

**NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**

**NEVADA ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVE**

**FOR THE HEARING OF May 29, 1997**

**HELD AT: Reno, Nevada**

**TYPE OF HEARING:**

<b>YES</b>	<b>REGULATORY</b>
	<b>APPEAL</b>
	<b>FIELD TRIP</b>
	<b>ENFORCEMENT</b>
	<b>VARIANCE</b>

**RECORDS CONTAINED IN THIS FILE INCLUDE:**

<b>YES</b>	<b>AGENDA</b>
<b>YES</b>	<b>PUBLIC NOTICE</b>
<b>YES</b>	<b>MINUTES OF THE HEARING</b>
	<b>LISTING OF EXHIBITS</b>

**NEVADA STATE ENVIRONMENTAL COMMISSION**  
**A G E N D A**  
**May 29, 1997**  
**9:00 A.M.**

The Nevada State Environmental Commission will conduct a hearing commencing at **9:00 a.m., on Thursday, May 29, 1997**, at the Division of Wildlife, Conference Room B, 1100 Valley Road, Reno, Nevada.

This agenda has been posted at the Grant Sawyer State Office Building and Clark County Commission Chambers in Las Vegas; the Washoe County Library and Division of Wildlife in Reno; and the Nevada State Library and Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on April 29, May 7, and May 15, 1997, 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 March 6, 1997 meeting. \* ACTION**

**II. Regulatory Petitions \* ACTION**

- A. Petition 97003** temporarily amends NAC 445A.055 to 445A.066, the Certification of Laboratories to Analyze Substances in Water, by amending the existing regulation to be more consistent with the Safe Drinking Water Acts laboratory certification program by replacing "warning limits" with "acceptance limits". Affected citations includes NAC 445A.057, 445A.060, 445A.061 and 445A.062.
- B. Petition 97002** temporarily amends NAC 445A.070 to 445A.348, Water Pollution Control, by amending the mining water pollution control fees in NAC 445A.232. The regulation adds a new category of less than 18,250 tons and two new categories greater than 500,000 tons. Annual fees are proposed to be increased in three increments over six years. The increments cover the period of State Fiscal Years (July 1st to June 30th) 1998 to 1999, 2000 to 2001 and 2002 to 2003. Original and Renewal fees are also increased but remain constant during the aforementioned fiscal years.

**III. Settlement Agreements on Air Quality Violations \* ACTION**

- A.** Iron Mountain Acquisition Co. : Notice of Alleged Violation # 1221
- B.** Min-Ad Inc. : Notice of Alleged Violation # 1223 and 1224

**IV. Legislative Update and Resolutions \* ACTION**

**V. Discussion Items**

- A.** Status of Division of Environmental Protection's Programs and Policies
- B.** General Commission or 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., **May 21, 1997**.

## **NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING**

The Nevada State Environmental Commission will hold a public hearing beginning **9:00 a.m. on Thursday, May 29, 1997**, at the Division of Wildlife's Conference Room B, located at 1100 Valley Road, **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 97002** temporarily amends NAC 445A.070 to 445A.348, Water Pollution Control, by amending the mining water pollution control fees in NAC 445A.232. The regulation adds a new category of less than 18,250 tons and two new categories greater than 500,000 tons. Annual fees are proposed to be increased in three increments over six years. The increments cover the period of State Fiscal Years (July 1st to June 30th) 1998 to 1999, 2000 to 2001 and 2002 to 2003. Original and Renewal fees are also increased but remain constant during the aforementioned fiscal years.

The change in fees will increase permitting costs for the mining industry. The additional fees will allow sufficient manpower and resources to adequately regulate and accommodate the rapid growth that has occurred in the mining industry. The fees will translate into an increased level of service that will allow for prompt permit issuance, approval of required plans and better coordination with federal agencies. There will be no adverse economic impact to the public, but marginal mining operations could possibly reduce employment due to the fee increases. The increased quality of regulation will better protect the environment, public health and safety. There will be no increased cost to the Division of Environmental Protection for enforcement of this regulation. This regulation does not overlap or duplicate the regulation of another agency. There is no equivalent federal program to compare to this state mining regulation program. This regulation will increase fees for the mining industry. Approximately an additional \$ 4,240,000 will be collected over six years, with an average annual amount of \$ 706,000. The additional funds will pay for regulation of the mining industry including permitting, enforcement and mine closure.

- 2. Petition 97003** temporarily amends NAC 445A.055 to 445A.066, the Certification of Laboratories to Analyze Substances in Water, by amending the existing regulation to be more consistent with the Safe Drinking Water Acts laboratory certification program by replacing "warning limits" with "acceptance limits". Affected citations includes NAC 445A.057, 445A.060, 445A.061 and 445A.062.

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This petition does not have an adverse economic effect upon the public, nor is there an estimated immediate or long-term economic effect upon the public. There will be no new costs to affected businesses since the current regulations addresses payments necessary to cover the cost of site evaluations. The regulation will not have an adverse economic effect upon businesses and the regulation will have a beneficial effect by creating more consistency with other state's certification programs and EPA's laboratory certification program. The regulated business community will receive a positive immediate and long term benefit by the increased consistency of the regulations. There will be no additional costs associated enforcement of this regulation. The regulations do no overlap with any existing state or federal regulations. Federal regulations do not regulate this activity. The proposed regulation does not include an increase in fees.

Pursuant to NRS 233B.0603(c) the provisions of NRS 233B.064 (2) is hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption".

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 89706-0851. Written submissions must be received at least 5 days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 128, in Carson City; and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notice have been deposited at major library branches in each county in Nevada. Listed below are the locations where the public notice and regulations will be available for inspection and copying:

Carson City Library, 900 North Roop Street, Carson City;  
Churchill County Library, 553 South Maine Street, Fallon;  
Las Vegas Library, 833 Las Vegas Blvd. North, Las Vegas;  
Douglas County Library, 1625 Library Lane, Minden;  
Elko County Library, 720 Court Street, Elko;  
Goldfield Public Library, Fourth & Crook Streets, Goldfield;  
Eureka Branch Library, 10190 Monroe Street, Eureka;  
Humboldt County Library, 85 East 5th Street, Winnemucca;  
Battle Mountain Branch Library, 625 Broad Street, Battle Mountain;  
Lincoln County Library, 93 Main Street, Pioche;  
Lyon County Library, 20 Nevin Way, Yerington;  
Mineral County Library, First & A Street, Hawthorne;

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Tonopah Public Library, 171 Central Street, Tonopah;  
Pershing County Library, 1125 Central Avenue, Lovelock;  
Storey County Library, 95 South R Street, Virginia City;  
Washoe County Library, 301 South Center Street, Reno;  
White Pine County Library, 950 Campton Street, Ely.

Additional copies of the regulations to be adopted or amended will be available at the Division of Environmental Protection for inspection and copying by the 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.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing, Nevada State Environmental Commission, 333 West Nye Lane, Room 128, Carson City, Nevada, 89706-0851, facsimile (702) 687-5856, or by calling (702) 687-4670 Extension 3118, no later than 5:00 p.m. on **May 21, 1997**.

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas; Division of Wildlife and Washoe County Library in Reno; and Division of Environmental Protection and State Library in Carson City.

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**STATE ENVIRONMENTAL COMMISSION**  
**Meeting of May 29, 1997**  
Division of Wildlife Conference Room - Reno, Nevada  
Adopted Minutes

**MEMBERS PRESENT:**

William Molini, Vice Chairman  
Paul Iverson  
Marla Griswold  
Roy Trenoweth  
Robert Jones  
Russell Fields

**MEMBERS ABSENT:**

Melvin Close, Jr., Chairman  
Michael Turnipseed  
Joseph Tangredi  
Mark Doppe  
Fred Gifford

**Staff Present:**

Jean Mischel- Deputy Attorney General  
David Cowperthwaite - Executive Secretary  
LuElla Rogers - Recording Secretary

The meeting was called to order at 9:00 a.m. by Vice chairman William Molini. The public notice posting requirements as defined in the agenda for May 29, 1997, were verified.

Vice chairman Molini moved to **Agenda Item I - Approval of minutes from the March 6, 1997, meeting: Commissioner Griswold made a motion to adopt the March 6, 1997, minutes as presented. Commissioner Jones seconded the motion. The motion was unanimously approved.**

Vice chairman Molini moved to **Agenda Item II - Regulatory Petitions**

- A. Petition 97003** temporarily amends NAC 445A.055 to 445A.066, the Certification of Laboratories to Analyze Substances in Water, by amending the existing regulation to be more consistent with the Safe Drinking Water Acts laboratory certification program by replacing "warning limits" with "acceptance limits". Affected citations include NAC 445A.057, 445A.060, 445A.061 and 445A.062.

Adele Basham, Acting Chief, Bureau of Water Quality Planning explained Petition 97003 requests minor changes to the laboratory certification regulations.

Section 1 - 445A.057 addresses out-of-state laboratories. The proposed change will make the regulation consistent with the laboratory certification regulations adopted by the State Board of Health.

Section 2 - 445A.060, Evaluation of performance: Required analyses; provisional certification of uncertified laboratory and Section 3 - 445A.061, Evaluation of performance: Incorrect analyses.

For clarification, we are proposing to insert the word "satisfactorily" and we are proposing to change "warning limits" in each place that it appears to "acceptance limits". Other western states which have passed the Clean Water Act Laboratory Certification Programs all use "acceptance limits". When the U.S. EPA certifies labs the term "acceptance limits" is used. Although "acceptance limits" are slightly less strict than "warning limits" EPA recognizes that the analyses of pollution samples, as opposed to drinking water samples, are typically more complex with difficult matrixes and often very low detection limit requirements. We feel this change is necessary to make Nevada's program equivalent with other states.

Section 4. 445A.062, Evaluation of laboratory: Procedure.

Change "his evaluation" to "the evaluation" and insert the word "acceptable".

Commissioner Jones asked if this would make the regulations consistent with the regulations adopted by the State Board of Health.

Ms. Basham noted this is the first step. We will probably be back again at your next hearing because we have other things we need to clean up.

Commissioner Fields requested an explanation of the term "satisfactorily" - is there some standard?

Ms. Basham explained that language change is proposed where there is a requirement to analyze the sample. We are inserting "satisfactorily analyze" because you could analyze the samples but they could be outside the acceptance limits but technically you would have complied with the regulation. "Satisfactorily" is within the acceptance limits. Vice chairman Molini asked for public comment.

Bill Pillsbury, owner of Sierra Environmental Monitoring explained a group of laboratories has been working with the Nevada Division of Environmental Protection (NDEP) staff and we are in concurrence with these changes. We would appreciate the adoption of this first step. We are working on other changes and will be before you again.

Max Chem, owner of Chemix Laboratories concurred with Mr. Pillsbury's statement.

Roger Shoal, Laboratory Director of Alpha Analytical, expressed support of Mr. Chem;s and Mr. Pillsbury's statements and complimented NDEP staff for their cooperation and hard work.

**Commissioner Fields made a motion for adoption of Petition 97003, the temporary amendments to NAC 445A.055 to NAC 445A.066.**

**Commissioner Iverson seconded the motion.**

**The motion was approved.**

Vice chairman Molini moved to Agenda Item 2 - B:

**B. Petition 97002** temporarily amends NAC 445A.070 to 445A.348, Water Pollution Control, by amending the mining water pollution control fees in NAC 445A.232. The regulation adds a new category of less than 18,250 tons and two new categories greater than 500,000 tons. Annual fees are proposed to be increased in three increments over six years. The increments cover the period of State Fiscal Years (July 1st to June 30th) 1998 to 1999, 2000 to 2001 and 2002 to 2003. Original and Renewal fees are also increased but remain constant during the aforementioned fiscal years.

Leo Drozdoff, Chief of The Bureau of Mining Regulation and Reclamation explained the Bureau is divided into two sections. Pursuant to NAC 445A, **Regulation** primarily deals with water pollution control issues and protects water quality from mining activities and **Reclamation** deals with the physical stabilization, re-vegetation and post-mining land use. Both programs are completely funded by fees - there is no general fund money and since this is a state only program there are no federal components or any federal dollars. Because we had accumulated a fairly significant surplus when the Regulation Program was put in place by this Commission in 1989 we have been able to fund the Regulation Program despite running at an annual deficit but obviously, that surplus was going to end so the fee increase is necessary.

For the last 9 months the Bureau has been working internally and with the entire regulated community. In November and December, 1996, before we even proposed a fee increase, we sat down with the Nevada Mining Association and reviewed what we felt our next 5 or 6 years expenditures would be, based on projections. We wanted to make certain that seemed reasonable before we got started. With their concurrence that our bottom line made sense, we then wanted to develop an acceptable fee increase with the regulated community. We held 4 meetings with industry, primarily the Nevada Mining Association, to review our proposal. We changed our program from a 5 year to a 6 year program with staggered fee increases. The basis for that was to allow companies to keep as much of their money for as long as possible and they would have a better sense of where they would be 6 years from now as opposed to a one-shot raise, in effect for 5 years, that would operate with an initial surplus, then using that surplus over a 5 year period. We also made equal the renewal fees and the original permit modification fees and we provided for something called an Engineering Design Review that was not in our regulations. At the present, if a company comes to us with any sort of substantive change to their activities we either have to classify it as minor or major modification. Cost associated with a minor modification is one-half the renewal fee and a major modification is the entire fee. Both staff and the regulated community did not feel justified with that fee so we accommodated that with a small increase.

Mr. Drozdoff continued, although we knew the lion's share of this increase would be paid for by the large miners we wanted to:

1) make sure the small mining category was adequately evaluated

2) that we did not create an environment that would severely impact the small miners

so we solicited input from the small miners and continued our public outreach. We had input from the large miners through the Nevada Mining Association; we sent a mass mailing to every permitted facility as well as environmental groups, local county commissions, etc.; we held workshops in Winnemucca, Elko, Las Vegas, Ely and Carson City. Only 18 people attended the 5 workshops and I think that was primarily due to the fact they had received the mass mailing information.

Mr. Drozdoff reviewed the working documents used in meeting with the Nevada Mining Association and in the

workshops, Attachments A, B, C and D. The documents support our actual petition and proposed regulatory change.

**Attachment A:**

Details our current fee structure, showing that we define our categories based on the number of tons of material processed. The categories range from 36,500 tons per year on up to 500,000 tons per year. We also referenced our major modification provisions and our minor modifications provisions. Our proposal now is a 2 year staggered fee increase. The way this will work is that the fees will increase, in a manner described in Petition 97002, 3 times every two years over the next six-year period. We also added two larger categories. When these regulations were adopted in 1989, 500 thousand tons per year seemed appropriate for a large facility. We now have facilities much larger than that so we wanted to look at adding some larger categories and we also wanted to protect the small mining category that is not subject to major fee increases. We knew we needed to raise fees but we did not want to have such a large jump in fees from the small category to the large category so we added a mid - smaller category that would meet both those needs, to maintain a small fee category but give us opportunity to ramp in a reasonable manner. We added the Engineering Design Change of \$500 and we made our application fees equal to our renewal fees. We wanted to cap what that minor modification would be so we looked what we had done over the past 5 - 6 years, what a minor modification would cost and we felt a cap was appropriate.

Attachment B:

The second line is our projection of what our fees would be based on our current fee schedule. The 2-year average is the 2-year average of those fees, structured because of our 2-year fee increase. Then, our projected revenues, based on our new fees which are contained in further attachments as well as in Petition 97002.

The purpose of this is to give everyone, the regulated community and the Commission, a clear picture of what these fees mean in actual dollars over this 6 year period. That is displayed as to our projected 2-year net average increase in revenue collections.

We also realized, and this is the backbone for our entire fee strategy, that annual fees are our most reliable source of income. We did not want to be too conservative and say we would not get any minor modification fees or new application fees so we reviewed our history from 1990 to the present and found that approximately 80% of our total revenues come from annual fees so we used that number to serve as the backbone for the annual fee increases we are proposing. All fees have essentially been increased but the key factor we relied on in the whole process is the annual fees. We anticipate 20% of our fees coming from minor modifications, new applications, etc.

Vice-chairman Molini asked if all the permits were 5 year permits.

Mr. Drozdoff replied just about all of them are.

Attachment C Reveals our expenditures. The factors 1 through 7 are what we used when we talked with industry, our projected expenditures. We have factored in what we consider to be our 5% salary increases, on average. The Governor recommends a 3% salary increase this year so we used that for the 6 years. We are planning to add two new positions in the regulation branch - one in closure and one in compliance. These positions are needed because more facilities are approaching closure, a step prior to reclamation, where they have to chemically stabilize the site, and we are finding that because of the new activities of mining facilities below the water table that compliance takes more time. These positions are in our budgets for FY98 and FY99.

A unique situation surfaced in our conversations. The State of Nevada is the only state in the country that actually has a BLM and NDEP or a State/Federal Liaison position. That position is currently funded by the BLM but it is a one year position and it is through the Nevada State Office. That position has proved to be very effective and we, the BLM, and industry are satisfied with it. There was discussion from industry and from BLM about maintaining this position but there was no funding mechanism for it. Industry requested us to look at it and we have built into our fee structure funding for this BLM Liaison position beginning in July, 1997. The fees we would collect through this program and would essentially pass to the Federal Government, in this case the BLM, the cost associated with paying this one individual full time salary and benefits.

Attachment C outlines the total projected expenditures for FY98 through 2003. We then took the 80% figure of that amount and equated that to what our annual fees would be, took a 2-year average, compared our expenditures to our revenues (again these are estimates but I think they are good estimates) and you can see the difference between revenue and expenditures is in the order of 1%.

Attachment D is the backbone for the temporary regulation change we are proposing today. We took the information in Attachment D and put it in a format appropriate for the regulations.

We added a smaller category, 18,250 tons which enables a small mining activity to continue. If you look through the 3 bienniums you can see we have not increased those fees.

We added 2 larger categories, we went from 500,000 to 1,000,000; 1,000,000 to 2,000,000; and then our maximum category has gone from what was once greater than 500,000 tons per year to 2,000,000 tons per year.



We estimated as best we could how many facilities in each of these categories we would have, did our math - came up with the projected revenue, compared it to what our expenditures would be and came within 1.5%.

Again, there are factors beyond the Division's control, most notably the price of gold, but barring something unforeseen this is a conservative approach and should enable the regulation branch to operate efficiently for the next 6 years.

Vice-chairman Molini noted the same number of permits were utilized throughout the projection. That can be dynamic with the price of gold and increased closure activities. What was your confidence in using those? I would think you might see some variation in the permits, especially when you get to 2002 or 2003?

Mr. Drozdoff explained it is a projection but to project any other way we would have less confidence. In terms of closure, let me emphasize again the split between our program - the Regulation Branch deals with the design, construction, operation and closure of mining facilities and it is following closure activities that theoretically they would then move to the Reclamation side of the house. They would still be paying these fees while they are in closure but they stop paying these fees once they move into reclamation, then into post-closure. You are right. An appropriate time to reevaluate the program will be in 2002 or 2003. If things change sooner then we would need to come back but we think to do it any other way we would have less confidence in what was going on.

Commissioner Jones asked, in regards to the BLM position, is that a normal thing that is done, subsidizing federal positions? Did we ask and find out that BLM was certainly not going to fund it and the feds were not going to fund it?

Mr. Drozdoff explained the genesis of this position was: the Bureau of Mines disbanded so the BLM and other Federal Land Management Agencies tried to accommodate the ex Bureau of Mines positions. They had some temporary dollars and they were given 1 - 1½ years worth of dollars so they were basically running on Bureau of Mines severance pay for a year or so. It was not built into BLM's budget at all. They just gave these people an opportunity to find other work and essentially gave them 1 year to do that. It was a good faith effort on BLM's part to offer that position 1 year ago. It was new and they felt it could help. We, and industry, have been convinced of the job's merit. I want to make it clear that we certainly support this position but it was not our idea to fund it. Industry requested that we evaluate that. So I look at it as a positive.

Commissioner Jones asked, is it not unusual to have federal positions funded by the state?

Vice chairman Molini stated in his experience it is unusual but there is a program in the federal government called the Inter-Governmental Personnel Agreement, an IPA where you can share costs or sometimes the federal government will pay for one of their employees to work for you or one of your employees to work for them on a 2-year renewable, not to exceed 4 years.

Deputy Attorney General Jean Mischel asked whose employee is it?

Commissioner Jones reiterated, the nature of my question is why it is appropriate that they are serving the same function to be an employee of the state/liaison with the feds versus the other way and why is that going to be an on-going funding source, not the position. If the industry thinks it is an appropriate position and they are willing to pay for it in fees that is really not the question - I guess it is a question of the state paying for a federal employee versus just making it a state employee liaison in the same position.

Mr. Drozdoff replied, we and industry thought about that. We needed to understand the dynamics of the situation and in all candidness, here is what we decided. The position works because the position is in our office, yes, most of the time, but it is a federal position. I think the position would have less effectiveness if it was a state position that then was directing federal activities.

Commissioner Jones noted then a federal employee can influence and bring those things to the table that are important.

Mr. Drozdoff agreed and reiterated we evaluated that strongly, the effectiveness of the position. And I believe there is precedence.

Commissioner Griswold asked what does the position actually do?

Mr. Drozdoff explained this position serves a variety of functions. There is very clear involvement in our reclamation branch. Our regulations and statutes are tied to federal regulations, our regulatory program interacts routinely with the BLM because they are becoming more and more interested and have found they have a responsibility in some things that we look at - such as pit lakes and ecological risk assessments - and as part of their environmental impact statement they need to be evaluating this as well. What we are utilizing the position for in those arenas is to try to get some commonality to the federal and state requirements. We, the industry, and the federal government would like nothing better so that if possible, we can all agree on what will be required from our bureau in terms of getting a water pollution control permit and what may be required from the federal government while they are going through the environmental impact statement process. With 150 mining sites/facilities, there is

a weekly need and it helps dramatically when you have people in Ely, Elko and Battle Mountain that can answer questions and serve as an interface between the two agencies and resolve potential conflicts before they become conflicts. It is a multi-faceted role; to increase communication, to standardize requirements, to gain greater understanding, and facilitate everyone's activities in a time efficient manner.

Commissioner Griswold asked if the position would be a 2-year commitment?

Mr. Drozdoff explained the industry is paying these fees. They have committed to 6 years but I believe at the half-way mark - 3 years - they are going to re-evaluate the functionality of this position. Their, and our, feeling now is it will be beneficial for the entire 6 years but if that does not work out they will let us know, they will let the federal government know, and then it will be incumbent upon us to evaluate that change in our regulations. Vice Mr. Jones asked if industry supports Petition 96002.

Mr. Drozdoff explained no one is jumping for joy that their fees are going up but a letter from the Nevada Mining Association dated May 16, 1997 expresses their support.

Vice chairman Molini asked if the Bureau received comments from any individual companies, especially the big ones that are in the 2 million-plus tons per year category? Their fees are going to go up substantially as compared to the old fee schedule.

Mr. Drozdoff explained we received one comment, more like an observation, at the workshop in Carson City. Again, we did this projection from an estimate of the number of facilities and how many tons per year they are processing and that fluctuates. If we find that there is a necessary reason to evaluate that cutoff and if we think it merits re-evaluation we would come back before the Commission. I think that scenario would exist if was 2 million, 1 million, 4 million, or ½ million.

Commissioner Fields asked how the small miners feel? Did you receive any written or verbal comments back when you did your mass mailing from folks that fall into the less than 18,250 tons category?

Mr. Drozdoff explained we did not. The Nevada Mining Association can be characterized as the trade group for large miners. The small miners and prospectors in Nevada can be characterized as just that - small miners. We placed phone calls to their person in charge, had a brief discussion about what we were doing and mailed them everything we were proposing in terms of the workshops and attachments we reviewed this morning so we did seek input. It has not been said to me but I can only attribute that to "yes". These small miner fees have increased a little bit - and a little bit is a lot to the small miners - but on a balance when you look at what we have proposed I think that they probably realize that a good faith effort was made to keep fees in line. We have not received any negative response from small miners.

Commissioner Fields noted if you look at the existing fees on page 2 of the petition, the cut point at 10,000 tons per year is now 18,250 tons so it appears to me that anybody now that is processing between 10,000 and 18,250 is actually getting a fee reduction.

Mr. Drozdoff agreed and explained there is nothing magical about the 18,250 other than it is half of 36,500. Right now we believe there are probably about 21 people below 36,500 so perhaps 10 facilities, half of them, may see a fee increase.

Commissioner Fields asked what about the physical separation folks - what happens to their fees?

Mr. Drozdoff explained they have the same fees as the small miners, they are called Discharging Wash Water, these are placer operations and their fees are going up a little bit.

Commissioner Fields noted from \$400 now to \$500 for their original permit.

Vice chairman Molini called for public comment.

Paul Scheidig, Director of Regulatory and Environmental Affairs for the Nevada Mining Association reported he is to support the proposal in front of you for fee increases and our letter underscored that very well.

The Division has worked beyond the normal route with everyone in this particular program to look at fees realistically and tried to get us to the point where we understood what they were doing. The Bureau and the Division is to be commended for this effort to get our opinions early on and to work through the problems that had been identified earlier. More overt, I think it points out the fact that the industry is supportive of a strong regulatory agency. We've been making that case in front of the BLM these past couple of weeks and in the future in our written comments, pointing to the fact that Nevada's regulatory program is a framework that we think the BLM ought to look at as the appropriate framework that shows a good state/federal relationship, a partnership that regulates in a very fair and environmentally sound way a very intrusive industry on the environment. The BLM is looking to maybe revamp their regulations. We don't think that needs to be done. Having a strong regulatory program that is well supported and well funded by the industry totally is one that points to the fact that this industry can be managed in a very fair, reasonable and environmentally sound fashion. We think this program will do that and underscore the fact that Nevada has the best program for regulating the mining industry in the nation.

Vice chairman Molini expressed the Commission's and Division's appreciation for those comments.

Vice chairman Molini called for additional public comment.

There were no comments.

Commissioner Griswold asked, is the 10% yearly increase in expenditures consistent with the budget of other bureaus within the NDEP?

Lew Dodgion, NDEP Administrator, explained when we prepare budgets and submit them to the budget office for the legislature we are not allowed to just use a percent increase but 10% on an annual basis is accurate and consistent.

Vice chairman Molini requested a motion on Petition 97002.

**Commissioner Fields made a motion to adopt Petition 97002 temporarily amending NAC 445A.070 to NAC 445A.348, water pollution control regulations as proposed by the Division.**

**Commissioner Griswold seconded the motion.**

**The motion unanimously carried.**

**Vice chairman Molini moved to Agenda Item III. Settlement Agreements on Air Quality Violations.**

**A. Iron Mountain Acquisition Co. : Notice of Alleged Violation # 1221**

Tom Porta, Bureau of Air Quality, NDEP, reported Iron Mountain Acquisition is a small subdivision located in Carson City which we inspected in October, 1996. During the inspection, which was generated from a complaint, we found uncontrolled fugitive dust emanating from the site, there was no water truck on site so we issued Notice of Alleged Violation 1221 on November 13, 1996, and had an enforcement conference with Mr. Dick Scott of Iron Mountain on December 2, 1996. Mr. Scott agreed to purchase a water truck. Part of the problem was that he had to lease a water truck and he could not, on occasion, get the water truck to the site in time to control fugitive emissions. The water truck has been purchased and it is on site now. Mr. Scott also agreed to pay a fine of \$500 for this violation.

Vice chairman Molini asked for questions.

Commissioner Fields stated he noticed on the actual NOAV form that the wind was pretty high, 40 mph, that day.

Had there been a water truck on site would the fugitive dust have been controllable?

Mr. Porta explained we do look at these days very carefully before we issue a notice. In this particular case no attempt was being made to control the dust until we showed up. Usually, when we get winds of this nature we talk with company officials and try to work with them. We have a number of subdivisions and golf courses being built in Carson City right now and we are out looking at these facilities on a daily basis. On windy days some dust is going to emanate but if you are not even making an attempt to control it we draw the line.

Vice chairman Molini asked if a company representative was present today.

No representative was present.

**Commissioner Griswold made a motion the settlement agreement be accepted.**

**Commissioner Jones seconded the motion.**

**The motion carried unanimously.**

**B. Min-Ad Inc. : Notice of Alleged Violation # 1223 and 1224**

Tom Porta explained on February 4, 1997, the Bureau responded to a complaint from the Winnemucca area regarding the Min-Ad facility. Inspection, conducted on February 4, revealed a number of problems, primarily poor maintenance at the facility. They had the control equipment in place however a number of pieces of duct work were not connected and emissions were coming from those unconnected pieces of duct work. We issued two notices of violation, one minor and one major. NOAV 1224 was issued for failure to control fugitive emissions because in and around the facility itself, where the loaders etc. were working, there was no water being applied to the facility. NOAV 1224 was a minor fugitive dust violation and in accordance with the NAC, a \$125.00 fine was imposed. They have paid this fine. The major violation, NOAV 1223, was for operating various pieces of loading equipment, bagging operations, without the proper controls. In most cases the control duct work was in disrepair or had holes in it and we could not see where the company had made any attempt to correct these problems until the inspector showed up on site. Min-Ad officials met with us in an enforcement conference on April 3, 1997, at which time they did admit that there was some plant housekeeping and structural problems and they agreed to make the repairs. We have not conducted a follow-up inspection as yet but they did bring in pictures that showed the duct work on the various machinery has been repaired and the control equipment is working properly. Min-Ad agreed to a \$1,000 fine for this violation. The plant manager was at the enforcement conference with other Min-Ad officials and got the point that plant maintenance was a key issue.

Vice-chairman Molini called for questions.

Commissioner Jones asked if Min-Ad paid both the \$125 minor violation and the \$1,000 major violation?

Mr. Porta explained the minor fine is set in the Nevada Administrative Code and they paid that. When they came to the enforcement conference we discussed the violation and they agreed to pay the \$1,000 fine.

Commissioner Fields asked what the fining capability is on that major violation. How much could you have fined them?

Mr. Porta replied potentially \$10,000 for the one day of observation. \$10,000 per day is the maximum.

Commissioner Trenoweth asked how did you settle on the \$1,000.

Mr. Porta explained he has a fining matrix that takes into account the affect of emissions on public health, risk to the environment, willingness of the company to cooperate with us and how fast they apply corrective actions. The matrix it gives me a range to work with when I go into the enforcement conference. If I get additional information I can go to the lower or upper end of the range.

Vice chairman Molini asked if a company representative was present. No one from the company was present.

Vice chairman Molini asked for public comment.

There was no public comment.

**Commissioner Jones made a motion to accept the settlement agreement.**

**Commissioner Trenoweth seconded the motion.**

**The motion was unanimously adopted.**

Vice chairman Molini moved to Agenda Item IV.

### **Legislative Update and Resolutions**

David Cowperthwaite, Executive Secretary, State Environmental Commission explained part of his duties in the Division is to help the administrator track current proposed legislative bills. Report 11-J is a short list of the status of the bills that may impact the Commission.

AB122 is revisions to the Administrative Procedures Act in terms of requiring additional reviews and workshops.

This bill has passed and it requires the Environmental Commission to review its regulations once every ten years for the purpose of amending or repealing those regulations. They define how this process review works. After the agency (SEC) reviews you have to send a report to legislative counsel within 30 days after review. Then they have a procedure to indicate and re cite and will place in the citation the date on which that review occurred so at that point you are able to start a 10 year clock. There are approximately 1,700 citations involved in the Commission's jurisdiction, those that you have adopted over a period of time, and they could be reviewed enblanc. There are 8 chapters of the Nevada Administrative Code affected and the issue is how to proceed with this review.

Vice chairman Molini asked, based on the effective date of this statutory change, do we have to review them all within a 10 year period or does the statute indicate that you have to, from the date of adoption of initial regulation or amendment, to review it in 10 years.

Mr. Cowperthwaite explained the bill is not particularly clear in that area. It just said "thou shall review every 10 years your regulations" - the language is real short.

Deputy Attorney General Mischel explained that issue was raised by our office at the senate hearing but apparently the bill got passed as already written, without clarification. We suggested staggering, so they did pass the bill cognizant of this question. The SEC could review all 1,700 citations on one day sometime within the 10 year period.

Vice chairman Molini noted there appears to be flexibility for interpretation on behalf of the agency as to how they do that.

DAG Mischel agreed.

David Cowperthwaite stated in the future he will ask the Commission how, and to what level, you want to review the regulations. There will be a substantial amount of work on the agency side to be able to bring these before you.

Commissioner Griswold asked how will public involvement be incorporated?

DAG Mischel stated it would be a public hearing, just like any other regulation hearing, with 30 day notice.

Commissioner Griswold noted she meant public input. It looks like we might be heading for some over-whelming discussion from the public on some of the regulations.

Vice chairman Molini stated if the regulated community has a problem with a regulation they usually petition us for the change.

David Cowperthwaite continued, AB122 also increases the requirements for filing a regulation by requiring more information. For instance, if a regulation is being duplicated by a federal agency you have to attach the citation and the description of that federal regulation and if it is a more stringent regulation you have to give a summary of those federal decisions of "why". So filing is more stringent.

AB122 also requires workshops for regulations and requires a process in which the public has to be notified by mail at least 15 days prior to a workshop and there also has to be an effort to target the affected business community. So this scales up the requirements going into the regulatory process on the Division side. I think it would be redundant for you decision makers to have to hold a workshop and then hold a hearing. The Division generally holds workshops to work through the issues before they come to you with a proposed regulation.

Vice chairman Molini asked if AB122 becomes effective upon passage or on October 1? If it is silent then it is effective October 1. I only asked that because of the impact on my own agency who has not been as good as NDEP about workshops.

Commissioner Jones asked if there has been conversation about the effect this is going to have on LCB and the legislative process when the review process of all agencies reviewing hits? Can you imagine the number of bills that will have to be addressed by the legislature in that 10-year interim if they have not staggered them for different agencies?

Mr. Cowperthwaite stated these are regulations so all you have to do is go through the process of saying "yes, we looked at this chapter - we found at this point in time we need to repeal our amendment".

Mr. Jones stated I think we all have to assume that in reviewing 10 years of regulations all agencies are going to find some changes and that is all going to hit the crush at LCB at that one session if it is not staggered. That is an incredible task.

Lew Dodgion, NDEP Administrator, stated we are in front of the Commission between 4 and 6 times a year to propose changes to nearly all of the regulations you deal with so therefore you have done a review.

DAG Mischel explained the only difference is that those reviews have to be incorporated into a final report to the legislature.

Lew Dodgion explained the existing statutes requires this review every 6 years and it is basically ignored. On occasion we have an irate citizen or a regulated entity saying you have to review these per NRS 233B. Then we have had to go back and find out, yes, the regulation has been reviewed. We did have the Tahoe regulations that had not been reviewed for 20 years but most of the regulations are reviewed several times in a 10-year period.

Commissioner Jones asked if NDEP has it set up that way, a maintenance thing where a certain section of them are all covered in that period?

Mr. Dodgion replied we have not done that but we can do that so the Commission does not wind up at the end of this 10-year period with half the regulations requiring review.

Commissioner Iverson stated he thought that was one of the reasons the bill was written so that all of us who are in regulatory agencies start doing a review on a regular basis - a percentage each year.

Mr. Dodgion reported he participated in the hearing on this bill and that was discussed and someone from LCB suggested that they might contact agencies that have regulatory responsibilities and ask for development of schedules we could use to avoid this lame duck.

Mr. Cowperthwaite continued, the last part of AB122 is that the Attorney General will develop guidelines for the drafting of regulations.

AB120 is to implement Question 8 of the last legislative period which gives the legislature a right and purview to approve or disapprove your regulation. It used to be that they had to accept them, they could not be happy be with them but they had to file the regulations after a period of time. That has changed and they now have the authority to specifically approve or disapprove your regulations. Once the regulations are adopted and given to them it sits on a 35-day clock and then it moves forward to be filed with the Secretary of State. If the Legislative Commission has it go through a process of disapproval it will be returned to you with a reason why they object to it. At that point you have the opportunity to revise the rejected regulation and resubmit it to them. Then it goes to the Legislative Commission at their next meeting and if there are no objections it gets filed. If there are objections it will come back to you. Theoretically, it could become an endless loop in terms of legislative prerogative on the issue. They have unusual language in this bill which I personally thought sounded odd. If the agency refuses to revise the regulation that has been objected to, the legislature may suspend the filing of it until the next session. Then at the next session the legislature may declare the regulation not to be effective and then they will instruct that the regulation not be enforced by the agency at all.

There is also a provision related to the issue of forms. There is already a provision that forms that are generated by the agency could, at the request of somebody, be reviewed by the legislature. Again, being able to approve or disapprove forms that may be adopted by an agency if they felt that the agency had exceeded its boundaries. This legislation all becomes effective on July 1, 1997. In reading AB120 it was not clear to me how it affects the temporary process versus the permanent process. Most of this is geared to the permanent regulatory process in which they do the drafting. The temporary process has its own unique track which is much more streamlined. The

petitions come directly to me and the Commission, I go to posting and public notice, they are presented to you and if adopted they are directly filed. For example, Petition 97003 and Petition 97002 will be filed tomorrow as it does not sit on any 35 day clock -

Vice chairman Molini explained they do have to go back again during the time period for permanent regulations.

Mr. Cowperthwaite agreed. They will have to be reviewed as permanent regulations. They will have to give us an interpretation of whether they are affecting the process on the temporary side.

Commissioner Jones asked who is doing the review process.

Mr. Cowperthwaite explained these temporary regulations will go to the LCB on or before July 1st. LCB will take these petitions, put in their language and into the context of how they want to draft it. They have 30 days to act upon this then at that point I bring it back to you for adoption.

Commissioner Jones asked, is it LCB's function to review this?

Mr. Cowperthwaite explained they look at it to make sure there is nothing here that is outside the pale of the statutory authority allowed to you to adopt that regulation.

Commissioner Jones asked, so this is not the same thing as this review process?

Mr. Cowperthwaite explained that is done at the front end. Then it comes to you, you adopt, then it goes back to the Legislative Commission. These regulations have always gone to the Legislative Commission for review and they say if they like them or not. As a matter of fact, we had this relating to the issue of the Humboldt River Water Quality Standards. Somebody intervened who was not satisfied so there was some circulation and correspondence between us and them. Eventually the report had to be brought to you to be given back to them to satisfy their concerns, but they could not block the implementation.

Commissioner Jones asked is the Legislative Commission a sitting group within LCB that involves legislators?

Vice chairman Molini stated it does involve legislators and they would be the ultimate authority. I guess with this new provision usually what would happen is the staff, the LCB Legal Division, would look at a regulation and might say "we don't think you have the statutory authority to do this regulation" and ultimately that would go to the Legislative Commission but the Legislative Commission really has not had approval authority to this point.

DAG Mischel explained they can remand it -

Mr. Dodgion explained 12 or 14 years ago the statute allowed the Legislative Commission to actually reject a regulation. That was challenged by the University of Nevada and found to be unconstitutional so then the statute was amended where they, the Legislative Commission, would review it. The review is actually done by LCB staff but they report to the Legislative Commission and they take the action. If they found that, in their opinion, the regulation exceeded your authority and was outside the intent of the legislation the Legislative Commission would send it back to the agency (SEC) with that advice. You could take the advice or ignore it and go ahead and cause the regulation to be filed and then the legislature would address that within the first so many days of the next legislative session. The ballot question where the public authorized the amendment to the constitution has now given the legislature the authority to approve or disapprove agency regulations but that authority is vested with the legislature and not the Legislative Counsel Bureau which is why they don't reject the regulation. If they don't agree with it they just refuse to file it and then the legislature will take it up and reject, or approve, it at the next legislative session. In the meantime you don't have a regulation because they don't file it.

Mr. Dodgion continued, back when they had the authority to reject it we got involved in the Water Quality Standards on the Truckee River and had a real rhubarb. They established a sub-committee of the Legislative Commission and held a hearing. I appeared at two hearings on the Truckee River Standards, and later a third hearing on the Humboldt River Standards, in the early 1980's where our statutory authority and legislative attempt was challenged. That subcommittee, in all three instances, found with the Commission's (SEC) action and that Legislative Commission went ahead and allowed it to file.

Mr. Cowperthwaite continued, AB171 with 1 reprint is now in Senate Government Affairs.

AB171 re-defines and expands the definition of what a regulation is and it expands it to the purview of state policy. If you do have a state policy, that ends up becoming defined as a regulation. At that point I assume it has to run through the regulatory process. What will be more delicate to deal with is the issue of interpretations or findings of general applicability of a regulation. The issue is of interpretation as it relates to compliance with federal or state statutes to assess fines or penalties. They have added exclusions to this process and they expanded the exclusions to what a definition of what a regulation is. A manual of policies and procedures, like the Division's internal particular accounting practice or something like that, is not defined as being a regulation. A manual of audit procedures, again for internal use, would not be applicable in terms of being defined as a regulation although a manual of audit procedures outside of that pale would be defined as being a regulatory process.

AB355, the environmental audit bill, will end up circulating back around to you because if there are any particular

procedures terms of the environmental audit process they may end up having to be conducted to you through a regulatory framework. An advisory opinion of general applicability, interpretation where the agency has specific statutory authority, and letters of approval or disapproval or permits are also exempt as being defined as a regulation. It has two trigger dates - July 1, 1997, and January 1, 1998. The Division worked with the legislature to explain that by having everything as an interpretation we end up binding up the whole regulatory process and the customer service process will be significantly affected. If every time you tell a person "this is what the regulation means" you end up having to go through a regulatory process that takes 180 days to get through and that would be very onerous in terms of providing a service for something that you could provide in 5 minutes.

AB72, the Utility and Environmental Protection Act has passed and has been signed by the Governor. AB72 takes the authority for the Utility and Environmental Protection Act applications by utilities in Nevada from the Commission's jurisdiction to the Division of Environmental Protection's jurisdiction.

Other bills have not moved at all. For example, AB149, where the counties want to be able to control the public lands, has not gone anywhere. I bring that up because many of you people sit on that Commission.

AB337 is the Open Meeting Law which you already have. If you want something placed on the agenda you just call me and tell me you want it placed on the agenda. Apparently, some boards are not accommodating their members in this manner but it has always been the practice of the SEC that if you want something on the agenda I will put it on the agenda.

AB355 Environmental Audits, is a very complex bill still sitting in an Assembly Subcommittee - Vice chairman Molini interjected it moved out last night - with some amendments that Sandoval offered they gave it a do pass.

Allen Biaggi, Deputy Administrator, NDEP, reported this bill is not something we would like to have but if we have to have an audit bill in the state this is probably the most benign one out there. Barbara Ristine, our new Deputy Attorney General has been helping us with this. EPA has expressed their fairly significant concern with the bill and has threatened our delegated programs but I am not sure that is a valid threat. We are watching it very closely and Brian Sandoval has worked very well with us.

Mr. Cowperthwaite continued, the only other bill I think will end up affecting the Commission is AB179, Hazardous Materials.

Commissioner Trenoweth asked, what about SB251?

Mr. Dodgion explained that was amended yesterday by deleting the entire bill and adding some new provisions to it, essentially adding another bill. It deals with ability of this Commission and the two county Boards of Health to adopt the fuel standards for stationary and mobile sources. That authority was amended to make it clear that standards for fuels for mobile sources had to achieve or maintain ambient air quality standards which is why we would adopt it anyway but that was just a clarification to satisfy the oil companies. The other changes would only impact the two County Boards of Health. It would not impact this Commission authority at all. There were three provisions that were added that the counties would have to deal with:

- 1) To adopt a fuel standard for mobile sources. They would have to determine the cost effectiveness of such a standard and compare it incrementally to other control measures, which is something they do anyway. We are talking basically about the control of carbon monoxide at this time in Clark County. They would have to determine the cost of the fuel standard per ton of CO produced by the implementation of that standard and then compare that with the cost of ton of the production by other control measures such as traffic lights, one-way traffic, the I/M Program. Again, this is something that has to be done in the State Implementation Plan Development to show the Federal EPA how we are going to achieve the CO standard or the particulate standard and they have to do that anyway. Again, it is just putting into the statute what in fact is done anyway.
- 2) They had to determine that is was technologically feasible, that it was safe, plus 2 or 3 other elements that they would have to address. Again, things we look at anyway.
- 3) They had to hold public workshops on such a regulation to adopt a standard.

The 3 elements that were put in place on the County Boards of Health were similar to the things that state regulatory agencies and the Commission has to go through to satisfy the Administrative Procedures Act, 233B. This amendment to that bill was developed by a consensus with John Sande, lobbyist for the Petroleum Industry, myself, my own Air Quality people and the two Air Quality folks from the District Health Departments. So that was amended and passed out at the Senate Natural Resources yesterday.

Vice chairman Molini asked if it would affect the Commission.

Mr. Dodgion reported it will not affect the Commission's ability to adopt fuel standards. The only effect it would have is if the criteria applied to the two District Boards of Health if it was to prevent them from adopting a fuel

standard because something else, like enhanced I/M, was determined to be more cost effective and therefore that should be adopted. Then that would come back into your laps and I am sure you all remember the fun times we've had with I/M regulations in Clark County. That was the route of our resistance and opposition with SB251 as it was originally written.

Commissioner Griswold asked if the Department of Conservation would be taking part in the Tahoe Environmental Summit this summer?

Lew Dodgion explained the Department is taking a very active role. Pam Wilcox, the Administrator of the Division of State Lands and Conservation Districts has been designated by the Governor's office in a primary coordinating role. There are 3 committees, forums or work groups that are having pre-Summit meetings.

- 1) Water Quality: I have assigned Jim Smitherman from our Bureau of Water Quality Planning to coordinate our role.
- 2) Forest Health: Roy Trenoweth will be involved in that and Willie Molini also has someone involved in the Water Quality.
- 3) Transportation: Will take into account the air quality aspects and I have assigned Tom Porta to be actively involved in that.

Mr. Dodgion continued, I have a great concern about what is going to happen with this Summit and it deals with money. In today's paper Stan Hansen, who I think still sits on the APC - runs Heavenly Valley Ski Resort and has been very active in the environmental restoration and activities in Lake Tahoe, stated that the issue is getting federal monies to come in and implement the plans that TRPA has already developed. I agree with him. The problems have been defined and re-defined and solutions have been developed and redeveloped and kicked around and the real issue is finding money to implement those things. The federal agencies apparently have been given instructions that there will be no new federal monies made available for Lake Tahoe as a result of this Summit. We have been told that by EPA in Region IX and what they intend to do is to give grant monies to TRPA but those grant monies will come out of the pockets of the California agency and NDEP's pocket. In meetings attended by Tom Porta and Jim Smitherman we have already been told by other federal agencies, like the U.S. Department of Transportation, that there will be no new monies made available and that existing funds will have to be redirected. So far they have talked about redirecting grant funds that go to the State Department of Energy to be placed into the Tahoe Basin rather than spread for use statewide. They mentioned NDEP's 106 Grant Funds, used to run our Water Pollution Programs, our 105 Grant Funds, used to run our Air Programs, our 319 monies that go into erosion control projects and nonpoint source control projects statewide (and a large portion of that money goes into Lake Tahoe now), and then our State Revolving Loan monies that we use to fund sewer plant upgrades, etc. for our small communities statewide. So, thank you for the opportunity to get on the soapbox but I am really concerned. The issues up there aren't "what are the problems" - the problems have been defined. The real issue is where do we find the money, the funds for the implementation of the programs that are necessary to cure those problems.

Commissioner Griswold stated just from the press releases I smelled a little of this and that is why I asked the question.

Mr. Dodgion continued, I am really upset about the way it is going and we will probably see some real problems in our programs if this happens.

Commissioner Jones stated that problem will be exacerbated if some of the findings, rulings that are coming through the Supreme Court, are held up that the takings are occurring with that property and they have to find a way to pay for that in addition to doing what they are doing and I don't know where the funds are going to come from.

Mr. Dodgion agreed. The recent Supreme Court hearing was remanded back to the Federal District Court. I don't have any doubt in that particular case that there is going to be a Finding of Taking.

Commissioner Trenoweth asked, do you really think so - she was offered money, wasn't she?

Mr. Dodgion noted she was offered the opportunity to sell the development rights off of the property and the value of the development rights off of the property were a lot less, in the opinion of the property owner at least, than the value of the property of being able to build her dream home on it.

Commissioner Jones stated I think there is some truth in that and I think the takings issue is finding its way through and that is going to be a huge dollar amount if it ever does.

Commissioner Jones asked if the Commission would have the opportunity to participate in the Summit itself?

Lew Dodgion replied we should talk about how to do that. A lot of the things going will be by invitation only and if the Commission members want to be involved we would have to submit names to be invited.

Commissioner Trenoweth explained, based on what Pam Wilcox said at the staff meeting yesterday, if you want to be invited you must get your name on the list for the forum or whatever they call that thing - prior to. They had one last night.



Lew Dodgion explained the forums are coming up -

Vice chairman Molini explained last night was like a public hearing and then there is a forum for each of the 3 areas that Lew mentioned - Water Quality, Forest Health and Transportation - and I am just going to speculate that I think it is going to be a very limited list of people that is actually invited to the Summit with the President and Vice-president.

Commissioner Trenoweth explained Pam said if you want to get on, to even get close to the list, your name has to be on that first meeting, the Forest Health meeting from 6:00 - 10:00 p.m. scheduled for June 30th at the Hyatt.

Lew Dodgion stated the Water Quality forum is June 18 and the Transportation forum is July 2.

The list of potential invitee's to the Water Quality Forum is being generated now and they haven't had a call for a list for the others yet. If the members of the Commission would like to be included on any of those forums let me know and I will submit those names along with a list of people from the Division.

Commissioner Jones reported Senator Reid is forming up a committee again for the final enactment of the Truckee River Negotiated Settlement in Northern Nevada. Many people in Northern Nevada and throughout the state think that is completed. It truly isn't. As a matter of fact, I wanted to bring to your attention that California has finally (I have a copy of the letter in my office) filed a salvo across our bow that they may not be acceptable to the terms and we have all been concerned about that for some time because the B-State Agreement, which is a portion of that, is probably the most important thing in Northern Nevada, as far as water, that we could imagine. For that reason, as well as the water quality which we have dealt with in streams into the Lake, I think it is imperative that we be involved in that Summit. I think we should be involved in the Water Quality Forum as individual people.

Vice chairman Molini explained Pete Morros, the Director of the Department of Conservation and Natural Resources, is playing a fairly major role -

Commissioner Jones interjected - Steve Bradhurst is going to be appointed, there is going to be an announcement in June. He will take on a non-partisan environmental business/non-partisan political role in trying to form up the group to get the final push done to get that to occur. Gibbons is supposed to be on board, both gubernatorial candidates and everyone so it does not take on a political flavor. Everybody is afraid of that with the senator elections coming up. They don't want that to happen.

Commissioner Jones told Mr. Dodgion he would like to be involved in the water side of the Summit.

Lew Dodgion stated he would put Mr. Jones name on the list that will be submitted.

Vice chairman Molini explained he was already on the list.

#### **Vice chairman moved to Agenda Item V.**

##### **A. Status of Division of Environmental Protection's Programs and Policies**

Lew Dodgion explained he had nothing to report.

Vice chairman Molini requested an update on what is happening at the Helms Pit.

Allen Biaggi, Deputy Administrator, NDEP, stated the big news to report is that it is no longer the Helms Pit, it is now the Helms Lake. The Helms Pit filled, probably about 25%, as a result of the January, 1997 flood event. The dikes around the pit were breached by the City of Sparks in order to relieve flooding throughout the City of Sparks. About that same time we were evaluating a feasibility report on whether or not remediation could be actively conducted with a full pit and we rejected that plan as it presented by the responsible parties. They have come back to us with a modified, more aggressive, remediation approach. The first scenario they came up with was more of a containment. They were just putting in a system which would contain the contamination in place, no actual remediation. That contamination would have naturally degraded over about a 200 year period and we did not feel that was appropriate, in the best interest of the ground water and of the residents of the State or the City of Sparks. They have come back to us now with a much more aggressive approach and it can be done with the Pit filled. They are operating a pilot facility right now to evaluate the effigy of that system and the remediation time is down to around 20 years now so they have made some fairly good strides in the design. We are working on them with this. In the meantime, the Pit is filling up fairly rapidly - to the tune of about 1½" - 2" a day. It will reach a point where it reaches 43.75 above mean sea level. The City of Sparks wants to maintain that level to ensure that basements don't start filling up and underground storage tanks start popping out of the ground. So, they are working very diligently to get pumping systems in and we have been working with them to get the discharge permit modified. They will need to bring the Pit back down again to nearly empty so stabilization activities can be completed because there is still a potential of dropping I-80 into the Pit.

Commissioner Jones asked where they would discharge the water.

Mr. Biaggi explained historically, there has been about a 6 million gallon-a-day discharge to the Truckee River to keep the Pit empty. Maintaining the level at 43.75 will result in the need for somewhere between a 1-2 million

gallon on-going discharge to the Truckee River daily.

Lew Dodgion explained there are some water quality issues related there because of the nutrient waste loading total maximum daily load of nutrients to the river. The responsible parties permit required them to meet the nutrient loads by June 1 which is next week. They are not ready to do that and of course they had an "act of God" in the flood as an excuse as being unable to do that. So, we are kind of in a bind here along with them, as to how we are able to handle that continuing discharge. There is a potential of something winding up in front of a panel of this Commission related to continuing discharge because they are not meeting water quality standards and a waste load allocation.

Commissioner Jones asked, is there a possibility of clouding the readings of nutrient buildup and the readings of the river coming out of the sewer plant? You are awfully close in your discharge area. Can you differentiate between the discharge coming from the plant and a discharge with a mix of the two? Is there enough gradient distance between the river to do that?

Lew Dodgion replied he is not sure that there is. The treatment plant has been experiencing problems in the last several months, maybe even about a year, with air and nitrate removal but I think they are now in compliance with air permit conditions in their waste load allocation but it has just been within the last 1½ months. We have told both the responsible parties and the City of Sparks that there is the issue of the waste load, there is a issue of the water quality standard in the river and they have started some river monitoring to determine the actual values of nitrogen and phosphorus upstream and points downstream to try to come up with a mixing concept where they might be allowed to discharge at greater than water quality standards that show the water quality standards of the river are not violated by that discharge. It is going to a complicated thing to figure out and to prove.

Commissioner Jones asked if the Pyramid Indians are participating in this compromise method.

Mr. Dodgion explained they are very interested and we are keeping them apprised of what is going on. You never know what their reaction is going to be.

Vice chairman Molini asked Allen Biaggi if he is temporarily satisfied that they can remediate with the pit full with the technology and is their proposed technology feasible?

Allen Biaggi explained they are not undertaking any whizz-bang new technology. What they are using is fairly tried and true methods that have been around for a decade or so and while we, at this point, are not 100% convinced, the results coming out of the pilot study look very positive and it looks like that this is going to be a workable concept.

Vice chairman Molini moved to Agenda Item V - B.

**B. General Commission or Public Comment**

There were no additional items to discuss.

There was no public comment.

Vice chairman Molini adjourned the hearing at 10:55 a.m.

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