

1 session, and they are normally given the opportunity to
2 have the last word because they have the burden of proof.

3 CHAIRMAN COYNER: Okay. So I don't have to
4 call for witnesses. That's not an issue here?

5 MR. NEWTON: Correct.

6 CHAIRMAN COYNER: All right. Are there any
7 other steps I have to take before I ask the Division's for
8 their closing?

9 MR. NEWTON: I have a request from one of the
10 Appellants to make another comment to the Board, but it's
11 up to the panel to discern.

12 CHAIRMAN COYNER: It's an additional statement
13 from someone that's already spoken, correct?

14 MR. NEWTON: Correct.

15 CHAIRMAN COYNER: Okay. Objection?

16 COMMISSIONER DODGION: I have no objection.

17 CHAIRMAN COYNER: Objection, Ms. Zimmerman?

18 COMMISSIONER ZIMMERMAN: No objection.

19 CHAIRMAN COYNER: Okay. Go ahead. And tell us
20 who you are, please.

21 MR. CRATER: Yes, I'm Bruce Crater. I spoke
22 earlier about the competition. This amendment -- or this
23 statute is in question, and our privilege to be heard seems
24 to be quite part of this meeting. And if you continue to
25 support this statute, which is in conflict with the United

1 States Constitution, you are in a conspiracy. If you
2 support this statute, you are in a conspiracy against the
3 Constitution of the United States. Thank you.

4 CHAIRMAN COYNER: Thank you, Mister`-- thank
5 you, Bruce.

6 David, any other steps I need to go through
7 before I ask for a motion?

8 MR. NEWTON: Not unless you or any of the other
9 members of the panel have any questions regarding the
10 Attorney General's opinion and his ability to hear. Other
11 than that, if you're comfortable -- I know you've all read
12 the copy that was provided. So if you're comfortable, you
13 can go forward with asking for a motion and then
14 (unintelligible) --

15 CHAIRMAN COYNER: Anything further from
16 Mr. Frey --

17 MR. FREY: Yes.

18 CHAIRMAN COYNER: -- before we move to the
19 motion?

20 MR. FREY: Yes, I would like to reply.

21 CHAIRMAN COYNER: Go ahead.

22 MR. FREY: And I'd like to start by talking a
23 little bit about due process and equal protection.

24 And while (unintelligible) maybe none of us
25 other than Beverly Hills has a discharge permit,

1 environmental permit, I imagine that we all -- almost all
2 of us have driver's licenses. And you have no
3 constitutional right to have a driver's license. What you
4 have is a statutory right.

5 And the Legislature in the state created a
6 series of statutes that describe how you get a license, and
7 what age you can get the license, that you have to take a
8 test, that you have to take a vision test, and a practical
9 test, a written test. And they've done all of this, and it
10 doesn't give you a constitutional license. It gives you
11 something that is created by statute.

12 Now, when you get that -- no one else can
13 challenge it. No third party can say, "No, don't give him
14 a license. I don't think he should drive. I've seen him."
15 A third party cannot challenge, constitutionally, your
16 right to have a license. The State, once having given you
17 a license, cannot take that license away from you without
18 affording you due process. That means they have to give
19 you a hearing, because once you have that license, that
20 license is a property right of yours.

21 Now, let's look at that compared to the
22 situation today. Beverly Hills Dairy, they have a permit.
23 The permit system that was created by statute. What also
24 was created by statute, not the constitution, but by
25 statute was that a third party could challenge that permit.

1 Unheard of. Nobody else has that.

2 You can get a license. It doesn't give a third
3 party a right to challenge it in any way. The Legislature
4 said, "We're going to give other people the right to
5 challenge your permit." They created that by statute.
6 Then they wrote and amend the statute and limited who could
7 challenge. They limited by saying you have to show that
8 you were aggrieved by it.

9 Now, Mr. Marshall argued in his brief that
10 "aggrieved" has a certain definition. Well, it does, but
11 the Legislature narrowed that definition when it modified
12 233B.127, and it came up with a very narrow definition, but
13 that's the Legislature's prerogative to do that.

14 Now, there's no due process right existing
15 until it is created by statute, and if you can create
16 something by statute, you can take it away by statute, or
17 in this case, make it narrow it by statute.

18 What -- whether it is an equal protection
19 question, I believe, is if the Commission treats people who
20 come before it -- again, these third parties who are
21 challenging permits -- which was exactly the case with the
22 Big Springs appeal which occurred in July -- a third party
23 came in and said, "We're opposed to that permit," again,
24 had no financial -- could not demonstrate financial --
25 their financial situation would be improved or maintained.

1 And they were -- they were dismissed. Their
2 case was dismissed, and it said -- and the SEC said, "You
3 can take it up -- take this up with the court. If there's
4 different possible definitions, appeal this to the court,
5 but we're following the statute."

6 What I believe is, if you come to a different
7 conclusion today, then you have not complied -- you have
8 not provided equal protection under the law, because you,
9 as a Commission have said to one appellant, "You're
10 dismissed," but then turn around and say to another
11 appellant -- neither one of them could show that their
12 financial situation was maintained or improved -- you
13 turned around to another appellant -- well, actually, these
14 cases, contrary to what Mr. Marshall said, are the same.
15 Appellants came in, could not demonstrate financial --
16 their financial situation improved or maintained.

17 One's already been dismissed. This one should
18 be dismissed, as well, and let Mr. Marshall take it on
19 appeal. And if he says that there are different ways to
20 interpret these statutes, and the Division's is wrong, let
21 a judge determine that, and then we can go forward from
22 there.

23 But I -- I suggest that the Commission not have
24 inconsistent rulings on the same statute. Thank you.

25 CHAIRMAN COYNER: Okay. Questions -- questions

1 from the Commission?

2 UNIDENTIFIED SPEAKER: I have a question.

3 CHAIRMAN COYNER: You do?

4 MR. NEWTON: Mr. Chair?

5 CHAIRMAN COYNER: Yes. Yes, David.

6 MR. NEWTON: We have another request from one
7 of the Appellants to speak, the one of them that had
8 already addressed the Commission.

9 CHAIRMAN COYNER: Well, I'm not going to get
10 into a case of where the Appellants are debating with
11 lawyers. It's bad enough that we have lawyers debating
12 with lawyers. So I think we'll move to just questions from
13 the Commission for the Appellants or the lawyers.

14 And, Stephanie, you've indicated you have none
15 right now?

16 COMMISSIONER ZIMMERMAN: I have none. Thank
17 you.

18 CHAIRMAN COYNER: Commissioner Dodgion has
19 none?

20 COMMISSIONER DODGION: I have none, as well,
21 other than I have for my attorney. David, I want you to --
22 I want you to confirm for me something in your opinion.
23 And when I say, "your opinion," I don't mean your personal
24 opinion, but I mean the A.G.'s opinion.

25 And that runs to the assumption -- or at least

1 my interpretation that 233B, as it was alluded to by
2 Mr. Frey. 233B is the floor, I believe it was your wording
3 in the opinion. In other words, it sets the initial date
4 as to who can come through for the administrative process
5 under an appeal hearing.

6 Is that correct?

7 MR. NEWTON: That's correct. And what you have
8 here is you have the Legislature having enacted 233B
9 (unintelligible). The Legislature now also then enacted
10 445.605, which is the statute that Ms. Marshall was
11 referring to that allows for any aggrieved party to appeal.

12 And that worked at that time because of the way
13 the floor was set up. The Legislature then went back and
14 moved the floor, and they have taken -- and they have upped
15 the ante as to what the minimum procedure or requirement is
16 for an appellant to demonstrate in order to move forward
17 with an appeal.

18 Although (unintelligible), they basically
19 nullified, in part, what they had done in 445A.605, because
20 233B said that (unintelligible) set the foundation. The
21 very agency is free to regulate or impose additional
22 restrictions, but they have to have minimum imposed, what's
23 contained in 233B.

24 CHAIRMAN COYNER: Thank you. Second question.
25 Is -- with regards to timing, is it generally accepted in

1 the rule of law that the latest modification or amendment
2 carries more weight than a previous one?

3 MR. NEWTON: That's not the Rule of Statutory
4 Construction, but following those rules -- is that there
5 are several, and they often conflict, and they conflict in
6 this case.

7 There is a Rule of Statutory Construction that
8 says the latest modification carries weight because the
9 Legislature is deemed to have known all the other laws in
10 existence at the time it passed law. There are others --
11 the ones that Marshall alluded to regarding that the
12 specific statute controls over the general. There are
13 several other ones that are also alluded to that in the
14 Attorney General's opinion, and you kind of have to decide
15 which ones are most applicable in a particular instance.

16 Because of 233B's introductory language stating
17 that it sets the minimum procedural requirements, it's the
18 opinion of our office that the latest action of the
19 Legislature, even though it is on a more general, better
20 controls in this particular. And then from that go
21 forward -- we went forward -- we moved forward in
22 attempting to harmonize the two statutes as much as we
23 could.

24 CHAIRMAN COYNER: Thank you, David. One more
25 question. And I remember reading in one of the motions a

1 potential lack -- a conflict of interest between you, being
2 a lawyer at this proceedings for the Commission, and the
3 Attorney General's opinion.

4 And I just want to clarify for the benefit of
5 the Appellants, at least, that this is an Attorney
6 General's opinion. In other words, it's George Chanos'
7 opinion. It's not David Newton's opinion, or it's the
8 Office of the Attorney General's opinion maybe is more
9 properly stated. Now --

10 MR. NEWTON: That's correct. The panel that
11 heard the Great Basin opinion could have asked me to
12 interpret the statutes on the spot, during a proceeding,
13 much like we have today.

14 The Chairman of that panel and the panel agreed
15 it would be better to go through the more formalized
16 process of requesting an opinion of the Attorney General's
17 Office, so they would -- they, the public, decision --
18 because they knew the ramifications in terms of the number
19 of agencies that this particular interpretation could
20 affect. And so they -- instead of having me do something
21 quick and somewhat ad hoc with my own interpretation, they
22 asked for an opinion of the Attorney General's Office.

23 CHAIRMAN COYNER: Any further questions from
24 the Commissioners?

25 COMMISSIONER DODGION: I have none.

1 CHAIRMAN COYNER: David, is there any reason
2 why I can't move to a vote?

3 MR. NEWTON: No. You do need to ask for a
4 motion.

5 CHAIRMAN COYNER: I do know that. I do know
6 that, but is there any reason I can't move to a vote?

7 MR. NEWTON: No.

8 CHAIRMAN COYNER: Thank you. When I ask for
9 the motion, I'd like the Commissioner that makes that
10 motion to be specific as to the applicability of the motion
11 for approval or which -- whatever, and if you're moving to
12 approve or dismiss, I think you need to include in there
13 that you've basketed all the Appellants or not, or perhaps
14 to be more specific so that we have that applicable to
15 everyone.

16 Do I hear a motion from either Commissioner or
17 do I have to make one?

18 COMMISSIONER DODGION: I'll make a motion.

19 COMMISSIONER ZIMMERMAN: I'll make a motion,
20 but I probably won't (unintelligible). That's about it.

21 CHAIRMAN COYNER: Okay.

22 COMMISSIONER ZIMMERMAN: Because I'm just not
23 sure what you're asking for.

24 CHAIRMAN COYNER: Well, what I was alluding to,
25 Commissioner Zimmerman, is if there is a reason to treat

1 some appellant different than another one, that you perhaps
2 thinks has standing. In other words, if -- there's nine
3 different Appellants, and conceivably one could have
4 standing and eight couldn't. It could break out that way.

5 So I'd like to be specific in the motion that
6 we are including all the Appellants or not. My -- my
7 personal feeling, if I was making the motion, is I would
8 include all the Appellants.

9 Or you can just move -- or you can move to
10 approve the Dismiss by the Department -- by the Division.
11 Excuse me.

12 COMMISSIONER ZIMMERMAN: Well, I move to
13 approve NDEP's Motion to Dismiss the appeal of the Water
14 Pollution Control Permit NV2006504, referent to Beverly
15 Hills Dairy, pursuant to NRS 233B.127(4). And --

16 COMMISSIONER DODGION: I'll second the motion
17 with the understanding that it applies to all of the
18 Appellants that have appeared and the Certificate of
19 Service on the Motion to Dismiss.

20 CHAIRMAN COYNER: The motion by Commission
21 Zimmerman, seconded by Commission Dodgion.

22 Do we have the motion down? I'll turn to --
23 anything discussion now? I'll turn to David and ask him if
24 there's an issue -- does that now apply to all nine
25 Appellants?

1 MR. NEWTON: That's my understanding of the
2 motion as it was made.

3 COMMISSIONER DODGION: And I second it.

4 CHAIRMAN COYNER: So the second stands. Any
5 further session by the Commission?

6 COMMISSIONER DODGION: I'd just like to comment
7 that I think that we are bound more or less to this
8 decision and this motion by past actions of the other panel
9 of the Commission and with respect to the Attorney
10 General's opinion.

11 CHAIRMAN COYNER: Any further discussion?
12 Commissioner Zimmerman?

13 COMMISSIONER ZIMMERMAN: No.

14 CHAIRMAN COYNER: Call for a vote. All those
15 in favor of the motion say, "aye." Aye.

16 Opposed say, "nay."

17 It's unanimous. Is that correct? Okay.

18 (Motion carries with a unanimous vote)

19 CHAIRMAN COYNER: Thank you very much,
20 Commission.

21 I now have to move to Public Comment. Is there
22 any members of the public that would like to speak before
23 there appeal panel?

24 UNIDENTIFIED SPEAKER: Yes.

25 CHAIRMAN COYNER: Yes. I have one here raising

1 his hands. All right. I'll start with members of the
2 public in Carson City, and if you'll introduce yourself,
3 please.

4 MR. DROZDOFF: My name's Leo Drozdoff. I'm the
5 Administrator of the Nevada Division of Environmental
6 Protection.

7 CHAIRMAN COYNER: Let me ask if you can hear
8 him okay in Las Vegas.

9 UNIDENTIFIED SPEAKER: Yes.

10 CHAIRMAN COYNER: Okay. Thank you.

11 MR. DROZDOFF: Some discussion was carried with
12 regard to the potential of statutory changes. I just
13 wanted to provide a brief update. At the September 6th full
14 SEC Commission meeting, I made comments on the record that
15 basically amounted to our feeling as the Division, that the
16 changes to 233B were problematic from our perspective.
17 That position -- that position is still ours.

18 Since that time we've embarked on two specific
19 courses of action. We have been in touch with
20 Assemblywoman Sheila Leslie, who did confirm that she is
21 planning to propose some amendment to 233B. We have
22 confirmed that, and we've confirmed that we'd be very
23 interested in working with her.

24 Similarly, we have requested correspondence
25 from the federal Environmental Protection Agency on this

1 matter, because we feel that that's an important piece of
2 the puzzle, as well. We haven't received such
3 correspondence yet, but we have been in contact with the
4 EPA, and we're hoping to receive that document shortly.

5 So I guess I want the Commission and everybody
6 else in attendance to know that we do plan to pursue this
7 matter during the next Legislative session.

8 CHAIRMAN COYNER: Thank you. Any other member
9 of the public wishing to speak?

10 MS. TERRANEO: Yes, sir. My name's Christie
11 Terraneo, and I just want make one more little statement
12 here.

13 CHAIRMAN COYNER: Go right ahead.

14 MS. TERRANEO: In re -- I heard that -- I'm not
15 an attorney. I do have an education. I do have a Master's
16 in public policy, and I look at the issues from a public
17 policy standing because of my background. And in recent --
18 regarding our election law, and every law that is run
19 through by our Legislature, every law has a right to be
20 challenged at some point or time.

21 This law has appears to have been challenged
22 one other time, but not similar to ours in the fact that we
23 have more people appealing this than it appears at the
24 other hearing. Just because a law gets passed doesn't make
25 it good law if we don't get to test it. And I understand

1 that the testing will be in the court.

2 My questions to the panel is: If that we are
3 under the assumption that our Legislature will be listening
4 to this next year, in 2007, would it not be more prudent or
5 not at this time to postpone a ruling until we know if this
6 is going to withhold or not, the statute? We've -- we --
7 they are (unintelligible) question our Legislative
8 (unintelligible) on the stand that they are willing to
9 listen to them again (unintelligible) and would protect
10 this law.

11 Thank you.

12 CHAIRMAN COYNER: Thank you, Christie.

13 Any other members of the public wishing to
14 speak?

15 MR. CRATER: Yes. Bruce Crater. In comment to
16 a statement made by the attorney concerning the driver's
17 licenses, every permit that is issued under our
18 constitutional rights we have can challenge any permit,
19 including driver's licenses. If I find someone's operating
20 a vehicle that is detrimental to my health, safety, or
21 welfare I may challenge his possession of that license.

22 CHAIRMAN COYNER: Thank you, Mr. Crater.

23 Any other members of the public wishing to
24 speak?

25 MR. STENGEL: Yes. Curtis Stengel. This is a

1 reply to NDEP at their December hearing in Amargosa Valley.
2 I had a list of questions that were not answered. I
3 submitted my questions again, restated for this appeal
4 hearing. And I would like to indicate that to this date I
5 have not received any reply. Therefore, with your
6 permission, I will read a few more of my questions.

7 CHAIRMAN COYNER: If you can be brief, please.
8 Thank you.

9 MR. STENGEL: Okay. Regarding the answers that
10 I received, this is a summation of the December transmittal
11 that doesn't -- I did ask what agency would repair broken
12 pipelines and perform cleanups. I got no answer. I did
13 ask if you have approve a permit with information not
14 available (unintelligible). My question was: What type of
15 category of pipe is to be installed on the two-mile
16 pipeline. Another question: If my (unintelligible) from
17 leakage, plumbing, or broken pipe, what recourse do I have
18 to access clean water? NDEP says the permit does not
19 include any provisions that would require cleanup over
20 (unintelligible) clean water in the event of a
21 (unintelligible). My question: Why not?

22 Next question: Did you not inquire of an
23 insurance carrier or body under the (unintelligible)
24 pipeline? My question: Why not? Our access road and
25 egress road, Diablo Drive, if (unintelligible) cause is an

1 access issues are beyond the covered authority? Again, I'm
2 still waiting for answers that have not come.

3 In regards to availability of air pollution
4 monitoring equipment, it was not considered in the
5 development of this permit. Applicant's (unintelligible)
6 will detect ammonia, hydrogen sulfide, methane, carbon
7 dioxide, and also organic compounds. I will be exposed to
8 these gasses. Will my neighbors?

9 Since there was no reference made to the
10 Comprehensive Environmental Response Compensation and
11 Liability Act and the (unintelligible) Planning and
12 Community Right To Know Act, I assume NDEP does not require
13 this reporting.

14 In conclusion, as you, NDEP, are my only hope
15 for keeping me safe in my environment. My home is downwind
16 and downstream from the lagoon site. I believe that you
17 would you stop this event. If you don't, you will be
18 labeled a "terrorist" by myself and the seniors in my
19 neighborhood. Thank you.

20 CHAIRMAN COYNER: Well, thank you, Curtis, very
21 much for your participation. I did read the transcript of
22 the December hearing, and I note some of those same
23 question are recorded here and some answers that were given
24 by the Division. And believe, we'd like nothing more than
25 to grill the Division about some of their answers. So we

1 hope that some day we can get to that point in this appeal
2 hearing process.

3 Again I would remind the Appellants that there
4 is a reconsideration option available to you to come back
5 before the SEC, for that reconsideration, and you may want
6 that as part of your judicial review process because of the
7 potential for a judge to remand it back because you haven't
8 exhausted your administrative appeals. So you might take
9 that under advisement.

10 Any other closing comments from Commissioners
11 only, please?

12 All right. I wish to thank you all for your
13 participation in the process today in the case, and I will
14 declare this hearing closed.

15 (Proceedings concluded)

16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIBER/PROOFREADER'S CERTIFICATE

I, CARRIE HEWERDINE, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 55, inclusive, are the true, accurate and complete transcript prepared from the audio tape made by Robert Pearson on October 30, 2006, before the Nevada State Environmental Commission, that I have verified the accuracy of the transcript by comparing the typewritten transcript against the verbal recording to the best of my ability and skills, considering the quality of the recording provided.

12-13-06
DATE

Carrie Hewerdine
TRANSCRIBER/PROOFREADER