

1 for processing of pistachios. And that (unintelligible),
2 that water resource is at risk. That's why we're here,
3 right, that the permit was not restricted enough.

4 NDEP and the Dairy says, "We have conditioned
5 the permit so that we are protecting you." Right? "We --
6 we issued the permit basically so that our fundamental job,
7 to protect the public interest and the waters of the state,
8 we've accomplished that by the (unintelligible) from the
9 Intervenor's off -- response to our opposition."

10 The permit requirements are designed to protect
11 water quality and include a 60-year HDPE line process waste
12 water lagoon and limitations on the use of processed waste
13 water for irrigation of crop lands. According to the terms
14 of the permit, (unintelligible) annual processing -- for
15 processed waste water application rate, will be limited, et
16 cetera -- and essentially the Bureau reached the
17 (unintelligible) conclusion that the water in the state
18 will not be degraded from the operation, and that the
19 public health and safety would be protected.

20 Now, what does that mean? That means as a
21 direct result of the issuance of this permit, in line with
22 NDEP and the Dairy, the financial position of
23 Mr. Barrackman and the remaining Appellants have been
24 maintained, because their interest in the groundwater has
25 been essentially protected. All right?

1 Now, if you go back and you look at 433B, that
2 satisfies the standing provision. We don't agree with
3 that. We don't agree that their interest, that the terms
4 of the permit maintains their interest. We are fearful
5 that the result is going to be pollution to the
6 groundwater, but the State is saying, "We have conditioned
7 this permit exactly to protect your interest. We're
8 maintaining your financial position."

9 So how on the one end they can be saying that
10 and being saying that we don't need the standing provision
11 shows to us the incredible awkwardness of saying, in the
12 SEC context, why we should be interpreting the provision
13 this way.

14 All right. It's -- you know, if you are to
15 rely solely on the information presented to you by NDEP and
16 the Appellants, these Applicants have standing -- or these
17 Appellants have standing, because their specific result of
18 the permit is to preserve the groundwater quality. All
19 right? That's what -- that's what they say in the permit.
20 That's what the whole reason for the permit is, for the
21 conditions on the permit. So how they could not have
22 standing in their mind is -- kind of escapes us. We, of
23 course, dispute the fundamental premise that the permit is
24 adequate. All right?

25 So it presents a very difficult -- if you want

1 to pursue that line of reasoning, it presents a very
2 difficult analytical tact to say, well, what really what
3 controls here is whether or not the resource is protected.
4 If the resources is protected, then these Appellants have
5 standing, because their financial position is maintained.
6 Of course, that also means that the permit was correctly
7 issued -- right -- because the resource is protected.

8 If you find that the resource was not
9 protected -- right -- that they will be financially hurt
10 because the permit was too lax to meet substantive
11 requirements, these Appellants lack standing because that
12 financial position will be hurt.

13 We don't believe that the Legislature intended
14 that result to happen. That's non-sensical. We believe
15 that what should control here is the any-person-who's-
16 aggrieved standard, which is what directly applies to this
17 appeal.

18 And so that's our pitch to you, that you have a
19 choice between these two competing constructions of these
20 laws. In your role as overseer of any permits, you have
21 the ability to interpret laws that come to you and
22 that govern. And I'd ask you to declare a law
23 unconstitutional, contrary to what the Interveners are --
24 how they're trying to position. They're saying, "You have
25 a choice, and your choice should be to allow public

1 participation, and to foster and encourage that
2 participation, rather than to take a position that says
3 "why bother?" to the public, because you will not -- we can
4 ignore everything you say, and you will not be able to
5 participate in an appeal hearing, and we think that's
6 inappropriate.

7 And if you have any questions, we'll be glad to
8 answer them.

9 CHAIRMAN COYNER: Thank you, Mr. Marshall.

10 I think I'll proceed through the list of
11 Appellants. Then we'll come back to the Intervener. Let's
12 start with you --

13 MR. NEWTON: (Unintelligible).

14 CHAIRMAN COYNER: Yes, Mr. Newton.

15 MR. NEWTON: I just wanted to let you know that
16 Annie Bell has arrived and is in the room.

17 CHAIRMAN COYNER: Thank you very much,
18 Mr. Newton.

19 So I have now, for my list of Appellants -- let
20 me just review one more time, that are present. Bill
21 Barrackman, Mary Crater, Bruce Crater, Annie Bell, Curtis
22 Stengel, and David Steel. Okay?

23 MR. NEWTON: Christie Terraneo.

24 CHAIRMAN COYNER: Oh, I'm sorry. I misread my
25 mark. Yes, Christie Terraneo and not David Steel.

1 MR. NEWTON: That's right.

2 CHAIRMAN COYNER: Thank you very much.

3 Okay. I'll proceed down the list of Appellants
4 now for opening statement, again with the reminder that the
5 focus of this hearing is to decide whether you have
6 standing. And whether it's defined under the APA or 233B
7 will be for us to decide, but that is the focus, not the
8 merits or the quality of the permit, how good the permit is
9 or how bad the permit is. Your job today is to convince us
10 that you have standing as we see those two NRS's.

11 You may choose to waive a statement at this
12 time, and you can speak under Public Comment, but, again,
13 the decision of the Commission will be rendered prior to
14 public comment.

15 So I'll start with Bill Barrackman.

16 MR. BARRACKMAN: Thank you. The only thing I
17 think I want to say for the record --

18 MR. FREY: I'd object. Mister`--
19 Mr. Barrackman is represented by an attorney who just made
20 a statement on his behalf. Now we're going to have
21 testimony from Mr. Barrackman in addition to his attorney's
22 comments?

23 CHAIRMAN COYNER: Mr. Newton?

24 COMMISSIONER DODGION: From the standpoint of a
25 private panel, I have no objection to Mr. Barrackman making

1 a statement.

2 MR. BARRACKMAN: Excuse me?

3 COMMISSIONER DODGION: I have no objection to
4 you making a statement.

5 MR. BARRACKMAN: Okay.

6 CHAIRMAN COYNER: Where'd he go?

7 UNIDENTIFIED SPEAKER: (Unintelligible).

8 UNIDENTIFIED SPEAKER: He just ran Newton out
9 of the --

10 MR. NEWTON: Mr. Chairman, as a matter of
11 (unintelligible) has decided to allow it or not?

12 CHAIRMAN COYNER: Yeah. I don't see it in the
13 Rules of Practice as to whether it's an either-or
14 situation.

15 MR. NEWTON: It is unusual to have an
16 interested party make a statement after their attorney, but
17 (unintelligible).

18 CHAIRMAN COYNER: All right. Mr. Dodgion
19 indicates that he is fine with Mr. Barrackman making a
20 statement.

21 Ms. Zimmerman?

22 COMMISSIONER ZIMMERMAN: I have no objection.

23 CHAIRMAN COYNER: And I have no objection. So
24 go ahead Mr. Barrackman. Thank you.

25 MR. BARRACKMAN: Yeah, I'll just be very brief.

1 Shortly in reviewing this record, I think
2 there's also my affidavit that was included, to say that,
3 you know, I'm not an out-of-town environmental group. I
4 live within a mile of this dairy. I have a pistachio
5 orchard there. I've established -- it's been there since
6 1989, '90. I have a concern about the groundwater getting
7 polluted from this dairy. That's why I'm here.

8 I feel that -- and, you know, if we look -- if
9 you look at the legislative history of this law, this 233B,
10 I think it was that -- Mr. James Wadshams presented it.
11 And his -- as I understand it, his concern at that time was
12 to make it easier for hearing officers to decide who should
13 have standing. And also he mentioned that he had been a
14 counsel for the insurance industry and also others in the
15 state who were obtaining permits.

16 And what he was saying was -- for instance, he
17 gave an example. Let's say a large insurance company
18 had -- was doing business in the state, and a small
19 insurance company wanted to come and get a permit, a
20 license to -- to do business. And his concern was that
21 that large insurance company would -- would raise an
22 objection and oppose the permit that would -- was being
23 issued for that insurance company. And that was his
24 reasoning for introducing this bill.

25 Well, I'm not a dairyman, and I'm not in

1 competition with this dairy. So I'll make that very clear.
2 I'm just a man that has a home there and worked hard for a
3 number of years to establish my orchard. Thank you.

4 CHAIRMAN COYNER: Thank you, Mr. Barrackman.
5 Mary Crater, would you like to make an opening
6 statement?

7 MR. CRATER: Bruce Crater here. I'm
8 representing my wife, and (unintelligible) I'd like to make
9 a statement.

10 CHAIRMAN COYNER: Thank you. Go ahead, Bruce.

11 MR. CRATER: Yes. I'm Bruce Crater. I am a
12 citizen of the United States of America, a born citizen --
13 a natural born citizen. I served in the armed forces. I
14 am a registered voter in Amargosa Valley, Nye County.

15 And I believe in the Constitution of the United
16 States and feel that NRS 233B is in conflict with the
17 Constitution of the United States, and I therefore have the
18 privilege of being heard. Thank you.

19 Oh, I would like to make another addition. I
20 moved into the Amargosa Valley for the privilege of
21 breathing clean air and drinking clean water rather than
22 having to buy bottled water and living in a polluted area.
23 Therefore, the decision was made by the Water Pollution
24 Control District to issue this permit will jeopardized my
25 (unintelligible) that I have to breath clean air and drink

1 clean water. Thank you.

2 CHAIRMAN COYNER: Thank you, Bruce, very much
3 for your statement.

4 Annie Bell?

5 ANNIE BELL: I would just like to say that I've
6 always (unintelligible) in Amargosa Valley 30 years, and
7 everything I have financially I've sunked into my home
8 there. And when I moved there, there was no threat to the
9 water source, and now I feel uneasy about the
10 (unintelligible) that are made in this (unintelligible)
11 investment, if my I can't live there for the rest of the
12 time.

13 And I want you, as my governing body, to help
14 me protect this investment that I've made in Amargosa and,
15 indeed, in the United States. (Unintelligible) and as part
16 of my right of citizenship I would like to be heard, at
17 least, my feeling (unintelligible) I don't own a dairy,
18 that like I said (unintelligible) pollution groundwater
19 problem. Thank you for that.

20 CHAIRMAN COYNER: Thank you, Annie, very much.

21 Curtis Stengel?

22 MR. STENGEL: Thank you, Mr. Chairman. I'm a
23 resident of Amargosa Valley. I retired from the City of
24 Las Vegas and built a home south of the site of the "to-be
25 dairy." I'm downwind and I'm downwater just from that

1 facility.

2 To have my comments fit your requirements,
3 where I would benefit financially, they would have
4 (unintelligible). You take away my environment, the air I
5 breathe, taint the water, then you can pay my taxes.
6 That's how I would benefit. Thank you.

7 CHAIRMAN COYNER: Thank you, Curtis.

8 Christie Terraneo?

9 MS. TERRANEO: Yes, sir. My name is Christie
10 Terraneo, and I've been an Amargosa Valley resident since
11 the year 2000. I have an (unintelligible) ranch, and the
12 way I see it (unintelligible) zero, zero. To the south of
13 me I have the existing dairy, where the south wind I get --
14 I haven't had the benefit, and the (unintelligible).

15 I'm financially impacted by this decision. I
16 do not benefit from this decision except under my
17 Constitutional Right to the Fourteenth Amendment to due
18 process. Where my land is located, if this dairy is given
19 this permit, they will be moving groundwater through a
20 pipeline on the easement down the farm road. This farm
21 road easement is being routed across the valley two miles.
22 There's nothing in between it.

23 If at any time that pipeline breaks, it will be
24 (unintelligible) to discuss it. My water for my ranch will
25 be impacted. I live there. I own trees. I have a tree

1 farm. The benefit -- my water is also my drinking water.

2 So under the Constitution, under the Fourteenth
3 Amendment, I have a right to speak, and under the First
4 Amendment I have a right to speak. And (unintelligible)
5 where you're taking a (unintelligible) 233B, as spoke to my
6 (unintelligible) for the State. All this is then -- will
7 never be appealed because you -- why would you give them
8 here today to maintain a financial incentive, and if you
9 (unintelligible), that these two are based off of.
10 (Unintelligible).

11 So, again, I have the right to be a party to
12 this based on the location of my land, the location of this
13 (unintelligible), and on that constitutional right. Thank
14 you, sir.

15 CHAIRMAN COYNER: Thank you, Christie, very
16 much.

17 Is there any other Appellant present that would
18 like to speak? Did I get everybody? All right. Thank you
19 very much.

20 Again, I'll just remind you, you will have an
21 opportunity to speak again if the question is asked by a
22 Commissioner or at the time of Public Comments after the
23 decision.

24 I'll move now to the Intervener and ask him for
25 his opening statement.

1 MR. BUTLER: Mr. Chairman, I don't have an
2 opening statement. I would like to respond very briefly to
3 Mr. Marshall's comments, if that's okay.

4 Mr. Marshall indicates that you have a choice,
5 but I think that it's clear that the Commission does not
6 have the choice to simply ignore what the Legislature has
7 enacted. And no matter which of the paths that he suggests
8 you follow, if you -- you end up where he wants you to end
9 up, is simply ignoring the provisions in the APA that the
10 Legislature has adopted.

11 Instead, I suggest that you go back to the
12 Attorney General's opinion, which gives a thoughtful lay to
13 reconcile the two statutes, and that is that the more
14 recently enacted statute, the amendment to the APA, serves
15 as a limitation or a definition of what is an aggrieved
16 person under NRS 445. That is the explanation of the
17 Attorney General's Office.

18 It is gives the right to rationalize or
19 reconcile the two statutes according to some well-known
20 canons of statutory construction. That's what the last SEC
21 panel did. I think this panel should follow that same
22 course.

23 The second point I want to make is that he
24 suggests that people are denied the right to participate in
25 the permit decision making process. Well, that's not

1 entirely true. This permit process has gone on for some
2 time. There have been public comment processes. There's
3 been a public hearing. People have been allowed to
4 comment. Their voices have been heard. The statute does
5 not deny participation. It simply limits participation in
6 one aspect of that, and that is where there is a contested
7 case hearing, which is what we're in today. I think he
8 sweeps too broadly with that argument.

9 And then finally he suggests that the statute
10 on its face is non-sensical because of the -- if the permit
11 is right, then the status of the party is maintained. But
12 I think you need to look more closely what the statute
13 actually requires. Again, he's sweeping too broadly.

14 What the statute says is that when there is a
15 contested case hearing on the granting of the permit -- and
16 that's the context where we find ourselves today -- that
17 the Appellants must show to the satisfaction of the
18 presiding hearing officer before he or she can be admitted
19 as a party, that the financial interest is likely to be
20 maintained as a direct result of the granting of the
21 permit.

22 I don't think there's been any evidence given
23 or any suggestion to the panel today that you could follow,
24 that meets that requirement of the statute. So I -- on
25 behalf of the Intervener, we join in the motion made by

1 NDEP and urge you to dismiss the appeals.

2 CHAIRMAN COYNER: Thank you very much,
3 Mr. Butler.

4 I think I'll call for questions from the
5 Commissioners and the panel now to any of the opening
6 statements at this point.

7 COMMISSIONER DODGION: I would just comment to
8 Mr. Marshall --

9 CHAIRMAN COYNER: Can you hear him down there
10 okay, Las Vegas?

11 UNIDENTIFIED SPEAKER: Yes.

12 CHAIRMAN COYNER: Okay.

13 COMMISSIONER DODGION: As I was saying, in
14 response to Mr. Marshall's analysis of the "maintain," I
15 have to agree with you that this statute, as it exists,
16 provides, you know, a -- a disconnect. It's -- I don't
17 like it, but I also feel that we have -- this Commission
18 has made -- us, in particular, the panel and the
19 Commission, has made a decision with respect to it and with
20 respect to consideration of the Attorney General's opinion.
21 And that -- that decision and the opinion have been
22 discussed by the entire Commission.

23 So I think that we, as a panel here today, are
24 somewhat of a dilemma. I find a lot of merit in some of
25 your arguments, and I also find some merit in the other

1 attorney's arguments, particularly with the public that's
2 involved.

3 My understanding is that this statute is going
4 to be revisited by the 2007 Legislature, and we will hope
5 that it would get straightened out at that time.

6 CHAIRMAN COYNER: Stephanie, any comment at
7 this point before we move forward?

8 COMMISSIONER ZIMMERMAN: Well, I agree with
9 Mr. Dodgion that if -- if -- (unintelligible) my
10 understanding that someone is looking at this in the next
11 Legislature. Is that correct?

12 MR. NEWTON: I've been told there's a bill
13 drafted. (Unintelligible), but I -- I haven't seen it.

14 COMMISSIONER ZIMMERMAN: Okay. I hear the
15 concerns of the Appellants, and I completely understand
16 (unintelligible). I think that the weight of that
17 (unintelligible) take account and the merits of the motion
18 to dismiss are hard to ignore.

19 I guess I'm curious how -- how this property
20 became a dairy farm. Was it -- was a permit provided by
21 another agency? Because to me it seems like the NDEP is
22 more of an action regarding the already permitted use of
23 the property rather than the NDEP permitted use.

24 So, you know, if (unintelligible) are concerned
25 about the groundwater quality, maybe the Appellants would

1 be served by getting involved in the testing environmental
2 process that is required by the permit to ensure that the
3 quality of the water leads the appropriate standard. And
4 then maybe the Appellants should have discussion with the
5 jurisdiction approving the permits.

6 So those are my comments.

7 CHAIRMAN COYNER: Thank you, Stephanie.

8 Commissioner Dodgion?

9 COMMISSIONER DODGION: I've been out of the
10 public eye for some time, but Nye County did not used to
11 have zoning building permit requirements. Is that still
12 the case?

13 MR. BARRACKMAN: Yes, sir. We're, in Pahrump,
14 working on a regional planning district. But there is
15 provision, however, in the State statutes that gives the
16 county commissioners the authority regulate land use,
17 whatever that land use may be detrimental to the health and
18 welfare, and economic well-being of the citizens in that
19 area.

20 And we presented this to our County
21 Commissioners, along with a vote -- a resolution of
22 four-to-one from our town advisory board, along with a
23 petition that was over 200 signatures on it. And the
24 Commissioners told us that they couldn't act on this
25 because we did not have original a regional planning

1 district.

2 And I reminded them that the way I see the law,
3 and the way I read, it's spelled out very clearly, that
4 they do have the authority to regulate land use for the
5 exact reason that in the areas of Nevada that are just
6 beginning to develop, where these regional planning
7 district do not exist, there should be some authority to
8 regulate land use or hazardous uses. But they chose to
9 ignore that and assured us that NDEP was going to protect
10 us and our interest. And we're here.

11 CHAIRMAN COYNER: For the record, that was
12 Mr. Barrackman's response to a question from Commissioner
13 Dodgion.

14 So let's refocus now. I have one question for
15 the Division before we proceed. Does the status of the
16 permit -- is it held in abeyance under appeal or does it go
17 forward?

18 UNIDENTIFIED SPEAKER: (Unintelligible).

19 CHAIRMAN COYNER: It goes forward?

20 MR. DROZDOFF: It goes forward. The -- the
21 permit is effective.

22 CHAIRMAN COYNER: Is effective?

23 MR. DROZDOFF: Yes.

24 CHAIRMAN COYNER: Okay. Then I have a question
25 for the Appellant. Is there any activity on the site right

1 now?

2 MR. BARRACKMAN: Not that I'm aware of.

3 CHAIRMAN COYNER: So there's no construction
4 undergoing?

5 MR. BARRACKMAN: Not that I'm aware of.

6 CHAIRMAN COYNER: All right. Normally we'd
7 move to the case in chief, but --

8 UNIDENTIFIED SPEAKER: Commissioner, may I make
9 a suggestion on this, since it's not marked a contested
10 case hearing, this is simply a hearing on the motion, that
11 we had argument in support of the motion, the opposition to
12 it, it seems to me there's just a reply and then the panel
13 should decide.

14 CHAIRMAN COYNER: I'm just making sure my
15 lawyer is not looking over my shoulder and that I glitch
16 the proceedings somehow. Should I properly call for the
17 witnesses though? I don't know if there's somebody else
18 out there that someone wants to present as a witness.

19 MR. NEWTON: The normal procedure is to have
20 the moving party, which in this case is the Division, to
21 make its opening, and then you hear from the opp -- those
22 opposed to the motion, and then it goes back to the moving
23 party to respond on any issues that were raised in the
24 opposition. Because the moving party has the burden of
25 proof, so they are given the opportunity to open the