

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF August 27, 1998**

**HELD AT: Teleconference, Nevada**

**TYPE OF HEARING:**

**REGULATORY**

**YES APPEAL (Jarbidge/Elko County Panel Selection)**

**FIELD TRIP**

**ENFORCEMENT**

**VARIANCE**

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

**YES AGENDA**

**PUBLIC NOTICE**

**YES MINUTES OF THE HEARING (Transcript)**

**LISTING OF EXHIBITS**

**NEVADA STATE ENVIRONMENTAL COMMISSION**  
**A G E N D A**  
**August 27, 1998**  
**2:00 P.M.**

The Nevada State Environmental Commission will conduct a **teleconference** hearing commencing at **2:00 p.m., on Thursday August 27, 1998**. A public location to participate in the teleconference will be provided at 123 W. Nye Lane, Room 215, Carson City, Nevada.

The public may access the telephone conference of the Commission by dialing **1-800-473-7795**. **Upon calling, your conference party reference is David Cowperthwaite, Executive Secretary**. Your entry into the phone conference will be signaled with an entrance tone. There are a limited number of public phone lines available for the this meeting, so members of the public should contact the Executive Secretary at 702-687-4670 extension 3118 prior to the teleconference to ensure your phone access to this teleconference.

This agenda has been posted at the Grant Sawyer State Office Building, the Elko County Courthouse, the Washoe County Library and at the Nevada State Library & Archives and Division of Environmental Protection in Carson City.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

- I. Telephone Speaking and Comment Protocols -- Discussion
- II. Call of Commission Roster -- Action Item \*  
The Commission Roster will be called by the Executive Secretary
- III. Selection of Appeal Panel Pursuant to NAC 445A.311 -- Action Item \*

Nevada Administrative Code (NAC) 445A.311 provides that the Environmental Commission will determine the members of appeal panels when an appeal deals with water pollution control decisions relating to diffuse (non point sources) NAC 445A.305 to 445A.340. This teleconference deals with the appeal submitted by Elko County in regards to the Finding of Alleged Violation and Order dated July 23, 1998 by the Nevada Division of Environmental Protection's Bureau of Water Pollution Control. This matter relates to the issue of a tributary of the Jarbidge River.

- IV. Public Comment

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary, in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 104, Carson City, Nevada, 89706-0851 or by calling (702) 687-4670 no later than 5:00 p.m. - **August 26, 1998**.

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**STATE ENVIRONMENTAL COMMISSION**  
**Verbatim Transcription of**  
**Teleconference**  
**August 27, 1998**

Executive Secretary

David Cowperthwaite: The call is scheduled to start at 2:00 and I will just log in with these people and start my business. Probably you can begin at any time. Right now is fine. You don't have to announce any arrivals.

Verne Rosse:

D. Cowperthwaite:

Thank you.

Shouldn't it be coming through on this phone?

It should be.

Who do we have on line here?

Marla is on line - Marla is available

Doppe is on line

Roy Trenoweth is on line

Dr. Gifford is on line

Alan Coyner is on line

Anybody else on line here?

Kristin McQueary from the DA's office in Elko is on line

Gary Woodbury from the DA's office in Elko is on line

DAG Jean Mischel is on line

Joseph Johnson is on line

So I guess the only one we are waiting for is Mr. Close. We also have here with me Mike Turnipseed so we are just waiting for Mr. Close and Mr. Iverson to come on line.

Paul Iverson is on line

Yes, we are just waiting for Mel at this point. It is my understanding that Commissioner Jones and Molini are not going to be on line here. We have a speaker phone and we are trying to get it to work here.

DAG Mischel:

D. Cowperthwaite:

Who is on line?

At this point I have Commissioner's Coyner, Doppe, Gifford, Griswold, Iverson, Johnson, Trenoweth, Turnipseed, and you Jean. Commissioner Close is on line. Mr. Close you have a quorum at this point.

We are trying to get our speaker phone up here working so you will have to bear with us while we are trying to figure out what the problem is.

DAG Mischel:

D. Cowperthwaite:

Is anybody from the Division on?

No - nobody from the Division has shown up at this point - I have

Verne Rosse - Verne is the Deputy and Allen is out of the office today so Verne is representing the Division.

DAG Mischel: He is with you or not?  
D. Cowperthwaite: Yes. Verne is with us.  
Karen Fleming: I think if you hang that phone up it automatically comes through this phone -  
D. Cowperthwaite: What we are going to do is hang this up so what we might have to do is call back in so don't be surprised here. We are trying to get the speaker phone on line here.  
DAG Mischel: Are you still there?  
M. Close: Everyone there?  
DAG Mischel: David?  
M. Close: We can't hear David.  
D. Cowperthwaite: I am here.  
Karen Fleming: Did you dial in on this phone?  
D. Cowperthwaite: No -  
Karen Fleming: Try dialing from this phone -  
D. Cowperthwaite: The people here can hear so I will pass the phone around so they will be able to talk. They can hear you at this end.  
Mr. Close you have a quorum and you can proceed with business.  
Chairman Close: I have the agenda before me and it appears as though there has been proper public noticing of the agenda for this teleconference. We have a quorum present and I think the first item is the selection of an appeal panel.  
Comm. Griswold: Mr. Chairman. I would like to make just a brief statement if I may?  
Chairman Close: You may.  
Comm. Griswold: O.K. - Members of this commission received a memorandum dated August 25. The subject was this meeting. The memo cautioned commission members to be very careful of any independent fact-finding or communication with Elko County Officials or the Department of Environmental Protection. I feel strongly there was an omission. The caution did not include facts received or communication from sources that have been parties in this matter and certainly will be very much part of future deliberations and actions. I have served as an Elko County Commissioner and do have knowledge of some facts. Therefore, I do not believe I should be a member of this panel. Additionally, I would hope my fellow commission members will carefully consider facts that they have received and communications that they have had in determining their credibility as a panel member. Thank you Mr. Chairman.  
DAG Mischel: Mr. Chairman, this is Jean Mischel. I just wanted to add to that statement that there is a prohibition in NRS 233B against participating as a decision maker if any of the commissioners have been involved in what could be construed as an investigator so if any of the commissioners do have independent knowledge that they feel could

influence their decision they need to disclose that as well as any other conflicts in relation to this particular matter since it is an open contested case.

Chairman Close: What we are talking about, I believe, is being a panel member on a fact-finding panel rather than just being a commission member at our usual -

DAG Mischel: Absolutely. It only relates to this particular matter.

Chairman Close: So I agree with what has just been said. Does anybody want to recuse themselves as a result of any independent information they may have.

Comm. Trenoweth: Mr. Chairman, Roy Trenoweth.

Chairman Close: Yes, Roy.

Comm. Trenoweth: We have a fire district up there. Some of my personnel from the district have been involved in looking at things so I would re - whatever the word it -

Chairman Close: Recuse -

Comm. Trenoweth: Recuse myself from the panel.

Chairman Close: O.K.

Comm. Trenoweth: And I would be willing at any time to make a motion for the panel members who I think would have nothing to do with what is going on up there.

Chairman Close: Does anybody else wish to take that same action? I gather from the silence that everybody else feels that they could be -

Comm. Griswold: Mr. Chairman, I have withdrawn.

Chairman Close: I understand that -

Comm. Trenoweth: And I have withdrawn -

Chairman Close: So it is my understanding that everybody except Marla and Roy feel they could be an impartial panel member because they have not received any extraneous information - is that a true statement?

Comm. Gifford: True

Comm. Coyner: True

Comm. Doppe: True

Comm. Johnson: True

Comm. Turnipseed: Mike Turnipseed - it is true here.

Comm. Trenoweth: Mr. Chairman, Roy Trenoweth

Chairman Close: Yes, Roy

Comm. Trenoweth: My motion for the appeal panel would be as Chairman, Mike Turnipseed and as panel members Alan Coyner and Mark Doppe for the appeal hearing scheduled for Thursday, September 3, 1998, in Elko.

Chairman Close: Is there a second to that motion?

Comm. Gifford: I would second.

Chairman Close: Are there are comments?

Kristin McQueary: David, this is Kristin McQueary in Elko. We are still kicking around the idea of asking for a continuance. I understand that several people's schedule, including Ms. Mischel's make it difficult for her to be up here next Thursday. We have a couple of concerns about asking for a

continuance: 1) we have an emergency argument and we do not want us asking for a continuance for you guys to hold that against our emergency argument. If we could reach some sort of stipulation on that we would probably ask for a continuance.

Another thing, if we do continue the hearing I would ask that you guys consider setting the hearing up in Jarbidge so the panel, as part of its deliberations, can see the site in question. Elko County Manager George Boucher assured me that we can schedule the Jarbidge Community Hall for any such meeting.

Chairman Close: I don't think we have any problem having the meeting in Jarbidge. I think there was some discussion about that previously. David, do you concur with that?

David Cowperthwaite: We can do it up there but it sort of extends it out and it is certainly at the pleasure of the commission as to where they want to be able to do it. It all depends upon Elko County. I mean at this point we are under that 20 day clock to be able to provide a hearing so that is why that hearing was set for September 3 at this point.

Chairman Close: I would say, on behalf of the commission then, if we do stipulate to a continuance we would never thereafter hold that in any way against your position if we can do it, and Jean is going to tell us if we can do it or not but if we do introduce stipulation it is going to be on both sides and it would not affect our consideration one-way or another.

DAG Mischel: Right. That was my question - is Verne available?

Verne Rosse: Yes.

DAG Mischel: Do you have any objection to stipulating to some kind of short continuance and in doing so not descending against an emergency argument solely on the grounds of the continuance?

Verne Rosse: No. That would be fine with me.

Chairman Close: So Jean, you think the continuance falls within our authority if the other side agrees to it?

DAG Mischel: Yes. I think that is procedural matter that you have some authority to accept.

Chairman Close: When would you like to have the hearing?

Kristin McQueary: Jean told me that she was available the following week which starts the 7th through whatever - maybe that third day. I will be tied up in a trial the 8th and possibly the 9th so maybe the Thursday which would be the -

DAG Mischel: 10th.

Kristin McQueary: The 10th.

DAG Mischel: Is that O.K. with the panel members.

D. Cowperthwaite: Mr. Turnipseed has gone to fetch his calendar at this point so I guess Mr. Doppe is up first or Mr. Coyner is up first to talk about what is on their agenda.

Comm. Doppe: It works for me David.

Comm. Coyner: This is Coyner. If we have to travel - this is going to be more than a one-day trip I am going to assume - if we are going to Jarbidge we

would at least have to over-night. Wednesday afternoon I am obligated but I could late Wednesday afternoon to be there on Thursday. Thursday and Friday are open for me.

- Chairman Close: O.K.
- D. Cowperthwaite: We are waiting for Mr. Turnipseed to return from down the hall -
- Chairman Close: What is your plan David? Is your plan to go up on Wednesday or go up on Thursday?
- D. Cowperthwaite: Well, in terms of going to Elko it would have been to fly out on that Thursday and hold the hearing on Thursday and Friday in Elko. But this is new to me, in terms of going up to Jarbidge - you know Jarbidge is way up there and it is going to take some - you know I have to get the vehicles together and essentially we are not going to be able to fly up to Elko we are going to have to drive from Carson City or wherever and go on those back routes up there so it is going to be further getting up there. In terms of time, it is going to take more time to get up there.
- Kristin McQueary: David, this is Kristin again. It is about a 2½ - 3 hour drive from Elko going on the Charleston route which is the quickest way up there.
- David Cowperthwaite: Mr. Turnipseed is here -
- Chairman Close: What about having this thing in Elko like we had thought about before? That is not practical?
- Kristin McQueary: Well, from Elko County's viewpoint I think it would be beneficial to your deliberations to see the site.
- Chairman Close: O.K. - I will leave this up to the panel because they are the ones that have to make that extra trip. If it is O.K. with them I think it would be O.K. with the Commission.
- Comm. Turnipseed: This is Mike Turnipseed. I have no problem going to Jarbidge but I can't go on the 10th. I have a Public Lands legislative committee meeting in Tonopah the next day and -
- DAG Mischel: What does the 14th or 15th look like for anybody?
- Comm. Coyner: This is Commissioner Coyner. The 14th and 15th is wide open.
- Comm. Doppe: It is the same for me, Jean.
- Comm. Turnipseed: I'm teaching a law class to the Sealy International meeting those two days but I can't remember which day I am teaching the class.
- Kristin McQueary: Would next Monday work for anybody?
- Comm. Turnipseed: That is Labor Day.
- Kristin McQueary: That is Labor Day?
- DAG Mischel: Yes, I am out of town.
- Comm. Doppe: Mike, is your thing on the 11th or on the 10th?
- Comm. Turnipseed: The Public Lands Committee is on the 11th but it is in Tonopah and starts at 8:30 so I have to travel the day before.
- Kristin McQueary: Isn't Labor Day on the 6th instead of next Monday?
- DAG Mischel: No. It is the 7th.
- Kristin McQueary: What about the day before - the 9th?
- DAG Mischel: The 8th?
- Comm. Turnipseed: Tuesday the 8th?
- Kristin McQueary: I can't be there Tuesday the 8th. I've got court.

Comm. Turnipseed: Mike Turnipseed again. I am open on the 16th, 17th and 18th.  
Comm. Coyner: Commissioner Coyner here. 16th, 17th and 18th is open.  
Comm. Doppe: Yes, same for me - Mark Doppe.  
DAG Mischel: I can't be there on the 18th but I don't know if we need 3 days -  
Comm. Turnipseed: Is that Jean?  
DAG Mischel: Yes, it's Jean, and you know, you can replace me.  
Comm. Turnipseed: Lu is saying 2 days to travel!  
DAG Mischel: A day up, a day of hearing, a day back.  
DAG Mischel: 2 days to travel?  
Kristin McQueary: Whatever day is best for you guys, I will re-arrange my schedule, this is Kristin again.  
DAG Mischel: Maybe I can replace myself on the 18th too. I just have a scheduled meeting - a meeting with Frankie Sue. That sounds like that is the best option for everybody.  
Comm. Doppe: The 16th and 17th?  
DAG Mischel: Yes. And a site visit really is a panel determination. Sometimes photographs work - sometimes they don't.  
Kristin McQueary: This is Kristin again. It would be Elko County's recommendation to have the panel see the site because the photos are so limited in what they can show you.  
David Cowperthwaite: Kristin, this is David Cowperthwaite. We'll work on that agenda and the process there. I think the major decision here is that the commission has selected it's panel and is going to move forward on the 16th and 17th - that what we are going to do? So, we will harden everything around that to meet everybody's expectations here.  
Chairman Close: And the panel can work out where it wants to have the hearing?  
D. Cowperthwaite: Right.  
Kristin McQueary: And Jean will work out some sort of written stipulation.  
DAG Mischel: Yes. It will be between you and DEP and as the commission indicated they would accept the stipulation with the understanding that you stated.  
Chairman Close: I don't think we have voted on the motion yet.  
Comm. Trenoweth: We haven't voted on my motion yet.  
DAG Mischel: Yes, we need to vote on that.  
Chairman Close: Let's vote on the motion to appoint the panel.  
All in favor?  
Ayes from Turnipseed, Coyner, Gifford, Griswold, Trenoweth, Iverson, Johnson, Doppe.  
Opposed?  
That motion is carried.  
Chairman Close: Is there a motion to enter into a stipulation to extend the hearing date to the 17th and 18th?  
DAG Mischel: Mr. Chairman, that is not necessary it would be between the parties - and we'll have to - because it is not on our agenda specifically we'll accept the stipulation between DEP and Elko County but there is no motion necessary unless the continuance is opposed or the commission



makes independent findings the case needs to go forward the commission can just accept this stipulation.

Comm. Trenoweth: Jean, this is Roy. Doesn't Verne have to agree to it by voice?  
DAG Mischel: He did.  
Comm. Trenoweth: I didn't hear him.  
Comm. Gifford: Yes, he did.  
DAG Mischel: Verne?  
Verne Rosse: Yes. I did agree with that.  
DAG Mischel: O.K.  
Chairman Close: Anything else? Any public comment?  
Kristin McQueary: This is Kristin McQueary with the DA's office again. What were those better day - was it the 16th and 17th or the 17th and 18th?

DAG Mischel: The 16th and 17th.  
Kristin McQueary: O.K.  
DAG Mischel: Is that right?  
Comm. Turnipseed: That is correct.  
Chairman Close: Is there any public comment?  
Hearing none, we have concluded our agenda. Is there a motion to -  
DAG Mischel: You don't need to take a motion to adjourn.  
Chairman Close: Can we just hang up?  
Comm. Gifford: If we don't hear you anymore Mel, that will be it.  
DAG Mischel: Right.  
Chairman Close: I don't usually just walk out of a meeting unless it is adjourned.  
DAG Mischel: Well, we didn't have that on this agenda so I think you can just call it adjourned.  
Chairman Close: The teleconference is adjourned.