Brad represented where his level of least concern
32 was in the conference call I cited on December 5 with everybody involved, with LCB and the AG and he basically
33 said, "Look I understand what's going on. I just want to make sure that from an implementation standpoint
34 nothing's changed." Much like the calls I have received from Doug Busselman and John Carpenter and I
35 reiterated to him and I reiterated to the other folks on the phone as you eloquently stated that this is not a change.

36
37 Commissioner Iverson stated I appreciate your hard work on this. I know it takes a lot to get this many people to
38 agree on anything.

39
40 Chairman Close called for further testimony. There was none. He called the public meeting to a close. He called
41 for discussion by the Commission. There was none. He called for a motion.

42
43 **Commissioner Ricci motioned to adopt Petition 2002-01, further defining the meaning of point source.**
44 **Commissioner Villaflor seconded the motion.**
45 **The motion carried unanimously.**

46
47 Chairman Close moved to **Agenda Item III.B. Petition 2002-03.**

48
49 **(Petition 2002-03 (LCB R-128-01)** is a permanent amendment to NAC 445A.119 to 445A.225, the pollution
50 control standards for water quality. The petition amends the standards for various reaches of the East and West
51 forks of the Walker River. Amendments are proposed for NAC 445A.159 through 445A.169, inclusive
52 including Sweetwater Creek and Desert Creek of the Walker River. Revised area of water quality standards
53 includes pH, the nitrite in the lower reaches, the time period for dissolved oxygen beneficial use standard, the

1 Topaz Lake dissolved oxygen standard, the replacement of the narrative color standard with a numeric standard,
2 establishing sulfate requirements to maintain existing higher quality (RMHQ), replacement of existing fecal
3 coliform standard with E. Coli standard and to establish a total suspended RMHQ for Sweetwater Creek. It is
4 proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker
5 Lake to Weber Reservoir.)

6
7 Tom Porta introduced himself as being with the Bureau of Water Quality Planning. He stated I'd like to begin
8 with a brief history of where we've been, what's transpired over the last couple of years and then turn it over to
9 Randy Pahl who will be giving the river standards. We have decided at this time to separate the two petitions
10 unlike last time where we had one petition to consider both the river and the lake together. The first one you'll be
11 hearing today is the river.

12
13 The bureau began working on the Walker River and Walker Lake standards in 1998. During 1999 we collected
14 and reviewed data and put out a rationale for our changes. There were four workshops conducted in early 2000
15 and by the end of 2000 we had presented the first round anyway, the first meeting of the water quality standards
16 for Walker Lake and Walker River at the end of the year 2000. In early February the Commission reconvened to
17 hear the petition once again because of numerous comments during the first hearing and the Commission passed
18 the Walker Lake and Walker River standards on a vote of 5 to 4. Subsequent to that a legislative review
19 committee reviewed the regulations, which were passed by the SEC in April, and basically the directive was
20 remand it back to the SEC. In May, Senate Concurrent Resolution No. 40 basically declared that the water
21 quality standards would not become effective. Right after that there was another SEC hearing to discuss what
22 action this body should take. At that time it was determined that there would be no further action to move
23 forward with adopting water quality standards for Walker Lake or Walker River. Shortly thereafter the Walker
24 Lake Working Group being represented by the Western Environmental Law Center filed a notice of intent to sue
25 EPA. In July of 2001 NDEP met with the Walker Lake Irrigation District, the Walker Lake Working Group and
26 the representative from the Western Environmental Law Center. At that meeting the Division explained a plan to
27 get adopted partial water quality standards while we worked on the more difficult issues with the lake. At that
28 time, that was the best course of action in our minds.

29
30 Subsequent to that meeting the Walker Lake Working Group and Western Environmental Law Center got back to
31 us about that plan and we're not in agreement with that plan. Their position is that the water quality standards
32 should be adopted as whole and not partial which means that we should include TDS in these water quality
33 standards for the lake. In any event, the Division feels that we should stay with the plan that we have originally
34 gone with and that is an attempt to get the river standards adopted, partial lake standards adopted today and then
35 move forward in another venue that's being conducted at the same time on the water rights litigation. The
36 Division has decided to participate in the alternative dispute resolution in hopes that we can come to agreement
37 with not only water rights issues but also water quality standards. As many of you know, this is a big issue in the
38 west. It has basically come to the point now where you cannot talk about water quality without talking about
39 water quantity. So we feel this is the best course of action to work through this process. So we have these two
40 petitions before you today.

41
42 Workshops were also conducted on these two petitions in early October and an interesting dynamic has
43 developed. At the first Commission hearing, as you know, the Irrigation District opposed our standards and the
44 Walker Lake Working Group supported them. At this hearing you'll probably find that now the Irrigation District
45 will support our standards by a letter I believe you have in your packets and the Walker Lake Working Group will
46 oppose them. So we've had a change in perceptions on this issue. So with that I'd like to turn it over to Randy
47 Pahl who is the new branch supervisor for our water quality standards program. We have a couple of options
48 today with our presentations. We have both a long and a short version and I would leave it to the discretion of the
49 chairman and the members to decide which course of action you would like to take. We have a summary version,
50 which we can get through in a fairly short time or we can go through line-by-line on the standards to present to
51 you.

52
53 Chairman Close asked how long does the line-by-line presentation take?

1
2 Mr. Porta answered depending on questions I would say 45 minutes, maybe an hour.
3
4 Chairman Close stated I think this has been a serious enough matter that we should have a full presentation of
5 your data.
6
7 Mr. Porta stated okay. We came prepared for both.
8
9 Commissioner Ricci asked are there any differences between the river standards that we heard in December, to
10 today?
11
12 Mr. Porta explained no. They're the same.
13
14 Commissioner Ricci asked so this is going to be just more or less a refresher?
15
16 Mr. Porta answered right, for the river.
17
18 Randy Pahl introduced himself. He stated I've been involved in the Walker in a lot of different capacities in the
19 past and now it's interesting to be involved in it from the water standards portion. We put together some
20 summary tables that will be helpful. We'll inundate you a little bit with a lot of information. Some of this we
21 came prepared to present some summaries because as it has been mentioned the changes that we're proposing are
22 not any different from last time. A lot of the changes are updating criteria based upon more recent EPA criteria
23 and so it affects a lot of the same reaches, all of the reaches throughout . . .
24
25 Chairman Close asked are your slides contained in the document you've given to us so we can follow along with
26 what you're doing?
27
28 Mr. Pahl answered I don't believe the slides are.
29
30 Chairman Close asked not the slides, but the transparencies?
31
32 Mr. Pahl answered no. I don't believe so.
33
34 Chairman Close asked David is there another machine?
35
36 David Cowperthwaite answered no. I asked for it, but it was the only one they've got.
37
38 Mr. Pahl stated I need an overhead in order to get through this.
39
40 Chairman Close called for a short break.
41
42 Mr. Pahl (continuing presentation after break) from Wellington to the confluence. Down here right in the middle
43 is Desert Creek, in the blue, Sweetwater Creek is over there on kind of the center bottom, the yellow, East Walker
44 at Stateline and then you have East Walker that runs all the way from the State Line to the confluence, Walker
45 River from the confluence to Weber Reservoir, it's that gold color there. Then Weber Reservoir, we've got
46 another reach here, Weber Reservoir to the lake and then Walker Lake that is covered under another petition that
47 we'll be talking about later.
48
49 We are making some changes. One of the changes is we're breaking East Walker River that goes from Stateline
50 to the confluence into two reaches. And that's all this is really discussing. It's breaking at this place called
51 Bridge B-1475 which is near the middle of the reach and the reason that was done was the stream has different
52 characteristics in the upper part than in the lower part and so to better characterize the stream in the standards we
53 broke them into two reaches. So that's one change and associated with that is beneficial uses under the original

1 long East Walker Reach are the same now into two, it's broken into two sub reaches basically. So it includes the
2 mountain whitefish, rainbow trout, and brown trout as the fish species.

3
4 There are some changes with the beneficial uses. Mountain whitefish was added as a major species of concern
5 and that was added for the, there's three reaches listed up there: the West Walker at Stateline, West Walker at
6 Wellington up to Stateline and then Sweetwater Creek and that was based upon NDOW recommendations. Also
7 there was another change to the beneficial uses where there's a statement in there saying that the Lahontan
8 cutthroat trout (LCT) may be present in the reach between Weber and Walker Lake between April and May. Well
9 we're proposing to revise that to February through June based upon NDOW recommendations. Also, we're
10 proposing a change to the color standard. Currently the standard has been something like less than 10 units
11 greater than the natural conditions. We're changing all these to 75. That is driven by the EPA criteria for
12 domestic and municipal water supply. That's item C as it relates to that, the municipal domestic being the most
13 restrictive beneficial use for that color.

14
15 Starting with temperature, one of the changes was to add a footnote to our table that says this is the Weber
16 Reservoir, Walker Lake reach that specifies a temperature of less than 21°C during February through June when
17 LCT are present. That's based upon NDOW recommendations for LCT protection. Also the same footnote,
18 we're proposing to put in that reach from it's basically the whole Walker River from the confluence down to
19 Weber Reservoir. The less than 21 degrees February through June and that was based upon a request from the
20 Paiute Tribe, and also an NDOW recommendation.

21
22 Commissioner Crowley asked is that controlled by quantity? Is that how you do temperature? More water keeps
23 it cooler, or? How do you control the temperature?

24
25 Mr. Pahl answered we don't control it. We just monitor it. One way of meeting a temperature requirement would
26 be possibly additional flow. Other more likely way is maybe improving vegetation, riparian vegetation, and
27 riparian corridor conditions.

28
29 Commissioner Crowley stated okay. Thanks.

30
31 Mr. Pahl stated there was another change that we're proposing and this is with the beneficial use standard of, this
32 is from the confluence of West Walker down to Weber Reservoir. We had in the standards now there's a
33 beneficial use temperature for April through June of 24 degrees and that was inconsistent with the reach down
34 below and so we're revising that, hoping to revise that to 23 degrees and it would just be more consistent with the
35 rest of the river.

36
37 Chairman Close asked how close to the temperature readings that you propose is it from the existing temperature
38 on the river? Is it met now?

39
40 Mr. Pahl answered yes. We haven't had any impairment listings for temperature on the Walker. The pH changes
41 apply to all the reaches. Currently the standard is 7.0 to 8.3 through all these reaches. The EPA criterion now is
42 they are recommending a range of 6.5 to 9. So in order to be consistent with what the latest and greatest is from
43 EPA, we're proposing that change. That gives us a broader range for pH. What's interesting to note is that the
44 Walker River has been listed on the 303D list. If you're familiar with that that's just basically a list that we put
45 together every two years on impaired status. If a river is violating its water quality standards, it goes on the list
46 and Walker has been on the 303D list for pH based upon the old range of 7 to 8.3. But now going to the broader
47 current-type of criteria from EPA, 6.5 to 9, we won't have that problem anymore. It won't be listed anymore.

48
49 Chairman Close asked as you go through here if there's any criteria that's not presently met that has to have a
50 change to it or some action taken, would you bring that to our attention?

51
52 Mr. Pahl answered sure. I believe all of these changes are related to parameters that aren't causing impairment or
53 aren't indicating impairment for those parameters. The parameters where there's problems on the Walker where

1 we have listing for impairment is phosphorus, suspended sediment, and has been pH and I believe there's an iron
2 in there, in one reach has some iron problems. I believe those are the main problems. But we're not making any
3 changes to those. Nitrite is another area that we're looking at proposing to change. This is the reach from the
4 confluence of the East and West again all the way down to Weber. Right now the beneficial use standard for the
5 nitrite is 5 mg/l and it's somewhat inconsistent with some of the other EPA criteria in some of the other reaches
6 down below. So we're proposing to change that to 1 mg/l. But at the same time, there's some concerns about
7 you need certain nitrite levels for cold-water fish and that's the reason for this footnote. We're looking at having
8 a beneficial use standard for nitrite of .06 instead of that 1. When LCT are present this standard would say that
9 .06 would be your beneficial use standard for the February through June period if LCT are present from the
10 confluence all the way down to Weber Reservoir. This is based upon NDOW recommendations and .06 is EPA
11 criteria needed to protect fisheries.

12
13 Dissolved oxygen is another category we're hopefully making some changes. There are a number of reaches
14 listed there: the West Walker at Stateline, Topaz Lake, and Weber Reservoir to Walker Lake. Where right now
15 the beneficial use standard we have a two-part deal standard. You have a 6 from November through April and
16 then a 5 through May through October. Anyway, based upon some NDOW recommendations and another issue is
17 we're not being consistent with some of the other reaches in the river so we're proposing to change that
18 November to April for the 6 to a period from November to May for those reaches. As I said, that will get us more
19 consistent with the rest of the reaches on the river and more in line with what NDOW thinks is necessary.

20
21 Commissioner Ricci stated that last reach, Walker Lake to Weber Reservoir, is different than what you have in the
22 book here on page 34 it says Walker River at Schurz Bridge. Is that the same?

23
24 Mr. Pahl answered Schurz Bridge is the control point for that reach. So, yes, that's where we do our monitoring
25 basically.

26
27 Commissioner Johnson stated one of the comments in the discussion question the dissolved oxygen level in Topaz
28 Lake and how it was measured. Do you have comments for that? I mean this says that Topaz Lake will have 6
29 mg, but top to bottom, or what?

30
31 Mr. Pahl stated on Topaz we just had those two values. We're proposing to add a footnote that would say that
32 the standard through June through October would only apply in the upper epilimnion level of the river, of the lake
33 rather during stratification and we just felt this is more reasonable for a lake that has some production going on
34 with algae. So right now it has that 6 and at 5. This would be a slight modification to that table.

35
36 Commissioner Johnson asked and 5 really relates to the summer time water temperature?

37
38 Mr. Pahl stated right. And there again we haven't seen any violations of these standards. Topaz hasn't been
39 listed for impairment on our 303D list.

40
41 Some other changes include total suspended sediments. This was just an RMHQ requirement to maintain existing
42 higher quality and we're proposing to set that at 45 mg/l. This is based upon our existing data that we collect and
43 NDOW had requested that we incorporate an RMHQ for Sweetwater. That's really the only change with the total
44 suspended solids.

45
46 Here's color again. In all of our reaches the standard should be less than 10 color units above natural conditions.
47 It's very difficult to try to quantify what natural conditions are. One of our hopes is to have standards that are
48 measurable, quantifiable. Also, a lot of the other rivers in Nevada didn't have this standard; they had that 75
49 standard that's for drinking water systems, drinking water use. Our proposal is to replace that less than 10 with
50 the less than 75 for all reaches on this river.

51
52 There's also with some color where you're looking at our existing data that we collect through our monitoring
53 network and have come up with some recommendations for RMHQ's requirements to maintain those higher water

1 qualities. So in this situation this is really you see at the bottom it says, "Based upon 75th percentile of existing
2 data." So basically for those three sites 95 percent of the data that we have are below those numbers. Only 5
3 percent are above. So you can see, the water is considerably better or quite a bit better than that 75 beneficial use
4 standard but that's typical when we'll many times set an RMHQ when we want to protect that higher quality
5 that's better than beneficial use standard. So anyway, we have those three changes that we're hoping to
6 incorporate.

7
8 Again, we're proposing some RMHQ's for sulfate on the West Walker at Stateline and Topaz and these are at 25
9 mg/l. Looking at the actual data, the water quality is better than that 25, but one of our procedures with setting
10 RMHQ's is not to go lower than 10 percent to the beneficial use standard so that's where the 25 comes from. Our
11 beneficial use standard for sulfate in those rivers is 250. Here again, there's RMHQ's for the West Walker, that's
12 West Walker from Nordyke up to Wellington. That's from the confluence up to Wellington. There's the East
13 Walker at Stateline and then there's the East Walker from the confluence with West Walker halfway, about
14 halfway up through that bridge where we're making that new break in the section. Those are the three reaches
15 and these RMHQ's there are based upon the 95th percentile of the existing data. As you can see they are
16 considerably lower than the 250, which is the beneficial use standard.

17
18 Another change deals with bacteria. Currently in our standards the parameter that has been measured historically
19 for bacteria has been fecal coliform. More recently EPA has come out with criteria related to E. Coli as a better
20 indicator for concerns with bacteria. So we're hoping to remove the existing fecal coliform beneficial use
21 standard and replace it with E. Coli bacteria for all of these reaches and there we'll have an annual geometric
22 mean value and a single sample maximum value. Again that's based upon EPA criteria to protect the people
23 when they're recreating.

24
25 Commissioner Johnson asked you have drinking water standards for some other items, why here is it contact
26 rather than drinking water?

27
28 Mr. Pahl answered well I believe this is the most restrictive.

29
30 Commissioner Johnson asked over drinking water?

31
32 Mr. Pahl explained part of the equation when you're looking at standards for drinking water is that these things
33 can be treatable. We don't set standards in the river that say you can drink right out of the river, but you have to
34 be able to reasonably treat the water.

35
36 Those are mainly the main changes. There were some tables that we did pass out that summarized all of these
37 changes and really most of them were pretty minor.

38
39 Chairman Close called for further questions from the Commission. There were none. He asked if there were any
40 members of the public who were in opposition to the petition.

41
42 William E. Schaeffer introduced himself as representing the Dynamic Action on Wells Group. He stated as
43 before, the Dynamic Action on Wells Group opposes the setting of standards of any kind in Walker Lake because
44 it is a terminal lake and therefore the standards are not reasonably attainable. Likewise, the proposed standards
45 for the river will require additional inflows during dry times in order to meet the proposed standards. Because the
46 river is fully appropriated and, in fact, over appropriated, the proposed standards for the river are likewise not
47 reasonably attainable. Accordingly, for the reasons I have stated before, this Commission should stop trying to
48 set standards for this river system until such time, if ever, as the Commission can show how the standards can be
49 attained. The legislature has spoken. No standards should be set at this time. Please show how you plan to attain
50 any standards on an ongoing basis before you revisit this issue. You have no jurisdiction to set unattainable
51 standards. As to Topaz Lake I'm at a loss as to how to understand how you hope to attain or enforce any
52 standards you might set when most of the water there comes from California, which places the bulk of the system
53 outside of your jurisdiction even assuming it is attainable. I'm glad that we're not going to the total dissolved

1 solids, which was the immediate cause of basically the stalemate, which the legislature put upon you. But these
2 other standards have many of the same problems. The churning of the water itself during quick inflows, which is
3 the way that the lake has gone up before, will cause all kinds of problems with meeting those standards and if you
4 slow it down the water won't get up to the right levels. There are just too many problems that need to be
5 resolved. I wish the Commission would take all of that into consideration and not assume it has to set any
6 standards. We currently have a lawsuit pending which probably will settle a lot of this. I would suggest that you
7 wait until that lawsuit finishes. I don't have a problem with that. We plan to be involved in the background, if
8 not directly, and that should settle the issue once and for all. I ask again for the reasons I've stated many times
9 before, don't set any standards.

10
11 Chairman Close called for questions.

12
13 Commissioner Crowley stated I have a question for Mr. Pahl. Aren't we in attainment for all of the standards that
14 you just discussed with the changes we've made?

15
16 Mr. Pahl answered that's correct.

17
18 Commissioner Crowley asked do you foresee us going out of attainment in the near future?

19
20 Mr. Pahl answered I don't believe so. Like I said, with the pH that decreases the likelihood of any listing in the
21 future.

22
23 Chairman Close asked if there was anyone else who wished to speak against the proposal.

24
25 John McMasters introduced himself as being from the Walker Paiute Tribe. He stated as you all know there's two
26 control points within the reservation within the standards. Our question from the Tribe is we need clarification
27 and we probably should have asked this question sooner, but as Randy Pahl indicated we were in on the science in
28 the beginning of this session here so it says here in the public notice of public hearing the federal government has
29 delegated the responsibility for establishing water quality standards to the State. We would like clarification on
30 the official action of when that happened, how it happened. When the federal government delegated the authority
31 to the State to propose standards within the two control points on the reservation.

32
33 Tom Porta explained what the State has done in the past, with Tribal concurrence, is adopted water quality
34 standards for waters on those lands. Once a Tribal entity has put forth or proposed their own water quality
35 standards such as the case of Pyramid Lake Tribe, the State rescinds those portions of the standards that are on
36 Tribal lands. That's the way it's worked in the past. So I guess that's the best way to answer the question.

37
38 Chairman Close asked does that answer your question?

39
40 Mr. McMasters answered not really. I'm looking for the federal authority, the federal delegation.

41
42 Mr. Porta asked do you mean the federal delegation for Tribal lands?

43
44 Mr. McMasters answered yes.

45
46 Mr. Porta asked Stephanie Wilson, Environmental Protection Agency Region IX to answer the question.

47
48 Stephanie Wilson introduced herself as being with the EPA out of Region IX in San Francisco. She explained
49 although the State is setting standards for areas that are Tribal lands, the State would technically not have any
50 authority to enforce those standards on Tribal lands. EPA would be the one who would have to set the standards
51 that would be enforceable on Tribal lands. The State in this case has worked with the Tribes and is setting what
52 we would consider goals for those stretches of the waters. But, they would not be enforceable by the State for
53 those reaches on Tribal lands.

1
2 Chairman Close called for questions. There were none. He called for any other members of the public in
3 opposition to the petition. There were none. He then called upon the members of the public who had signed up to
4 speak, the first one being Gordon DePaoli.

5
6 Gordon DePaoli introduced himself as being on behalf of the Walker Irrigation District. He stated the Walker
7 River Irrigation District did not oppose the proposed changes to the river standards back in December of 2000 and
8 February of 2001 and does not oppose them today, but is in support of this petition and these amendments.

9
10 Chairman Close called for further testimony. Since there was none he called the public hearing to a close. He
11 called for comments by the Commission.

12
13 Commissioner Ricci stated if I recall right, the water quality standards can't be required to be met by using or
14 anything changing existing water rights. Is that correct? Am I paraphrasing that correctly?

15
16 Mr. Porta answered yes. The State statute prevents any adoption of a standard or regulation that would supercede
17 or somehow interfere with State water rights and the Clean Water Act as well.

18
19 Commissioner Johnson stated perhaps we need to indicate on the record a historical perspective whether we've
20 actually entered into an agreement with the Schurz Tribal group or what our activity on the reservation actually is.
21 I don't think the questions that were raised were actually answered. Will you please elaborate on our activity
22 there?

23
24 Mr. Porta stated other than to say this has been a practice for the past 25 or more years, we've always worked
25 with the Tribes on these standards and granted we don't have technical authority under the Clean Water Act to do
26 this. We have done this on their behalf with their concurrence. This is the first time I've run up against a
27 questioning of that. During our public process if there had been any objection to these standards certainly we
28 would have withdrawn those portions of the river that did fall on Tribal land. So, in the past 25 to 30 years we've
29 never run up against this, against Duck Valley, Pyramid Lake, or any of the other Tribes in Nevada and we've
30 worked with them on all of the water quality standards. So, if the Tribal interest prefer that those standards not be
31 adopted we could certainly rescind those standards and have them move forward, I believe probably working with
32 EPA to adopt their own water quality standards much like the Pyramid Lake Tribe has done.

33
34 Commissioner Johnson asked if they were interested in adopting the standards they could come to you and work
35 out a Memorandum of Understanding or simply they could adopt the standards and you would come back and we
36 would revisit this issue?

37
38 Mr. Porta answered I think more or less it would be if we were to adopt the standards for the Tribe we could work
39 out something like that. But if the Tribal interests want water quality standards of their own, they typically work
40 with EPA directly and they use our data, much like the Pyramid Lake Tribe has done for this year. As a matter of
41 fact, they have a set of standards for Pyramid Lake before EPA right now.

42
43 Commissioner Iverson stated I guess my question has to do with the next petition you're going to hear also, but I
44 have a tough time separating the two completely. I realize that there are different issues that need to be discussed
45 on both of these and probably in order to move forward separating them out is a good shot. But if we ever are
46 able to adopt standards at the lake, are we in a position that as the monitoring takes place in this river system to go
47 back and modify standards if it's needed to meet the standards in the lake or are these sort of set in stone now? I
48 mean certain portions of the river where we may find a problem.

49
50 Mr. Porta stated let's say for some reason 10 years down the road these weren't deemed reasonable or something
51 like that. I think we've seen that in one of the changes we made here on pH. The range used to be narrower
52 because it was thought that fish had to live within this certain pH range. Well as further science has developed
53 it's found that we can now expand that range and therefore we can make the change to the standards. If we were

1 to do a special study in a certain area instead of using the EPA criteria books, which showed numbers that were
2 different than the criteria books, we could use those numbers. We can also change the beneficial use if we saw fit.
3 If for some reason the beneficial use, provided it wasn't an existing use, we have to go through use attainability
4 now so then we could actually change the use itself. So these options I think are still open to us. While they're
5 not exactly easy to do they are done and they have been done in other states as well as Nevada.

6
7 Chairman Close asked what is the status of any litigation that's presently before the courts?

8
9 Mr. Porta answered with regard to water quality standards, the Environmental Protection Agency has been sued in
10 San Francisco District Court. That's where it was filed. The lawsuit basically has two claims and I believe
11 there's another amendment coming. The first claim is the fact that in the '80's, early '90's and last year, EPA
12 failed to do its duty in effect by approving Nevada's water quality standards. In other words, when these
13 standards were first proposed on the river and so forth, because they did not include Walker Lake, the claim is
14 that the standards were not complete and EPA should have not adopted those standards. That's the first claim.
15 The second claim refers to the impaired waters listing. Because Walker Lake was not included as part of that,
16 EPA failed in its duty for disapproving our impaired waters listing and they should have disapproved it and
17 adopted, first of all going back, water quality standards which included the lake and then list the lake as impaired.
18 The third amendment that we have heard, and I don't know if it's been filed yet, is in regard to the ESA
19 Endangered Species Act issues and EPA's failure to consult with the Fish and Wildlife Service on the Water
20 Quality Standards.

21
22 Currently, EPA has not responded to the complaint yet. There has been some issues with serving all of the parties
23 in the government because of the instances that happened back east in September, the mail and so forth is being
24 held and delayed and so EPA has not responded to the complaint as of yet and there's questions yet as to whether
25 they've been served. I think they're pretty close if not have been served. Formulating a response to that claim,
26 whether the response will be to ask the judge to simply dismiss the actions or will it be to answer the complaints?
27 We don't know. We have been in contact with EPA on the lawsuit. Most likely they will use our data to set it if
28 they are forced to by the courts to set a standard. So, we are working with them on that front and on the other
29 litigation front in the water rights case, we are participating in that alternative dispute resolution in the hopes that
30 we can work together on both the water quantity issue and water quality at the same time.

31
32 Chairman Close asked who are the parties in that litigation? Who is the plaintiff?

33
34 Mr. Porta asked on the water rights?

35
36 Commissioner Ricci answered the Department of Conservation and Natural Resources, I believe the Walker River
37 Irrigation District and . . .

38
39 Chairman Close asked these are the plaintiffs?

40
41 Commissioner Ricci answered I know they're in the caption. They're the ones on the top.

42
43 Commissioner Villaflor asked if the State does not have jurisdiction on the water flow on the reservation, how
44 does it adversely affect the general flow if they don't exactly follow the general guidelines of the water?

45
46 Mr. Porta stated let me make sure I understand your question exactly. You're asking about flow on the
47 reservation?

48
49 Commissioner Villaflor stated flow and if they don't follow the guidelines, how can it adversely affect the general
50 flow of the whole river?

51
52 Mr. Porta deferred the question to the State engineer, Mr. Ricci.

1 Commissioner Ricci asked Commissioner Villaflor to repeat the question.

2
3 Commissioner Villaflor asked if the State does not have jurisdiction on the quality of the water in the reservation
4 if their quality is poor, how does it adversely affect the general flow of the river? Let's make it simple. If they
5 pollute the river that's in their land, how does it affect adversely the rest of the flow?
6

7 Mr. Porta answered a similar instance would be like California and the Truckee River maybe (inaudible) Tribe
8 might be another example. Technically, we don't have jurisdiction on Tribal lands for water quality standards. I
9 believe EPA would have to work with the Tribe to somehow bring those water quality standards back into play.
10 The first thing would be to list the water as impaired for whatever pollutant was causing that and they would have
11 to work directly with EPA as a Tribal entity to come up with that list and most likely EPA may promulgate the
12 listing as well as the water quality standards.
13

14 Commissioner Villaflor asked so there is a mechanism that's in place to check the quality of the river that flows
15 through their land?
16

17 Mr. Porta answered yes. We check above and below and in some cases where Tribal interests have let us do the
18 sampling, they like it on their behalf, we have done that as well.
19

20 Chairman Close asked what would happen if they set more stringent standards for their reach (inaudible) before
21 and after?
22

23 Mr. Porta answered the city of Albuquerque is facing that right now where the State has adopted water quality
24 standards; however, part of, I believe it's the Rio Grande that flows through Albuquerque, the Tribal interest there
25 did set more stringent water quality standards. It's much like the State of California, State of Nevada adopting
26 different standards. We try to work through EPA as kind of the mediation agency to come at some agreement to
27 make our water quality standards consistent. If there were an impasse most likely that type of impasse would
28 probably end up in the court system somehow. But I think as long as they are within the criteria that EPA sets
29 forth, those water quality standards are valid. But certainly like a state, a Tribe has the right to set more stringent
30 water quality standards.
31

32 Commissioner Crowley stated I thought I was straight on the Tribal jurisdiction. The standards that we're setting
33 today will apply to the whole system, Tribal waters included. If the Tribe wants to set different standards they
34 need to work with the EPA and proactively come forward and say, "We don't agree with these and we're going to
35 do our own thing."
36

37 Mr. Porta stated correct.
38

39 Commissioner Crowley stated but that hasn't happened so . . .
40

41 Mr. Porta stated right.
42

43 Commissioner Iverson stated in the last couple of hearings we've heard Mr. Schaeffer indicate that he opposes
44 this because we're setting standards that we can't obtain. Do you believe that? Are we in a position where we
45 are, in fact, setting standards that we can't attain?
46

47 Mr. Porta stated I have two responses to that. First, the water quality standards we are proposing today are being
48 met and being met regularly. The only thing we're limited on is phosphorus and I believe turbidity or sediment.
49 Secondly, the Nevada Administrative Code allows for violations of water quality standards during drought or at
50 unusually high flows. So during those time when we have drought such as in the late '80's, early '90's, water
51 quality standards are technically not applicable for listing the waters as impaired. Water quality standards are set
52 on the basis of normal flow and normal years and I'm saying today that during these times these standards we are
53 proposing are being met. So I don't believe those concerns are valid.

1
2 Chairman Close called for further public comment. Since there was none he declared the public hearing closed.
3 He called for further discussion among the Commission members? There was none. He called for a motion.
4

5 **Commissioner Ricci motioned to adopt Petition 2002-03.**

6 **Commissioner Johnson seconded the motion.**

7 **DAG Gray stated for clarification . . .**

8 **Mr. Cowperthwaite stated it's the correct petition. I've mislabeled the things in terms of the files, but it**
9 **has been posted correctly.**

10 **DAG Gray stated I just wanted to make sure.**

11 **Chairman Close stated there are also several exhibits, which I think we should probably include: No. 7,**
12 **No. 11 . . .**

13 **Mr. Cowperthwaite stated and 14 and 15.**

14 **Chairman Close asked is that included in your motion to adopt those amendments?**

15 **Commissioner Ricci stated yes it is Mr. Chairman.**

16 **The motion carried unanimously.**

17
18 Chairman Close moved to **Agenda Item III. C. Petition 2002-04.**

19
20 **(Petition 2002-04 (LCB R-129-01)** is a permanent amendment to NAC 445A.119 through 445A.225, the
21 pollution control standards for water quality. The permanent regulation establishes water quality standards for
22 Walker Lake. The regulation establishes beneficial uses and water quality standards to protect those uses.
23 Proposed standards for Walker Lake include pH, dissolved oxygen, total suspended solids, temperature, dissolved
24 oxygen, nitrite, total inorganic nitrogen, total phosphorus and E. Coli.)

25
26 Tom Porta introduced himself as being with the Bureau of Water Quality Planning. He stated John Heggeness
27 with our Water Quality Standards Bureau will be presenting the proposed standards that we have had. What we
28 have done with this petition versus the last petition that was before you is we have eliminated TDS, arsenic, and
29 chloride. Again, it's our position that we'll work through the alternative dispute resolution process on the water
30 rights litigation to try to hopefully come up with standards as a result of that process based on what comes from
31 the water rights that are allocated and so forth.

32
33 John Heggeness introduced himself as being with NDEP. He stated when we started our review for the Walker
34 River system and the water quality standards review we noticed that we do have narrative standards, which are for
35 all waters of the State, but we do not have any specific standards for Walker Lake. So we are proposing to add
36 another reach to the Nevada Administrative Code to include Walker Lake.

37
38 As you all know we were here about a year ago proposing these standards. This is a list of the changes that we
39 have made to those standards that we proposed a year ago. As Tom said, we are going to remove total dissolved
40 solids, chloride and arsenic. We would like to apply the standards throughout the lake. While we were getting
41 prepared for this we also reviewed our RMHQ procedures in the continuing planning process and we had some
42 questions about how to set an annual average RMHQ. So rather than setting an annual average RMHQ for total
43 inorganic nitrogen we are going to put that off this time and remove it from our petition. Also, we would like to
44 change the E. Coli to the annual geometric mean. This will be more consistent with what we will be proposing
45 for bacteria criteria hopefully this summer.

46
47 The first step in adopting water quality standard is to set the beneficial uses. Through observation and public
48 input we are proposing that the beneficial uses include recreation involving contact with the water, which is
49 swimming, water skiing, recreation not involving contact with the water which is boating, fishing, propagation of
50 wildlife and propagation of aquatic life with a species of major concern being the tui chub, the Tahoe sucker and
51 the adult and juvenile Lahontan cutthroat trout. The reason we had adult and juvenile cutthroat trout is because
52 there is not a natural reproducing population in the lake. It is a stocked system.
53

1 This is a table just listing the proposed water quality standards for the lake. I'm going to go through all of them
2 on a series of slides, a series of graphs. The first one, which there is not a graph for, is the recommended standard
3 for temperature, which is a Delta T of 2 degrees at the boundary of an approved mixing zone. We are
4 recommending a pH standard of 6.5 to 9.7. The EPA criterion is 6.5 to 9 as you heard in the previous petition.
5 But the pH in Walker Lake is higher than that and as you can see it varies from 9.2 to about 9.7. We are
6 proposing the 9.7 being the upper limit on the pH boundary.

7
8 This is dissolved oxygen. The proposed standard is greater than 5 mg/l and this is also the EPA criterion and as
9 you can see at Sportsman's Beach we are meeting those standards. We will have a footnote to the dissolved
10 oxygen standard that it does only apply in the epilimnion.

11
12 Commissioner Iverson asked what was your footnote again?

13
14 Mr. Heggeness answered that the dissolved oxygen standard only applies in the epilimnion when the lake is
15 stratified. Suspended solids - our proposed standard is less than 25 and the EPA criteria is from 25 to 80. As you
16 can see, there is only one instance early in the 1990's that it did exceed that standard.

17
18 The proposed standards for nitrite and nitrate are the same as the EPA criteria: 0.06 for aquatic life and less than
19 90 again for aquatic life and as you can see those both have met the standard.

20
21 This is total inorganic nitrogen and we are recommending an RMHQ of less than .03 mg/l.

22
23 Total phosphorus, we are proposing a standard of 0.82 mg/l. As you heard before, we have the EPA criteria or
24 standards of fecal coliform we are proposing the E. Coli, which is the current criterion from EPA. Again, we
25 changed the proposal to an annual geometric mean and all of the values that we've gotten from Walker Lake have
26 been below our detection limit of 10.

27
28 We have been performing additional sampling on the lake starting in 1999. These are our sample points on the
29 lake. The first point that we've been sampling is at Sportsman's Beach. We have also been sampling at these
30 three other points, 2, 3 and 4. At each of those points we are taking three samples, a surface or epilimnion, a
31 metalimnion, or essentially a middle depth and a hypolimnion, or a deep-water sample. So there's a total of nine
32 samples collected in 2, 3 and 4. At the same time we have also been collecting an extra sample at Sportsman's
33 Beach. So there are two samples collected at Sportsman's Beach; one is collected by monitoring on their normal
34 schedule and one is collected during this lake-wide sampling.

35
36 We did some statistical tests to establish that the sampling within the lake is running into the same, is seeing the
37 same water quality that we have been collecting at Sportsman's Beach. We performed T tests and ranked some
38 tests on all of the constituents. Actually I ranked some for all of the constituents in the T test on just the
39 constituents that were normally distributed.

40
41 Next we've got a series of box plots showing all of the data from the different sites. The box plots show there's a
42 little square in the middle that is the median value. The box itself shows the 25th and 75th percentile and the
43 whiskers show non-outlier values.

44
45 Chairman Close asked what does that mean?

46
47 Mr. Heggeness answered it depends on how you define an outlier value as to whether it is so far from this, the box
48 itself. If it is more than three values, or three points higher than the width of the box it will be considered an
49 outlier. We will see some of those in some of the other graphs.

50
51 This is showing temperature. The sample all the way over to the left of WL1 is the sample that monitoring took at
52 the Sportsman's Beach. The WL-1 that one is the sampling that was collected during lake-wide sampling but it's
53 also collected at Sportsman's Beach and so there's a comparison between the two different samples. As it goes

1 toward the right, WL2E, WL2M, WL2H, that is the surface, middle and bottom samples and the same thing with
2 3 and 4. What you can see from this is that the bottom samples show a lot less of a variation because the
3 temperature is a lot more consistent at the deeper levels.
4

5 Again, you see the same sort of a thing with dissolved oxygen, you get much more of a variation with the oxygen
6 in the deeper samples, the hypolimnion samples, because during stratification the oxygen levels will be consumed
7 during decomposition of the algae.
8

9 Total suspended solids, all of the samples were pretty similar to what we had collected at Sportsman's Beach and
10 you can see some of the circles show some of the outlier values particularly the ones up toward the top.
11

12 This is nitrate and again all of the values are very similar to what was collected at the beach.
13

14 Again, same thing with nitrate. I guess I had it backwards, the first one was nitrate, and this is nitrite.
15

16 Commissioner Johnson asked basically that's the detection limit?
17

18 Mr. Heggeness answered yes. This is the total inorganic nitrogen and you do see some variations in the deeper
19 samples because of the decomposition of the algae during stratification so you do get a higher value of some of
20 the nutrients. And again, total phosphorus, they're all very similar.
21

22 This is pH and when I first saw this there's an obvious difference that jumps out at you. There's some sort of a
23 difference between a pH collected at Sportsman's Beach and the other samples that were collected using our
24 hydro lab. Looking into this trying to figure out why and wondering if the samples are, the numbers we're
25 recommending for pH we did a bit more of a study on that and we took the hydro lab and the pH meters out to the
26 lake and essentially got the same difference. We checked some other things, but what we think it is is there's a
27 temperature compensation in the probes and if you want to put up the next one, there are two different pH buffers
28 here. There's the upper graph is the 7 buffer and the lower table is the pH 10 buffer and the probes depending on
29 the temperature will give you a different reading due to the temperature compensation within the probe. Checking
30 this and checking both our hand-held units and our hydro lab unit on the bottom table, the hand-held unit at a
31 temperature of 8 was reading with the 7 buffer 7.8 which corresponds very well to what it should be seeing with a
32 pH 7 buffer and then with a temperature of 10 it was reading 10.16. Again, reading very well with the buffer.
33 Our hydro lab seemed to have much more problem with that so I guess the conclusion I came to from that is our
34 \$10,000 piece of equipment isn't as good as a \$50 piece of equipment.
35

36 Commissioner Johnson asked could you go back to the previous slide?
37

38 Mr. Heggeness answered yes.
39

40 Commissioner Johnson asked how much difference is that? I can't read the scale.
41

42 Mr. Heggeness answered it's about .2 to 2.25.
43

44 Commissioner Johnson asked so then you're looking at a range of 9.0 to 9.2 where most of the boxes are right?
45

46 Mr. Heggeness answered yes. And then the box on the left is about 9.5 to just over 9.6. And, again, this is just a
47 table summarizing the proposed standards for the lake.
48

49 Commissioner Crowley asked if you set standards that apply to the whole lake and you have one area of
50 nonattainment how do you treat that? Is there averaging that goes on or do you just need one. .
51

52 Mr. Heggeness answered we do have provisions in that if there is just like one exceedence that's not considered a
53 violation. It has to be more consistent than that. Depending on if this was a point source discharging then there

1 might be some question as to what we might do about it. In most cases if it were just a general exceedence, then
2 we would end up looking at the whole lake.

3 .
4 Commissioner Johnson asked do you want to address the issue of pH and justification for using the 9.7 as the top
5 value?

6
7 Mr. Heggeness stated because we feel that the conditions within the lake are sustaining the beneficial uses that are
8 on the lake and due to the natural conditions of the lake, or existing conditions at this point in time, the beneficial
9 uses are being supported with this pH.

10
11 Commissioner Johnson asked does the pH vary over decades? Do we have information to indicate that? And I
12 don't recall the fishery studies indicated the harm in TDS and chloride, but I don't remember whether there was
13 any testing on pH or not. There is some relationship but I've (inaudible).

14
15 Mr. Heggeness stated I don't remember specifically studies on pH. I know when we have talked to the Division
16 of Wildlife they have said this was fine. Most of the studies that I have seen have been on temperature and TDS.

17
18 Chairman Close called for further questions. There were none. He called for members of the public who wished
19 to speak in opposition to this petition.

20
21 Louis Thompson introduced himself as being with the Walker Lake Working Group in Mineral County. He
22 stated first I want to thank you for your actions back in February this year in setting water quality standards for
23 Walker Lake. Although the standard for TDS was higher than desirable to the health of the tui chub and the trout
24 it was a standard that would allow for the continued viability of the lake as a fishery and recreation area for the
25 people of the State of Nevada. We were very disheartened by the action of the legislature in overturning the many
26 months of hard work by the people in the Division of Environmental Protection and the actions of this Board in
27 setting standards. It's unfortunate that politics was able to overturn the actions of the professionals who have the
28 expertise and the obligation to set standards for the lake. The action of the legislature has placed NDEP and this
29 commission in a position that can best be described as between a rock and a hard place. While trying to meet the
30 mandates of the Federal Clean Water Act and bring the State into compliance your efforts were thwarted by the
31 very lawmakers who give you the responsibility to meet those requirements. We recognize the position you are in
32 and we can sympathize with you. However, we cannot sit back idly and allow the continued neglect of Walker
33 Lake. As was mentioned earlier, you're aware of the pending lawsuit wherein we have sued the federal EPA for
34 allowing the State of Nevada to neglect water quality standards for the lake and we're asking the EPA to perform
35 their duty to step in and set the appropriate standards. We will continue our efforts until the State performs its
36 responsibilities on behalf of Walker Lake.

37
38 The standards before you today do not meet the requirements of the Clean Water Act. Even though you may be
39 familiar of those requirements I'd like to remind you of the wording in the Act. "Whenever the State revises or
40 adopts a new standard such or new standard shall be submitted to the administrator. Such revised or new water
41 quality standards shall consist of the designated use of the navigable waters involved and the water quality criteria
42 for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare,
43 enhance the quality of water, and serve the purposes of this chapter. Such standards shall be established taking
44 into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational
45 purposes and agricultural, industrial and other purposes also taking into account, taking into consideration their
46 use and value for navigation."

47
48 I know the attorneys can argue. I'm not an attorney, but I do understand the meaning of the word "shall." This
49 Act does not allow for setting standards that will not support the designated uses. The proposed standards before
50 the Commission today will not support the designated use or propagation of fish and wildlife in Walker Lake.
51 Without a standard for total dissolved solids the water quality can deteriorate to the point that no freshwater fish
52 will be able to survive in the lake. It is our belief and our position that in accordance with the requirements of the
53 Clean Water Act, water quality standards for Walker Lake must include standards for TDS, arsenic and chloride

1 and that those standards must be set so as to support the designated use of propagation of fish and wildlife. If
2 you're going to set water quality standards for the lake today, you must include TDS, arsenic and chlorides. If
3 you're not going to include these elements, we believe you must reject the proposed standards. Relying on an as-
4 yet unapproved alternative dispute resolution process to fix the problem is unrealistic and I believe does not meet
5 the requirements of the Clean Water Act.

6
7 Chairman Close asked do you think that the standards that are being adopted are beneficial to the quality of the
8 lake even though it may omit the three categories, which you have mentioned?

9
10 Mr. Thompson answered without TDS particularly being a standard being established for that almost any other
11 standard is not applicable. It won't help the lake.

12
13 Commissioner Crowley asked is there another alternative that this Commission can take that would be beneficial
14 to the lake without doing nothing that your group would support?

15
16 Mr. Thompson answered as I said earlier, I believe you've been placed in a very difficult position. If you approve
17 these standards, we'll protest them in court. It is not meeting the Clean Water Act. If you do nothing, we'll still
18 be in court because of nothing being done. So, I'm not sure what I can suggest except that these standards we do
19 not believe benefit the lake nor meet the mandates of the Clean Water Act.

20
21 Chairman Close called for further questions. There were none. He called upon Susan Lynn.

22
23 Susan Lynn stated thank you for this opportunity to comment on proposed regulations for the Walker Lake. The
24 Clean Water Act is very complex and I have to confess that I've not read it all, but I've read a better portion of it
25 and I too am somewhat confused because it seems like there are conflicting directions in it. However, that said
26 there is still an overriding obligation that the EPA has delegated to the State to set clean water standards for its
27 bodies of water within this State and in Nevada Walker Lake is one of those bodies of water that is now becoming
28 an internationally known lake. It is one of five or six international clean fresh water lakes in the world, in the
29 world. So this is not just a State treasure but it is a national and an international treasure and I am here to ask you
30 to do the right thing. At minimum we would ask you to readopt the standards that you set last February. They are
31 not the best, but they are something and they include TDS, chloride, and arsenic.

32
33 Pyramid Lake just recently developed a water quality control plan for Pyramid Lake. And, admittedly, the water
34 quality standards are far different from Pyramid than they are for Walker. However, there are a couple of key
35 statements in this plan that I though might be beneficial to review. They talk about the terminology of the Clean
36 Water Act and it says, "A water quality standard has several elements that together define the desired water
37 quality for a portion of an entire water body. Two basic elements of a standard that are set are beneficial
38 designated uses for the water body and the water quality characteristics or criteria," which you are talking about
39 today, "needed to restore or maintain those uses." The completed water quality standards document also contains
40 an anti-degradation policy. It is important to note that water quality standards established for a water body do not
41 need to be achievable at the time standards are set. One of the purposes of the water quality standards is to
42 establish goals for desired water quality of our nation's waters. In addition, standards provide a basis for the
43 development of water quality based treatment controls which have nothing to do with water rights, but have to do
44 with what other methods we may find or develop to improve the water quality standards of the lake. They are
45 also strategies for watershed management. At a minimum, water quality standards must provide for the protection
46 and propagation of fish, shellfish, wildlife, and recreation. This is the so-called goal of fishable and swimmable.

47
48 Now we are reaching the levels at the lake where we will no longer have fishable waters. The TDS level has risen
49 to a level of 13,100 to 13,200. The demise of the fish will probably begin occurring at 14,000 to 15,000 ppm of
50 TDS. We are less than 1,000 ppm away and those TDS levels have risen better than 1,000 ppm per year in our
51 drought situations. So the fishery are on the brink but it is not just the Lahontan cutthroat trout, it is the tui chub,
52 it is the phytoplankton, it is all the other little critters that we refer to in the lake that develop the food chain and
53 the food chain is also important to the largest congregation of common loons in North America. They come

1 through Walker Lake in the fall and in the spring and they stop there because there are fish in that lake to eat.
2 They recharge and then they fly on to Canada in the summer. They fly to Mexico in the winter. And so those are
3 the things that are dependent upon water quality in this lake as well as human recreation.
4

5 At this point I would say that nonattainment is not an excuse for not passing water quality standards that include
6 arsenic, chloride and TDS. I would urge you to consider that this is an internationally known lake and that we do
7 not want to be the poster-boy example or the poster-girl example of bad management of water quality in a lake
8 that is internationally important.
9

10 Commissioner Ricci stated I guess I'm still a little confused here, Ms. Lynn, about if the standards are not
11 attainable or they're exceeded right now, and going back to the 12,000 that was adopted in February and
12 everybody knows what happened to that, and it's a goal and it is a goal then to achieve that standard. If the Clean
13 Water Act doesn't allow any alteration of existing water rights, what do you do? What would you propose to do
14 if you were in charge?
15

16 Ms. Lynn stated well, the Bureau of Land Management is exploring those options right now in its EIS for Walker
17 Lake. Some of the things that they are considering are a desalinization plant, which is quite expensive, but it's an
18 option, infusions of fresh water during floods if there is another flood and there most certainly will be. There are
19 entities at federal and state levels I believe that have, if they are able through legal, to combine water to send it
20 down to the lake on an emergency one-time basis to at least stabilize the lake for a while longer. There are a
21 number of other possibilities so I don't see it as undoable. I see it as that it's going to take some concentration
22 and if you don't meet it the first year, you don't meet it the first year. If you don't meet it the second year, the
23 EPA has been known to be quite bending once you set the standards to allow you the time to find a solution and
24 there's also money to help you find a solution at the federal level. So, I don't want to talk about federalizing the
25 lake and I don't want to talk about federalizing water quality standards so I think it behooves the State to do
26 something about it at this time.
27

28 Commissioner Crowley asked are those options that the BLM is exploring, are they going to proceed anyway?
29

30 Ms. Lynn answered they're doing an EIS to determine cost benefit ratios, environmental impacts and we don't
31 know, we think that report was supposed to be out two weeks ago, or a week ago. It is now projected to be out in
32 mid-March and at that time we'll look at all of the pros and cons of all of the different proposals. I don't pretend
33 to know what they are because I am not a cooperator in that effort. I will be a commenter obviously.
34

35 Chairman Close thanked Ms. Lynn and called upon Rose Strickland.
36

37 Rose Strickland introduced herself as representing the 5,200 members of the Toiyabe Chapter of the Sierra Club
38 who live in Nevada in the eastern Sierra. She stated I would ask that you incorporate all of the previous Sierra
39 Club testimony on this issue of water quality standards for Walker Lake into the record of this proceeding.
40

41 Chairman Close stated I'm not sure we can do that. We've heard it and of course we can take cognizance of it but
42 something that is not present in our record right now I'd think we cannot automatically include it. Certainly
43 we've heard the testimony in those previous hearings and that would be part of our record.
44

45 Ms. Strickland continued. She stated Nevada has accepted the responsibility of implementing the Clean Water
46 Act for this State. In order to do that Nevada must set beneficial uses and water quality standards to support those
47 uses. Water quality standards have been set or revised at least three times for the Walker River since the 1980's,
48 but never for Walker Lake. In my previous testimony when we ask why the standards had not been set for the
49 lake we never received an answer from the State. The Nevada Environmental Commission did set beneficial uses
50 and water quality standards for Walker Lake last winter. At that time we testified and still believe these standards
51 are not as strong as the ones we would have like to have seen the State set. Subsequently, the Nevada Legislative
52 Commission rejected these weaker standards. What I understand from these proceedings that you are now

1 proposing beneficial uses and some water quality standards, but no standards are on TDS levels, chlorine or
2 arsenic in order to support those beneficial uses.

3
4 The Sierra Club urges you to readopt the previously adopted water quality standards for Walker Lake as the
5 minimum, the first step to take. We believe that you should do this because this is necessary for the State to
6 comply with the Clean Water Act. We also believe it is in within the State's authority. We do not believe there is
7 legal authority for the legislative branch of the State to direct or control the administrative branch in carrying out
8 the State's responsibility under the Clean Water Act. If other states had not set water quality standards for their
9 rivers and lakes and worked to meet those standards, we'd still have rivers that catch on fire in the east from the
10 toxic pollution. Of course these problems were not solved overnight, but they were solved and the people in those
11 States can now fish and swim in those previously polluted waters. Setting or readopting the previously adopted
12 water quality standards for Walker Lake is the right thing to do. Walker Lake is one of Nevada's premier
13 fisheries and natural assets that belong to the people of the State of Nevada. The only alternative we see is, to the
14 State's accepting responsibility for Walker Lake, is to accept that the river and the lake will be federalized. We
15 do not want to lose Walker Lake.

16
17 Commissioner Crowley asked what would the course of our regulation be if we readopted the previously adopted
18 regulation? Would it face Legislative Commission scrutiny again? And come right back our way? Or is there a
19 limit on how many times you can hit them with the same regulation?

20
21 Chairman Close stated they have a bigger fist than we have and so they likely would hit us more than we'd hit
22 them. Do you want to respond to that and maybe review to some extent what has happened historically with our
23 adoption at the previous meeting and then the legislature's action and how we're back here again?

24
25 Mr. Porta stated I think to answer part of that question is first of all with today's hearing and that is the Open
26 Meeting Law. We have not public noticed that we'd be considering TDS, arsenic or chloride in these standards.
27 So at this point at this meeting I don't think, and you'll have to consult with the attorneys, but it could be a
28 consideration for today's hearing. You could certainly direct us to go back and come back with a standard at a
29 later hearing. With regard to what happens if you move forward, let's say we did with a TDS standard, I mean we
30 get in this round robin it seems like with the legislature. You know we've looked at this question. What's our
31 best course of action here given the political climate? We see that by adopting at least partial standards and
32 acceptance of beneficial uses, i.e., the fish, the birds and so forth, that is the beginning to the standards adoption
33 process and we have precedence setting in the fact that we have adopted partial standards in the past, particularly
34 one that comes to mind was the Humboldt. There was a lot of controversy on the temperature standard. I wasn't
35 involved then, but my understanding was there were a number of contentious issues over that. The Commission
36 adopted the rest of the standards, the State then worked with the various stakeholders that were involved and came
37 back to the Commission at a later date to get a temperature standard for the Humboldt. That's sort of our
38 intention here to do this. You know, I think if we were to consider for somehow if it was allowed the TDS,
39 arsenic and chloride standards today, we would have these standards shot down again, basically. I just don't see
40 the political climate, the political will being there to move forward. So our position is we work through the
41 alternative dispute resolution in the water rights case and try to come up with some standards as a result of how
42 much flows will be appropriated and so forth. I hope that answered your question.

43
44 Commissioner Johnson stated the very first slide that was presented said that there's a narrative description of
45 standards for all waters of the State. Will you review those for me?

46
47 Mr. Porta stated I don't know them verbatim, but basically we call them the free-from standards. Any waters of
48 the State have to be free from oil, grease, debris, and any nuisance-causing type agents. They also have to be free
49 from toxics, pesticides at a certain level. Those apply to all waters. What we're talking about here today are
50 specific, designated parameters. Just for reference, the free-from standards are contained in 445A.121 and it says,
51 "Waters must be free from substances attributable to domestic and/or industrial waste or other controllable
52 sources that will settle from sludge or bottom deposits in the amount sufficient to be unsightly, odorous, or in an
53 amount sufficient to interfere with any beneficial uses of the water." So those apply to all waters and there are

1 eight other sections that go on to this. So there are technically water quality standards on the lake, but we do not
2 have the specific designated uses and designated water quality standards for Walker Lake, but these standards in
3 addition to the toxic standards apply to that water body.
4

5 Commissioner Johnson asked that's only assuming we establish a beneficial use?
6

7 Mr. Porta answered right. The free-from standards regardless of beneficial use are applicable. You can't have
8 debris and grease and oil floating in any water of the State of Nevada.
9

10 Commissioner Johnson asked but for the other portions?
11

12 Mr. Porta answered yes.
13

14 Commissioner Iverson stated the regulations that are in front of us today don't include certain components of the
15 regulations that we talked about several months ago and we had to come back and address them a second time. It
16 appears that the regulations that are posted are the regulations we have to deal with today and we can't all of a
17 sudden jump into TDL's and arsenic and things like that because that is not what is posted on the agenda. I also
18 think if they were posted you'd probably have other people here that aren't here because I think the ones that
19 you're looking at here are probably some that in a lot of cases most people have agreed on or at least they
20 understand and they think there's some benefit. We have to remember that the original vote on this Board was 5
21 to 4 and that's not an overwhelming majority. So there were some real concerns. I think DEP has done a good
22 job of going out there and at least trying to look at what we agree on. I'm not so sure that we'll ever get to a point
23 where we agree on everything. But I do think that these regulations are at least a start and it gives us some time to
24 get some standards on the lake. It gives us time to continue to study, continue to negotiate, continue to work with
25 other groups in trying to come up with some kind of a compromise. I'm a little concerned about the opponents
26 that are coming up, those who object to this, because you know it would be nice from a lot of people's side if we
27 won everything. This might be something where there has to be a little bit of give and take and if you don't get
28 100 percent of what you're looking for, we may have to settle for some of the other. What I'm hearing right now
29 is that the folks that have been up here are saying don't do anything right now, when in fact, we probably should
30 be doing something right now from a State level.
31

32 Mr. Porta stated you must realize that there's another action taking place in San Francisco and that the courts may
33 instruct EPA, if they do not prevail in defending this lawsuit, they may instruct EPA to promulgate these
34 standards for us and they would be in the federal register and they would be a federal standard. By the way, we
35 do have those for various metals in the State. It's not unprecedented and other states have federal adopted water
36 quality standards as well for certain portions of their water bodies. So, time is of the essence. There's no
37 question with regard to getting this issue resolved. We do not want to see the lake go to a state where it's no
38 longer recoverable. In other words, the entire ecosystem may collapse. We are always positive that this can be
39 done in an expeditious manner as practical through these other means. Right now we don't see any other options.
40 If there are other options that people have to suggest to us to get resolution on this thing we'd be more than happy
41 to hear that. But right now this is the only option we see available to us.
42

43 Commissioner Iverson stated during the last hearing we talked about a couple of other alternatives that I want to
44 clarify. In the new regulations that you have in front of us today, that's for the entire lake. Now there was some
45 talk about dividing the lake and setting up standards in two different directions, looking at beneficial uses in two
46 different areas, one dealing with wildlife, one dealing with recreation, one dealing with whatever. I'm assuming
47 that is no longer being looked at. The other thing we looked at was the possibility of some levels and we have
48 asked one of the scientists from one of the consulting groups to take a look at that. I'm assuming that that
49 basically is out of this now, but when we start talking about TDL's I think that seems to be the major stumbling
50 block and it seems like to me if the State came forward with some positive it's a lot better than doing nothing.
51

52 Mr. Porta stated yes and that's our take here today. Ms. Lynn stated that this is a unique lake and she mentioned
53 there are a half a dozen lakes and the reason these are unique is that there's no outlet to the ocean. They're

1 terminal lakes and Nevada happens to have two of them: Pyramid Lake and Walker Lake. So that's what makes
2 this unique. Other lakes have an outflow so they can handle drought, they can handle flood situations and their
3 concentrations may fluctuate, but typically they can recover because they have a sink or an outflow to the ocean.
4 So in this particular case whatever goes into Walker Lake or whatever leaves Walker Lake is there. It doesn't go
5 anywhere else. So, we think this is the best course of action. If other parties have other actions or paths they
6 think we should take, we'd certainly be open to that.
7

8 Chairman Close stated during one of our previous hearings we talked about methods to increase the flow into
9 Walker Lake. Can you kind of give us some overview as to where we are on that point?
10

11 Mr. Porta explained one of the things is the EIS. Part of the EIS that the federal government is looking at is
12 voluntary purchase to water rights, or selling of water rights. Other things that can be looked at for getting flow to
13 the lake are the actual river itself and repairs that can be done particularly above Weber Reservoir the areas and
14 below it to that extent as well. The river is very braided, shallowed, and it's not channelized and therefore it's
15 more susceptible to evaporation losses. So there can be some channel improvements. We don't want to see a
16 concrete ditch. That might have been the solution in the '70's, but now we have bio techniques, bio engineering
17 that can work to make a stream channel more efficient at getting water through it without loss and so these
18 remedies can be done and can be placed. One of the things we proposed at the last hearing was the fact that if
19 you're going to do these improvements whether bifurcating the lake or desalinization, or channelizing, or
20 whatever, you've got to have a goal of someplace to start and that's why we originally proposed the 10,000
21 standard so people would know if they were looking at these solutions how far they need to go. So that was one
22 of the original purposes of setting the standards at that time even though they were not being met. So these
23 solutions are still being discussed. We hope that through the water rights mediation process we can come up with
24 additional solutions. I don't know if bifurcating the lake or desalinization are feasible. Certainly not at this time,
25 but maybe something in the future can be done.
26

27 Chairman Close asked could you also touch on the legislative action that was taken following our last meeting on
28 this matter?
29

30 Mr. Porta explained the regulations that contained the standards that were previously adopted by the
31 Environmental Commission required review by the Legislative Commission. By a unanimous vote, that body
32 remanded the regulations back to the State Environmental Commission because they felt they did not conform to
33 the statute for water quality in considering agricultural interests and other interests. In other words, they said that
34 they were in conflict. Prior to the next meeting for the Commission to actually consider that remanding back,
35 there was a Senate Concurrent Resolution that was passed, I think a vote of 40 something to 0, basically saying
36 that those regulations are not effective and the reason they did that is because my understanding is the fact that
37 they had to act on that, otherwise the regulations would have become effective. That's why the concurrent
38 resolution was passed. So in order to do that with the legislature going out of session they had to pass the
39 concurrent resolution to basically vacate the regulations. I think the morning that resolution was passed we came
40 back to you and asked your opinion of what we should do here and at that time because of the political will that
41 was seen, this body basically said, "At this time we don't think it would be advantageous to continue." We came
42 back in a hearing in Laughlin to request some clarification on that direction on whether or not that prevented the
43 Division from continuing work on Walker Lake and you said, "No." So as a result, we formulated this plan and
44 are now back to you with these partial standards for the lake.
45

46 Chairman Close called for further questions. There were none. He called upon Marjorie Sill.
47

48 Marjorie Sill introduced herself as being a resident of northern Nevada for over 40 years. She stated this is the
49 first time I've had the privilege of meeting with the Environmental Commission, although I know several of you
50 personally. As I understand it, you are an environmental commission, in other words, you're the guardians of the
51 environment for the State of Nevada and I think this is a very important position. I don't think you're a political
52 body and yet what I heard was that your standards, which had been passed in a previous meeting, were overturned
53 by the State legislature, which is a political party. However, I do not believe that the State legislature represents

1 the people of Nevada and of California. I know many, many people. I'm a member of a large number of
2 organizations and every one of those people to whom I have talked believes that we need to protect Walker Lake
3 and we will not protect Walker Lake until we have a TDS standard that makes sense. Right now with these
4 weakened regulations, and they were a minimum at the time they were passed, you are not going to protect
5 Walker Lake. Walker Lake, unless something is done, is going to die. That is my biggest concern and that is
6 what I want to engage your help in preventing.
7

8 Chairman Close called for questions. There were none. He called upon Dennis Ghiglieri.
9

10 Dennis Ghiglieri introduced himself as being a lifelong resident of Reno, Nevada. He stated it's a pleasure to
11 address you. I wanted to make the following point: the two beneficial uses which were talked about for Walker
12 Lake are propagation of wildlife, the sustaining of wildlife which uses the lake which includes the vast numbers,
13 tens of thousands of water fowl that depend on the lake every year and also the aquatic life. You're in a very odd
14 position because in order to support those you need to set a TDS standard because what's going to kill those
15 animals is, in fact, the rising of dissolved solids, which affect their biology. Their physical natures cannot take
16 this constantly increasing physical change in the water. So you need to adopt these, you need to go back and
17 adopt TDS standards as well as the chlorides because these things are related and arsenic, in order to meet the
18 beneficial use. I do not envy your task because you took the right position and you were told you couldn't take it.
19 That's a sad thing, but you can't deal with that directly other than to, in my opinion, return to what is necessary
20 for Walker Lake and that is to set a TDS, chloride, and arsenic standard along with the other standards. I certainly
21 appreciate your position. I thank you for your previous votes to support Walker Lake. I wish there were an easy
22 answer for you. Easy answers are great. I certainly love them when they come up, but they aren't always
23 available. What I would ask is reconsideration of the TDS, arsenic to be included with the other standards, which
24 have been recommended by the NDEP.
25

26 Chairman Close called for questions. There were none. He called upon Ellen Pillard.
27

28 Ellen Pillard introduced herself as the chair of the Toiyabe Chapter of the Sierra Club and acting as the interim
29 coordinator for the national campaign to save Walker Lake. She stated I'm representing 700,000 members of the
30 Sierra Club and several other national organizations which have just recently made a commitment to conduct a
31 campaign to raise the public's awareness of the value of Walker Lake and its imminent death. It struck me as I
32 attended this hearing that there is an elephant sitting right in front of you and me and it is a dying elephant and
33 that's Walker Lake. It also struck me that you face a very complex problem. I understand that you passed
34 resolution that would have at least allowed our patient, this dying elephant, to have minimally survived until we
35 were able to resuscitate it with guaranteed fresh water. I understand that. It is my opportunity and several
36 national environmental organizations have committed to this project to help create the political will in this state
37 and California because it is a bi-state problem to set standards and to come to solution on a very complex problem
38 that will provide fresh water to Walker Lake to sustain the threatened fish, the migratory birds that use the lake,
39 all of which we will lose and are close to losing at this moment. I heard talk of the former standard of TDS being
40 12,000. In a recent report at a meeting I attended it was estimated that the lake is now at 13,000 TDS. The tui
41 chub will not reproduce at some level of 13,000 TDS. I am not criticizing you for it. I think you have done the
42 best job that you can do, but it is obvious to me that the standards you're talking about now will be like putting a
43 band-aid on somebody's throat that is cut. It is not going to help the lake, the fish, the birds, or the vast number of
44 people in Nevada who both recreate there and value it as the priceless treasure that it is.
45

46 Chairman Close called for questions. There were none. He called for others who wished to speak in opposition
47 to the petition. There were none. He called for people who wished to speak in favor of the petition. He called
48 upon Gordon DePaoli.
49

50 Gordon DePaoli introduced himself and stated that he was speaking on behalf of the Walker River Irrigation
51 District. He stated I know most of you heard the presentations that the district made in December of 2000 in
52 Yerington and in February of 2001 in Carson City. You've heard some more today about some of the things that

1 are going on but I might just provide a little bit of quick background on the water quantity litigation that is
2 pending on the Walker River system at the present time.
3

4 In 1924 the United States filed an action on the Walker River system to have the water rights determined in
5 particular for the Walker River Indian Reservation and upstream and a decree was entered in 1936 and amended
6 in 1940 and that decree has controlled water use on the system both in Nevada and in California since that time.
7 The additional claims that are now pending relate first to claims made by the Walker River Paiute Tribe and the
8 United States. The Walker River Tribe and the United States are seeking recognition of additional water rights
9 for the Walker River Indian Reservation to recognize a right for Weber Reservoir, which is on the reservation, and
10 in addition, to recognize an implied reserve right for additional land that was included in the reservation in 1936.
11 Their claims relate both to surface and groundwater. In addition, the United States is seeking recognition of water
12 rights on the Walker River system for federal enclaves from the top of the system to the bottom of the system for
13 the benefit of the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony, various allotments along the way,
14 the Hawthorne Army Ammunition Plant, the National Forest, the United States Marine Corp Winter Warfare
15 Training Center and for the Bureau of Land Management. That litigation is in the process in its infancy although
16 it was commenced in 1992 the process now really is involving identification of the parties to the litigation and
17 service of those parties. In addition, Mineral County has sought to intervene in the original proceeding to assert a
18 claim for the benefit of Walker Lake to, in effect, assert the Public Trust Doctrine to require minimum flows and
19 minimum levels at Walker Lake and that litigation too is in the stage of determining the parties and service on the
20 parties.
21

22 Finally, there has not been an allocation of the waters of the Walker River system between Nevada and California
23 although the California/Nevada compact was approved by the two states in 1971. That compact includes
24 Truckee, Carson, Lake Tahoe and the Walker River. The compact was never ratified and because public law
25 101618 deals with the interstate allocation of Lake Tahoe and the Truckee and Carson Rivers, it's not likely
26 Congress will ever ratify that compact. So there's a need to address that interstate allocation.
27

28 You heard quite a bit about the mediation process or alternative dispute resolution that is also getting underway.
29 At this point the State of Nevada, the State of California, the Walker River Irrigation District, Mineral County, the
30 Walker Lake Working Group, Walker River Paiute Tribe and Lyon County, Nevada, and there may be others, but
31 those are the ones that I know about have sent letters to the attorney general of the United States and the secretary
32 of the interior of the United States requesting that the United States assemble a team to represent the United States
33 in negotiations concerning the issues on the Walker River system. The United States has not yet responded with
34 assembling that negotiating team, but it's my understanding they are in the process of trying to put that together.
35 In the meantime, the parties I mentioned have begun the process to at least identify a short list of candidates to be
36 mediators in that process.
37

38 I sent, either it would be a facsimile or mail to each of you a letter dated December 5, 2001 where I tried to
39 provide some background as to what had taken place with the prior petition and what the Nevada Legislative
40 Commission did, what the Nevada legislature did with Senate Concurrent Resolution No. 40. I hope it is clear
41 that the concern of the Legislative Commission related to adoption of standards, which clearly can only be
42 attained and maintained by increased inflow into the lake. That was the concern of the Legislative Commission.
43 Senate Concurrent Resolution No. 40 was adopted because of the statutory requirement that when the legislature
44 is in session such a resolution must be adopted or the regulation will enter into effect in spite of the action taken
45 by the Legislative Commission.
46

47 You've already dealt with one aspect of it. You've dealt with the standards for the river, which was handled this
48 time as a separate petition. The petition that is before you today on Walker Lake does not include those standards
49 which at this point in time can only be achieved and maintained by additional inflow going into the lake and with
50 the issues related to water quantity that are ongoing, until those issues are resolved the issue of inflow into the
51 lake is not going to be decided. Why the district feels that this is the best approach at this time for you and for the
52 State of Nevada is really a fairly practical one. Regardless, if whether you had taken the action you took in
53 February of 2001, whether the legislature had done what it did in April of 2001, the TDS level in Walker Lake

1 would be exactly the same. The adoption of these standards or of standards for TDS level is not going to change
2 the weather and is not going to change the inflow into the lake at this time. After the meeting that the district had
3 with the NDEP staff after the meeting in Laughlin, what the district committed to do was to work with the
4 interested parties to first of all get in place standards that could be attained and maintained and then to deal on an
5 interim basis and hopefully on a long-term basis through the alternative dispute resolution process the standards
6 that are tied to inflow.

7
8 In February of 2001 the district brought Jean Baldrige of Intrex to your meeting. Jean made a presentation about
9 the Walker Lake ecosystem and about the fact that more information is needed about how that ecosystem
10 functions and did function during the last extended drought period because it is apparent that certain things
11 happen and exactly what they are is not entirely clear, but it is apparent that certain things happen that have
12 allowed that ecosystem to survive during the last drought when the standards were exceeded by a higher point
13 than they are today. In addition, the district has committed to and is working with the Desert Research Institute
14 on a cloud seeding program this winter to hopefully increase precipitation in the basin and thus benefit the lake.
15 The district also supported in the Nevada legislature, with Assemblyman Neighbors, some action to improve the
16 ability of the channel to get water to Walker Lake. For a variety of reasons that didn't come to fruition, but those
17 are the things that need to be worked on in this interim period of time. The adoption of unattainable standards is
18 not going to change any of that. What we need to do is we need to figure out what we can do in the short term
19 and then work on what everyone has agreed are the complex long-term issues that are facing us that we're trying
20 to get our arms around with this alternative dispute resolution process.

21
22 Finally, I think this is the best approach from the standpoint of the concerns that have been expressed this
23 morning about federalization of the river of the lake. I'm not exactly sure what all that means, but I guess just
24 saying it makes all of us nervous. From the standpoint of the water quality litigation that has been brought in the
25 United States District Court for the northern district of California by the Walker Lake Working Group in Mineral
26 County, it seems to me that it is important that the State of Nevada adopt some water quality standards for Walker
27 Lake rather than no water quality standards for Walker Lake. I think that action to the extent that it is limited to
28 issues related to the Walker River and Walker Lake, your action today to first to have adopted amended standards
29 for the river and hopefully your action following this petition to adopt these limited standards for the lake will
30 make that a more defensible action from the standpoint of a court ordering EPA to step into the process and
31 establish all of these standards. In my judgment that litigation is difficult to understand from just reading a
32 complaint given the notice pleading provisions of the federal rules to know exactly what all of the issues will be
33 in that litigation, but the litigation does in fact use Walker Lake as an example. It appears to me that litigation is a
34 challenge to water quality standards that have been adopted in the State of Nevada for virtually every water body
35 for which they have been adopted to EPA's approval. Having approved those standards, it appears to be a
36 challenge to EPA's approval of the 303D list of the State of Nevada for all of those water bodies. And to the
37 extent that any of those water bodies have endangered or threatened species within them, I expect that the
38 amendment to that litigation will contend that EPA was required to consult with the Fish and Wildlife Service
39 before it approved any of the water bodies on the impaired list. So it is broader-based litigation than just Walker
40 Lake and the Walker River. But I do think that your favorable action on this petition will help make that a more
41 defensible action and will help keep these issues to be decided within the State of Nevada as we go forward with
42 what is going to be a very difficult and complex process. But it is that process and what we do in the interim to
43 try to make sure that this ecosystem survives while we're doing it that will make the difference for Walker Lake
44 and I would urge anyone who is truly interested in making that ecosystem survive during the process to help with
45 studying what it takes to keep it alive in the meantime and to help with efforts to get more water to the lake in the
46 interim and I would ask for your favorable action on this petition.

47
48 Commissioner Johnson stated you cited that had the legislature not overturned our adopted reg. that there would
49 be no more water in the lake and I agree with you on that. But if we adopt this regulation without TDS standards,
50 with only standards that will not be exceeded in the foreseeable future, how will that help bring any additional
51 water to the lake?
52

1 Mr. DePaoli stated I don't think your adoption of standards either that are too high or too low are going to change
2 bringing any additional water to the lake. What needs to happen to bring additional water to the lake is to get the
3 parties together who are concerned about water quantity issues to deal with those issues and to figure out how in
4 dealing with those issues the inflow to the lake can be increased and at the same time while that process is going
5 on figuring out how we deal with avoiding some disaster in the meantime.

6
7 Commissioner Johnson stated I would agree with you entirely. I think the record will show those were my
8 statements and the reason that I passed and voted for the amendment last February.

9
10 Commissioner Iverson stated Mr. DePaoli maybe you understand a little bit better than I do exactly what
11 happened at the legislature, what the Legislative Committee's concerns were because you did go through quite an
12 explanation. I appreciate that. Contrary to what some people believe, I believe that the legislature do represent
13 the people of the State of Nevada. I also believe that in a lot of cases they look at the big picture of things and a
14 lot of issues around this Walker Lake thing is more than just the lake unfortunately. There are other issues that
15 need to be addressed. I agree with you on your comments that something needs to happen. Sitting here listening
16 to your argument of why we need to adopt something to at least give us some time to go back and to further
17 evaluate some of the real strong issues there is a real plus because it does put U.S. EPA on notice that the State of
18 Nevada is serious about coming up with some standards for the lake. But it also puts them on notice that we've
19 got some major issues that we need to address out there. In dealing with the Walker Lake, you've also got to
20 remember that people have become part of that environment too. There's going to be some impacts upstream and
21 there's going to be some impacts on certain counties. I appreciate your going through and explaining this. By
22 going back and re-approving what we've already approved won't go anywhere. I think it's going to be a
23 revolving door. I think what DEP has offered us now is at least one step. Somebody mentioned an elephant. You
24 know it's hard to eat an elephant in one big gulp. I think you have to take one bite at a time. I think DEP's
25 approach to that elephant and getting through that is let's get what we can agree on out of the way and let's
26 continue to work towards a compromise, a negotiation, a settlement, something that we can agree on. Maybe
27 none of us ever wins completely, but we get to the point where we've got something that's workable that protects
28 the environment, and it protects the lake. At the same time it can be workable for the people upstream and we can
29 get some kind of a compromise because I believe it's a real step in the right direction to do something.

30
31 Commissioner Ricci asked this amendment to the complaint that everybody has mentioned about the consultation
32 with the Fish and Wildlife Service on the ESA, would the position of EPA be any different if these proposed
33 standards were passed today?

34
35 Mr. DePaoli asked on that issue?

36
37 Commissioner Ricci answered on that issue alone.

38
39 Mr. DePaoli answered no. I don't think so.

40
41 Commissioner Ricci asked how about the other, the original complaint?

42
43 Mr. DePaoli answered well, again, it's hard to know from just reading a complaint what the precise issues that
44 will get litigated will be. But it does seem to me that to the extent that the complaint alleges that the State of
45 Nevada has failed to adopt any water quality standards for Walker Lake, and that therefore EPA is mandated by
46 the Clean Water Act to step in and do that, that the adoption of this petition will make EPA's defense of that claim
47 stronger and will, I'm not going to tell you that it's going to win because I've learned not to do that anymore, but I
48 do think that that will help the EPA position on that particular issue to the extent that that's one of the significant
49 issues in that litigation.

50
51 Chairman Close called for further questions. There were none. He called for further public comment. There was
52 none. He declared the public meeting closed. He called for discussion among the Commission members.

1 Commissioner Johnson stated I wish to comment about Senate Concurrent Resolution 40. There seems to be
2 some conception that the legislature heard in fact an argument on the issues. Senate Concurrent Resolution 40
3 was an emergency procedure that was introduced in session 4. It passed without having had public hearing, went
4 to the Assembly on immediate consideration and without having had public hearing on the issues was passed
5 there. There was very little discussion about the issues. The letter that we received from LCB, which defined the
6 Legislative Commission's findings are in some points different than claimed in the letter that we received. Has
7 this letter been introduced as an exhibit? Does Mr. DePaoli's testimony serve as the record on those issues?
8

9 Mr. Cowperthwaite answered this is not an exhibit to my knowledge.

10 Commissioner Johnson asked would it be the will of the Commission to introduce it as an exhibit?
11

12 Chairman Close asked this was the letter from the LCB you're talking about?
13

14 Commissioner Johnson answered no, the letter from Mr. DePaoli.
15

16 Chairman Close stated I do intend to have his letter introduced if there's no objection.
17

18 Commissioner Johnson stated I'm very much in opposition to adopting standards that have no meaning in
19 essence. These are simply standards expressing the conditions of the lake at its present time. The relevant
20 standards are those ones that are being ignored at this time. In previous hearings there was adequate testimony
21 about the effects. The science is there to document the need for those standards. There is absolutely no reason
22 that's been presented to us that I've heard other than it would make a defense of an inadequate program because
23 we have not adopted standards on the lake meaningful. I simply at the time would make a motion for the
24 adoption of the beneficial use, but the standards I will vote against.
25

26 Chairman Close asked DAG Gray we've heard comment relative to adopting the three standards that we've talked
27 about: TDS, chloride and arsenic. Since these were not included in our public notice, I presume those are not
28 open for discussion. Is that a correct statement?
29

30 DAG Gray stated that's correct.
31

32 Chairman Close called for further comment.
33

34 Commissioner Ricci stated Mr. Chairman I was appointed to the Environmental Commission I think in September
35 of 2000 and in every single commission meeting that I have attended we've been dealing with the Walker Lake
36 standards. If we postpone it again we're going to be right back listening to basically what I heard in December, in
37 February, in May and today. I don't think there's anything new that anybody said. I think what happened in the
38 legislature in May, whether everybody agrees with what they did or not, it happened and it's done. So I don't
39 think to do nothing again is the right thing. We should at least start somewhere. There's another thing in motion
40 out there dealing with trying to get additional water to the lake through whatever means by almost everybody who
41 is going to be part or have some impact as a result of whatever needs to be done. So I think at least in this
42 position whether the TDS is there or not, I mean, excuse me whether the components are not on this, at least I
43 think this is a starting point from which we can go forward and everything else will just then somehow or another
44 follow.
45

46 Commissioner Crowley stated this is my first meeting on the Commission and I didn't foresee such a crazy vote
47 as this where I'm the mining representative on this body and I'm going to oppose the environmental community
48 and actually vote in favor of some stringent regulations in opposition to their support of no new regulations. It
49 seems like a very bizarre twist to me. But I do believe that this Commission prior to my being on it did stand up
50 and do some very positive things for the lake. They have a proven track record of wanting to save Walker Lake.
51 I most certainly want to do the right thing for the lake. But I don't believe that the all-or-nothing position is
52

1 effective. It is very much a political world that we live in and all-or-nothing never succeeds in politics and so I
2 will vote in favor of these recommendations.

3
4 Commissioner Johnson stated my comment is simply that adopting these regulations is not a strenuous, rigorous
5 interpretation of protecting anything. It's recognizing the establishment that's presently there. These are
6 essentially proposing standards that recognize the status quo. The items that would be tough on this are being
7 ignored.

8
9 Commissioner Iverson stated I disagree with that. I don't think it's being ignored at all. I think those are the
10 issues that DEP and the State and different groups are all very, very concerned about. I think we realize that these
11 issues have to be resolved somewhere down the road. If we can't do it at this meeting we can't do it. There was
12 another comment made that the science was proved to us. I'm not so sure that all of the alternatives and all the
13 concerns have been addressed. I think it's something that we need more time on. Just like we talked about at the
14 last meeting, is for DEP to continue to work with the scientific community, with DRI, with the Irrigation District,
15 with the environmental community to see if we can resolve these three issues because they're going to be issues
16 that need to be resolved some day. If not, then I think we're going to be at a point down the road where EPA may
17 come in and say, "Those are standards that we're going to have to set" because we can't resolve it in Nevada. I
18 think with the aggressive approach that everyone has taken, from BLM all the way down to the water engineer,
19 we can come up with some solutions to save that lake and to protect and preserve the environment out there.

20
21 Chairman Close stated I would tend to disagree with what Joe said. I think that these may not be the three critical
22 conditions for the aquatic life in the lake, but I think it does tend to preclude or prevent further degradation of the
23 lake at least in these categories. I think it does set some standards for these particular areas that I think we need. I
24 would hate to have done nothing and then find some violation of what we could have prevented occurring in the
25 future and so I think I'll vote in favor of this.

26
27 Commissioner Villaflor asked with three of the Commissioners missing, would our vote today be binding?

28
29 DAG Gray answered yes. You have a quorum here.

30
31 Chairman Close agreed.

32
33 Commissioner Villaflor asked just as long as you have a general quorum? So it's going to be a majority vote?

34
35 Chairman Close answered correct.

36
37 DAG Gray answered majority of the six of you, yes.

38
39 **Commissioner Crowley motioned to approve Petition 2002-04.**

40 **Commissioner Ricci seconded the motion.**

41 **Commissioner Johnson stated I think there was a proposed change or amendment that was a removal that**
42 **you need to reflect in the motion, nitrate or nitrogen. I noted in the general category but didn't get the**
43 **particular comment.**

44
45 **Mr. Porta stated some clarification on the total inorganic nitrogen; we're removing the annual average and**
46 **also then on the E. Coli standard switching it to annual geometric mean. Those are the two changes.**

47
48 **Chairman Close stated we also have some exhibits on this petition. Those are Nos. 8, 9 and 11, and if**
49 **there's no objection we'll make Mr. DePaoli's letter a matter of record and an exhibit.**

50 **Commissioner Crowley stated Mr. Chairman I'd like to amend my motion and move that we approve**
51 **Petition 2002-04 reflecting the changes that Tom has mentioned.**

52 **Chairman Close asked does the second approve?**

53 **Commissioner Ricci answered yes.**

1 **Chairman Close voted yes.**
2 **Commissioner Crowley voted yes.**
3 **Commissioner Iverson voted yes.**
4 **Commissioner Ricci voted yes.**
5 **Commissioner Villaflor voted yes.**
6 **Commissioner Johnson voted no.**
7 **The motion carried.**

8
9 Chairman Close called a lunch break. He reconvened the meeting and moved to **Agenda Item III. D. Petition**
10 **2002-02.**

11
12 **(Petition 2002-02 (LCB R-102-01)** is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle
13 emission control program. The amendment adopts by reference a State of California regulation that became
14 effective on July 25, 2001. The amendment requires model year 2005 and 2006 new heavy-duty diesel engines
15 (HDDE's) with a Gross Vehicle Weight Rating (GVWR) of 14,001 pounds and greater to meet supplemental
16 emission tests. Definitions added include the applicable Executive Order, heavy-duty diesel engine, model year,
17 new motor vehicle, new motor vehicle engine, ultimate purchaser, ultra-small volume manufacturer, and urban
18 bus.)

19
20 Jolaine Johnson introduced herself as Deputy Administrator for the Division of Environmental Protection. She
21 stated it is the Division's desire at this point to withdraw this petition at the pleasure of the Commission.

22
23 Chairman Close asked could you give us some background? I think that's something we should be considering.

24
25 Ms. Johnson stated a few years ago there was a Consent Decree that came forth between the U.S. Environmental
26 Protection Agency and six major heavy-duty diesel engine manufacturers. That consent decree was the result of a
27 settlement between EPA and those engine manufacturers who apparently had been caught sort of bypassing some
28 emission requirements of heavy-duty diesel engines. At any rate, the consent decree required those major
29 manufacturers of diesel engines to develop and produce and provide for distribution engines that we'll call, what
30 they call not-to-exceed engines and essentially they are engines with lower pollutant emissions. That consent
31 decree addressed the emissions from those manufacturers for Model Years 2003 and 2004. The reason they chose
32 two years was EPA had regulations in the works that would then require all engine manufacturers to begin to
33 produce this not-to-exceed engine beginning in 2005. What happened in EPA's regulatory adoption process is
34 that it was realized that they really couldn't adopt those standards beginning 2005, but had to delay the
35 requirement for all heavy-duty diesel engines to be manufactured in 2007. So, essentially what we're left with is
36 a gap between the consent decree which requires the six manufacturers to produce the engines in 2003, 2004 then
37 there's a gap 2005, 2006 before the federal EPA regulations come into play when all engine manufacturers have
38 to produce the not-to-exceed engine.

39
40 The Clean Air Act allows the State of California some specific authority to also adopt engine emission standards
41 and California filled this gap for 2005, 2006 by adopting a rule in California that said that a heavy-duty diesel
42 engine couldn't be sold during those two model years unless it meets the not-to-exceed requirements. The Clean
43 Air Act also allows other states, once California adopts engine emission standards, other states can opt into that
44 program and there's been a national campaign underway that has encouraged state environmental protection
45 agencies to adopt the California opt-in standards for those two model years. Essentially this proposal proposed
46 that, that Nevada adopt those standards so that engines could not be sold in Nevada during those two years
47 without meeting those standards.

48
49 What we have found since we originally proposed this is that nine other states have proposed the California opt-in
50 standards. Those nine states represent about 23 percent of the total market for heavy-duty diesel engines. There
51 are several other states that are still in the process of considering those emission standards and they will account,
52 should all of those states that are now considering it adopt those standards, that would account for another 23
53 percent of the market for a total of 46 percent of the market and will be significant when I get through the next
54 part of this.

1
2 Nevada only accounts for .64 percent of the heavy-duty diesel engine market in the U.S. So our state alone could
3 certainly not affect the market in producing a single engine. The problem that we discovered during workshops
4 with these proposals is that there was a very high likelihood that if Nevada adopted these standards and required
5 only these low emission engines, that people would tend to go to another state to purchase the engines. So we
6 would have a serious economic impact on our dealers, on our trucking companies, and on the State general fund
7 that realizes funds from the sales of those engines.
8

9 So we proceeded to add a provision in the rule, in agreement with those that were opposed to this rule to begin
10 with that would say that if we found that there were other engines available, in other words if there's both an NTE
11 engine and another engine available on the market in the U.S. and in other states around Nevada, that the
12 Commission would then waive these requirements, so these requirements would go away, keeping that business in
13 Nevada. What we found is that since there's only 46 percent of the market represented by the states that are
14 considering or have considered these regulations is that it's very likely that there will be two engines available
15 and this rule becomes moot. That's the basis for our proposing to withdraw this petition at this time.
16

17 Commissioner Crowley asked is there any estimate on how much the two engines would cost, the price
18 difference?
19

20 Ms. Johnson answered the estimates from the State of California that we've read is about \$800 in difference.
21 There's also a slight increase in the operating costs of the new engines and there is some debate between the State
22 of California and some of these manufacturers that those engines will have poor, diminished performance. So,
23 essentially because of performance and cost there would be an incentive to go to another state to purchase a non-
24 NTE engine.
25

26 Chairman Close asked at what point do you think that you would then bring this back before us when the State,
27 with the 60 percent, or 70 percent? When will you bring this back before us for a consideration again?
28

29 Ms. Johnson answered it would be our intent, essentially, to not bring it back before you. If it happens that only
30 one engine becomes available, one NTE engine all across the United States, then Nevada will realize that anyway
31 because they will not be producing a second engine for 4.6 percent of the market. If, in the other event, which is
32 really a lot more likely, for these two model years there will be two engines available and with the waiver
33 provision that we had included in this to satisfy those concerns, the rule wouldn't make any sense anyway.
34

35 Commissioner Johnson stated but that doesn't get to the point if you didn't have the waiver the requirement and
36 we're talking of \$800 per engine. As I recall, there were in the Las Vegas the study committee on air quality of
37 the proposed mitigation measures, this control of diesel emissions are one of the most effective meanings of
38 control in particulates. I guess my comment, and as you know I objected to having this pulled on the basis that I
39 guess was inappropriate on the face of the statute that I was reading, but the questions of heavy-duty diesel engine
40 controls, presently there are two engines available. I mean there are the compliance, the six manufacturers who
41 consented and all those other people who were not in the consent decree. Is that correct?
42

43 Ms. Johnson stated that's correct. The consent decree begins as of Model Year 2003. So there will be two
44 engines available in 2003.
45

46 Commissioner Johnson asked and those that are presently manufacturing, the six major engine manufacturers are
47 very likely to continue marketing the same engine? Is that an appropriate statement? Or are they going to re-tool
48 and develop other engines?
49

50 Ms. Johnson answered I would expect that they will not retool for those two model years because they have to be
51 back to the NTE engine by 2007. So the six major manufacturers that account for, the indications are, about 60
52 percent of the total U.S. market will continue to produce those engines through those two years and they certainly
53 have to do that for the State of California which makes up a major part of their market anyway.

1 Commissioner Johnson asked they don't have the adjacent state exemptions?

2
3 Ms. Johnson answered no they don't.

4
5 Commissioner Johnson asked so there's probably a significant opportunity for businesses in this State to sell to
6 California motor transport (inaudible) because of the way licensing happens? Is that an appropriate comment?

7
8 Ms. Johnson stated I'm sorry, I don't know the details about California market in Nevada and licensing.

9
10 Commissioner Johnson stated well interstate transport companies register the vehicle and pay lower fees. I really
11 wanted to address the issue of heavy-duty diesel regulation and the snap test and review that. I think it would be
12 more appropriate in the comment period, rather than at this time.

13
14 Chairman Close stated **if there's no objection we will permit Petition 2002-02 to be withdrawn.** The next item
15 will be **Agenda Item IV. Settlement Agreements A. Road and Highway Builders.**

16
17 Mike Yamada introduced himself as the supervisor of the compliance and enforcement branch. He stated I'm
18 here to present five major air quality violation settlement agreements for your consideration. The first item on the
19 agenda is Road and Highway Builders Notice of Alleged Violations Nos. 1563 and 1564. There's a correction to
20 be made there: 1563 and 1564 were approved at the September 18 meeting. This is an additional violation that
21 we're talking about. It's violations No. 1585 through 1589 and 1591 through 1593.

22
23 Road and Highway Builders is a company that operates asphalt plants for paving of roads and highways. Road
24 and Highway Builders operate under a General Class II Quality Air Operating Permit. This permit allows for
25 operation of temporary sand and gravel processing asphalt concrete plants and concrete batch plants. They also
26 get from us Change of Location permits, which allows them to move their asphalt plants from place to place for a
27 period of 12 months.

28
29 On August 13, 2001 the Division of Environmental Protection conducted an inspection of Road and Highway
30 Builders' operation near Rye Patch Reservoir under their COLA number, 1799. We received complaints about
31 opacity and fugitive dust problems from the administrator and then assistant administrator of NDEP regarding this
32 operation. On the 13th I dispatched an inspector to look at this operation and what she found was that there was a
33 violation of opacity being caused by their lime marination plant where the lime from the silo was being blown
34 across the highway because it wasn't properly being managed. She also noticed that there was an opacity
35 problem being caused by their scrubber off of their asphalt drum dryer. She attempted to bring them back into
36 compliance, but they could never achieve the proper opacity so she shut them down with a stop order. On the 14th
37 she returned and tried to get them to bring their operation back into compliance and during that period she was
38 able to get them up to 322 tons per hour without an opacity problem. She limited them to 322 tons per hour and
39 left for the day. We obtained records the following day on their production and found out that they had actually
40 gone up to 34 tons above the 322 tons. So we shut them down again.

41
42 We found out that they also did not provide the proper stack testing and IOCD testing, the Initial Opacity
43 Compliance Demonstration testing, that was required by their permit. We told them that they would have to
44 provide us with a test protocol and to do the testing before we would let them operate again. They told us that
45 they had been tested and that we would receive that information. It turned out they didn't have that information
46 so we required them to get a new test run. Their tester called us on the 21st of August asking us to allow them to
47 run on the 23rd but because there was insufficient time for us to review the protocols, we told them it was not
48 possible and that they would have to wait until we got it done. We expedited the protocol and started on the 23rd
49 but the tester could not test until the 30th.

50
51 While they were doing the testing we had issued the NOAV's 1585 through 1590 to them for their violations on
52 the 13th and 14th. We issued them two more violations on August 25th, 1592 and 1593 for their failure to stack test
53 and do the IOCD test. They notified us that they would be unable to finish their job without an extension of their

1 permit and that their throughput would have to be increased by 100 tons in order for them to be able to finish their
2 job. In the meantime the tests were being conducted on the 30th and 31st. Prior to the tests, Road and Highway
3 Builders did a tremendous amount of maintenance work on their scrubber to bring it into compliance. They were
4 able to get that up to 425 tons. Their permit called for 475 tons, but we limited them to 425.

5
6 We held an enforcement conference on September 20, 2001 in Carson City to discuss the violations that we had
7 cited in the NOAV's. The base violation for NOAV 1585 was \$125, because it was a minor violation for fugitive
8 dust. The penalty is determined by using the (inaudible) penalty matrix for NOAV's 1586 through 1593 prior to
9 the enforcement conference was \$60,800. During our enforcement conference NOAV No. 1590 was dropped and
10 we negotiated a penalty of \$44,975 for NOAV's 1585 through 1589 and for 1591 through 1593. At the present
11 time we find that Road and Highway Builders are in compliance with their (inaudible) air permits.

12
13 Commissioner Ricci asked were Nos. 1563 and 1564 at the same place as these other ones?

14
15 Mr. Yamada answered 1563 was at a different location. Let me see if 1564 was. That all occurred back in May.
16 That was our first indication that they were operating outside of the opacity and we had the Road and Highway
17 Builders send a man to opacity school to learn how to read opacity. We thought that we had taken care of the
18 problem with that. So we negotiated a little bit lower fine. At the September 18 meeting I told you that we would
19 bring additional NOAV's because of the violations that happened after the initial violations.

20
21 Chairman Close asked did they have to have the additional capacity in their plant in order to avoid the penalties
22 imposed by the State for not meeting deadlines?

23
24 Mr. Yamada answered they were supposed to start the project at a certain day. They had a certain period to start
25 and they were 90 days into their contract before they actually rolled onto the site. So they were already time short
26 when they got on there. Their total throughput was already close to the maximum allowed for the job. So they
27 were subject to penalties. I think they were subject to something like somewhere around \$400,000 for delaying
28 the projects.

29
30 Chairman Close asked so it's cheaper, then, to violate our regulation and to take the State's penalties?

31
32 Mr. Yamada answered yes it was.

33
34 Chairman Close asked if that's the case, why did we negotiate this down?

35
36 Mr. Yamada answered when we did the initial penalty matrix we took the worst case. There was a
37 misunderstanding; a large part of it was No. 1590, which was for \$12,000, which we withdrew. The reason we
38 withdrew that is there was some confusion as to whether 322 tons per hour was an instantaneous value or an
39 average value over the run. What happened was we said that it was an instantaneous value and they said they
40 don't measure that way. Because it's on a weighing belt, they weigh the material. So we said, "Well we can
41 understand how that misunderstanding would have occurred." So we removed \$12,000 of that particular NOAV.

42
43 Chairman Close called for further questions. There were none. He called for a motion.

44
45 **Commissioner Iverson moved to accept the recommendation of staff as far as the fines on this particular
46 NOAV.**

47 **Commissioner Villaflor seconded the motion.**

48 **Commissioner Johnson stated I think we need to mention which one of these that we have.**

49 **Chairman Close asked 1563 and 1564?**

50 **Mr. Yamada answered no. The ones that we're looking at are Nos. 1585 through 1589, 1591 through 1593.**

51
52 **The motion carried unanimously.**

1 Chairman Close moved to **Agenda Item I.V. B. Nye County Road Department.**

2
3 Mr. Yamada stated we've been having a lot of problems up in Nye County due to fugitive dust complaints. We
4 have a very vocal person up in the area that was E-mailing us and letting us know and sending us pictures of dust
5 violations at the Nye County Road Department Pahrump landfill. So we sent an inspector out there to take a look
6 at the operation and on June 25th she went out there and discovered that there was a lot of fugitive dust being
7 generated. There was no water truck on site. They weren't doing any kind of fugitive dust control at all. Why
8 we discovered it was their operation was actually in excess of five acres, which requires a permit in the State of
9 Nevada under the Nevada Administrative Code. We also noticed that all the roads around the area were not being
10 controlled, so there was a lot of dust being in the area. Our inspector goes there on quite a regular basis because
11 of these things and every time that she actually got out there she noticed this. So we issued an NOAV for fugitive
12 dust and we issued one for not having a permit.

13
14 We held an enforcement conference with the head of the road department regarding the five acres that was being
15 disturbed, plus the fugitive dust and we came to an agreement as to what we would do about this particular action.
16 We decided on a penalty of \$3,000 for one of the things that we negotiated with them, which was for them to
17 permit all of their landfills that we had not been to because they were all over five acres. They did that, but they
18 also permitted a gravel pit, which we didn't know they owned. So, I think the road department is pretty clean as
19 everything else goes. I think they have everything on the permit now that needs a permit.

20
21 We've had some subsequent dust violations. On September 6 the inspector did another unscheduled inspection
22 and saw fugitive dust. We issued NOAV No. 1601. We also issued 1602 in the amount of \$250 for a subsequent
23 one. Those are minor violations and not covered by the settlement. They'll be just paid to the Commission. I
24 guess the important thing to know about this is they are now in compliance and the money that they are paying for
25 the fine will be actually remitted to the Nye County School District. So, basically, the money stays within the
26 county itself.

27
28 Commissioner Johnson asked have you had any more complaints from your concerned citizen?

29
30 Mr. Yamada answered yes we have. But they've done quite a bit of work out there to try to do something for
31 him. They have built a buffer. This person lives near the landfill site so they built a buffer and they're talking
32 about planting it and they say that's the dust control plan, which includes seeding and planting trees to try to
33 mitigate the problem.

34
35 Chairman Close called for further questions. There were none. He called for a motion.

36
37 **Commissioner Johnson moved for adoption of NOAV 1596.**

38 **Commissioner Crowley seconded the motion.**

39 **The motion carried unanimously.**

40 **Chairman Close stated if there's no objection we'll add Exhibit No. 10 to the record on this matter.**

41 **The motion carried unanimously.**

42
43 Chairman Close moved to **Agenda Item No. IV. C. Premier Chemicals.**

44
45 Mr. Yamada stated Premier Chemicals is a magnesium oxide mine and process facility, located in Gabbs, Nevada
46 in Nye County. Their home office is actually in King of Prussia, Pennsylvania. The problem we had with them
47 was they failed to conduct a source test within the period allowed after they renewed their permits. What the
48 bureau does is 60 days prior to requiring their source tests they are contacted by letter to inform them that they
49 need to test. We'll call them 30 days before ahead of time and if they miss the 30-day cutoff, which is the time
50 they need to get the protocols to us, then another call is made. We didn't receive a response from them so we sent
51 them a letter. On August 9th we had an enforcement conference held in Carson City to explain why they weren't
52 testing.

1 Based on information they provided us, we issued NOAV No. 1594 for failure to source test. They agreed to
2 provide corrective action by submitting a test protocol to us by August 27th and to conduct a source test by
3 October 2001. We did get the source test protocol on August 29th. The source test was supposedly done October
4 1st. There was a problem. The person that owned the testing company had a heart attack so we gave them a delay
5 on that. I have not seen a report since, but I'm sure that's going to go through.

6
7 They agreed to pay an administrative penalty of \$5,600 for the above-mentioned violations. As far as
8 compliance, we have the fugitive dust plan and they agreed to ensure that the plant is implementing (inaudible) as
9 required to control fugitive dust and the mine and process facility. The facility is pretty dusty and they need to
10 control that. The facility is pretty much covered with the magnesium oxide residue. They agreed to pay is
11 \$5,600.

12
13 **Commissioner Ricci moved to accept NOAV's 1594 and 1595 as reported.**
14 **Commissioner Villafior seconded the motion.**
15 **The motion carried unanimously.**

16
17 Chairman Close moved to **Agenda Item IV. D. Crockett Enterprises.**

18
19 Mr. Yamada stated Crockett Enterprises is a contractor that performs construction services including grading and
20 excavation in Nevada. We got a complaint about some work being done on the new Wal-Mart that's creating a
21 lot of fugitive dust, no water trucks being available. We received numerous calls. Some of them didn't give us
22 their names or anything like that. We did get one from an employee of NDEP and we sent out an inspector on
23 September 17th to determine what was happening. We found they were generating quite a bit of fugitive dust.
24 They didn't have a truck out there to water down the place. We also found out they didn't have a permit to
25 operate more than five acres. The property is about 40 acres that was being disturbed.

26
27 We issued a stop order on September 19, 2001 and told them to get a permit application into us. We received the
28 permit application and we told them they could not operate until we told them they could operate. Well the
29 permittee sent in their permit application and on the weekend they operated again and that was reported. So we
30 called them in for an enforcement conference and told them that they weren't supposed to be operating. We
31 negotiated a settlement with them for NOAV's 1599 and 1605, one for violating the stop order, the other for
32 operating without a permit. They also had another one, which isn't included here, but it had to do with the
33 fugitive dust. That was only a \$125 penalty.

34
35 Chairman Close called for questions. There weren't any. He called for a motion.

36
37 **Commissioner Crowley moved to approve NOAV's 1599 and 1605.**
38 **Commissioner Iverson seconded the motion.**
39 **The motion carried unanimously.**

40
41 Chairman Close moved to **Agenda Item IV. E. Paul Moore Sand and Gravel.**

42
43 Mr. Yamada stated Paul Moore Sand and Gravel is a company that operates a sand and gravel operation in
44 Pahrump, Nevada. While we were out conducting investigations on September 17th the inspector noticed that
45 there was a considerable amount of dust coming from a gravel pit. All the gravel pits are pretty much located in
46 the same area. She determined it was more than five acres and went in there to issue a fugitive dust NOAV and
47 found out that they had no permit. We had an enforcement conference in Las Vegas with Paul Moore Sand and
48 Gravel's representative to find out why they were operating without a permit. It turns out they had a permit
49 earlier and they got it because they thought they needed it for their crusher, but then they realized they needed it
50 for the whole thing. So when they sold the crusher they gave up their permit. So the fine should have been
51 basically around \$3,000. We determined that they really didn't quite understand properly what needed to be
52 done and why they needed the permit. So we negotiated it down to \$1,080. We also charged them a \$125 NOAV
53 for minor violation fugitive dust. They paid the fugitive dust violation.

1 Chairman Close called for questions. There were none. He called for a motion.

2
3 **Commissioner Johnson moved for adoption of NOAV 1604.**

4 **Commissioner Iverson seconded the motion.**

5 **The motion carried unanimously.**

6
7 Chairman Close moved to **Status of the Division of Environmental Protection's Programs and Policies.**

8
9 Mr. Biaggi stated the Chairman brought up an issue a couple of months ago concerning terrorism issues and what
10 the involvement of the Division of Environmental Protection is with regard to the incidents that have occurred
11 subsequent to September 11th. I sent all of you a letter outlining what, in general terms, our responsibilities are
12 and some of the activities that the Division has undertaken with regard to emergency preparedness. The State
13 Division of Emergency Management has been very proactive in addressing emergency response concerns be it
14 terrorist activities or emergency actions resulting from roadside accidents, rail accidents or the presence of
15 biological problems in the State of Nevada such as foot-and-mouth disease or mad cow disease. We have been
16 participating with DEM in a number of exercises over the last couple of years. The largest was held in
17 Emmetsburg, Maryland last spring where approximately 90 state officials attended a weeklong exercise. The
18 scenario in that incident was a major earthquake in northern Nevada resulting in a wide variety of concerns,
19 everything from sewage spills and wastewater spills, hazardous materials releases, power being out, major fires,
20 lack of infrastructure through water, roadways, etc. The Division of Environmental Protection is a major part of
21 the emergency preparedness plan for the State of Nevada. That plan is broken down into a number of parts called
22 emergency support functions. DEP is involved in emergency support functions 11 and 13. Eleven deals with the
23 handling of hazardous waste and other types of chemical hazards and 13 deals with decontamination procedures.
24 So while the Division of Environmental Protection is not a first responder, we don't have the capabilities or
25 responsibilities to go out and address bio-terrorism, or terrorism, or a truck spill of hazardous materials, we do
26 have those emergency support functions where when the command center is activated we participate and address
27 with the resources we have and the resources we can get our hands on from the federal Environmental Protection
28 Agency, from local hazardous material teams and other resources, private resources to address those incidents
29 when they occur.

30
31 Next Monday I'll be participating with the Environmental Protection Agency and the other Region IX states,
32 which are Arizona, Hawaii, California and the Trust Islands, to address these types of incidents and how the states
33 are responding and what additional resources are needed. I'll be participating, along with my counterparts, the
34 State Health Division for the drinking water programs and also with representatives from the Division of
35 Emergency Response to address these sorts of issues. One of the concerns that I have in the State of Nevada is
36 that we're very well covered with emergency response in Washoe County, Clark County, Douglas County,
37 Carson City, and Lyon County because there are very strong and capable emergency response teams. I am
38 concerned about the outlying areas of Nevada including Elko where we have a lot of mining presence in
39 hazardous materials, Ely and other parts of the State. So I think one of the areas that I would like to concentrate
40 on and express my concerns to EPA on is hopefully to get some additional resources to address those concerns in
41 the rural parts of the State of Nevada. Maybe set up some regional response teams in the more rural parts of the
42 State to address incidents when they may occur.

43
44 Commissioner Iverson stated a week or two ago we had the EPA liaison with the State come to our Board
45 meeting and at that time he described a meeting that's taking place in California. Is this the one you're going to?
46 EPA is bringing all of the representatives to talk about emergency planning in all of the Region IX states.

47
48 Mr. Biaggi answered that's right, but with a spin towards terrorism.

49
50 Commissioner Iverson asked is that on the 17th or 18th?

51
52 Mr. Biaggi answered 17th and 18th. I will only be there for the 17th, but emergency response will be there for both
53 days. I should also mention that Paul and I participated in a daylong exercise with emergency management in the

1 event foot-and-mouth disease comes to the State of Nevada. It was an eye opener in how fast these things can
2 come about and the serious ramifications that an incident like that would have in terms of stressing our ability to
3 respond to it and the economic consequences of such an incident not only statewide, regionally and nationwide. It
4 can have very serious ramifications.
5

6 Commissioner Ricci asked on all of the mining facilities and unloading facilities where they have them all up
7 along Interstate 80, doesn't each one of those mining companies or chemical companies have an emergency
8 action plan that they have to submit with you or somebody to take care of any spills that may occur?
9

10 Mr. Biaggi answered they all have emergency action plans, as do the mines. In fact, earlier this year Jolaine and
11 Verne and I visited a cyanide manufacturing facility located outside of Winnemucca. I was very impressed with
12 the emergency response capabilities of that facility and how they track their trucks by satellite knowing exactly
13 where they are on the roads at any time. Whether they're full, whether they're unloaded, where they are. Very
14 impressive and many of the other facilities have similar type systems. I think it's a real bright spot that in the
15 almost 25 years that there's been major mining using cyanide in the State of Nevada there has not been a major
16 incident to report as of yet and hopefully that will continue with the diligence of the companies and the
17 transporters and the manufacturers in Nevada.
18

19 Commissioner Ricci asked what's happened with the situation in Fallon?
20

21 Mr. Biaggi explained the Division, in concert with the State Health Division, has been undertaking environmental
22 sampling in the Fallon area for the leukemia cluster. We started that activity on the 8th of October and we finished
23 it on Tuesday of last week. The Division had approximately 40 staff members involved for this effort and we
24 sampled 68 homes in the Fallon area, both case families and controls for household dust, for exterior soil, for
25 interior air and for radiological contaminants for radon in air. That has resulted in approximately 16,240 data
26 points. We have gathered a tremendous amount of information out of this, everything from volatile organics to
27 pesticides, herbicides, heavy metals, the radiological contaminants that will be coupled with the biological
28 sampling that was done by the Centers for Disease Control and the Health Division. An attempt is going to be
29 made on a causal relationship between the leukemia and some sort of an environmental factor. As I have reported
30 to you in the past, similar activities have been done in about 100 other cancer clusters throughout the country and
31 the causal effects have only been found in one or two of those. But this effort is actually broader and more
32 ambitious than some of those others and hopefully that cause and effect relationship will be identified. The final
33 report on that evaluation of all this information will not be out until probably this time next year. It takes a lot of
34 information, a lot of analysis to go through this information.
35

36 With regard to the arsenic issues, the Environmental Protection Agency modified the arsenic standard down from
37 50 ppb to 10 ppb. Fallon has received a good bit of support from the federal government to help them meet the
38 arsenic values in their drinking water over the next few years. That standard does not go into place until 2006.
39

40 Some of the things coming up for the Environmental Commission over the next couple of months, next week we
41 have the Oil Dri hearing. That is an appeal to a mining reclamation permit for a kitty litter mine here in Washoe
42 County. It's a very contentious issue, one that is very high profile. David, who are the panelists?
43

44 Mr. Cowperthwaite answered Terry Crawford, Mark Doppe, and Steve Robinson.
45

46 Mr. Biaggi stated the Reno-Sparks Indian Colony and Great Basin Mine Watch lodged the appeal.
47

48 Commissioner Crawford stated I think that Oil Dri is owned by Wal-Mart.
49

50 Mr. Biaggi stated I did not know that. Another hearing that will be ongoing probably in January/February time
51 frame is another fairly high profile contentious issue and that is with regard to the Las Vegas wastewater facility
52 discharge permits. There are three permits: Henderson, Clark County and City of Las Vegas. There have been
53 appeals made with regard primarily to the flow numbers and potential impacts to the Las Vegas Wash and Lake

1 Mead. There are ongoing legal issues in terms of intervention by the permit holders into this process. I'm hoping
2 all of that will be dispensed with right after the first of the year so we can move on with the hearing on that one.

3
4 Commissioner Crowley asked is that a recurring permit? Is that why you're doing this?

5
6 Mr. Biaggi answered permits are renewed once every five years and so this is the five year renewal process for all
7 three of these permits.

8
9 There was a lawsuit that I've spoken to you about with regard against the BLM on 3809, the mining requirements.
10 BLM has modified the 3809 regulations and our concern with that was continuing consistency between the BLM
11 program and the State of Nevada program and the working relationship we have with our federal partners in that
12 situation. With BLM's modifications to 3809, that lawsuit has been dropped.

13
14 We have run into some issues with regard to Chemical Accident Prevention Program, which is a large set of
15 regulations you heard last time. There have been three major incidents over the last few weeks or few months
16 with the CAPP program. The first was Depressurized Technologies Incorporated in Douglas County, which had
17 an explosion at their facility. This wasn't under the CAPP program, but was regulated under the Resource
18 Conservation Recovery Act, hazardous waste program. That incident killed one worker and very seriously
19 injured two others. We have filed Findings of Notices of Violation and Administrative Orders against that
20 company for violations of hazardous waste law.

21
22 Aerotech was a facility in the Las Vegas area that manufactured model rocket engines, solid fuels. That facility
23 had a catastrophic explosion that leveled that facility and a number of other businesses in the small industrial area
24 where it was located. That facility also was not under the Chemical Accident Prevention Program because of the
25 ammonium perchlorate they had on site. We believe, however, in reviewing the definition of what constitutes an
26 explosive under the CAPP program, that that facility should have been enrolled in this program and we have filed
27 actions against that facility as well. Both DTI and Aerotech have indicated their desire to reopen in the State of
28 Nevada and we have some concerns about that, obviously, from their past records.

29
30 Advanced Specialty Gases operated a plant that manufactured a highly toxic gas used for the electronics industry.
31 The facility was located near Dayton. A year ago last July they had a catastrophic explosion which blew the roof
32 off the facility and caused a small brush fire. We've been going around and around with them as has Lyon
33 County because this facility is in an area where residential development and other industrial development can
34 occur and there's been an encroachment on the facility with housing developments. Two months ago Lyon
35 County decided to revoke the Special Use Permit for that facility which effectively put them out of business and
36 as of last week a lawsuit was filed against Lyon County requesting damages in excess of \$5 million. So, the
37 Division will be a party to that action eventually.

38
39 Starting in January we'll be seeing budget issues starting to come forward again. We'll be starting to prepare our
40 budgets for the next biennium and then we'll start working on legislative issues probably in the next couple of
41 months in anticipation of the 2003 session.

42
43 Commissioner Johnson stated I have two items I'd like to address; one would be the budget and I would like to
44 see the ongoing report on the Mojave refurbishing. I think the issue of the permit fees on that facility should be
45 revisited in case they're not in active pursuit of complying with their consent decree.

46
47 Mr. Biaggi explained Mojave has been in the office a number of times. They have expressed to me every full
48 intention to comply with the dates and deadlines within their consent agreement with the Sierra Club. Of course,
49 what that means to us is dramatically reduced fees into the program. This is an issue that I have been bringing up
50 to the Nevada legislature for the last two sessions that we're going to have to look at some major reforms of fees
51 in order to support the program and that is one of the things that we'll be pursuing in our budget. But if you'd like
52 I will continue to bring those issues forward.

1 Commissioner Johnson stated thank you for what you sent me after the last meeting. The other issue concerns my
2 concern with the regulation of heavy-duty diesels as opposed to light-duty. Half-ton vehicles have to go through a
3 dynamometer test, etc., but we've more or less accepted that the snap test, the visual seeing smoking diesels and
4 that sort of thing is, but my read through our regulations I think there's a tag to the penalty at a 70 percent opacity,
5 which doesn't recognize the different requirements of the generation of diesel engines. Plus I would like to see
6 those cut points dropped, but I think first off just to ask a review of what we have and its relevance to the
7 regulated environment that's there. I know Clark County is anticipating using remote sensing rather than the
8 visual determination, but I don't know what that status is either. It's been ongoing for a number of years.
9
10 Mr. Biaggi stated we'll bring that forward for the next hearing. David, will you put that on the agenda please?
11
12 Chairman Close called for further questions. There were none.
13
14 Mr. Cowperthwaite asked Chairman Close about exhibits 1 through 6 that related to Petition 2002-02, the vehicle
15 emissions control program, that had been withdrawn.
16
17 Chairman Close stated I guess there's no harm in accepting them, but if this comes back on again, we ought to
18 have these brought back before us.
19
20 Mr. Cowperthwaite stated I will file them.
21
22 Chairman Close asked Mr. Porta to keep the Commission advised as to any progress on the Walker River and the
23 lake and any improvements in the flow that's anticipated or anything of that nature. We want to be kept fully
24 advised.
25
26 The meeting was adjourned at 2:40 p.m.
27
28