

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF April 15, 1993

HELD AT: Reno, NEVADA

TYPE OF HEARING:

YES	REGULATORY
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES	AGENDA
YES	PUBLIC NOTICE
YES	MINUTES OF THE HEARING
	LISTING OF EXHIBITS

AGENDA

NEVADA STATE ENVIRONMENTAL COMMISSION PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing commencing 9:00 a.m., on **Thursday April 15, 1993**, at the Reno City Council Chambers located at 490 South Center Street, Reno, Nevada.

This agenda has been posted at the Reno City Council Chambers, the Division of Environmental Protection Office in Las Vegas, Nevada, the Washoe County Library in Reno, Nevada, the Nevada State Library and Division of Environmental Protection Office in Carson City, Nevada. The Public Notice for this set hearing was published on March 16, March 26, and April 7, 1993 in the Las Vegas Review Journal and Reno Gazette Journal Newspapers.

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. Approval of minutes from the December 10, 1992 meeting. * ACTION

II. Air Pollution - Public Hearing - * ACTION

Petition 93004 by the Nevada Division of Environmental Protection to temporarily amend Section 445.717 of the Nevada Administrative Code (NAC), to remove the list of criteria pollutants from the list of toxic or hazardous air contaminants. The amendment will also reflect the current title of the toxic publication.

III. Water Quality Standards - Public Hearing - * ACTION

Petition 93005 by the Nevada Division of Environmental Protection to temporarily amend Chapter 445 of the Nevada Administrative code (NAC), to update the water quality standards for the Truckee River (NAC 445.124 and NAC 445.134625 to 445.13471). The standards affected are from stateline to Pyramid Lake. The changes in the standards will affect pH and water temperatures. In addition the total nitrogen single value below the Truckee River at Lockwood is also proposed to be deleted.

IV. Discussion Items

- A. Review of Pending Legislation Affecting the Commission
- B. Status of Nevada Division of Environmental Protection Programs and Policy
- C. Future Meetings of Environmental Commission
- D. Public Comment

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Karen Howard in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670 no later than Monday 5:00 p.m. April 12, 1993.

NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning 9:00 a.m. on April 15, 1993, at the Reno City Council Chambers, located at 490 South Center Street, Reno, Nevada.

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

1. Petition by the Nevada Division of Environmental Protection to temporarily amend Section 445.717 of the Nevada Administrative Code (NAC), to remove the list of criteria pollutants from the list of toxic or hazardous air contaminants. The amendment will also reflect the current title of the toxic publication.
2. Petition by the Nevada Division of Environmental Protection to amend Chapter 445 of the Nevada Administrative code (NAC), to update the water quality standards for the Truckee River (NAC 445.124 and NAC 445.134625 to 445.13471). The standards affected are from stateline to Pyramid Lake. The changes in the standards will affect pH and water temperatures. In addition the total nitrogen single value below the Truckee River at Lockwood is also proposed to be deleted.

Persons wishing to comment upon the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted and amended will be on file at the Office of the Secretary of State, Capitol Complex, State Library, 100 Stewart Street, Division of Environmental Protection, 333 West Nye Lane in Carson City, Nevada, Division of Environmental Protection, 1515 East Tropicana, Suite 395, Las Vegas, Nevada for inspection by members of the public during business hours.

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

STATE ENVIRONMENTAL COMMISSION
Meeting of April 15, 1993
Reno, Nevada
Adopted Minutes

PRESENT:

Vice Chairman William Molini
Fred Gifford
Dr. Bentley
Tom Ballow
Fred Wright
Roy Trenoweth
Russell Fields
Mike Turnipseed
Marla Griswold

Jean Mischel - Deputy Attorney General
David Cowperthwaite - Executive Secretary
Karen Howard - Recording Secretary

Meeting Convened at 9:00 a.m. at the Reno City Council Chambers.

Vice Chairman Molini read the public noticing as defined in the agenda.

Vice Chairman Molini opened the meeting with a request for a motion to approve the minutes of the December 10, 1992 meetings. Commissioner Bentley made a motion to approve the minutes, with Commissioner Turnipseed seconding the motion. The motion passed unanimously.

Item II. Petition 93004 - Amendments to remove the list of criteria pollutants from the list of toxic or hazardous air contaminants.

Ms. Gay McCleary, supervisor for the Permits Branch of the Bureau of Air Quality discussed petition 93004. Ms. McCleary stated that the petition removes a duplication in standards within the administrative code regarding the listing of toxic or hazardous air contaminants. The listed items, explained Ms. McCleary, to be deleted are also listed as criteria pollutants in

the Nevada Administrative Code (NAC). Commissioner Ballow asked Ms. McCleary what this petition would resolve. Ms. McCleary stated purpose of the amendment is to reduce duplication of regulations. The incorporation of the document was done by reference in 1984. At that time the publication used was for threshold limit values in a workbook designed for the work place. Since the reference was designed for the work place, and the fact that standards for criteria pollutants had been established, the thresholds in the list publication have never been enforced. What is enforced, McCleary stated, is the enforcement of the Nevada's and the national standards. The national and state standards are based upon an analysis that is more stringent and valid.

Jean Mischel, the commissions deputy attorney general, asked whether the amended regulation would no longer make the regulations uniform. Ms. McCleary replied that this amendment does not delete the toxic or hazardous pollutants. Ms. Mischel recommended that since the intent was not clear in the proposed amendments that the petition be revised. Ms. Mischel further stated that the language was ambiguous. Ms. Mischel expressed that the wording as presented may confuse the reader into believing the pollutants were not hazardous or toxic. Ms. Mischel recommended possible language changes. Commissioner Wright stated that the remarks provided by Clark County District Health District incorporated Ms. Mischels thoughts on possible amendments. Commissioner Bentley concurred that the petition needed to be amended. Mr. Aaron Mann, of Sierra Pacific Power Co., stated that they support the concept of the petition. Mr. Mann stated that the Clean Air Act has 189 pollutants listed as toxic or hazardous. Commissioner Bentley proposed that the petition be amended with the inclusion of the following language after the word "exception", "the toxic or hazardous air contaminants". Commissioner Turnipseed asked whether this would be a temporary or permanent regulation. Ms. McCleary responded that due to the time of year it would be considered to be a temporary regulation. Commissioner Bentley moved to amend the petition and he was seconded by Commissioner Ballow and petition 93004 was adopted as amended.

Item III. Truckee River Water Standards - Petition 93005.

Commissioner Molini, reviewed the petition.

Mr. Wendel McCurry, chief of the Bureau of Water Quality Planning for the Nevada Division of Environmental Protection, spoke to the commission regarding the proposed amendments to NAC 445 and the updating of water quality standards for the Truckee River. Mr. McCurry introduced his two staffers, Adele Alderson and James Cooper. Mr. McCurry stated that Mr. James Brock would also be conducting a presentation regarding the modeling work done on the Truckee River. Mr. McCurry started the discussion with a review of Section 1 of petition 93005. This section was a deletion of the NAC 445.124, the Ceresola Ranch to Pyramid Lake reach as a Class C water. Mr. McCurry explained that when the standards were revised in 1984 this reach was overlooked and that this is a minor technical correction. Section 2, does not modify the beneficial use, while Sections 3 through 9 are minor revisions to various standards on the lower reaches of the Truckee River. Mr. McCurry discussed the various control points on the Truckee River and the minor changes being proposed for fecal coliform and turbidity. Mr. McCurry discussed RMHQ's (Requirement to Maintain Existing Higher Quality), and how these were higher standards are to be met. Mr. McCurry again stated that the changes proposed were minor and consistent with federal regulations.

Commissioner Turnipseed stated that the water quality issues of the Truckee River begin above the stateline, and that it is important for California to also meet the rivers' water quality standards. Mr. McCurry replied that federal standards require all states to be consistent in applying federal standards, and that if there were inconsistencies that the U.S. Environmental Protection Agency would act to resolve any such problems. Commissioner Gifford asked that if a violation had occurred, what type of enforcement could the state bring to resolve a problem. Mr. McCurry stated that the state would attempt to find out why and what then could be done to resolve the problem.

Commissioner Wright asked what procedures were being followed to deal with potential conflicts with downstream water users. Mr. McCurry replied that the EPA has yet to develop a policy to resolve tribal vs state, however we have been working with the tribes for the last three years, and there has been extensive study of Pyramid Lake and the relationship to the Truckee River. Mr. McCurry stated the state intends to keep its options open. Commissioner Molini asked whether federal law recognizes the Indians setting standards. Mr. McCurry stated that the Pyramid Lake Indians, as a tribe will have the ability in a few years to set water quality standards for lower reaches of the Truckee River. U.S. EPA's approval will be necessary for such a delegation of authority. EPA has set up a resolution committee if conflicts regarding water quality standards arise. Commissioner Molini stated that the tribe does not now have the authority to adopt standards. Mr. McCurry stated that Commissioner Molini's statement was true, that the tribe does not now have the authority to set standards for portions of the Truckee River and the fact that the Commission has primacy in setting water quality standards in Nevada. Commissioner Ballow asked about how the standards are affected by the drought years. Mr. McCurry replied that due to the drought the water quality in the river has gotten worse.

Commissioner Ballow asked what the impact would be of broadening the range of the pH standard. Mr. McCurry replied that the pH standard was to be broadened and that a single beneficial use standard of 6.5 to 9.0 pH was being proposed for all reaches on the river. This is an adoption of U.S. EPA's recommendation, and that the RMHQ's will be established for all reaches. Commissioner Ballow asked what the original standard was for pH. Mr. McCurry replied that the standard for pH is met at least 90 % of the time within the RMHQ, and it was formerly 7.0 to 8.3. Commissioner Ballow responded, will not the higher pH tolerances result in more alkaline waters. Mr. McCurry replied that the beneficial use is to focus on the nitrogen standard, which is defined in sections 6 through 9 of the petition. Mr. McCurry discussed the role of the nitrogen standard and how they

were dealing with spikes. Mr. McCurry reported that the U.S. EPA has drafted comments, however they have been late in arriving. U.S. EPA has objected to the wastewater permits issued by the state, especially in the areas of phosphates and nitrogen. Mr. McCurry discussed the loading of salts and the relationship to the Reno-Sparks wastewater treatment plant.

Ms. Adele Alderson, an Environmental Engineer for the Division, read a prepared statement about the section 2 of the petition. This section, stated Ms. Alderson was to clarify the language regarding species and life stages to be protected by the proposed amendments to the water quality standards. Commissioner Molini asked about the mountain whitefish and the impact of exceedances at stateline to Idewild Park. Ms. Alderson stated that the samples collected showed only limited problems on these reaches. Commissioner Gifford asked if the standards apply average values. Ms. Alderson replied that the standards are not to be exceeded. Commissioner Molini asked about the impact of temperature on mountain whitefish and impact on various reaches. Ms. Alderson replied that temperature was not the only consideration indicating problems with a reach, and that it could depend on where the sample is taken. Mountain whitefish are temperature sensitive. Mr. McCurry stated the intent of section 2 language is based on various meetings with federal agencies was to protect specific species in the lower reaches. Commissioner Molini asked how the flow rate criteria would correlate with spawning being induced. Mr. McCurry stated that the flow rate clearly affects spawning activity. Mr. Mark Warren, a fisheries biologist with the Nevada Department of Wildlife stated that they are expecting an excellent spawning this spring, and that the role of Stampede dam is crucial in keeping the flow rate above 1000 cubic feet per second. Commission Molini asked Mr. Warren about whether the database maintain by his agency supported such conclusions. Mr. Warren replied that they felt there is enough water to induce spawning, however it is unclear whether the spawning could be sustained. Commissioner Turnipseed stated that the releases would be stepped up, however this was the high period for diversions on the river.

Commission Gifford asked whether the water quality standards were based upon the higher flow rates than those recently experienced on the Truckee River. Mr. McCurry replied that the flow rates would have to be adequate to induce spawning for the standards to apply.

Mr. James Brock a river ecologist of Idaho State University, a consultant for the Division of Environmental Protection presented a slide show to the Commissioners regarding the water quality attributes of the Truckee River and the water quality model. Mr. Brock stated that the river was not in ideal health, however it was a complex problem to characterize. Mr. Brock continued in saying that the river has been studied for three decades, with a variety of evolving water quality models having been used. Mr. Brock stated that the problem reaches on the river are below the McCarren to Pyramid Lake. The key to dealing with the rivers water quality focuses upon oxygen demand. Mr. Brock stated that 1989 data was used to calibrate the model. In prior years the nitrogen loading of the river was directly connected to the waste water treatment plant. Nitrogen directly impacts the oxygen levels in the river. Commissioner Gifford asked what the confidence limits were on the data, and when is it appropriate to be alarmed about conditions on the river. Mr. McCurry replied that individual species are affected when dissolved oxygen levels drop in the critical 6-8 hour periods. To achieve .7 mg/l of nitrogen at Lockwood the nitrogen loading upstream should be limited to 1000 lbs per day. Mr. Brock stated that the river responds to nitrogen, and that lower amounts will result in less algae, which in turn reduces the demand for dissolved oxygen.

Mr. Cooper, a branch supervisor in the Division of Environmental Protection, spoke about the overall regulatory perspective and how control points are used on the river. Commissioner Gifford asked when sampling is done. Mr. Cooper replied that there is a regular schedule of manual and automated sampling. Commissioner Molini asked about what were the major point sources for the river. Mr. Cooper replied that the major sources were Steamboat Creek, the Helms Pit and discharges from the north truckee drain, and the Reno-Sparks wastewater treatment

plant. Commissioner Molini asked what the strategy was to deal with non-point sources. Mr. Cooper replied that they were looking at upstream flows and in purchasing of water rights from TCID. Commissioner Turnipseed discussed the role of the Helms Pit, how denitrification at the sewer plant was important and finally how less diversions at Derby Dam influences the lower reaches of the river. All these issues combined were reducing the nitrogen load on the river. Commissioner Gifford stated that there appears to be a lot of confidence in the modeling that has just recently been conducted by Mr. Brock.

The discussion open up into public comment. Mr. William Isaff, the attorney of the City of Reno and the Reno-Sparks Joint wastewater treatment plant, stated that the working relationship with the state had been very cordial. They support the changes in the standards, however they had a few minor reservations and comments to make. Mr. Isaff stated that they had problems with the rationale used to support the change in regulation, however the errata provided by the division has resolved most concerns. Mr. Isaff continued in stating that the Brock modeling was based upon data that existed prior to operation of the wastewater treatment plants denitrification facility. This has resulted in the pH and other values not reflecting current conditions. Increased river flows will resolve many of the problems. Mr. Isaff expressed concern about potential major policy commitments, and that the water model presented by Mr. Brock needs further work prior to policy being established.

Ms. Kathy Felty, a representative from the Nevada Indian Environmental Coalition, thanked the Commission for looking after the quality of water entering into Pyramid Lake. Ms. Felty stated they were looking forward to receiving grants to enable the tribe to establish standards on the river, especially to protect the endangered species.

Mr. Warren of the Department of Wildlife, stated they support the temperature standards for the river, that this will greatly help the fish. Mr. Warren pointed out that the drought has affected the temperature and has impaired the lower rivers ability to support a fishery.

Also entered into the record was the Truckee River water reclamation prepared by Kennedy-Jenks. Ms. Juanita Cox letter was read into the record. Ms. Cox's letter opposed the proposed changes to the water quality standards. Mr. McCurry read into the record a letter received from the U.S. EPA. The EPA's biggest concern was about the removal of the single value nitrogen standard from the river. Commissioner Molini asked how the state intended to address U.S. EPA's concerns. The public testimony was closed.

A discussion ensued over the issue of the single value nitrogen standard. Commissioner Wright asked whether the value is a spike. Mr. McCurry replied that there was no way, other than regular sampling to detect such a spike. This means there would be a remote chance of a violation of the single value nitrogen standard. Commissioner Turnipseed asked whether the Reno-Spark wastewater treatment plants permit would be further refined. Mr. McCurry replied, that the modeling cost is expensive, at about \$1,000 per run.

Commissioner Wright asked whether the proposed water purification facility to be located at Chalk Bluff would result in changes to the standard or degradation of the water quality. Mr. McCurry replied that there would be a impact from the water treatment plant, but the impact would be localized.

Commissioner Molini asked how this compares to the nitrogen loading. Mr. McCurry stated that the number will be meet. Commissioner Turnipseed stated that the algae would be scoured out by the higher flows, especially in the lower reaches. Commissioner Gifford stated that dilution was certainly the major factor at work. Commissioner Turnipseed replied that the real threat comes from the potential of low flows. Mr. Richard Reavis, a deputy administrator with the Division of Environmental Protection stated that EPA wants the state to be strict, however they realize the realities involved in these issues.

Commissioner Gifford asked whether the single nitrogen value could be annualized. Mr. McCurry stated that there is already a annual value, and there is no intention to change that value.

Mr. Brock also replied that the people at the Reno-Sparks wastewater treatment plant conduct daily sampling of their effluent. Commissioner Gifford asked what the recommendation should be. Commissioner Wright pointed out that Kennedy/Jenks stated that there is a need to evaluate the model.

Mr. McCurry stated that at this time the state was withdrawing the request to delete the single value for nitrogen as defined in NAC 445.1347.

Commissioner Turnipseed asked about the enforcement of the turbidity standard. Mr. McCurry stated that the controls on contractors and persons working in or near the river were being enforced.

A motion was made by Commissioner Gifford to adopt the proposed changes defined in petition 93005, and to retain the single value nitrogen standard. He was seconded by Commissioner Ballow. Petition 93005 was adopted as amended.

Executive Secretary David Cowperthwaite reported on the status of legislation that could possibly affect the authority or ability of the commission to function.

Commissioner Ballow requested a copy of the SB 641 report as submitted to the legislature. Mr. Cowperthwaite stated that the reported would be sent to them prior to the next meeting.

Mr. L.H. Dodgion discussed the potential impact of reorganization. Present trends indicate that the division will not become a department in the near future.

Commissioner Gifford asked what was going on with US Ecology. Mr. Dodgion stated that since counsel was not present, that the issue should not be discussed.

Commissioner Griswold asked about the status of the heavy duty diesel testing. Mr. Dodgion replied that surveys had been done in eastern Nevada, on the passes. A report will be presented at the next meeting of the Commission.

Commissioner Wright asked about the bill draft request that revised the membership of the commission. Mr. Dodgion replied that a legislative bill has not surfaced.

The commissioners was informed by Mr. Dodgion that Karen Howard, the recording secretary would be leaving the commission to work elsewhere in the division. A letter of commendation is to be prepared for Karen by Chairman Close.

As prepared by David R. Cowperthwaite, Executive Secretary.
Minutes Adopted on May 27, 1993