

1 BEFORE THE STATE OF NEVADA, STATE ENVIRONMENTAL COMMISSION

2  
3 In Re: )  
4 )  
5 Appeal of Water Pollution Control Permit: )  
6 NEV60025 North Valley Wastewater Treatment )  
7 Facility – Douglas County, Nevada )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

8 This matter came before a panel of the State Environmental Commission  
9 (“Commission”) on October 15, 2007. Appellant John Nolte (“Nolte”) appeared and  
10 represented himself. Appellant Stephen Bennett (“Bennett”) did not appear but was  
11 represented by John Haug (“Haug”). Appellants Carl and Deborah Larsen (“the Larsens”) did  
12 not appear but were represented by Lynn Muzzy. Respondent Nevada Division of  
13 Environmental Protection (“NDEP”) appeared and was represented by its counsel, Janet  
14 Hess. Intervener Douglas County appeared and was represented by its counsel, Robert T.  
15 Morris.

16 Appellants Nolte, Bennett and the Larsens appealed NDEP’s renewal, with  
17 modifications, of water pollution control permit number NEV60025 for the North Valley  
18 Wastewater Treatment Facility in Douglas County, Nevada. Appellants argued in their appeal:  
19 (1) the provisions of the permit are insufficiently detailed to assure nearby residents that the  
20 effects of odors and pests will be properly handled; (2) the planned operation of the plant  
21 depends on the application for, and amendment of, an effluent management plan by an  
22 adjacent private party and that the permits are improperly disconnected; and (3) the  
23 particulars of the amended permit are vaguely described and could lead to misinterpretation or  
24 conflict during compliance reviews.

25 At the beginning of the hearing, counsel for NDEP moved to have Bennett’s and  
26 Larsens’ appeals dismissed because they did not have legal representatives present. The  
27 Commission denied NDEP’s request because NAC 445B.895 does not require representation

1 by counsel. Counsel for NDEP also moved to have all appeals dismissed because the  
2 appeals failed to present an issue that was within the authority of NDEP. The Commission  
3 denied NDEP's request because the matters appealed were within the purview of the permit  
4 and were therefore within the purview of the Commission to hear.

5 After review of the admitted documentary evidence, after hearing the testimony of Alan  
6 Tinney, and after hearing arguments of Nolte, Muzzy, and counsel for NDEP and Douglas  
7 County, the Commission finds and decides as follows:

8 FINDINGS OF FACT

9 1. On March 29, 2007, Douglas County requested a renewal and modification of  
10 permit NEV60025 to include the Phase II expansion of the North Valley Wastewater  
11 Treatment Facility (the "Facility").

12 2. Douglas County completed a Groundwater Discharge Permit Application ("Permit  
13 Application"), submitted it to NDEP, and paid a \$4,000.00 fee.

14 3. Prior to submitting the Permit Application, the Douglas County Planning  
15 Commission had a meeting about the Facility's special use permit, and as a result of public  
16 comments received, Douglas County moved the effluent treatment pond a hundred feet  
17 farther to the north, which was a hundred feet farther away from the Saratoga Springs  
18 subdivision, and committed to install an aerator during the first phase of construction, rather  
19 than waiting for odor complaints to arise. After a public hearing, the Douglas County  
20 Commissioners upheld the Douglas County Planning Commission approval as it was  
21 modified.

22 4. In its Permit Application, Douglas County requested an increase in MGD flow from  
23 a maximum of 0.45 million gallons per day to 1 million gallons per day and it identified three  
24 sites to which it would discharge effluent: Incline Village wetlands, an on-site rapid infiltration  
25 basin, and the Bently Kirman tract.

26 5. Carl Ruschmeyer ("Ruschmeyer"), the county engineer for Douglas County,  
27 signed the Permit Application and certified that to the best of his knowledge and ability the

1 information contained in the application was true, complete and accurate.

2 6. NDEP reviewed the Permit Application and determined that it was complete and  
3 met all the qualifications.

4 7. On June 26, 2007, NDEP notified Ruschmeyer that a public notice/hearing was  
5 being published in the Nevada Appeal newspaper, comments pertaining to the public notice  
6 were due by July 28, 2007, and that a public hearing was scheduled for August 1, 2007 at  
7 1:30 p.m. at the Legislative Building, 401 South Carson Street, Room 3138, Carson City,  
8 Nevada.

9 8. On June 28, 2007, a Notice of Proposed Action and Notice of Public Hearing  
10 pertaining to the Permit Application was published in the Nevada Appeal newspaper. The  
11 Notice of Proposed Action and Notice of Public Hearing was placed on the NDEP website and  
12 was sent to a list of people who had indicated they wanted to be notified of all of NDEP's  
13 proposed actions.

14 9. In the Notice of Proposed Action and Notice of Public Hearing, NDEP stated that  
15 on the basis of preliminary review of the requirements of the Nevada Revised Statutes as  
16 amended and implementing regulations, it had made a tentative determination to issue (renew  
17 with modification) the proposed permit to discharge for a period of five years. The Notice of  
18 Proposed Action and Notice of Public Hearing stated that written comments were due by July  
19 28, 2007 at 5:00 p.m. and that there a public hearing would be held on August 1, 2007 at 1:30  
20 p.m. at the Legislative Building, 401 South Carson Street, Room 3138, Carson City, Nevada.

21 10. NDEP prepared a fact sheet regarding the Permit Application which was posted  
22 on NDEP's website.

23 11. NDEP prepared a draft permit in advance of the public notice. The draft permit  
24 contained five outfalls to which the Facility could discharge effluent: (1) on-site landscape  
25 reuse areas and on-site dust control and construction use; (2) Incline Village wetlands; (3) the  
26 Facility's RIB(s); (4) the Facility's effluent holding basin; and (5) Bently Kirman tract irrigation  
27 areas.

1           12. On August 1, 2007, NDEP held a public hearing on the issuance of proposed  
2 permit NEV60025 for the Facility. Members of the public who spoke at the hearing included  
3 Curtis Smith, Steve Bennett, John Haug, Deborah Larsen, and John Nolte.

4           13. On August 28, 2007, NDEP issued its Notice of Decision in which NDEP  
5 responded to all the comments it received during the public comment period and during the  
6 public hearing. Appellants Bennett, Nolte and the Larsens were provided with a copy of the  
7 Notice of Decision.

8           14. On August 28, 2007, NDEP issued the final Nevada Groundwater Discharge  
9 Permit 60025 for the Facility (the "Permit").

10          15. The Commission received a timely request for an appeal hearing from Nolte,  
11 Bennett, and the Larsens regarding the Permit.

12          16. The Permit states that there shall be no objectionable odors from the facility,  
13 irrigation plots, effluent holding basin, evaporation/percolation area(s), or facility discharges.

14          17. Odors at the Facility will be handled in multiple ways. When the effluent pond is  
15 built, solar mixers will be installed. Odor controls will also be done at the headworks, which is  
16 at the beginning of the treatment plant where all the collection lines come into the plant. If the  
17 mixers within the effluent pond are not sufficient, additional mixers will be added in the future.

18          18. The Permit states that facility operations shall not cause or contribute to the  
19 propagation of pests or vector nuisances, including mosquitoes.

20          19. NDEP worked with Douglas County to place the area within the Douglas County  
21 Mosquito Abatement Group.

22          20. The Permit requires Douglas County within 90 days of the completion of the  
23 effluent holding basin to submit to NDEP an updated O&M Manual which must include  
24 provision for vector attraction controls including mosquitoes and provisions for odor controls  
25 from the facility, including the effluent holding basin, irrigation plots, evaporation/percolation  
26 area(s), and facility discharges.

27          21. The Permit authorizes Douglas County to discharge effluent from the Facility to:  
28

1 (1) on-site landscape reuse areas and on-site dust control and construction use; (2) Incline  
2 Village wetlands; (3) the Facility's rapid infiltration basin(s) RIB(s); (4) the Facility's effluent  
3 holding basin; and (5) Bently Kirman tract irrigation areas.

4 22. The approximately 300,000 gallons per day that the Facility currently discharges  
5 goes to the Incline Village wetlands. The rapid infiltration basin is a pilot study. If the basin  
6 fails to provide the necessary filtration to the secondary effluent, the basin will be shut down.  
7 Another outfall area for effluent is on-site landscape reuse areas and dust control and  
8 construction use, but this outfall area is not a high-end use.

9 23. The three locations that can accept the most effluent from the Facility are: (1) the  
10 rapid infiltration basin, which is the subject of the pilot study; (2) the Incline Village wetlands;  
11 and (3) the Bently Kirman tract.

12 24. A separate permit issued by NDEP governs the Bently Kirman tract. Although an  
13 effluent management plan currently exists for the Bently Kirman Tract, it does not address  
14 taking flow from the Facility. Before Facility effluent can be discharged to the Bently Kirman  
15 tract, Bently Kirman must submit a permit application which will go through the public notice  
16 and comment process.

17 25. The Permit authorizes the Facility to discharge effluent to all five locations with  
18 whatever flow amount it determines, not to exceed one million gallons per day. If the five  
19 locations identified in the Permit cannot accept the flow from the Facility, the Facility cannot  
20 discharge that amount of flow.

21 26. If the Facility does not have a location to which it can discharge effluent, Douglas  
22 County cannot produce the effluent. If the Facility goes over its flow or does not have a place  
23 to which it can discharge effluent, Douglas County is in violation of the permit. If the Facility  
24 discharges to any location other than the five locations identified in the Permit, it is a violation  
25 of the Permit.

26 27. The Permit does not limit the capacity of the Facility to discharge effluent if Bently  
27 Kirman does not apply for use of effluent from the Facility.

1 CONCLUSIONS OF LAW

2 1. The Commission has jurisdiction to hear this appeal pursuant to NRS 445A.605.

3 2. Douglas County complied with NAC 445A.230, NAC 445A.231, and NAC  
4 445A.232 when it filed its Permit Application for the Facility.

5 3. NDEP complied with NAC 445A.233 when it prepared its draft permit in advance  
6 of public notice.

7 4. NDEP complied with NAC 445A.234 and NAC 445A.239 when it published and  
8 circulated the Notice of Proposed Action and Notice of Public Hearing regarding the Permit  
9 Application.

10 5. NDEP complied with NAC 445A.236 when it prepared a fact sheet regarding the  
11 Permit Application.

12 6. NDEP properly issued the final Nevada Groundwater Discharge Permit 60025 and  
13 acted within its authority as granted by the Nevada Water Pollution Control Law, NRS Chapter  
14 445A, and its implementing regulations, NAC Chapter 445A.

15 ORDER

16 Based on the foregoing findings of fact and conclusions of law, NDEP's issuance of  
17 Nevada Groundwater Discharge Permit 60025 to Douglas County on August 28, 2007 is  
18 affirmed.

19 Dated this \_\_\_\_ day of November, 2007.

20  
21  
22 \_\_\_\_\_  
23 Lew Dodgion, Panel Chair  
24 State Environmental Commission  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of the State of Nevada, State Environmental  
3 Commission, does hereby certify that on the date shown below, a true and correct copy of the  
4 foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was duly mailed,  
5 postage prepaid, to the following:

6 Appelants

7 Stephen L. Bennett  
8 2906 La Cresta Circle  
9 Minden, NV 89423

10 John N. Nolte  
11 2938 La Cresta Circle  
12 Minden, NV 89423

13 Carl and Deborah Larsen  
14 2928 La Cresta Circle  
15 Minden, NV 89423

16 Attorneys & Staff for Intervener Douglas County

17 Robert T. Morris  
18 Chief Civil Deputy District Attorney  
19 Douglas County  
20 P.O. Box 218  
21 Minden, NV 89423

22 Catherin Pool  
23 Douglas County  
24 Post Office Box 218  
25 Minden, Nevada 89423

26 Attorney and Staff for NDEP

27 Janet Hess  
28 Deputy Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

Jon Palm, Bureau Chief  
Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001  
Carson City, NV 89701

Al Tinney, P.E  
Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001

Carson City, NV 89701

- 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
- 26
- 27
- 28

\_\_\_\_\_  
An employee of the State Environmental Commission

DATED: \_\_\_\_\_