

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF December 11, 2001

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 VERBATIM TRANSCRIPT OF THE HEARING

YES LISTING OF EXHIBITS

NEVADA STATE ENVIRONMENTAL COMMISSION
1ST REVISED AGENDA
December 11, 2001

The Nevada State Environmental Commission will conduct a public hearing commencing at **9:30 a.m. on Tuesday, December 11, 2001, at the Nevada Division of Wildlife's Conference Room B, 1100 Valley Road, Reno, Nevada.**

This agenda has been posted at the Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Wildlife in Reno, Division of Environmental Protection and Department of Museums, Library and Arts in Carson City, the Lyon County Courthouse in Yerington, and Mineral County Courthouse in Hawthorne. The Public Notice for this hearing was published on November 12, November 21 and November 29, 2001 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. Introduction of Commissioner Tim Crowley**
- II. Approval of minutes from the September 18, 2001 meeting. * ACTION**
- III. Regulatory Petitions * ACTION**

A. Petition 2002-01 (LCB R-096-01) permanently amends NAC 445A.070 to 445A.348, the water pollution control program by amending 445A.100 the definition for "point source" by adding language that defines earth moving equipment, and 445A.309, the definition for "diffuse source" to incorporate runoff in various subsections of the definition. In addition, the definition for "diffuse source" clarifies provisions regarding urban area runoff and earth moving activities. The regulation will assist regulated communities in determining when water pollution control permits are necessary.

B. Petition 2002-03 (LCB R-128-01) is a permanent amendment to NAC 445A.119 to 445A.225, the pollution control standards for water quality. The petition amends the standards for various reaches of the East and West forks of the Walker River. Amendments are proposed for NAC 445A.159 through 445A.169, inclusive including Sweetwater Creek and Desert Creek of the Walker River. Revised area of water quality standards includes pH, the nitrite in the lower reaches, the time period for dissolved oxygen beneficial use standard, the Topaz Lake dissolved oxygen standard, the replacement of the narrative color standard with a numeric standard, establishing sulfate requirements to maintain existing higher quality (RMHQ), replacement of existing fecal coliform standard with E. Coli standard and to establish a total suspended RMHQ for Sweetwater Creek. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker Lake to Weber Reservoir.

C. Petition 2002-04 (LCB R-129-01) is a permanent amendment to NAC 445A.119 through 445A.225, the pollution control standards for water quality. The permanent regulation establishes water quality standards for Walker Lake. The regulation establishes beneficial uses and water quality standards to protect those uses. Proposed standards for Walker Lake include pH, dissolved oxygen, total suspended solids, temperature, dissolved oxygen, nitrite, total inorganic nitrogen, total phosphorus and E. Coli.

D. Petition 2002-02 (LCB R-102-01) is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. The amendment adopts by reference a State of California regulation that became effective on July 25, 2001. The amendment requires model year 2005 and 2006 new heavy-duty diesel engines (HDDEs) with a Gross Vehicle Weight Rating (GVWR) of 14,001 pounds and greater to meet supplemental emission tests. Definitions added include the applicable Executive Order, heavy-duty diesel engine, model year, new motor vehicle, new motor vehicle engine, ultimate purchaser, ultra-small volume manufacturer, and urban bus.

- IV. Settlement Agreements on Air Quality Violations * ACTION**
 - A. Road & Highway Builders; Notice of Alleged Violations # 1585, 1586, 1587, 1588, 1589, 1591, 1592, and 1593
 - B. Nye County Road Department; Notice of Alleged Violation # 1596
 - C. Premier Chemicals, LLC; Notice of Alleged Violations # 1594 & 1595
 - D. Crockett Enterprises; Notice of Alleged Violations # 1599 & 1605
 - E. Paul Moore Sand and Gravel; Notice of Alleged Violation # 1604

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V. Status of Division of Environmental Protection's Programs and Policies

VI. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary, David Cowperthwaite at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition the State Environmental Commission maintains an Internet site at <http://www.ndep.state.nv.us/admin/envir01.htm>.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify the Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-4670, ext. 3117, by 5:00 p.m. **December 5, 2001.**

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NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **9:30 a.m. on Tuesday, December 11, 2001, at the Nevada Division of Wildlife's Conference Room B, 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. **Petition 2002-01 (LCB File No. R-096-01)**, the Water Pollution Control regulation in NAC 445A for diffuse source and rolling stock permits was previously noticed on August 20, August 29 and September 6, 2001 for hearing on September 18, 2001. The adoption on this regulation was deferred on September 18, 2001 until the next regularly scheduled regulatory hearing.

1. Petition 2002-02 (LCB R-102-01) is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. The amendment adopts by reference a State of California regulation that became effective on July 25, 2001. The amendment requires model year 2005 and 2006 new heavy-duty diesel engines (HDDEs) with a Gross Vehicle Weight Rating (GVWR) of 14,001 pounds and greater to meet supplemental emission tests. Definitions added include the applicable Executive Order, heavy-duty diesel engine, model year, new motor vehicle, new motor vehicle engine, ultimate purchaser, ultra-small volume manufacturer, and urban bus.

The regulation will not have a significant economic impact, either immediate or long-term, on the regulated community, the heavy-duty diesel engine manufacturers. The State of California, by a consent decree, is requiring manufacturers to comply with supplemental test procedures for model year 2003 and 2004 engines. The regulation does not have an immediate or long-term impact upon the public. There will be no additional cost to the agency for enforcement of the regulation. There are no other Nevada regulations that the amendment overlaps or duplicates. This regulation adopts a California regulation, Title 13, Section 1956.8 and Section 2065 of the California Code of Regulations, as effective on July 25, 2001. The regulation is more stringent than federal requirements, since the federal rule as promulgated by the U.S. EPA in 65 FR 59896 on October 6, 2000, begins regulation of heavy-duty diesel engines beginning on model year 2007. There are no fees associated with this regulation.

2. Petition 2002-03 (LCB R-128-01) is a permanent amendment to NAC 445A.119 to 445A.225, the pollution control standards for water quality. The petition amends the standards for various reaches of the East and West forks of the Walker River. Amendments are proposed for NAC 445A.159 through 445A.169, inclusive including Sweetwater Creek and Desert Creek of the Walker River. Revised area of water quality standards includes pH, the nitrite in the lower reaches, the time period for dissolved oxygen beneficial use standard, the Topaz Lake dissolved oxygen standard, the replacement of the narrative color standard with a numeric standard, establishing sulfate requirements to maintain existing higher quality (RMHQ), replacement of existing fecal coliform standard with E. Coli standard and to establish a total suspended RMHQ for Sweetwater Creek. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker Lake to Weber Reservoir.

The proposed regulation will not have an adverse economic impact on businesses, since the amendments do not directly regulate business. The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public. The implementation of the proposed regulation is not expected to result in any additional cost by the Division of Environmental Protection for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. The federal government has delegated the responsibility of establishing water quality standards to the state, therefore, there is no federal regulation for water quality standards for the Walker River Basin. This regulation is no more restrictive or stringent than federal requirements. This regulation does not provide for any new or increased fees.

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3. **Petition 2002-04 (LCB R-129-01)** is a permanent amendment to NAC 445A.119 through 445A.225, the pollution control standards for water quality. The permanent regulation establishes water quality standards for Walker Lake. The regulation establishes beneficial uses and water quality standards to protect those uses. Proposed standards for Walker Lake include pH, dissolved oxygen, total suspended solids, temperature, dissolved oxygen, nitrite, total inorganic nitrogen, total phosphorus and E. Coli.

The proposed regulations do not directly regulate businesses, therefore, they are not expected to have any direct economic effect on the regulated community. In the long-term, there is a possibility of secondary adverse economic effects on the agricultural community if the proposed standards are used by other government agencies to acquire water rights for the benefit of Walker Lake. Conversely, the long-term protection of Walker Lake will have a beneficial economic effect on tourism related businesses. The regulation is not expected to have any economic effect on the public both immediately and long-term. The regulation is not expected to result in additional cost by the agency for enforcement. There are no other state or government agency regulations which the proposed amendments duplicate. The federal government has delegated the responsibility of establishing water quality standards to the state, therefore, there is no federal regulation for water quality standards for the Walker River Basin. This regulation is no more restrictive or stringent than federal requirements. This regulation does not provide for any new or increased fees.

Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are 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 on 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 five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library and Archives, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, 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 notices have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet site. It is at <http://www.ndep.state.nv.us/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on December 5, 2001.

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Wildlife in Reno, Division of Environmental Protection and Department of Museums, Library and Arts in Carson City, the Lyon County Courthouse in Yerington, and Mineral County Courthouse in Hawthorne.

STATE ENVIRONMENTAL COMMISSION

Meeting of December 11, 2001

Nevada Division of Wildlife

Reno, Nevada

Verbatim Transcript

MEMBERS PRESENT:

Melvin Close, Chairman

Tim Crowley

Paul Iverson

Joseph L. Johnson

Hugh Ricci

Steve Robinson

Joey A. Villaflor

MEMBERS ABSENT:

Alan Coyner, Vice Chairman

Terry Crawford

Demar Dahl

Mark Doppe

Staff Present:

Deputy Attorney General Susan Gray - Deputy Attorney General

David Cowperthwaite - Executive Secretary

Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order. He noted that the agenda had been properly noticed in compliance with the Nevada Open Meeting Law. He introduced Tim Crowley as a new Commission member.

Agenda Item I. Approval of minutes from the September 18, 2001 meeting.

Commissioner Johnson moved for adoption of the minutes.

Commissioner Villaflor seconded the motion.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III. Regulatory Petitions, Petition 2002-01.**

(Petition 2002-01 (LCB R-096-01) permanently amends NAC 445A.070 to 445A.348, the water pollution control program by amending 445A.100 the definition for "point source" by adding language that defines earth moving equipment, and 445A.309, the definition for "diffuse source" to incorporate runoff in various subsections of the definition. In addition, the definition for "diffuse source" clarifies provisions regarding urban area runoff and earth moving activities. The regulation will assist regulated communities in determining when water pollution control permits are necessary.)

Leo Drozdoff:

Good morning Mr. Chairman, members of the Commission. My name is Leo Drozdoff and I'm the chief of the Bureau of Water Pollution Control for the Division of Environmental Protection and I'm here to present Petition 2002-01, which is also referred to as LCB File No. R-096-01. This is a regulation which clarifies point source and diffuse source in the Nevada Administrative Code. But it also helps us, helps the Division and we believe the State Environmental Commission settle our sort of long-standing activities associated with Elko County and their reconstruction of the South Canyon Road in

Jarbidge, Nevada. For that reason, I believe a brief, perhaps 10 minute, historical overview would be of benefit because, again, it does involve the Commission and there are several new members of the Commission.

On July 20, 1998 Elko County undertook the reconstruction of a segment of South Canyon Road in Jarbidge, Nevada following a vote by the County Commission that an emergency existed and the emergency was based on a 1995 flood and a pending plan from the United States Forest Service to change the road to a trail. Following a warning letter issued by NDEP, NDEP issued an order to stop work and get a permit on July 23, 1998. The Division's order was appealed to the State Environmental Commission. On September 16 and 17, 1998 Elko County's appeal was heard by a three-member panel of this Commission and the Commission's order contained 10 findings of fact and 9 conclusions of law upholding the Division's action. The 7th conclusion of law in that order was that rolling stock includes heavy construction equipment and bulldozers. Elko County then appealed the State Environmental Commission's order for judicial review. On February 1, 2000, members of the Division of Environmental Protection and the Attorney General's office appeared before Judge Wagner in Elko County. Judge Wagner affirmed in part and overturned in part the SEC order in his order of July 3, 2000. Specifically, Judge Wagner affirmed the findings of fact but he overturned one conclusion of law. Specifically, Judge Wagner ruled that rolling stock was related to locomotives, passenger and freight cars. Thus he concluded the SEC erred in finding that equipment used in this matter was rolling stock.

Now then it was our turn I suppose. Based on Judge Wagner's decision to overturn the State Environmental Commission's order, the Division then appealed to the State Supreme Court. We felt that we could cite and did cite many instances where rolling stock is defined more broadly and includes specifically items such as bulldozers and heavy equipment. We also felt there was ample case law in other states and in the federal courts that Judge Wagner chose not to consider that demonstrate that heavy equipment in streams is, in fact, a point source.

Now it's important to note what our motives for this appeal were. It wasn't that we had some grudge with Elko County, but rather it was based on discussions and in some cases, directions from not only the Environmental Protection Agency, but also other major permittees in this State. You see, we have a delegated program in the State of Nevada to implement the Clean Water Act and to put it bluntly, we were told that if the Nevada Division of Environmental Protection

has difficulty implementing certain aspects of the Clean Water Act, various steps could be taken, most serious would be losing our delegated program. Now that was a very big deal that affected nearly everyone. And that was why our major permittees were interested, some of our major permittees were interested in our appealing to the State Supreme Court because it was fairly unanimous in our regulated community that Nevada losing its delegated status to implement the Clean Water Act would be a major blow for the State of Nevada.

From Elko County's perspective I believe they understood that if EPA were to somehow implement the Clean Water Act they clearly would not be constrained by Nevada case law and the decisions by a State judge. So, there was I guess a reason to kind of keep talking. In November 2000 we met with the Supreme Court mediator, which is a requirement in all appeals to the State Supreme Court. And that actually was sort of a breakthrough event. Following that meeting, both the mediator, the Division of Environmental Protection, the Attorney General's Office and Elko County felt that a regulation change would be a good route for settlement. So over the next several months the Division of Environmental Protection did develop a proposed regulation and sent that to Elko County and their consultants for comments. This process went back and forth for a couple of months. We would gain some ground and lose some ground. We felt the best thing to do would finally be to meet in a place and see if we could hammer this agreement out.

In an event we have collectively coined the "Winnemucca Summit of June 14, 2000" members from the Division of Environmental Protection, the Attorney General's Office, Elko County Commissioners, Elko County District Attorney representative and consultants for Elko County all met and after several hours we actually developed a reg. that met all of our needs. We're quite pleased with that event. We, in turn, then followed our traditional public notice process. We placed a public notice in a variety of papers: Elko, Las Vegas, Reno and Carson. We also held a workshop on August 21, which was attended by Elko County and the Attorney General's office. All provided comments that the reg. as we've crafted was consistent with our discussions in Winnemucca on June 14. We then entered the phase of working with the Legislative Counsel Bureau and this took a little bit of time as well. The Legislative Counsel Bureau made some changes to our regulation, not for content, but for grammatical changes and LCB style. However, the reg. as written was different than what we crafted in Winnemucca and this raised some concerns, initially on all parts, and then finally primarily from Elko County.

The reason you have a revised regulation in front of you, which again is dated December 5, is on December 5 we had a conference call now with LCB, the Attorney General's office, Elko County officials and NDEP. We went through the various grammatical changes point by point over what you have in your folder. There's really just one change and that is in Section 3 on the FLUSH line, which I believe is on page 2, there's a term in the one you have now that says "items." The term used in the November 19 version was "activities." Elko County's concern was that "activities" is discussed in a couple of the diffuse source specific activities are discussed in the preceding eight elements of diffuse source and they wanted it to be clear that that FLUSH line corresponded or went with all eight activities, not just the two that had the word "activities" in it. Therefore, there's the change, one word. From "activities" to "items." So, at long last, we now had consensus, not just with us and Elko County, but the Attorney General's office and the Legislative Counsel Bureau. So with that that's the historical overview. If I can I'd like now to just move quickly to the regs. I believe they're fairly straightforward.

Really there's two parts to the regs. First, what we decided to do was we wanted to clearly define what a point source is. If we were going to have to live with this now definition of rolling stock we wanted it to clearly define a point source. And the second was we wanted to make it clear, and this is sort of the balancing part of the regulations that we worked with with Elko County, we wanted to make it clear that the diffuse source exception, if you would, is still maintained and clarified. By that what I mean is diffuse sources, since there isn't a discernable point source, a permit is not needed and we and the county wanted to make clear that nothing has changed in that regard. And so, on the first point about clearly defining what a point source is the Nevada Administrative Code has three places where point source is defined. Those are NAC 445A.0586, 100 and 372. The definition in all cases has been changed as you see in front of it. Not only does it cite the point source has the meaning ascribed to it in the statute, but it also now includes, "the term includes wheeled, track, stationary or floating equipment used for earthmoving activity from which pollutants are or may be discharged." What that does now is it makes it clear, regardless of what you think rolling stock is a point source could be a bulldozer in river, for example.

On the second point, which again was requested from Elko County it now makes it clear that the diffuse source, well diffuse sources are still maintained and clarifies it in all eight cases what a diffuse source is and that the diffuse source exists even if equipment is used in those diffuse source activities. Also since diffuse source is something where a discernable point source can't be found, as I mentioned, we

now make it clear that the regs. describe runoff from construction activities, building roads, etc. Again where a discernable point source cannot be located.

That's essentially the balance of the regulation change. I'd like to conclude with a couple of remarks. These reg. changes allow for a mutually-agreeable solution that has taken a great deal of resources, not just from us, but from Elko County, the Attorney General's Office, etc. As we learned when we went before Judge Wagner, in court you have one winner, you have one loser, it's a litigious environment, there's some level of animosity. Most importantly, there's no guarantee of success. There's, as I said, we feel, we have always felt that our case was strong, but I couldn't guarantee to this Commission or my boss or anybody else that we would absolutely win. Also the specter of a State suing a County in State Supreme Court is probably something that I don't know that there would be any winners with. So now in this document we have concurrence from LCB, the Attorney General's office, Elko County and NDEP. I would submit to the Commission that that's not a small feat, but I also would submit that perhaps you can take some comfort in the fact that this regulation has truly been reviewed and re-reviewed. It sets the stage for us to get back to a good relationship with Elko County and maintaining a good relationship with the various other counties in the State. It also keeps EPA satisfied that our program is secure and we're able to implement the Clean Water Act.

And as a final point I'd like to bring to your attention that in the last couple of days I've had several discussions with Assemblyman Carpenter, Brad Roberts, who is an Elko County Commissioner, Doug Busselman and all basically have agreed with our approach. But they all wanted assurance that this does not change, that we're not changing the game here and I guess I'm here on the record stating that we are not. I don't believe, I know that we have never in the past taken such extreme positions about, for example, a pickup truck through a watercourse requiring a permit or a farmer or a rancher working on an ag. ditch requiring a permit. I think our record is clear, we've never done that. I guess I'm stating for the record that this reg. does not allow us to do that and we have no intentions to implement this regulation in such a way. I'd like to if I may, through David just give you two letters of support. One is from the Attorney General's Office from Bill Frey dated December 10 and one is from Nolan Lloyd who is the Chairman of the Elko County Board of Commissioners all expressing concurrence with our approach.

Chairman Close:

Mr. Drozdoff:

Comm. Iverson:

If there's no objection we'll make that part of our record.

And I apologize, they just came today.

Mr. Chairman can I ask a question? You had mentioned four entities

that were in agreement with this. Elko County and then DEP and what were the other two?

Mr. Drozdoff:

The Attorney General's office and the Legislative Counsel Bureau. And I would say that if we are able to satisfactorily, if the Commission is convinced that this is the proper way to go and you approve and adopt these regulations, this will in fact be our settlement. We will drop our appeal to the State Supreme Court. As you can see Elko County is interested in moving forward in this regard and I think it's, well I think it's as good an ending as we can hope given the length that we've been involved in this project. With that I'd take any questions.

Chairman Close:

Any questions?

Commissioner Ricci:

The term "rolling stock" I realize it doesn't appear here anywhere so that becomes a term of art now and unless you put a railroad train inside water that means that you . . .

Mr. Drozdoff:

Yes. You know that's what Judge Wagner ruled. I think you're right. I think it does become a term of art. What we tried not to do is certainly put a finger in Judge Wagner's eye and say, "No rolling stock means something else." I don't think we have the ability, I don't know if the Commission has the ability to do that and so the precedential value of rolling stock, you know like I said there's plenty of case load that goes the other way so it does become a term of art. We, I think, have successfully sort of dodged that hot potato by focusing our attention where it should be which is what a point source is.

Comm. Iverson:

One other question, you had indicated that in the last several days you had spoken to Carpenter and Doug Busselman and a gentleman from the County Commission and I appreciate you putting that on record as the idea that this is not a change from the way we're doing business now and that equipment in an irrigation ditch is not considered involved in this and would not require a permit. I did have some concern though in your County Commissioner calling you indicating that during the Winnemucca Summit, when you worked with the county commission was that the entire county commission or was it a select group? Is this commissioner who called you up to speed with what's happened in the negotiations?

Mr. Drozdoff:

Yes he was. I should say this, for a while in both our activities and Elko County's activities with the federal government my understanding is the Elko County Commission appointed two people a two-member body of their commission to sort of represent them. Originally those two people were Roberta Skelton and Mike Nannini. When Roberta Skelton did not win reelection, Brad Roberts took Roberta's place representing the Commission and so when we met in Winnemucca it was with Mike Nannini and Brad Roberts, both of which were dually authorized by the Elko County Commission to represent the county in this regard.

Comm. Iverson: Did those two commissioners understand what you basically have put on record here?

Mr. Drozdoff: They did and I should say the phone call we had where Brad represented where his level of least concern was in the conference call I cited on December 5 with everybody involved, with LCB and the AG and he basically said, "Look I understand what's going on. I just want to make sure that from an implementation standpoint nothing's changed. Much like the calls I have received from Doug Busselman and John Carpenter and I reiterated to him and I reiterated to the other folks on the phone as you eloquently stated that this is not a change.

Comm. Iverson: I appreciate your hard work on this. I know it takes a lot to get this many people to agree on anything.

Chairman Close: Any other questions? Thank you very much.

Mr. Drozdoff: Thank you.

Chairman Close: Does anyone else wish to testify on this matter? I'll call the public meeting to a close. Any discussion by the Commission? Is there a motion?

Commissioner Ricci: Mr. Chairman I'll make a motion to adopt Petition 2002-01 further defining the meaning of point source.

Commissioner Villaflor: I second.

The motion carried unanimously.

Chairman Close moved to **Agenda Item III.B. Petition 2002-03.**

(Petition 2002-03 (LCBR-128-01) is a permanent amendment to NAC 445A.119 to 445A.225, the pollution control standards for water quality. The petition amends the standards for various reaches of the East and West forks of the Walker River. Amendments are proposed for NAC 445A.159 through 445A.169, inclusive including Sweetwater Creek and Desert Creek of the Walker River. Revised area of water quality standards includes pH, the nitrite in the lower reaches, the time period for dissolved oxygen beneficial use standard, the Topaz Lake dissolved oxygen standard, the replacement of the narrative color standard with a numeric standard, establishing sulfate requirements to maintain existing higher quality (RMHQ), replacement of existing fecal coliform standard with E. Coli standard and to establish a total suspended RMHQ for Sweetwater Creek. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker Lake to Weber Reservoir.)

Tom Porta: Good morning members of the Commission, Mr. Chairman, Tom Porta with the Bureau of Water Quality Planning. Well it's with a little intrepitation and a few less hairs I stand before you today to go over once again the Walker River and Walker Lake water quality standards. I'd like to start or begin with just a brief history of where we've been, what's transpired over the last couple of years and then turn it over to Randy Pahl who will be giving the river standards. We have decided to at this time to separate the two petitions unlike last time where we had one petition to consider both the river and the lake together. So the first one you'll be hearing today is the river.

Let me give a little bit of history. The bureau began working on the

Walker River and Walker Lake standards in 1998. During 1999 we collected and reviewed data and put out a rationale for our changes. There were four workshops conducted in early 2000 and by the end of 2000 we had presented the first round anyway, the first meeting of the water quality standards for Walker Lake and Walker River at the end of the year 2000. In early February the Commission reconvened to hear the petition once again because of numerous comments during the first hearing and the Commission passed the Walker Lake and Walker River standards on a vote of 5 to 4. Subsequent to that a legislative review committee reviewed the regulations, which were passed by the SEC in April, and basically the directive was remand it back to the SEC. In May Senate Concurrent Resolution No. 40 basically declared that the water quality standards would not become effective. Right after that there was another SEC hearing to discuss what action should be taken by this body. At that time it was determined that there would be no further action at that time to move forward with adopting water quality standards for Walker Lake or Walker River. Shortly thereafter a notice of intent was filed to sue EPA by the Walker Lake Working Group being represented by the Western Environmental Law Center. In July of 2001 NDEP met with the parties: the Walker Lake Irrigation District, the Walker Lake Working Group and the representative from the Western Environmental Law Center. At that meeting the Division explained a plan to adopt or get adopted partial water quality standards while we worked on the more difficult issues with the lake. At that time, that was the best course of action in our minds.

Subsequent to that meeting the Walker Lake Working Group and Western Environmental Law Center got back to us about that plan and we're not in agreement with that plan. Their position is that the water quality standards should be adopted as whole and not partial which means that we should include TDS in these water quality standards for the lake. In any event, the Division feels that we should stay with the plan that we have originally gone with and that is an attempt to get the river standards adopted, partial lake standards adopted today and then move forward in another venue that's being conducted at the same time on the water rights litigation. The Division has decided to participate in the alternative dispute resolution in hopes that we can come to agreement with not only water rights issues but also water quality standards. And as many of you know, this is a big issue in the west and we've basically come to the point now where you cannot talk about water quality without talking about water quantity. So we feel this is the best course of action to work through this process. And so before you today we have these two petitions.

Workshops were also conducted on these two petitions in October, early October and an interesting dynamic has developed. At the first Commission hearing, as you know, the Irrigation District opposed our standards and the Walker Lake Working Group supported them. At this hearing you'll probably find that now the Irrigation District will support our standards by a letter I believe you have in your packets and the Walker Lake Working Group will oppose them. So we've had a change in perceptions on this issue. So with that I'd like to turn it over to Randy Pahl who is the new branch supervisor for our water quality standards program. We have a couple of options today with our presentations. We have both a long and a short version and I would leave it to the discretion of the chairman and the members to decide which course of action you would like to take. We have a summary version, which we can get through in a fairly short time or we can go through line-by-line on the standards to present to you.

Chairman Close: How long does the line-by-line presentation take?
Mr. Porta: Depending on questions I would say 45 minutes, maybe an hour.
Chairman Close: I think this has been a serious enough matter that we should have a full presentation of your data.
Mr. Porta: Okay. We came prepared for both.
Commissioner Ricci: Are there any differences between the river standards that we heard whenever it was, December, to today?
Mr. Porta: No. They're the same.
Commissioner Ricci: So this is going to be just more or less a refresher?
Mr. Porta: Right, for the river.
Randy Pahl: Good morning. My name is Randy Pahl. I've been involved in the Walker in a lot of different capacities in the past and now it's interesting to be involved in it from the water standards portion. We put together some summary tables too that will be helpful I hope, not too confusing. We'll inundate you a little bit with a lot of information. Some of this we came prepared to present some summaries because as it has been mentioned the changes that we're proposing are not any different from last time. A lot of the changes are updating criteria based upon more recent EPA criteria and so it affects a lot of the same reaches, all of the reaches throughout . . .

Chairman Close: Are your slides contained in the document you've given to us so we can follow along with what you're doing?
Mr. Pahl: I don't believe the slides are.
Chairman Close: Not the slides, but the transparencies?
Mr. Pahl: No I don't believe so.
Chairman Close: David is it possible, is there another machine?
David Cowperthwaite: No. I asked for it, but it was the only one they've got.
Mr. Pahl: I need an overhead in order to get through this.
Chairman Close: So we're getting another one from out in the car?
Mr. Pahl: I'm sorry.
Mr. Cowperthwaite: Do you want to take a 5-minute break here?

Chairman Close:

Yes. I think we should have the presentation made all together so we'll take a second until you get it arranged for us.

Break

Mr. Pahl:

(continuing presentation after break) from Wellington to the confluence. Down here right in the middle is Desert Creek, in the blue, Sweetwater Creek is over there on kind of the center bottom, the yellow, East Walker at Stateline and then you have East Walker that runs all the way from the State Line to the confluence, Walker River from the confluence to Weber Reservoir, it's that gold color there. Then Weber Reservoir, we've got another reach here, Weber Reservoir to the lake and then Walker Lake which is covered under another petition that we'll be talking about later.

Some of the changes we are making, one of the changes is that East Walker River that goes from Stateline to the confluence, we're breaking that into two reaches. And that's all this is really discussing. It's breaking at this place called Bridge B-1475 which is near the middle of the reach and the reason that was done was to, the stream has different characteristics in the upper part than in the lower part and so to better characterize the stream in the standards we broke them into two reaches. So that's one change and associated with that is beneficial uses under the original long East Walker Reach are the same now into two, it's broken into two sub reaches basically. So it includes the mountain whitefish, rainbow trout, brown trout as the fish species.

There are some changes with the beneficial uses. Mountain whitefish was added as a major species of concern and that was added for the, there's three reaches listed up there: the West Walker at Stateline, West Walker at Wellington up to Stateline and then Sweetwater Creek and that was based upon NDOW recommendations. Also there was another change to the beneficial uses where there's a statement in there saying that the Lahontan cutthroat trout (LCT) may be present in the reach between Weber and Walker Lake between April and May. Well we're proposing to revise that to February through June based upon NDOW recommendations. And also, what the standards of that, what we're changing the color, proposing a change to the color standard and currently it's been the standard something like I believe less than 10 units greater than the natural conditions. We're changing all these to 75 and that is driven by the EPA criteria for domestic and municipal water supply. So that's going to be shown on, that's the item there, C, as relates to that, the municipal domestic being the most restrictive beneficial use for that color.

Starting with temperature one of the changes was to add a footnote to our table that says this is the reach the Weber Reservoir, Walker

Lake reach that specifies a temperature of less than 21oC during February through June when LCT are present and that's based upon NDOW recommendations for LCT protection. Also the same footnote, we're proposing to put in that reach from it's basically the whole Walker River from the confluence down to Weber Reservoir. The 21, less than 21 degrees February through June and that was based upon a request from the Paiute Tribe, but also an NDOW recommendation I believe also.

Commissioner Crowley: Is that controlled by quantity? Is that how you do temperature? More water keeps it cooler, or? How do you control the temperature?

Mr. Pahl: We don't control it. We just monitor it. But that would, I mean one way of meeting a temperature requirement would be possibly additional flow. Other more likely way is maybe improving vegetation, riparian vegetation, riparian corridor conditions.

Commissioner Crowley: Okay. Thanks.

Mr. Pahl: And then there was another change that we're proposing and this is with the beneficial use standard of, this is from the confluence of West Walker down to Weber Reservoir. We had in the standards now there's a beneficial use temperature for April through June of 24 degrees and that was inconsistent with the reach down below and so we're revising that, hoping to revise that to 23 degrees and it would just be more consistent with the rest of the river.

Chairman Close: How close to the temperature readings that you propose is it from the existing temperature on the river? Is it met now?

Mr. Pahl: Yes. We haven't had any impairment listings for temperature on the Walker.

Commissioner Iverson: Can you go back one slide?

Mr. Pahl: Sure.

Commissioner Iverson: I just needed to read it.

Mr. Pahl: Oh, okay. It's basically the same footnote is being added for those two reaches from the confluence all the way down the Walker, just two reaches. So that's temperature.

The pH changes, these apply to all the reaches. Currently the standard is 7.0 to 8.3 through all these reaches. EPA criteria now is they are recommending a range of 6.5 to 9. So in order to be consistent with what the latest and greatest is from EPA, we're proposing that change. So that gives us a broader range there for pH. What's interesting to note is that the Walker River has been listed on the 303D list. If you're familiar with that that's just basically a list that we put together every two years on impaired status. If a river is violating its water quality standards it goes on the list and Walker has been on the 303D list for pH based upon the old range of 7 to 8.3, but now going to the more, the broader current-type of criteria from EPA, 6.5 to 9 we won't have that problem anymore. It won't be listed anymore.

Chairman Close: As you go through here if there's any criteria that's not presently met that has to have a change to it or some action taken, would you bring that to our attention?

Mr. Pahl: Sure. I believe all of these changes are related to parameters that have, aren't causing impairment or aren't the, indicating impairment for those parameters. Does that sound correct? I believe so. The parameters where there's problems on the Walker where we have listing for impairment is phosphorus, suspended sediment, I believe and has been pH and I believe there's an iron in there, in one recess has some iron problems. I believe those are the main problems. But we're not making any changes to those. Nitrite is another area that we're looking at proposing to change. This is the reach from the confluence of the East and West again all the way down to Weber. Right now the beneficial use standard for the nitrite is 5 mg/l and it's somewhat inconsistent with some of the other EPA criteria in some of the other reaches down below. So we're proposing to change that to 1 mg/l. But at the same time, there's some concerns about you need certain nitrite levels for cold water fish and that's the reason for this footnote. We're looking at having a beneficial use standard for nitrite of .06 instead of that 1. When LCT are present this standard would say that .06 would be your beneficial use standard for the February through June period if LCT are present from the confluence all the way down to Weber Reservoir. And as I said this is based again upon NDOW recommendations and .06 is EPA criteria needed to protect fisheries.

Dissolved oxygen is another category we're making some, hopefully, making some changes. There's a number of reaches listed there: the West Walker at Stateline, Topaz Lake, and Weber Reservoir to Walker Lake. Where right now the beneficial use standard there's we have a two-part deal standard. You have a 6 from November through April and then a 5 through May through October. Anyway, based upon some NDOW recommendations and another issue is we're not being consistent with some of the other reaches in the river so we're proposing to change that November to April for the 6 to a period from November to May for those reaches. As I said, that will get us more consistent with the rest of the reaches on the river and more in line with what NDOW thinks is necessary.

Commissioner Ricci: That last reach, Walker Lake to Weber Reservoir is different than what you have in the book here on page 34 it says Walker River at Schurz Bridge. Is that the same?

Mr. Pahl: Schurz Bridge is the control point for that reach. So, yes, that's where we do our monitoring basically.

Commissioner Johnson: I have a question. One of the comments in the discussion, question the dissolved oxygen level in Topaz Lake and how it was measured. Do you have comments for that? I mean this is, says that Topaz Lake

will have 6 mg, but top to bottom, or what?

Mr. Pahl:

That's the next slide, is we're proposing to, on Topaz we just had those two values. We're proposing to add a footnote that would say that the standard through June through October would only apply in the upper epilimnion level of the river, of the lake rather during stratification and we just felt this is more reasonable for a lake that has some production going on with algae. So right now it has that 6 and at 5. This would be a slight modification to that table.

Commissioner Johnson:

And 5 really relates to the summer time water temperature?

Mr. Pahl:

Right. And there again we haven't seen any violations of these standards. The lake hasn't been, Topaz hasn't been listed for impairment on our 303D list.

Some other changes include total suspended sediments. This was just an RMHQ requirement to maintain existing higher quality and we're proposing to set that at 45 mg/l and this is based upon our existing data that we collect and NDOW had requested that we incorporate an RMHQ for Sweetwater. So that's really the only change with the total suspended solids.

Here's color again. I mentioned earlier where all of our reaches the standard is something it goes should not be less than, or it should be less than 10 color units above natural conditions. Well it's very difficult to try to quantify what natural conditions are and one of our hopes is to have standards that are measurable, quantifiable and so, and also a lot of the other rivers in Nevada will have, they didn't have this standard, they had that 75 standard that's for drinking water systems, drinking water use. So our proposal here is to replace that 10, less than 10 with the less than 75 for all reaches on this river.

There's also with some color where you're looking at our existing data that we collect through our monitoring network and have come up with some recommendations for RMHQ's requirements to maintain those higher water qualities. So in this situation this is really you see at the bottom it says, "Based upon 75th percentile of existing data." So basically for those three sites 95 percent of the data that we have are below those numbers. Only 5 percent are above. So you can see, the water is considerably better or quite a bit better than that 75 beneficial use standard but that's typical when we'll many times set an RMHQ when we want to protect that higher quality that's better than beneficial use standard. So anyway we have those three changes that we're incorporating now, hoping to incorporate.

Again we're proposing some RMHQ's for sulfate on the West Walker at Stateline and Topaz and these are at 25 mg/l. I believe

looking at the actual data the water quality is better than that 25, but one of our procedures with setting RMHQ's is not to go lower than 10 percent to the beneficial use standard so that's where the 25 comes from. Our beneficial use standard for sulfate in those rivers is 250. And here again there's RMHQ's for the West Walker, that's West Walker from Nordyke up to Wellington. That's from the confluence up to Wellington. There's the East Walker at Stateline and then there's the East Walker from the confluence with West Walker halfway, about halfway up through that bridge where we're making that new break in the section. Those are the three reaches and these RMHQ's there are based upon again the 95th percentile of the existing data. And as you can see they are considerably lower than the 250, which is the beneficial use standard.

Another change deals with bacteria. Currently in our standards the parameter that has been measured historically for bacteria has been fecal coliform. More recently EPA has come out with criteria related to E. Coli as a better indicator for concerns with bacteria. So we're hoping to remove the existing fecal coliform beneficial use standard and replace it with E. Coli bacteria for all of these reaches and there we'll have an annual geometric mean value and a single sample maximum value and again that's based upon EPA criteria to protect the people when they're, have contact with the water during, when they're recreating.

Commissioner Johnson: You have drinking water standards for some other items, why here is it contact rather than drinking water?

Mr. Pahl: Well I believe this is the most restrictive.

Commissioner Johnson: Over drinking water?

Mr. Pahl: Part of the equation when you're looking at standards for drinking water is that these things can be treatable. You can't set standards, we don't set standards in the river that say you can drink right out of the river, but you have to be able to reasonably treat the water.

I guess that went quicker than I thought it would. Are there any other questions? Those are mainly the main changes. There were some tables that we did pass out that summarized all of these changes and really most of them were pretty minor.

Chairman Close: Any questions? Thank you.

Mr. Pahl: Thank you.

Chairman Close: Is there any further presentation by the . . .

Mr. Porta: No. That will conclude it.

Chairman Close: Are there any people here who are in opposition to this petition? Because of our lack of time last time if you did not have a chance to speak, we'll give you a chance to speak this time first.

William E. Schaeffer: Good morning ladies and gentlemen. For the record, I did sign up, I don't know if the Chairman got it because I handed them..

Chairman Close:
Mr. Schaeffer:

What was your name again?

For the record I'm William E. Schaeffer. I represent the Dynamic Action on Wells Group. I'll make my statement very brief. As before, the Dynamic Action on Wells Group opposes the setting of standards of any kind in Walker Lake because it is a terminal lake and therefore the standards are not reasonably attainable. Likewise, the proposed standards for the river will require additional inflows during dry times in order to meet the proposed standards. Because the river is fully appropriate and, in fact, over appropriated the proposed standards for the river are likewise not reasonably attainable. Accordingly, for the reasons I have stated before this Commission should stop trying to set standards for this river system until such time, if ever, as the Commission can show how the standards can be attained. The legislature has spoken. No standards should be set at this time. Please show how you plan to attain any standards on an ongoing basis before you revisit this issue. You have no jurisdiction to set unattainable standards. As to Topaz Lake I'm at a loss as to how to understand how you hope to attain or enforce any standards you might set when most of the water there comes from California which places the bulk of the system outside of your jurisdiction even assuming it is attainable. I'm glad that we're not going to the total dissolved solids, which was the immediate cause of basically the stalemate, which the legislature put upon you, but these other standards have many of the same problems. The churning of the water itself during quick inflows which is the way that the lake has gone up before will you know cause all kinds of problems with meeting those standards and if you slow it down then the water won't get up to the right levels. I mean there's just too many problems here that need to be resolved. And I wish the Commission would take all of that into consideration and not assume it has to set any standards. We already have a lawsuit now pending which probably will settle a lot of this. I would suggest that you wait until that lawsuit finishes. I don't have a problem with that. We plan to be involved in the background if not directly and that should settle the issue once and for all. I ask again for the reasons I've stated many times before, don't set any standards. Thank you.

Chairman Close:
Commissioner Crowley:

Anybody else? Wait, a question?

I have a question for Randy if I could. Randy aren't we in attainment for all of the standards that you just discussed with the changes we've made?

Mr. Pahl:
Commissioner Crowley:
Mr. Pahl:

That's correct.

And do you foresee us going out of attainment in the near future?

I don't believe so.

Commissioner Crowley:
Mr. Pahl:

Thank you.

Like I said, with the pH that increases, or decreases the likelihood of any listing in the future.

Commissioner Crowley: Thank you.

Chairman Close: Anybody else who wishes to speak against the proposal?

John McMasters: I'm not really against. I just have a question for the Commission if that's okay?

Chairman Close: Okay.

Mr. McMasters: My name is John McMasters from Walker Paiute Tribe and as you all know there's two control points within the reservation within the standards and our question from the Tribe is we need clarification and we probably should have asked this question sooner, but as Randy Pahl indicated we were in on the science in the beginning of this session here so it says here in the public notice of public hearing the federal government has delegated the responsibility for establishing water quality standards to the State. I guess we would like clarification on the official action of when that happened, how it happened. When the federal government delegated the authority to the State to propose standards within the two control points on the reservation.

Chairman Close: Randy can you respond to that?

Tom Porta: Well what the State has done in the past with Tribal concurrence is adopted water quality standards for waters on those lands. Once a Tribal entity has put forth or proposed their own water quality standards such as the case of Pyramid Lake Tribe, the State rescinds those portions of the standards that are on Tribal lands. That's the way it's worked in the past. So I guess that's the best way to answer the question.

Chairman Close: Does that answer your question?

Mr. McMasters: Not really. I'm looking for the federal authority, the federal delegation.

Mr. Porta: Well the federal delegation, you mean for Tribal lands?

Mr. McMasters: Yes (inaudible).

Mr. Porta: Maybe, Stephanie, could you help me with this? Stephanie Wilson is with the Environmental Protection Agency Region IX.

Stephanie Wilson: I am Stephanie Wilson with EPA out of Region IX San Francisco. Although the State is setting standards for areas that are Tribal lands, the State would technically not have any authority to enforce those standards on Tribal lands. EPA would be the one who would have to set the standards that would be enforceable on Tribal lands. The State in this case has worked with the Tribes and is setting what we would consider goals for those stretches of the waters. But, they would not be enforceable by the State for those reaches on Tribal lands.

Chairman Close: Any questions? Anybody else in opposition to the petition? If not then we'll take those who have signed up to speak. Gordon DePaoli?

Gordon DePaoli: Mr. Chairman, members of the Commission, Gordon DePaoli on behalf of the Walker Irrigation District. I will be brief. I'll have perhaps a little more to say when you get to the petition related to

Walker Lake, but the Walker River Irrigation District did not oppose the proposed changes to the river standards back in December of 2000 and February of 2001 and does not oppose them today but is in support of this petition and these amendments.

Chairman Close: Any questions? Susan Lynn. I'm not sure you're here on the river or on the lake.

Susan Lynn: The lake.

Chairman Close: The lake? Anybody else wish to testify on this petition? Hearing no further testimony we'll call the public hearing to a close. Any comment by the Commission?

Commissioner Ricci: I'm not sure which one of you, either Randy or Tom could answer, but if I recall right the water quality standards can't be required to be met by using or anything changing existing water rights. Is that correct? Am I paraphrasing that correctly?

Mr. Porta: Yes. The State statute prevents any adoption of a standard or regulation that would supercede or somehow interfere with State water rights. And the Clean Water Act as well.

Chairman Close: Any other questions?

Commissioner Johnson: I just have a comment and I think Mr. McMasters' question, perhaps we need to indicate on the record a historical perspective whether we've actually entered into an agreement with the Schurz Tribal group or what our activity on the reservation actually is and I don't think the questions that were raised were actually answered. Some elaboration on our activity there?

Mr. Porta: Well, this, you know, other than to say this has been a practice for the past 25 or more years, the Tribes, we've always worked with the Tribes on these standards and granted we don't have technical authority under the Clean Water Act to do this. We have done this on their behalf with their concurrence so this is the first time I've run up against a questioning of that. During our public process if there would have been any objection to these standards certainly we would have withdrew those portions of the river that did fall on Tribal land. So, in the past 25 to 30 years we've never run up against this, against Duck Valley, Pyramid Lake, or any of the other Tribes in Nevada and we've worked with them on all of the water quality standards. So, if the Tribal interest prefer that those standards, you know, not be adopted we could certainly rescind those standards and have them move forward I believe probably working with EPA to adopt their own water quality standards much like the Pyramid Lake Tribe has done.

Commissioner Johnson: If they were interested in adopting the standards they could come to you and work out a Memorandum of Understanding or simply that they could adopt the standards and you would come back and we would revisit this issue?

Mr. Porta: Yes. I think more or less it would be if we were to adopt the standards for the Tribe we could work out something like that. But

if the Tribal interests want their water quality standards of their own, they typically work with EPA directly and they use our data, much like the Pyramid Lake Tribe has done for this year. As a matter of fact they have a set of standards for Pyramid Lake before EPA right now.

Chairman Close:

Any other questions?

Commissioner Iverson:

Can I ask a question Tom?

Mr. Porta:

Sure.

Commissioner Iverson:

And I guess it has to do with the next petition you're going to hear also, but I have a tough time separating the two completely and I realize that there are different issues that need to be discussed on both of these and probably in order to move forward separating them out is a good shot. But if there is a, if we ever are able to adopt standards at the lake, are we in a position that as the monitoring takes place in this river system to go back and modify standards if its needed to meet the standards in the lake or are these sort of set in stone now? And I mean certain portions of the river where we may find a problem.

Mr. Porta:

Let's say for some reason 10 years down the road these weren't deemed reasonable or something like that. Well I think we've seen that in one of the changes we made here on pH. The range used to be narrower because it was thought that fish had to live within this certain pH range. Well as further science has developed it's found that we can now expand that range and therefore we can make the change to the standards. If we were to do a special study in a certain area instead of using the EPA criteria books, which showed numbers that were different than the criteria books, we could use those numbers. We can also change the beneficial use if we saw fit. If for some reason the beneficial use provided it wasn't an existing use, we have to go through use attainability now so then we could actually change the use itself. So these options I think are still open to us. While they're not exactly easy to do they are done and they have been done in other states as well as Nevada.

Chairman Close:

Can you tell us what the status is of any litigation that's presently before the courts?

Mr. Porta:

With regard to water quality standards the Environmental Protection Agency has been sued in San Francisco District Court. That's where it was filed. The lawsuit basically has two claims and I believe there's another amendment coming. The first claim is the fact that in the '80's, early '90's and last year, EPA failed to do its duty in effect by approving Nevada's water quality standards. In other words, when these standards were first proposed on the river and so forth, because they did not include Walker Lake, the claim is that the standards were not complete and EPA should have not adopted those standards. That's the first claim. The second claim refers to the impaired waters listing. Because Walker Lake was not included as

part of that, EPA failed in its duty for disapproving our impaired waters listing and they should have disapproved it and adopted (1), first of all going back, water quality standards which included the lake and (2) then list the lake as impaired. The third amendment that we have heard and I don't know if it's been filed yet is regard to the ESA Endangered Species Act issues and EPA's failure to consultate with the Fish and Wildlife Service on the Water Quality Standards.

Currently, EPA has not responded to the complaint yet. There has been some issues with serving all of the parties in the government because of the instances that happened back east in September, the mail and so forth is being held and delayed and so EPA has not responded to the complaint as of yet and there's questions yet as to whether they've been served. I think they're pretty close if not have been served. Formulating a response to that claim, whether the response will be to ask the judge to simply dismiss the actions or will it be to answer the complaints? We don't know. We have been in contact with EPA on the lawsuit. Most likely they will use our data to set it if they are forced to by the courts to set a standard. So, we are working with them on that front and on the other litigation front in the water rights case, we are parties to that, not parties, but are participating in that alternative dispute resolution in the hopes that we can work together on both the water quantity issue and water quality at the same time.

Chairman Close: Who are the parties in that litigation? Who is the plaintiff?
Mr. Porta: On the water rights?
Commissioner Ricci: The Department of Conservation and Natural Resources, I believe the Walker River Irrigation District and . . .
Chairman Close: These are the plaintiffs?
Commissioner Ricci: I know they're in the caption. They're the ones on the top.
Chairman Close: Are there any other questions?
Commissioner Villaflor: If the State does not have jurisdiction on the water flow on the reservation, how does it adversely affect the general flow if they don't exactly follow the general guidelines of the water?
Mr. Porta: Okay, let me make sure I understand your question exactly. You're asking about flow on the reservation?
Commissioner Villaflor: Flow and if they don't follow the guidelines, how can it adversely affect the general flow of the whole river?
Mr. Porta: Well I think that's more of a question for the State engineer. Mr. Ricci could you kind of answer that a little bit? Because I'm not that familiar.
Commissioner Ricci: Could you ask that again please?
Commissioner Villaflor: My question is if the State does not have jurisdiction on the quality of the water in the reservation if their quality is poor, how does it adversely affect the general flow of the river? Let's make it simple.

If they pollute the river that's in their land, how does it affect adversely the rest of the flow?

Mr. Porta: Okay. Well a similar instance would be like California and the Truckee River maybe (inaudible) Tribe might be another example. Technically, we don't have jurisdiction on Tribal lands for water quality standards. I believe EPA would have to work with the Tribe to somehow bring those water quality standards back into play. The first thing would be to list the water as impaired for whatever pollutant was causing that and they would have to work directly with EPA as a Tribal entity to come up with that list and most likely EPA may promulgate the listing as well as the water quality standards.

Commissioner Villaflor: So there is a mechanism that's in place to check the quality of the river that flows through their land?

Mr. Porta: Yes. We check above and below and in some cases where Tribal interests have let us do the sampling, they like it on their behalf, we have done that as well.

Chairman Close: What would happen if they set more stringent standards for their reach (inaudible) before and after?

Mr. Porta: That's a great question. The city of Albuquerque is facing that right now where the State has adopted water quality standards; however, part of, I believe it's the Rio Grande that flows through Albuquerque, the Tribal interest there did set more stringent water quality standards. It's much like the State of California, State of Nevada adopting different standards. We try to work through EPA as kind of the mediation agency to come at some agreement to make our water quality standards consistent. If there is an impasse most likely that type of impasse would probably end up in the court system somehow.

But I think as long as they are within the criteria that EPA sets forth, those water quality standards are valid. But certainly like a state a Tribe has the right to set more stringent water quality standards.

Commissioner Crowley: I'm sorry, one of my many disconnects that I'll have in this process, but I thought I was straight on the Tribal jurisdiction. The standards that we're setting today will apply to the whole system, Tribal waters included. If the Tribe wants to set different standards they need to work with the EPA and proactively come forward and say, "We don't agree with these and we're going to do our own thing."

Mr. Porta: Correct.

Commissioner Crowley: But that hasn't happened so . . .

Mr. Porta: Right.

Commissioner Crowley: Thanks.

Commissioner Iverson: Tom I have to ask this question because in the last couple of hearings we've been sitting here and I keep hearing this and maybe you can clarify a little bit better than Mr. Schaeffer indicates where he opposes this because we're setting standards that we can't obtain. Can you explain why, I mean why are we, do you believe that? Are we in a position where we are in fact setting standards that we can't

attain?

Mr. Porta: Well first of all, two responses to that. First, the water quality standards we are proposing today are being met and being met regularly. The only thing we're limited on is phosphorus and I believe turbidity or sediment. Secondly, the Nevada Administrative Code allows for violations of water quality standards during drought or at unusually high flows. So during those time when we have drought such as in the late '80's, early '90's, water quality standards are technically not applicable for listing the waters as impaired. Water quality standards are set on the basis of normal flow and normal years and I'm saying today that during these times these standards we are proposing are being met. So I don't believe those concerns are valid.

Chairman Close: Any other questions? Thank you.

Mr. Porta: Thank you.

Chairman Close: Does anyone else wish to speak on this petition? Seeing no further comment from the public I'll declare the public hearing closed. Any discussion among the Commission members? Is there a motion?

Commissioner Ricci: Mr. Chairman I'll make a motion to adopt Petition 2002-03.

Commissioner Johnson: I'll second.

DAG Gray: For clarification . . .

Mr. Cowperthwaite: It's the correct petition. I've mislabeled the things in terms of the files, but it has been posted correctly.

DAG Gray: Okay I just wanted to make sure.

Commissioner Johnson: It is 03? Okay I'll second.

Chairman Close: There are also several exhibits which I think we should probably include: No. 7, No. 11 . . .

Mr. Cowperthwaite: And 14 and 15.

Chairman Close: Is that included in your motion to adopt those amendments?

Commissioner Ricci: Yes it is Mr. Chairman.

Chairman Close: Any further comment? On the motion all in favor?

The motion carried unanimously.

Chairman Close moved to **Agenda Item III. C. Petition 2002-04.**

(Petition 2002-04 (LCB R-129-01) is a permanent amendment to NAC 445A.119 through 445A.225, the pollution control standards for water quality. The permanent regulation establishes water quality standards for Walker Lake. The regulation establishes beneficial uses and water quality standards to protect those uses. Proposed standards for Walker Lake include pH, dissolved oxygen, total suspended solids, temperature, dissolved oxygen, nitrite, total inorganic nitrogen, total phosphorus and E. Coli.)

Mr. Porta: Tom Porta again with the Bureau of Water Quality Planning. So I guess this is the main event. The Walker Lake standards. John Heggeness with our Water Quality Standards Bureau will be presenting the proposed standards that we have had. What we have done with this petition versus the last petition that was before you is we have eliminated TDS, arsenic, and chloride from those. Again,

it's our position that we'll work through the alternative dispute resolution process on the water rights litigation to try to hopefully come up with standards as a result of that process based on what comes from the water rights that are allocated and so forth. So with that, I have John Heggeness again and we have overheads to present to you on the Walker Lake standards.

John Heggeness:

For the record, my name is John Heggeness with NDEP and when we started our review for the Walker River system and the water quality standards review we noticed that we do have narrative standards which are for all waters of the State but we do not have any specific standards for Walker Lake. So we are proposing to add another reach to the Nevada Administrative Code to include Walker Lake.

As you all know we were here about a year ago proposing these standards and this is a list of the changes that we have made to those standards that we proposed a year ago. As Tom said, we are going to remove total dissolved solids, chloride and arsenic. We would like to apply the standards throughout the lake. During while we were getting prepared for this we have also been reviewing our RMHQ procedures in the continuing planning process and we had some questions about how to set an annual average RMHQ. So rather than setting an annual average RMHQ for total inorganic nitrogen we are going to put that off this time and remove it from our petition.

Also, we would like to change the E. Coli to the annual geometric mean. This will be more consistent with what we will be proposing for bacteria criteria hopefully this summer.

The first step in adopting water quality standard is to set the beneficial uses. And through observation and public input we are proposing that the beneficial uses include recreation involving contact with the water, which is swimming, water skiing, recreation not involving contact with the water which is boating, fishing. Propagation of wildlife and propagation of aquatic life with a species of major concern being the tui chub, the Tahoe sucker and the adult and juvenile Lahontan cutthroat trout. The reason we had adult and juvenile cutthroat trout again is because there is not a natural reproducing population in the lake. It is a stocked system.

This is a table just listing the proposed water quality standards for the lake and I'm going to go through all of them on a series of slides, a series of graphs. The first one, which there is not a graph for, is the recommended standard for temperature, which is a Delta T of 2 degrees at the boundary of an approved mixing zone. We are recommending a pH standard of 6.5 to 9.7. The EPA criteria is 6.5 to 9 as you heard in the previous petition. But the pH in Walker Lake

is higher than that and as you can see it varies from 9.2 to about 9.7. We are proposing the 9.7 being the upper limit on the pH boundary.

This is dissolved oxygen. The proposed standard is greater than 5 mg/l and this is also the EPA criteria and as you can see at Sportsman's Beach we are meeting those standards. We will have a footnote to the dissolved oxygen standard that it does only apply in the epilimnion.

Commissioner Iverson:
Mr. Heggeness:

What was your footnote again?

That the dissolved oxygen standard only applies in the epilimnion when the lake is stratified. Total dissolved solids, our proposed standard is less than 25 and EPA criteria is from 25 to 80. As you can see, there is only one instance early in the 1990's that it did exceed that standard. I'm sorry, suspended solids. Did I say total? Excuse me.

The proposed standards for nitrite and nitrate are the same as the EPA criteria: 0.06 for aquatic life and less than 90 again for aquatic life and as you can see those both have met the standard.

This is total inorganic nitrogen and we are recommending an RMHQ of less than .03 mg/l.

Total phosphorus, we are proposing a standard of 0.82 mg/l. And as you heard before we have the EPA criteria or standards of fecal coliform we are proposing the E. Coli, which is the current criteria from EPA. And again we changed the proposal to an annual geometric mean and all of the values that we've gotten from Walker Lake have been below our detection limit of 10.

We have been performing additional sampling on the lake starting I believe in 1999 and these are our sample points on the lake. The first point that we've been sampling is of course at Sportsman's Beach. We have also been sampling at these three other points, 2, 3 and 4. At each of those points we are taking three samples, a surface or epilimnion, a metalimnion, or essentially a middle depth and a hypolimnion, or a deep-water sample. So there's a total of nine samples collected in 2, 3 and 4. And then we have also been collecting at the same time an extra sample at Sportsman's Beach. So there are two samples collected at Sportsman's Beach. One is collected by monitoring on their normal schedule and one is collecting during this lake-wide sampling.

We did some statistical tests to establish that the sampling within the lake is running into the same, is seeing the same water quality that we

have been collecting at Sportsman's Beach. We performed T tests and ranked some tests on all of the constituents. Actually I ranked some for all of the constituents in the T test on just the constituents that were normally distributed.

Next we've got a series of box plots showing all of the data from the different sites. The box plots show there's a little square in the middle that is the median value. The box itself shows the 25th and 75th percentile and the whiskers show non-outlier values.

Chairman Close:
Mr. Heggeness:

What does that mean?

It depends on how you define an outlier value as to whether it is so far from this, the box itself. If it is more than three values, or three points higher than the width of the box it will be considered an outlier. We will see some of those in some of the other graphs.

This is showing temperature. The sample all the way over to the left of WL1 is the sample that monitoring took at the Sportsman's Beach. The WL-1 that one is the sampling that was collected during lake-wide sampling but it's also collected at Sportsman's Beach and so there's a comparison between the two different samples. And then as it goes toward the right, WL2E, WL2M, WL2H, that is the surface, middle and bottom samples and the same thing with 3 and 4. What you can see from this is that the bottom samples show a lot less of a variation because the temperature is a lot more consistent at the deeper levels.

Again, you see the same sort of a thing with dissolved oxygens you get much more of a variation with the oxygen in the deeper samples, the H samples because during stratification the oxygen levels will be consumed during decomposition of the algae.

Total suspended solids, all of the samples were pretty similar to what we had collected at Sportsman's Beach and you can see some of the circles show some of the outlier values particularly the ones up toward the top.

This is nitrate and again all of the values are very similar to what was collected at the beach.

Again, same thing with nitrate. I guess I had it backwards, the first one was nitrate, this is nitrite.

Commissioner Johnson:
Mr. Heggeness:

Basically that's the detection limit?

Yes. This is the total inorganic nitrogen and you do see some variations in the deeper samples because of the decomposition of the algae during stratification so you do get a higher value of some of the nutrients. And again, total phosphorus, they're all very similar.

This is pH and when I first saw this there's an obvious difference that jumps out at you. There's some sort of a difference between a pH collected at Sportsman's Beach and the other samples that were collected using our hydro lab. Looking into this trying to figure out why and wondering if the samples are, the numbers we're recommending for pH we did a bit more of a study on that and we took the hydro lab and the pH meters out to the lake and essentially got the same difference. We checked some other things, but what we think it is is there's a temperature compensation in the probes and if you want to put up the next one, there are two different pH buffers here. There's the upper graph is the 7 buffer and the lower table is the pH 10 buffer and the probes depending on the temperature will give you a different reading due to the temperature compensation within the probe. Checking this and checking both our hand-held units and our hydro lab unit on the bottom table, the hand-held unit at a temperature of 8 was reading with the 7 buffer 7.8 which corresponds very well to what it should be seeing with a pH 7 buffer and then with a temperature of 10 it was reading 10.16. Again, reading very well with the buffer. Our hydro lab seemed to have much more problem with that so I guess the conclusion I came to from that is our \$10,000 piece of equipment isn't as good as a \$50 piece of equipment.

- Commissioner Johnson: Could you go back to the previous slide?
- Mr. Heggeness: Yes.
- Commissioner Johnson: How much difference is that? I can't read the scale.
- Mr. Heggeness: It's about .2 to 2.25.
- Commissioner Johnson: Okay so then you're looking at a range of 9.0 to 9.2 where most of the boxes are right?
- Mr. Heggeness: Yes. And then the box on the left is about 9.5 to just over 9.6. And, again, this is just a table summarizing the proposed standards for the lake. Any questions?
- Commissioner Crowley: I have a question. If you set standards that apply to the whole lake and you have one area of nonattainment how do you treat that? Is there averaging that goes on or do you just need one. .
- Mr. Heggeness: We do have provisions in that if there is just like one exceedence that's you know not considered a violation. It has to be more consistent than that. Depending on if this was a point source discharging then there might be some question as to what we might do about it. If it is for the whole, in most cases if it's just a general exceedence, then we would end up looking at the whole lake.
- Commissioner Crowley: Okay. Thank you.
- Commissioner Johnson: Do you want to address the issue of pH and justification for using the 9.7 as the top value?
- Mr. Heggeness: Because we feel that the conditions within the lake are sustaining the beneficial uses that are on the lake and due to the natural conditions

of the lake, or existing conditions at this point in time, the beneficial uses are being supported with this pH.

Commissioner Johnson: Does the pH vary over decades. Do we have information to indicate that? And I don't recall the fishery studies indicated the harm in TDS and chloride, but I don't remember whether there was any testing on pH or not. There is some relationship but I've (inaudible).

Mr. Heggeness: I don't remember specifically studies on pH. I know when we have talked to the Division of Wildlife they have said this was fine. Most of the studies that I have seen have been on temperature and TDS.

Chairman Close: Are you through with your presentation?

Mr. Heggeness: Yes.

Chairman Close: Any other questions? Thank you. Does anybody here wish to speak in opposition to this petition? Once again I'm going to give them a chance to speak first. Yes sir?

Louis Thompson: Thank you. I'm Louis Thompson with the Walker Lake Working Group in Mineral County. First I want to thank you for your actions back in February this year in setting water quality standards for Walker Lake. Although the standard for TDS was higher than desirable to the health of the tui chub and the trout it was a standard that would allow for the continued viability of the lake as a fishery and recreation area for the people of the State of Nevada. We were very disheartened by the action of the legislature in overturning the many months of hard work by the people in the Division of Environmental Protection and the actions of this Board in setting standards. It's unfortunate that politics was able to overturn the actions of the professionals who have the expertise and the obligation to set standards for the lake. The action of the legislature has placed NDEP and this commission in a position that can best be described as between a rock and a hard place. While trying to meet the mandates of the Federal Clean Water Act and bring the State into compliance your efforts were thwarted by the very lawmakers who give you the responsibility to meet those requirements. We recognize the position you are in and we can sympathize with you. However, we cannot sit back idly and allow the continued neglect of Walker Lake. As was mentioned earlier, you're aware of the pending lawsuit wherein we have sued the federal EPA for allowing the State of Nevada to neglect water quality standards for the lake and we're asking the EPA to perform their duty to step in and set the appropriate standards. We will continue our efforts until the State performs its responsibilities on behalf of Walker Lake.

The standards before you today do not meet the requirements of the Clean Water Act. Even though you may be familiar of those requirements I'd like to remind you of the wording in the Act. "Whenever the State revises or adopts a new standard such or new standard shall be submitted to the administrator. Such revised or new

water quality standards shall consist of the designated use of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water, and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes also taking into account, taking into consideration their use and value for navigation.”

I know the attorneys can argue. I’m not an attorney, but I do understand the meaning of the word “shall.” This Act does not allow for setting standards that will not support the designated uses. The proposed standards before the Commission today will not support the designated use or propagation of fish and wildlife in Walker Lake. Without a standard for total dissolved solids the water quality can deteriorate to the point that no freshwater fish will be able to survive in the lake. It is our belief and our position that in accordance with the requirements of the Clean Water Act, water quality standards for Walker Lake must include standards for TDS, arsenic and chloride and that those standards must be set so as to support the designated use of propagation of fish and wildlife. If you’re going to set water quality standards for the lake today, you must include TDS, arsenic and chlorides. If you’re not going to include these elements, we believe you must reject the proposed standards. Relying on an as-yet unapproved alternative dispute resolution process to fix the problem is unrealistic and I believe does not meet the requirements of the Clean Water Act. Thank you for allowing me to testify. If you have any questions I’ll be happy to answer them.

Chairman Close: Any questions? Let me ask you if you think that the standards that are being adopted are beneficial to the quality of the lake even though it may omit the three categories, which you have mentioned?

Mr. Thompson: Without TDS particularly being a standard being established for that almost any other standard is not applicable. It won’t help the lake.

Chairman Close: Any other questions?

Commissioner Crowley: I have a question Mr. Chairman. Is there another alternative that this Commission can take that would be beneficial to the lake without doing nothing that your group would support?

Mr. Thompson: As I said earlier, I believe you’ve been placed in a very difficult position. If you approve these standards, you know, we’ll protest them in court. It is not meeting the Clean Water Act. If you do nothing, we’ll still be in court because of nothing being done. So, I’m not sure what I can suggest except that these standards we do not believe benefit the lake nor meet the mandates of the Clean Water Act.

Chairman Close:
Mr. Thompson:
Chairman Close:
Susan Lynn:

Any other questions? Thank you very much.

Thank you.

Susan Lynn?

Good morning Mr. Chairman and members of the Committee. Thank you for this opportunity to comment on proposed regulations for the Walker Lake. The Clean Water Act is very complex and I have to confess that I've not read it all, but I've read a better portion of it and I too am somewhat confused because it seems like there are conflicting directions in it. However, that said there is still an overriding obligation that the EPA has delegated to the State to set clean water standards for its bodies of water within its State and in Nevada Walker Lake is one of those bodies of water that is now becoming an internationally known lake. It is one of five or six international clean fresh water lakes in the world, in the world. So this is not just a State treasure but it is a national and an international treasure and I am here to ask you to do the right thing. At minimum we would ask you to readopt the standards that you set last February. They are not the best, but they are something and they include TDS, chloride, and arsenic.

Pyramid Lake just recently developed a water quality control plan for Pyramid Lake. And, admittedly, the water quality standards are far different from Pyramid than they are for Walker. However, there are a couple of key statements in this plan that I though might be beneficial to review. They talk about the terminology of the Clean Water Act and it says, "A water quality standard has several elements that together define the desired water quality for a portion of an entire water body. Two basic elements of a standard that are set are beneficial designated uses for the water body and the water quality characteristics or criteria," which you are talking about today, "needed to restore or maintain those uses." The completed water quality standards document also contains an antidegradation policy. It is important to note that water quality standards established for a water body do not need to be achievable at the time standards are set. One of the purposes of the water quality standards is to establish goals for desired water quality of our nation's waters. In addition, standards provide a basis for the development of water quality based treatment controls which have nothing to do with water rights, but have to do with what other methods we may find or develop to improve the water quality standards of the lake. They are also strategies for watershed management. At a minimum, water quality standards must provide for the protection and propagation of fish, shellfish, wildlife, recreation. This is the so-called goal of fishable, swimmable.

Now we are reaching the levels at the lake where we will no longer

have fishable waters. The TDS level has risen to a level of 13,100 to 13,200. The demise of the fish will probably begin occurring at 14,000 to 15,000 ppm of TDS. We are less than 1,000 ppm away and those TDS levels have risen better than 1,000 ppm per year in our drought situations. So the fishery are on the brink but it is not just the Lahontan cutthroat trout, it is the tui chub, it is the phytoplankton, it is all the other little critters that we refer to in the lake that develop the food chain and the food chain is also important to the largest congregation of common loons in North America. They come through Walker Lake in the fall and in the spring and they stop there because there are fish in that lake to eat. They recharge and then they fly on to Canada in the summer. They fly to Mexico in the winter. And so those are the things that are dependent upon water quality in this lake as well as human recreation.

So at this point I would say that nonattainment is not an excuse for not passing water quality standards that include arsenic, chloride and TDS. And I would urge you to consider that this is an internationally known lake and that we do not want to be the poster-boy example or the poster-girl example of bad management of water quality in a lake that is internationally important. Thank you very much.

Chairman Close:
Commissioner Ricci:

Are there any questions? Thank you very much.

I guess I'm still a little confused here Ms. Lynn about if the standards are not attainable or they're exceeded right now, and going back to the 12,000 that was adopted in February and everybody knows what happened to that, and it's a goal and it is a goal then to achieve that standard. If the Clean Water Act doesn't allow any alteration of existing water rights, what do you do? What would you propose to do if you were in charge?

Ms. Lynn:

Well, the Bureau of Land Management is exploring those options right now in its EIS for Walker Lake. Some of the things that they are considering are a desalinization plant, which is quite expensive, but it's an option, infusions of fresh water during floods if there is another flood and there most certainly will be. There are entities at federal and state levels I believe that have, if they are able through legal, to combine water to send it down to the lake on an emergency one-time basis to at least stabilize the lake for a while longer. There are a number of other possibilities so I don't see it as undoable. I see it as that it's going to take some concentration and if you don't meet it the first year, you don't meet it the first year. If you don't meet it the second year, the EPA has been known to be quite bending once you set the standards to allow you the time to find a solution and there's also money to help you find a solution at the federal level. So, I don't want to talk about federalizing the lake and I don't want to talk about federalizing water quality standards so I think it behooves the State to do something about it at this time.

Commissioner Crowley: I have a question. Are those options that the BLM is exploring, are they going to proceed anyway?

Ms. Lynn: Well they're doing an EIS to determine cost benefit ratios, environmental impacts and we don't know, we think that report was supposed to be out two weeks ago, or a week ago. It is now projected to be out in mid-March and at that time we'll look at all of the pros and cons of all of the different proposals and I don't pretend to know what they are because I am not a cooperater in that effort. I will be a commenter obviously. Any other questions?

Chairman Close: Thank you.

Ms. Lynn: Thank you.

Chairman Close: Once again, we are taking the opponents to this petition and I've got some cards here. I'll call those names out. If you're an opponent then you can speak at this time. Rose Strickland?

Rose Strickland: Thank you Chairman, Commissioners. My name is Rose Strickland. I'm representing the 5,200 members of the Toiyabe Chapter of the Sierra Club who live in Nevada in the eastern Sierra. I would ask that you incorporate all of the previous Sierra Club testimony, which we have given on this issue of water quality standards for Walker Lake into the record of these proceedings.

Chairman Close: I'm not sure we can do that. We've heard it and of course we can take cognizance of it but something that is not present in our record right now I'd think we cannot automatically include it. Certainly we've heard the testimony in those previous hearings and that would be part of our record.

Ms. Strickland: Nevada has accepted the responsibility of implementing the Clean Water Act for this State. In order to do that you must set, Nevada must set beneficial uses and water quality standards to support those uses. Water quality standards have been set or revised at least three times for the Walker River since the 1980's, but never for Walker Lake. In my previous testimony when we ask why the standards had not been set for the lake we never received an answer that, we never received an answer period from the State. The Nevada Environmental Commission did set beneficial uses and water quality standards for Walker Lake last winter. At that time we testified and still believe these standards are not as strong as the ones we would have like to have seen the State set. Subsequently, the Nevada Legislative Commission rejected these weaker standards. What I understand from these proceedings that you are now proposing beneficial uses and some water quality standards, but no standards are on TDS levels, chlorine or arsenic in order to support those beneficial uses.

The Sierra Club urges you to readopt the previously adopted water quality standards for Walker Lake as the minimum, the first step to take. We believe that you should do this because it is necessary, this

is necessary for the State to comply with the Clean Water Act. We also believe it is in within the State's authority. We do not believe there is legal authority for the legislative branch of the State to direct or control the administrative branch in carrying out the State's responsibility under the Clean Water Act. If other states had not set water quality standards for their rivers and lakes and worked to meet those standards, we'd still have rivers that catch on fire in the east from the toxic pollution. Of course these problems were not solved overnight, but they were solved and the people in those States can now fish and swim in those previously polluted waters. Setting or readopting the previously adopted water quality standards for Walker Lake is the right thing to do. Walker Lake is one of Nevada's premier fisheries and natural assets, which belong to the people of the State of Nevada. The only alternative we see is, to the State's accepting responsibility for Walker Lake, is to accept that the river and the lake will be federalized. We do not want to lose Walker Lake. Thank you.

Chairman Close:

Are there any questions? Thank you very much. Wait a question.

Commissioner Crowley:

I have a question, just a general question Mr. Chairman. What is the, and I think I know the answer, but what would the course of our regulation be if we readopted the previously adopted regulation? It would face Legislative Commission scrutiny again, right? And come right back our way? Or is there a limit on how many times you can hit them with the same regulation?

Chairman Close:

They have a bigger fist than we have and so they likely would hit us more than we'd hit them. Do you want to respond to that and maybe review to some extent what has happened historically with our adoption at the previous meeting and then the legislature's action and now we're back here again?

Mr. Porta:

Well I think to answer part of that question is first of all with today's hearing and that is the Open Meeting Law. We have not public noticed that we'd be considering TDS, arsenic or chloride in these standards. So at this point at this meeting I don't think and you'll have to consult with the attorneys, but it could be a consideration for today's hearing. You could certainly direct us to go back and come back with a standard at a later hearing. With regard to what happens if you move forward let's say we did with a TDS standard I mean we get in this round robin it seems like with the legislature. You know we've looked at this question. What's our best course of action here given the political climate? And we see that by adopting at least partial standards and acceptance of beneficial uses, i.e., the fish, the birds and so forth, that is the beginning to the standards adoption process and we have precedence setting in the fact that we have adopted partial standards in the past, particularly one that comes to mind was the Humboldt. There was a lot of controversy on the temperature standard. I wasn't involved then, but my understanding

was there was a number of contentious issues over that, the Commission adopted the rest of the standards, the State then worked with the various stakeholders that were involved and came back to the Commission at a later date to get a temperature standard for the Humboldt. That's sort of our intention here to do this. You know, I think if we were to consider for somehow if it was allowed the TDS, arsenic and chloride standards today, we would have these standards shot down again, basically. I just don't see again, the political climate, the political will being there to move forward. So our position is we work through the alternative dispute resolution in the water rights case and try to come up with some standards as a result of how much flows will be appropriated and so forth. I hope that answered your question.

Commissioner Johnson: While you're there, the very first slide that was presented said that there's a narrative description of standards for all waters of the State?

Mr. Porta: That's correct.

Commissioner Johnson: Could you review those for me?

Mr. Porta: I don't know them verbatim, but basically we call them the free-from standards. Any waters of the State have to be free from oil, grease, debris, any nuisance-causing type agents. They also have to be free from toxics, pesticides at a certain level. Those apply to all waters. What we're talking about here today are specific, designated parameters and just for reference the free-from standards are contained in 445A.121. And like I said it says, "Waters must be free from substances attributable to domestic and/or industrial waste or other controllable sources that will settle from sludge or bottom deposits in the amount sufficient to be unsightly, odorous, or in an amount sufficient to interfere with any beneficial uses of the water." So those apply to all waters and there's eight other sections that go on to this. So there are technically water quality standards on the lake, but we do not have the specific designated uses and designated water quality standards for Walker Lake, but these standards in addition to the toxic standards apply to that water body.

Commissioner Johnson: That's only assuming we establish a beneficial use?

Mr. Porta: Right. Well the free-from standards regardless of beneficial use are applicable. You can't have debris and grease and oil flying in any water of the State of Nevada.

Commissioner Johnson: But for the other portions?

Mr. Porta: Yes. Right. That's correct.

Commissioner Iverson: Tom?

Mr. Porta: Yes?

Commissioner Iverson: And I guess it goes either to you or the Chairman or to Allen, I'm not so sure, but these regulations that are in front of us today don't include certain components of the regulations that we talked about several months ago and that we had to come back to and address a second time. It appears that the regulations that are posted are the

regulations we have to deal with today and we can't all of a sudden jump into TDL's and arsenic and things like that because that is not what is posted on the agenda and I also think if they were posted you'd probably have other people here that aren't here because I think the ones that you're looking at here are probably some that in a lot of cases most people have agreed on or at least they understand and they think there's some benefit. I'm a little concerned I guess in that we have to remember that the original vote on this Board was 5 to 4 and you know that's not an overwhelming majority. So there were some real concerns. And I think DEP has done a good job of going out there and at least trying to look at what we agree on. I'm not so sure Tom that we'll ever get to a point where we agree on everything. But I do think that with the regulations you've put forth now is at least it's a start and it gives us some time to get some standards on the lake. It gives us time to continue to study, continue to negotiate, continue to work with our other groups in trying to come up with some kind of a compromise out there. But I guess I'm a little concerned about the opponents that are coming up, those who object to this because you know it would be nice from a lot of people's side if we won everything. You know, this might be something where there has to be a little bit of give and take and if you don't get 100 percent of what you're looking for, we may have to settle for some of the other and I'm a little concerned that we're looking at no, what I'm hearing right now is that the folks that have been up here are saying don't do anything right now. When in fact we probably should be doing something right now from a State level.

Mr. Porta:

Well you know you must realize that there's another action taking place here in San Francisco and that the courts may instruct EPA if they do not prevail in defending this lawsuit, they may instruct EPA to promulgate these standards for us and they would be in the federal register and they would be a federal standard. And by the way, we do have those for various metals in the State. It's not unprecedented and other states have federal adopted water quality standards as well for certain portions of their water bodies. So, time is of the essence. There's no question with regard to getting this issue resolved. We do not want to see the lake go to a state where it's no longer recoverable, in other words the entire ecosystem may collapse. Hopefully, we are, you know, always positive that this can be done in an expeditious manner as practical through these other means. And right now we don't see any other options. If there are other options that people have to suggest to us to get resolution on this thing we'd be more than happy to hear that. But right now this is the only option we see available to us.

Commissioner Iverson:

During the last hearing we talked about a couple of other alternatives and I just want to clarify. In the new regulations that you have in front of us today, that's for the entire lake. Now there was some talk

about dividing the lake and setting up standards in two different directions, looking at beneficial uses in two different areas, one dealing with wildlife, one dealing with recreation, one dealing with whatever and I'm assuming that then is no longer being looked at. And the other thing we looked at was the possibility of some levels and we have asked I think one of the scientists from one of the consulting groups to take a look at that and I'm assuming that that basically is out of this now, but when we start talking about TDL's I think that seems to be the major stumbling block and if, you know I'm not a judge and I'm not an attorney but it seems like to me if the State came forward with some positive it's a lot better than doing nothing, just sitting.

Mr. Porta:

Yes and that's our take here today. One thing, Ms. Lynn stated that this is a unique lake and she mentioned there's a half a dozen lakes and the reason these are unique is that there's no outlet to the ocean. They're terminal lakes and Pyramid, and Nevada happens to have two of them: Pyramid and Walker Lake. So that's what makes this unique. Other lakes have an outflow so they can handle drought, they can handle flood situations and their concentrations may fluctuate, but typically they can recover because they have a sink or an outflow to the ocean. So in this particular case what ever goes into Walker Lake or whatever leaves Walker Lake is there. It doesn't go anywhere else. So, again we think this is the best course of action. If other parties have other actions or paths they think we should take, we'd certainly be open to that.

Chairman Close:

During one of our previous hearings we talked about methods to increase the flow into Walker Lake. Can you kind of give us some overview as to where we are on that point?

Mr. Porta:

Right. Well one of the things is the EIS and I believe part of the EIS that the federal government is looking at is voluntary purchase to water rights, or selling of water rights. Other things that can be looked at for getting flow to the lake are the actual river itself and repairs that can be done particularly above I believe Weber Reservoir the areas and below it to that extent as well. The river is very braided, shallowed, and it's not channelized and therefore it's more susceptible to evaporation losses. So there can be some channel improvements. You know, we don't want to see a concrete ditch, that might have been the solution in the '70's, but now we have bio techniques, bio engineering that can work to make a stream channel more efficient at getting water through it without loss and so these remedies can be done and can be placed. One of the things we proposed at the last hearing was the fact that okay if you're going to do these improvements whether bifurcating the lake or desalinization, or channelizing, or whatever, you've got to have a goal of someplace to start and that's why we originally proposed the 10,000 standard so people would know if they were looking at these solutions of how far

they need to go. So that was one of the original purposes of setting the standards at that time even though they were not being met. So these solutions are still being discussed. We hope that through the water rights mediation process we can come up with maybe additional solutions. I don't know if bifurcating the lake or desalinization are feasible. Certainly not at this time, but maybe something in the future can be done.

Chairman Close: Could you also touch on the legislative action that was taken following our last meeting on this matter?

Mr. Porta: Yes. The regulations were requested to be reviewed by the Legislative Committee of the standards that were adopted. In that process, and I believe it was a unanimous vote, that body remanded the regulations back to the State Environmental Commission because they felt they did not conform to the statute for water quality in considering agricultural interests and other interests. In other words, they said that they were in conflict. Prior to the next meeting for the Commission to actually consider that remanding back, there was a Senate Concurrent Resolution that was passed, I think a vote of 40 something to 0 basically saying that those regulations are not effective and the reason they did that is because my understanding is and maybe Mr. DePaoli can help me on this or Aimee is the fact that they had to act on that, otherwise the regulations would have become effective. That's why the concurrent resolution was passed. So in order to do that with the legislature going out of session they had to pass the concurrent resolution to basically, in essence, vacate the regulations. So, we came back to you after this and it was a matter of days, I think as a matter of fact that morning that resolution was passed and asked your opinion of what we should do here and at that time because of the political will that was seen it was, this body basically said, "At this time we don't think it would be advantageous to continue." We in essence came back in a hearing in Laughlin to request some clarification on that direction, did that prevent the Division from continuing work on the Walker Lake and you said, "No." So as a result of that we formulated this plan and are now back to you with these partial standards for the lake.

Chairman Close: Thank you. Any other questions? Thank you. Marjorie Sill?

Marjorie Sill: Thank you for allowing me to speak. My name is Marjorie Sill. I've been a resident of northern Nevada for over 40 years, but this is the first time I've had the privilege of meeting with the Environmental Commission although I know several of you personally. As I understand it, you are an environmental commission, in other words, you're the guardians of the environment for the State of Nevada and I think this is a very important position. I don't think you're a political body and yet what I heard was that your standards, which had been passed in a previous meeting, were overturned by the State legislature, which is a political party. However, I do not believe that

the State legislature represents the people of Nevada and of California. I know many, many people, I'm a member of a large number of organizations and every one of those people to whom I have talked believes that we need to protect Walker Lake and we will not protect Walker Lake until we have a TDS standard that makes sense. Right now with these weakened regulations and they were a minimum at the time they were passed, you are not going to protect Walker Lake. Walker Lake, unless something is done, is going to die. And that is my biggest concern and that is what I want to engage your help in preventing. Thank you.

Chairman Close:
Dennis Ghiglieri:

Any questions? Thank you. Dennis Ghiglieri?

My name is Dennis Ghiglieri, lifelong resident here of Reno, Nevada. It's a pleasure to address you. Thank you Mr. Chairman. I wanted to make the following point: the two beneficial uses which were talked about for Walker Lake are propagation of wildlife, the sustaining of wildlife which uses the lake which includes the vast numbers, tens of thousands of water fowl that depend on the lake every year and also the aquatic life. You're in a very odd position because in order to support those you need to set a TDS standard because what's going to kill those animals is in fact the rising of dissolved solids, which affect their biology. Their physical natures cannot take this constantly increasing physical change in the water. And so you need to adopt these, you need to go back and adopt a TDS standard as well as the chlorides because these things are related and arsenic, in order to meet the beneficial use. I do not envy your task because you took the right position and you were told you couldn't take it. That's a sad thing, but we can't deal, you can't deal with that directly other than to, in my opinion, return to what is necessary for Walker Lake and that is to set a TDS, chloride, and arsenic standard along with the other standards. I certainly appreciate your position. I thank you for your previous votes to support Walker Lake and I wish there were an easy answer for you. Easy answers are great. I certainly love them when they come up but they aren't always available. What I would ask, again, is reconsideration of the TDS, arsenic to be included with the other standards, which have been recommended by the NDEP.

Chairman Close:
Ellen Pillard:

Any questions? Thank you. Eileen Pillar?

Thank you. My name is Ellen Pillard and I'm currently the chair of the Toiyabe Chapter of the Sierra Club and am acting as the interim coordinator for the national campaign to save Walker Lake and in that I think I'm probably representing, I know I'm representing the 700,000 members of the Sierra Club and several other national organizations which have just recently made a commitment to conduct a campaign to raise the public's awareness of the value of Walker Lake and its imminent death. It struck me as I attended this hearing that there is an elephant sitting right in front of you and me

and it is a dying elephant and that's Walker Lake. It also struck me that you face a very complex problem. I understand that you passed resolution, which would have at least allowed our patient this dying elephant to have minimally survived until we were able to resuscitate it with guaranteed fresh water. I understand that and it is my opportunity and several national environmental organizations have committed to this project to help create the political will in this state and California because it is a bi-state problem to set standards and to come to solution on a very complex problem that will provide fresh water to Walker Lake to sustain the threatened fish, the migratory birds that use the lake, all of which we will lose and are close to losing at this moment. I heard talk of the former standard of TDS is 12,000 TDS in a recent report at a meeting I attended it was estimated that the lake is now at 13,000 TDS. The tui chub will not reproduce at some level of 13,000 TDS. I am not criticizing you for it, I think you have done the best job that you can do, but it is obvious to me that the standards you're talking about now will be like putting a Band-Aid on somebody's throat that is cut. It is not going to help the lake, the fish, the birds, or the vast number of people in Nevada who both recreate there and value it as the priceless treasure that it is. Thank you.

Chairman Close:

Any questions? Thank you. Does anyone else wish to speak in opposition to this petition? How many people here wish to speak in favor of the petition? Just raise your hands. Okay Mr. DePaoli, we'll take yours.

Gordon DePaoli:

Mr. Chairman, members of the Commission, Gordon DePaoli on behalf of the Walker River Irrigation District. I guess I might provide just a bit of background. I know most of you heard the presentations that the district made in December of 2000 in Yerington and in February of 2001 in Carson City. You've heard some more today about some of the things that are going on but I might just provide a little bit of quick background on the water quantity litigation that is pending on the Walker River system at the present time.

In 1924 the United States filed an action on the Walker River system to have the water rights determined in particular for the Walker River Indian Reservation and upstream and a decree was entered in 1936 and amended in 1940 and that decree has controlled water use on the system both in Nevada and in California since that time. The additional claims that are now pending relate first to claims made by the Walker River Paiute Tribe and the United States. The Walker River Tribe and the United States are seeking recognition of additional water rights for the Walker River Indian Reservation. One, to recognize a right for Weber Reservoir, which is on the reservation and in addition to recognize an implied reserve right for

additional land that was included in the reservation in 1936 and their claims relate both to surface and groundwater. In addition, the United States is seeking recognition of water rights on the Walker River system for federal enclaves from the top of the system to the bottom of the system for the benefit of the Yerington Paiute Tribe, the Bridgeport Paiute Indian Colony, various allotments along the way, the Hawthorne Army Ammunition Plant, the National Forest, the United States Marine Corp Winter Warfare Training Center and for the Bureau of Land Management. And that litigation is in the process in its infancy although it was commenced in 1992 the process now really is involving identification of the parties to the litigation and service of those parties. In addition, Mineral County has sought to intervene in the original proceeding to assert a claim for the benefit of Walker Lake to, in effect, assert the Public Trust Doctrine to require minimum flows and minimum levels at Walker Lake and that litigation too is in the stage of determining the parties and service on the parties.

Finally, there has not been an allocation of the waters of the Walker River system between Nevada and California although the California/Nevada compact was approved by the two states in 1971, which that compact includes Truckee, Carson, Lake Tahoe and the Walker River. The compact was never ratified and because public law 101618 deals with the interstate allocation of Lake Tahoe and the Truckee and Carson Rivers, it's not likely that that compact will ever be ratified by Congress so there's a need to address that interstate allocation.

You heard a little bit this morning, or quite a little bit I guess about the mediation process or alternative dispute resolution that is also getting somewhat underway. At this point the State of Nevada, the State of California, the Walker River Irrigation District, Mineral County, the Walker Lake Working Group, Walker River Paiute Tribe and Lyon County, Nevada and there may be others but those are the ones that I know about have sent letters to the attorney general of the United States and the secretary of the interior of the United States requesting that the United States assemble a team to represent the United States in negotiations concerning the issues on the Walker River system. The United States has not yet responded with assembling that negotiating team, but it's my understanding at least that they are in the process of trying to put that together. In the meantime the parties that I mentioned have begun the process to at least identify a short list of candidates to be mediators in that process. So that's a little bit of the background of the litigation and what's going on with it and also with the mediation process.

I sent, either it would be a facsimile or mail to each of you a letter dated December 5, 2001 where I tried to provide some background as to what had taken place with the prior petition and what the Nevada Legislative Commission did, what the Nevada legislature did with Senate Concurrent Resolution No. 40. And I hope it is clear that the concern of both the Legislative Commission, well of the the Legislative Commission related to adoption of standards which clearly can only be attained and maintained by increased inflow into the lake. That was the concern of the Legislative Commission. Senate Concurrent Resolution No. 40 was adopted because of the statutory requirement that when the legislature is in session such a resolution must be adopted or the regulation will enter into effect in spite of the action taken by the Legislative Commission.

The petition that is before you today is, and you've already dealt with one aspect of it. You've dealt with the standards for the river, which was handled this time as a separate petition. The petition that is before you today on Walker Lake does not include those standards which at this point in time can only be achieved and maintained by additional inflow going into the lake and with the issues related to water quantity that are ongoing, until those issues are resolved the issue of inflow into the lake is not going to be decided. Why the district feels that this is the best approach at this time for you and for the State of Nevada is really a fairly practical one. Regardless, if whether you had taken the action you took in February of 2001, whether the legislature had done what it did in April of 2001, the TDS level in Walker Lake would be exactly the same. The adoption of these standards or of standards for TDS level is not going to change the weather and is not going to change the inflow into the lake at this time. What the district, after the meeting that the district had with the NDEP staff after the meeting in Laughlin committed to do was to work with the interested parties to first of all get in place standards that could be attained and maintained and then to deal on an interim basis and hopefully on a long-term basis through the alternative dispute resolution process the standards that are tied to inflow. As you will, some of you were there at the time will recall, in February of 2001 the district brought Jean Baldrige of Intrex to your meeting and Jean made a presentation about the Walker Lake ecosystem and about the fact that more information is needed about how that ecosystem functions and did function during the last extended drought period because it is apparent that certain things happen and exactly what they are is not entirely clear, but it is apparent that certain things happen that have allowed that ecosystem to survive during the last drought when the standards were exceeded by a higher point than they are today. In addition the district has committed to and is working with the Desert Research Institute on a

cloud seeding program this winter to hopefully increase precipitation in the basin and thus benefit the lake. The district also supported in the Nevada legislature with Assemblyman Neighbors some action to improve the ability of the channel to get water to Walker Lake and for a variety of reasons that didn't come to fruition, but those are the things that need to be worked on in this interim period of time. The adoption of unattainable standards is not going to change any of that. What we need to do is we need to figure out what we can do in the short term and then work on what everyone has agreed are the complex long-term issues that are facing us that we're trying to get our arms around with this alternative dispute resolution process.

And finally I think this is the best approach from the standpoint of the concerns that have been expressed this morning about federalization of the river of the lake and I'm not exactly sure what all that means, but I guess just saying it makes all of us nervous so from the standpoint of the water quality litigation that has been brought in the United States District Court for the northern district of California by the Walker Lake Working Group in Mineral County, it seems to me that it is important that the State of Nevada adopt some water quality standards for Walker Lake rather than no water quality standards for Walker Lake and I think that action to the extent that it is limited to issues related to the Walker River and Walker Lake your action today to first to have adopted amended standards for the river and hopefully your action following this petition to adopt these limited standards for the lake will make that a more defensible action from the standpoint of a court ordering EPA to step into the process and establish all of these standards. That litigation, however, is not at least in my judgment, it is difficult to understand from just reading a complaint given the notice pleading provisions of the federal rules to know exactly what all of the issues will be in that litigation, but the litigation does in fact use Walker Lake as an example, but it appears to me at least that that litigation is a challenge to water quality standards that have been adopted in the State of Nevada for virtually every water body for which they have been adapted to EPA's approval, having approved those standards it appears to be a challenge to EPA's having approved the 303D list of the State of Nevada for all of those water bodies and to the extent that any of those water bodies have endangered or threatened species within them I expect that the amendment to that litigation will contend that EPA was required to consult with the Fish and Wildlife Service before it approved any of the water bodies on the impaired list. So it is broader-based litigation than just Walker Lake and the Walker River. But I do think that your favorable action on this petition will help make that a more defensible action and will help keep these issues to be decided within the State of Nevada as we go forward

with what is going to be a very difficult and complex process. But it is that process and what we do in the interim to try to make sure that this ecosystem survives while we're doing it that will make the difference for Walker Lake and I would urge anyone who is truly interested in making that ecosystem survive during the process to help with studying what it takes to keep it alive in the meantime and to help with efforts to get more water to the lake in the interim and I would ask for your favorable action on this petition.

Chairman Close:

Any questions?

Commissioner Johnson:

A comment. You cited that had the legislature not overturned our adopted reg. that there would be no more water in the lake and I agree with you on that. But if we adopt this regulation without TDS standards, with only standards that will not be exceeded in the foreseeable future, how will that help bring any additional water to the lake?

Mr. DePaoli:

I don't think your adoption of standards either that are too high or too low are going to change bringing any additional water to the lake. What needs to happen to bring additional water to the lake is to get the parties together who are concerned about water quantity issues to deal with those issues and to figure out how in dealing with those issues the inflow to the lake can in fact be increased and at the same time while that process is going on figuring out how we deal with avoiding some disaster in the meantime.

Commissioner Johnson:

And I think I would agree with you entirely and I think the record will show that that was where my statements and the reason that I passed and voted for the amendment last February. I have additional comments, but later. Thank you.

Chairman Close:

Any other questions?

Commissioner Iverson:

Mr. DePaoli I know you've been really involved with, at least you maybe understand a little bit better than I do exactly what happened at the legislature when the Legislative Committee took the matter, or what their concerns were because you did go through quite an explanation. I appreciate that. Contrary to what some people believe, I believe that the legislature do represent the people of the State of Nevada. I also believe that in a lot of cases they look at the big picture of things and a lot of issues around this Walker Lake thing is more than just the lake unfortunately. There's other issues that need to be addressed. And I agree with you on your comments that something needs to happen and sitting here listening to your argument of why we need to adopt something to at least give us some time to go back and to further evaluate some of the real strong issues there is a real plus because it does put US EPA on notice that the State of Nevada is serious about coming up with some standards for the lake. But it also puts them on notice, I think, that we've got some major issues that we need to address out there. I think in dealing with the Walker Lake, you've also got to remember that people have

become part of that environment too and there's going to be some impacts upstream and there's going to be some impacts on what we've been doing at certain counties out there so I appreciate your going through and explaining this because I think there has been comments, by going back and re-approving what we've approved before, and I don't think that's going to go anywhere. I think it's going to be a revolving door. I think what DEP has offered us now is at least one step. Somebody mentioned an elephant, you know it's hard to eat an elephant one bite at a time, I mean in one big gulp. I think you have to take one bite at a time and I think DEP's approach to that elephant and getting through that is let's get what we can agree on out of the way and let's continue to work towards a compromise, a negotiation, a settlement, something that we can agree on. Maybe none of us ever wins completely, but we get to the point where we've got something that's workable that protects the environment, it protects the lake, at the same time it can be workable for the people upstream and that we can get some kind of a compromise because I believe it's a real step in the right direction to do something.

Chairman Close:

Any questions?

Commissioner Ricci:

I just have one. I'm not sure if it's a question or a comment. This amendment to the complaint that everybody has mentioned about the consultation with the Fish and Wildlife Service on the ESA, I guess it is a question. Would the position of EPA be any different if these proposed standards were passed today do you think on that issue?

Mr. DePaoli:

On that issue?

Commissioner Ricci:

On that issue alone.

Mr. DePaoli:

No. I don't think so.

Commissioner Ricci:

How about the other, the original complaint?

Mr. DePaoli:

Well, again, it's hard to know from just reading a complaint what the precise issues that will get litigated will be, but it does seem to me that to the extent that the complaint alleges that the State of Nevada has failed to adopt any water quality standards for Walker Lake, and that therefore EPA is mandated by the Clean Water Act to step in and do that, that the adoption of this petition will make EPA's defense of that claim stronger and will, I'm not going to tell you that it's going to win because I've learned not to do that anymore, but I do think that that will help the EPA position on that particular issue to the extent that that's one of the significant issues in that litigation.

Chairman Close:

Any other questions? Thank you very much.

Mr. DePaoli:

Thank you.

Chairman Close:

Any other public comment on this issue, on this petition? Seeing no further comment we'll declare the public meeting to a close. Any discussion among the Commission members?

Commissioner Johnson:

I wish to comment about Senate Concurrent Resolution 40. There seems to be some conception that the legislature heard in fact an

argument on the issues. Senate Concurrent Resolution 40 was an emergency procedure that was introduced in the session 4 session. It passed without having had public hearing, went to the Assembly on immediate consideration and without having had public hearing on the issues was passed there. There was very little discussion about the issues. The letter that we received from LCB, which defined the Legislative Commission's findings, are in some points different than claimed in the letter that we received. I'm uncertain whether this letter has been introduced as an exhibit or not or if Mr. DePaoli's testimony serves as the record on those issues. It's a question.

Mr. Cowperthwaite:

This is not an exhibit to my knowledge.

Commissioner Johnson:

Would it be the will of the Commission to introduce it as an exhibit, because it was indeed a communication to each of us?

Chairman Close:

This was the letter from the LCB you're talking about?

Commissioner Johnson:

No, the letter from Mr. DePaoli.

Chairman Close:

I do intend to have his letter introduced if there's no objection.

Commissioner Johnson:

Very good. I'm very much in opposition to adopting standards that have no meaning in essence. These are simply standards expressing the conditions of the lake at its present time. The relevant standards are those ones that are being ignored at this time. There was in previous hearings adequate testimony about the effects. The science is there to document the need for those standards. There is absolutely no reason that's been presented to us that I've heard other than it would make a defense of an inadequate program because we have not adopted standards on the lake meaningful. I simply at the time would make a motion for the adoption of the beneficial use, but the standards I will vote against.

Chairman Close:

Susan we've heard comment relative to adopting the three standards that we've talked about: TDS, chloride and arsenic. Since these were not included in our public notice, I presume those are not open for discussion. Is that a correct statement?

DAG Gray:

That's correct.

Chairman Close:

So what was your motion Joe?

Commissioner Johnson:

I said when the time comes . . .

Chairman Close:

I thought you said you would make a motion of it.

Commissioner Johnson:

No.

Chairman Close:

Any other comment?

Commissioner Ricci:

Mr. Chairman I was appointed to the Environmental Commission I think in September of 2000 and in every single commission meeting that I have attended we've been dealing with the Walker Lake standards. And if we postpone it again we're going to be right back listening to basically what I heard in December, in February, in May and today. I don't think there's anything new that anybody said and I think what happened in the legislature in May whether anybody agrees with everybody, whether everybody agrees with what they did or not is correct or whatever, it happened and it's done. So to do

nothing again I don't think is the right thing. At least we should start somewhere. There's another thing in motion out there dealing with trying to get additional water to the lake through whatever means by almost everybody who is going to be part or have some impact as a result of whatever needs to be done. So I think at least in this position whether the TDS is there or not, I mean, excuse me whether the components are not on this, at least I think this is a starting point from which we can go forward and everything else will just then somehow or another follow.

Chairman Close:

Any other comment?

Commissioner Crowley:

I have a comment. I'd like to resign from the Commission. Just kidding. This is my first meeting on the Commission and I didn't foresee such a crazy vote as this where I'm the mining representative on this body and I'm going to oppose the environmental community and actually vote in favor of some stringent regulations in opposition to their support of no new regulations. It seems like a very bizarre twist to me. But I do believe that this Commission prior to my being on it did stand up and do some very positive things for the lake. They have a proven track record of wanting to save Walker Lake. I most certainly want to do the right thing for the lake. But I don't believe that the all-or-nothing position is effective. It is very much a political world that we live in and all-or-nothing succeeds never in politics and so I will vote in favor of these recommendations and I withdraw my resignation.

Chairman Close:

It wasn't accepted in the first place. Any other comment?

Commissioner Johnson:

My comment is simply that adopting these regulations is not a strenuous, rigorous interpretation of protecting anything. It's recognizing the establishment that's there presently. These are essentially proposing standards that recognize the status quo. The items that would be tough on this are being ignored.

Commissioner Iverson:

Mr. Chairman?

Chairman Close:

Yes?

Commissioner Iverson:

I disagree with that. I don't think it's being ignored at all. I think those are the issues that DEP and the State and different groups are all very, very concerned about and I think we realize that these issues have got to be resolved somewhere down the road and if at this meeting we can't do it, but you know there was another comment made that the science was proved to us. I'm not so sure that all of the alternatives and all the concerns have been addressed and I think it's something that we need some more time on and I would encourage just like we did at the last meeting, we talked about, is for DEP to continue to work with the scientific community, with DRI, with the Irrigation District, with the environmental community to see if we can resolve these three issues because they're going to be issues that need to be resolved some day. If not, then I think we're going to be at a point down the road where EPA may come in and say, "Those

are standards that we're going to have to set" because we can't resolve it in Nevada. But I'm still at a point that I think with the aggressive approach that everyone has taken, from BLM all the down to the water engineer, the whole thing, that we can come up with some solutions to save that lake and to protect and preserve the environment out there.

Chairman Close: Any other comments? I would tend to disagree with what Joe said. I think that these may not be the three critical conditions for the aquatic life in the lake, but I think it does tend to preclude or prevent further degradation of the lake at least in these categories. I think it does set some standards for these particular areas that I think we need and I would hate to have done nothing and then find some violation of what we could have prevented occurring in the future and so I think I'll vote in favor of this. Anything else? Any other comment?

Commissioner Villaflor: Mr. Chairman, with three of the Commissioners missing, would our vote today be binding?

DAG Gray: Yes. You have a quorum here.

Chairman Close: We have a quorum.

Commissioner Villaflor: Just as long as you have a general quorum? So it's going to be a majority vote?

Chairman Close: Correct.

DAG Gray: Majority of the six of you, yes.

Chairman Close: Is there a motion?

Commissioner Crowley: I motion to approve Petition 2002-04.

Chairman Close: Is there a second?

Commissioner Ricci: I'll second.

Commissioner Johnson: Yes. I think there was a proposed change or amendment that was a removal that you need to reflect in the motion.

Chairman Close: A removal? We have the . . .

Commissioner Johnson: Nitrate or nitrogen. I noted in the general category but didn't get the particular comment.

Mr. Porta: Some clarification on the total inorganic nitrogen, we're removing the annual average and also then on the E. Coli standard switching it to annual geometric mean. Those are the two changes.

Chairman Close: And also we have some exhibits on this petition. That would be No. 8, No. 11 also, No. 9, and if there's no objection we'll make Mr. DePaoli's letter a matter of record and as an exhibit. Now on the motion?

Commissioner Crowley: Mr. Chairman I'd like to amend my motion and move that we approve Petition 2002-04 reflecting the changes that Tom has mentioned.

Chairman Close: Second approves?

Commissioner Ricci: Yes.

Chairman Close: On the motion all in favor?

The motion carried.

Chairman Close: Yes.
Commissioner Crowley: Yes.
Commissioner Iverson: Yes.
Commissioner Ricci: Yes.
Commissioner Villaflor: Yes.
Commissioner Johnson: No.

Chairman Close called a lunch break. He reconvened the meeting and moved to **Agenda Item III. D. Petition 2002-02.**

(Petition 2002-02 (LCB R-102-01) is a permanent amendment to NAC 445B.400 to 445B.774, the vehicle emission control program. The amendment adopts by reference a State of California regulation that became effective on July 25, 2001. The amendment requires model year 2005 and 2006 new heavy-duty diesel engines (HDDEs) with a Gross Vehicle Weight Rating (GVWR) of 14,001 pounds and greater to meet supplemental emission tests. Definitions added include the applicable Executive Order, heavy-duty diesel engine, model year, new motor vehicle, new motor vehicle engine, ultimate purchaser, ultra-small volume manufacturer, and urban bus.)

Jolaine Johnson: Mr. Chairman, members of the Commission, I'm Jolaine Johnson, Deputy Administrator for the Division of Environmental Protection and it is the Division's desire at this point to withdraw this petition at the pleasure of the Commission.

Chairman Close: Can you give us some background? I think that's something we should be considering.

Ms. Johnson: We had put this petition forth, let me give you a little background on the matter before you. A few years ago there was a Consent Decree that came forth between the U.S. Environmental Protection Agency and six major heavy-duty diesel engine manufacturers. That consent decree was the result of a settlement between EPA and those engine manufacturers who apparently had been caught sort of bypassing some emission requirements of heavy-duty diesel engines. At any rate, the consent decree required those major manufacturers of diesel engines to develop and produce and provide for distribution engines that we'll call, what they call not-to-exceed engines and essentially they are engines with lower pollutant emissions. And those, that consent decree addressed the emissions from those manufacturers for Model Years 2003 and Model Year 2004. The reason they chose two years was that EPA had in the works regulations that would then require all engine manufacturers to begin to produce this not-to-exceed engine beginning in 2005. What happened in EPA's regulatory adoption process is that it was realized that they really couldn't adopt those standards beginning 2005, but had to delay the requirement for all heavy-duty diesel engines to be manufactured in 2007. So, essentially what we're left with is a gap between the consent decree which requires the six manufacturers to produce the engines in 2003, 2004 then there's a gap 2005, 2006 before the federal EPA regulations come into play when all engine

manufacturers have to produce the not-to-exceed engine.

The Clean Air Act allows the State of California some specific authority to also adopt engine emission standards and California filled this gap for 2005, 2006 by adopting a rule in California that said that a heavy-duty diesel engine cannot be sold during those two model years unless it meets the not-to-exceed requirements. The Clean Air Act also allows other states, once California adopts engine emission standards, other states can opt into that program and there's been a national campaign underway that has encouraged state environmental protection agencies to adopt the California opt-in standards for those two model years. Essentially this proposal proposed that, that Nevada adopt those standards so that engines could not be sold in Nevada during those two years without meeting those standards.

What we have found since we originally proposed this is that nine other states have proposed the California opt-in standards. Those nine states represent about 23 percent of the total market for heavy-duty diesel engines. There are several other states that are still in the process of considering those emission standards and they will account, should all of those states that are now considering it adopt those standards, that would account for another 23 percent of the market for a total of 46 percent of the market and will be significant when I get through the next part of this.

Nevada only accounts for .64 percent of the heavy-duty diesel engine market in the U.S. So our state alone could certainly not affect the market in producing a single engine. The problem that we discovered during workshops with these proposals is that there was a very high likelihood that if Nevada adopted these standards and required only these low emission vehicles, or these low emission engines, that people would tend to go to another state to purchase the engines and so we would have a serious economic impact on our dealers, on our trucking companies and on the State general fund that realizes funds from the sales of those engines.

So we proceeded to add a provision in the rule, in agreement with those that were opposed to this rule to begin with that would say that if we found that there were other engines available, in other words if there's both an NTE engine and another engine available on the market in the U.S. and in other states around Nevada, that the Commission would then waive these requirements, so these requirements would go away, keeping that business in Nevada. What we found is that since there's only 46 percent of the market represented by the states that are considering or have considered

these regulations is that it's very likely that there will be two engines available and this rule becomes moot. So that's the basis for our proposing to withdraw this petition at this time.

Chairman Close:

Questions?

Commissioner Crowley:

I've got a quick question. Is there any estimate on how much the two engines would cost, the price difference?

Ms. Johnson:

The estimates from the State of California that we've read is about \$800 in difference, there's also a slight increase in the operating costs of the new engines and there is some debate between the State of California and some of these manufacturers that those engines will have poor, diminished performance. So, essentially because of performance and cost there would be an incentive to go to another state to purchase a non-NTE engine.

Chairman Close:

At what point do you think that you would then bring this back before us when the State, with the 60 percent, or 70 percent? When will you bring this back before us for a consideration again?

Ms. Johnson:

It would be our intent, essentially, not to bring it back before you and here's why: (1) if it happens that only one engine becomes available, one NTE engine all across the United States, then Nevada will realize that anyway because they will not be producing a second engine for 4.6 percent of the market. If, in the other event, which is really a lot more likely, for these two model years there will be two engines available and with the waiver provision that we had included in this to satisfy those concerns, the rule wouldn't make any sense anyway.

Commissioner Johnson:

But that doesn't get to the point if you didn't have the waiver the requirement and we're talking of \$800 per engine. As I recall there were in the Las Vegas the study committee on air quality of the proposed mitigation measures, this control of diesel emissions are one of the most effective meanings of control in particulates. I guess my comment, and as you know I objected to having this pulled on the basis that I guess was inappropriate on the face of the statute that I was reading, but the questions of heavy-duty diesel engine controls, presently there are two engines available. I mean there's the compliance, the six manufacturers who consented and all those other people who were not in the consent decree. Is that correct?

Ms. Johnson:

That's correct. That is as of Model Year 2003 is when the consent decree begins. So there will be two engines available in 2003.

Commissioner Johnson:

And those that are presently manufacturing, the six major engine manufacturers are very likely to continue marketing the same engine? Is that an appropriate statement? Or are they going to re-tool and develop other engines?

Ms. Johnson:

I would expect that they will not retool for those two model years because they have to be back to the NTE engine by 2007. So the six major manufacturers that account for, the indications are, about 60 percent of the total U.S. market will continue to produce those

engines through those two years and they certainly have to do that for the State of California which makes up a major part of their market anyway.

Commissioner Johnson: They don't have the adjacent state exemptions?

Ms. Johnson: No they don't.

Commissioner Johnson: So California is going to be, there's a probably significant opportunity for businesses in this State to sell to California motor transport (inaudible) because of the way licensing happens? Is that an appropriate comment?

Ms. Johnson: I'm sorry. I don't know the details about California market in Nevada and licensing.

Commissioner Johnson: Well interstate transport companies register the vehicle and pay . . .

Ms. Johnson: Lower fees.

Commissioner Johnson: Lower fees. So there's, okay. I really wanted to address the issue of heavy-duty diesel regulation and the snap test and review that. I think it would be more appropriate in the comment period, rather than at this time.

Chairman Close: Any other questions? Thank you Jolaine. **If there's no objection then we will permit Petition 2002-02 to be withdrawn.** The next item will be **Agenda Item IV. Settlement Agreements A. Road and Highway Builders.**

Mike Yamada: Mr. Chairman, members of the Commission. My name is Michael Yamada, I'm the supervisor of the compliance and enforcement branch. I'm here to present five major air quality violation settlement agreements for your consideration. The first item on the agenda is Road and Highway Builders Notice of Alleged Violations Nos. 1563 and 1564. There's a correction to be made there: 1563 and 1564 were approved at the September 18 meeting. This is an additional violation that we're talking about. It's violations No. 1585 through 1589 and 1591 through 1593.

Road and Highway Builders is a company that operates asphalt plants for paving of roads and highways. Road and Highway Builders operates under a General Class II Quality Air Operating Permit and this permit allows for operation of temporary sand and gravel processing asphalt concrete plants and concrete batch plants. They also get from us Change of Location permits, which allows them to move their asphalt plants from place to place for a period of 12 months.

On August 13, 2001 the Division of Environmental Protection conducted an inspection of Road and Highway Builders' operation near Rye Patch Reservoir under their COLA number, 1799. We received complaints from about opacity and fugitive dust problems from the administrator and then assistant administrator of NDEP regarding this operation. On the 13th I dispatched an inspector to look

at this operation and what she found was that there was a violation of opacity being caused by their lime marination plant where the lime from the silo was being blown across the highway because it wasn't properly being managed. She also noticed that there was an opacity problem being caused by their scrubber off of their asphalt drum dryer. She attempted to bring them back into compliance, but what happened was they could never achieve the proper opacity so she shut them down with a stop order. On the 14th she returned and tried to get them to bring their operation back into compliance and during that period she was able to get them up to 322 tons per hour without an opacity problem. She limited them to 322 tons per hour and left for the day. We obtained records the following day on their capacity, on their production and found out that they had actually gone up to 34 tons above the 322 tons. So we shut them down again.

We found out that they had also did not provide the proper stack testing and IOCD testing, the Initial Opacity Compliance Demonstration testing that was required by their permit. We told them that they would have to provide us with a test protocol and to do the testing before we would let them operate again. They told us that they had been tested and that we would receive that information. It turned out they didn't have that information so we required them to get a new test run. They wanted to, their tester called us on the 21st of August asking us to allow them to run on the 23rd but because there was insufficient time for us to review the protocols, we told them it was not possible and that they would have to wait until we got it done. We expedited the protocol and started on the 23rd but the tester could not test until the 30th.

While they were doing the testing we had issued the NOAV's 1585 through 1590, I believe, to them for their violations on the 13th and 14th. We issued them two more violations on August 25th, 1592 and 1593 for their failure to stack test and do the IOCD test. They notified us that they would be unable to finish their job without an extension of their permit and that their throughput would have to be increased by 100 tons in order for them to be able to finish their job. In the meantime the tests were being conducted and, on the 30th and 31st. Prior to the tests Road and Highway Builders did a tremendous amount of maintenance work on their scrubber to bring it into compliance. They were able to get that up to I believe 425 tons. Their permit called for 475 tons, but we limited them to 425.

We held an enforcement conference on September 20, 2001 in Carson City to discuss the violations that we had cited in the NOAVs. The base violation for NOAV 1585 was \$125, because it was a minor violation for opacity, for fugitive dust, I'm sorry. The penalty is

determined by using the (inaudible) penalty matrix for NOAVs 1586 through 1593 prior to the enforcement conference was \$60,800. During our enforcement conference NOAV No. 1590 was dropped and we negotiated a penalty of \$44,975 for NOAV's 1585 through 1589 and for 1591 through 1593. At the present time we find that Road and Highway Builders is in compliance with their (inaudible) air permits. Are there any questions?

Commissioner Ricci: Mr. Yamada, 1563 and 1564, were they at the same place as these other ones?

Mr. Yamada: 1563 was at a different location, let me see if 1564 was. That all occurred back in May. That was our first indication that they were operating outside of the opacity and we had the Road and Highway Builders send a man to opacity school to learn how to read opacity and we thought that we had taken care of the problem with that. So we negotiated a little bit lower fine, but it turned out at the September 18 meeting, I guess I told you all that we would bring additional NOAVs to you because of the violations that happened after the initial violations.

Chairman Close: Did they have to have the additional capacity in their plant in order to avoid the penalties imposed by the State for not meeting deadlines?

Mr. Yamada: They were supposed to start the project at a certain day, they had a certain period to start and they were like I think 90 days into their contract before they actually rolled onto the site, so they were already time short when they got on there. Their total throughput was already close to the maximum allowed for the job. So they were subject to penalties. I think they were subject to something and from just telling you what I heard, there was like somewhere around \$400,000 worth of delayed, for delaying the projects.

Chairman Close: So it's cheaper then to violate our regulation and to take the State's penalties?

Mr. Yamada: Yes it was.

Chairman Close: And so if that's the case, I wonder why we negotiated this thing down.

Mr. Yamada: Well when we did the penalty matrix, the initial penalty matrix, we take the worst case. There was a misunderstanding, a large part of it was No. 1590 which was for \$12,000 which we withdrew and the reason we withdrew that is there was some confusion as to whether 322 tons per hour was an instantaneous value or an average value over the run. What happened was we said that it was instantaneous value, they say they don't measure that way. They measure, because it's on a weighing belt that they weigh the material. So we said, "Well we can understand how that misunderstanding would have occurred." So we, \$12,000 of that we removed that particular NOAV.

Chairman Close: Any other questions? Is there a motion?

Commissioner Iverson: I move that we accept the recommendation of staff as far as the fines on this particular NOAV.

Commissioner Villaflor: Second.

Chairman Close: On the motion, all in favor?

Commissioner Johnson: I think we need to mention which one of these that we have.

Chairman Close: 1563 and 1564?

Mr. Yamada: No. The ones that we're looking at is, the numbers are 1585 through 1589, 1591 through 1593.

Commissioner Johnson: It was those added two that I wanted to see.

Chairman Close: On the motion to adopt those violations and the second, any questions? All in favor?

The motion carried unanimously.

Chairman Close moved to **Agenda Item B. Nye County Road Department.**

Mr. Yamada: We've been having a lot of problems up in Nye County due to fugitive dust complaints and we have a very vocal person up in the area that was E-mailing us and letting us know and sending us pictures of dust violations at the Nye County Road Department Pahrump landfill. So we sent an inspector out there to take a look at the operation and on June 25th when she went out there she discovered that there was a lot of fugitive dust being generated. There was no water truck on site. They weren't doing any kind of fugitive dust control at all. Why we discovered it was their operation was actually in excess of five acres, which requires a permit in the State of Nevada under the Nevada Administrative Code. And we also noticed that all the roads around the area were not being controlled, so there was a lot of dust being in the area. Our inspector goes there on quite a regular basis because of these things and every time that she actually got out there she noticed this. So we issued an NOAV for fugitive dust and we issued one for not having a permit.

We held an enforcement conference with the head of the road department regarding the five acres that was being disturbed, plus the fugitive dust and we came to an agreement as to what we would do about this particular action. We decided on a penalty of \$3,000 for one of the things that we negotiated with them was for them to permit all of their landfills which we had not been to because they were all over five acres and so they did that but they also permitted a gravel pit, which we didn't know they owned. So, I think the road department is pretty clean as everything else goes. I think they have everything on the permit now that needs a permit.

We've had some subsequent dust violations. On September 6 the inspector also did another unscheduled inspection and saw fugitive

dust, so we issued NOAV No. 1601 and then we also issued 1602 for a subsequent one and it was for \$250, but those are minor violations and not covered by the settlement. They'll be just paid to the Commission. I guess the important thing to know about this is they are now in compliance and the money that they are paying for the fine will be actually remitted to the Nye County School District. So, basically, the money stays within the county itself.

Commissioner Johnson:

Have you had any more complaints from your concerned citizen?

Mr. Yamada:

Yes we have. But they've done quite a bit of work out there to try to do something for him. They have built a buffer. This person lives near the landfill site so they built a buffer and they're talking about planting it and they say that's the dust control plan, which includes seeding and planting trees to try to mitigate the problem.

Chairman Close:

Any other questions? Is there a motion?

Commissioner Johnson:

I move for adoption of NOAV 1596.

Commissioner Crowley:

Second.

Chairman Close:

On the motion and the second. All in favor?

The motion carried unanimously.

Mr. Cowperthwaite:

Mr. Chairman before you move on there, you have Exhibit No. 10.

Chairman Close:

If there's no objection we'll add Exhibit No. 10 to the record on this matter. On the motion all in favor?

The motion carried unanimously.

Chairman Close moved to **Agenda Item No. IV. C. Premier Chemicals.**

Mr. Yamada:

Premier Chemicals is magnesium oxide mine and process facility and it's located in Gabbs, Nevada in Nye County. Their home office is actually in King of Prussia, Pennsylvania. The problem we had with them was they failed to conduct a source test within the period allowed after they get their permit, had got their permits renewed. What the bureau does is 60 days prior to requiring their source tests, they are contacted by letter to inform them that they need to test. We'll call them 30 days before ahead of time and if they miss the 30-day cutoff, which is the time they need to get the protocols to us, then another call is made. We got no response from them and so we sent them a letter and on August 9th we had an enforcement conference held in Carson City to explain why they weren't testing.

Based on information they provided us, we issued NOAV No. 1594 for failure to source test. They agreed to provide corrective action by submitting a test protocol to us by August 27th and to conduct a source test by October 2001. We did get the source test protocol on August 29th. The source test was supposedly done October 1st. There was a problem. The person that owned the testing company I understand had a heart attack so we gave them a delay on that. I have

not seen a report since, but I'm sure that's going to go through.

They agreed to pay an administrative penalty of \$5,600 for the above-mentioned violations. As far as compliance, we have the fugitive dust plan and they agreed to ensure that the plant is implementing (inaudible) as required to control fugitive dust and the mine and process facility, the facility itself is pretty dusty out there and they need to control that. If you saw the facility it would be, it's pretty much covered with the magnesium oxide residue. That's basically it. The amount that they agreed to pay is \$5,600. Are there any questions?

Chairman Close:

Is there a motion?

Commissioner Ricci:

I'll move to accept NOAV 1595 as reported.

Chairman Close:

1595? 1594?

Commissioner Ricci:

1594.

Mr. Yamada:

Yes, 1594 and 1595. One was the (inaudible) the dust permit.

Yes 1594 and 1595.

Chairman Close:

Is there a second?

Commissioner Villaflor:

Second.

Chairman Close:

On the motion all in favor?

The motion carried unanimously.

Chairman Close moved to **Agenda Item IV. E. Paul Moore Sand and Gravel.**

Mr. Yamada:

Oh, we didn't get D yet, Crockett.

Chairman Close:

I'm sorry **D. Crockett Enterprises.**

Mr. Yamada:

Crockett Enterprises is a contractor that performs construction services including grading and excavation in Nevada. We got a complaint about some work being done on the new Wal-Mart that's creating a lot of fugitive dust. No water trucks being available and we've got numerous calls. Some of them didn't give us their names or anything like that. We did get one from an employee of NDEP and we sent out an inspector on September 17th to determine what was happening. We found them to be generating quite a bit of fugitive dust. They didn't have a truck out there to water down the place. We also found out they didn't have a permit to operate more than five acres. The property is about 40 acres that was being disturbed.

We issued a stop order on September 19, 2001 and told them to get a permit application into us. We received the permit application and during our, we told them they could not operate until we told them they could operate. Well the permittee sent in their permit application and on the weekend they operated again and that was

reported. So we called them in for an enforcement conference and told them that they weren't supposed to be operating. We negotiated a settlement with them for NOAV 1599 and 1605, one for violating the stop order, the other for operating without a permit. They also had another one, which isn't included here, but it had to do with the fugitive dust. That was only a \$125 penalty.

Chairman Close:

Any questions? Is there a motion?

Commissioner Crowley:

I'll move to approve NOAV 1599 and 1605.

Commissioner Iverson:

Second.

The motion carried unanimously.

Chairman Close moved to **Agenda Item IV. E. Paul Moore Sand and Gravel.**

Mr. Yamada:

Paul Moore Sand and Gravel is a company that operates a sand and gravel operation in Pahrump, Nevada. While we were out conducting investigations on September 17th the inspector noticed that there was a considerable amount of dust coming from a gravel pit. All the gravel pits are pretty much located in the same area. She determined it was more than five acres and went in there to issue a fugitive dust NOAV and found out that they had no permit. We had an enforcement conference in Las Vegas with Paul Moore Sand and Gravel's representative to find out why they were operating without a permit. It turns out they had a permit earlier and they got it because they thought they needed it for their crusher, but then they realized they needed it for the whole thing. So when they sold the crusher they gave up their permit. So the fine should which should have been basically around \$3,000 for the thing we determined that they really didn't quite understand properly what needed to be done. Why they needed the permit. So we negotiated it down to \$1,080. We also charged them a \$125 NOAV for minor violation fugitive dust. They paid the fugitive dust violation. There were two violations for the NOAV 1599 and 1605. So the total agreed upon was \$225, oh this is the wrong backing, I'm sorry. I apologize. It was \$1,080 for the settlement.

Chairman Close:

Any questions? Is there a motion?

Commissioner Johnson:

I move for adoption of NOAV 1604.

Commissioner Iverson:

Second.

The motion carried unanimously.

Chairman Close moved to **Status of the Division of Environmental Protection's Programs and Policies.**

Allen Biaggi:

Thank you Mr. Chairman, Commission members. I've had some things, I learned a lot from Mr. Yamada in those ones that you just approved. You can mess with anything except somebody's Wal-Mart and when we shut down Wal-Mart people really got upset so that

says a lot.

I thought I'd bring you up to speed on a couple of issues this afternoon and I know that it's the Christmas season, we're kind of all in a hurry to get home so I'll be brief. The Chairman brought up an issue a couple of months ago concerning terrorism issues and what the involvement of the Division of Environmental Protection is with regard to the incidents that have occurred subsequent to September 11th. I sent all of you a letter outlining what, in general terms, our responsibilities are and some of the activities that the Division has undertaken with regard to emergency preparedness. Just to follow up a little bit on that. The State Division of Emergency Management has been very proactive in addressing emergency response concerns be it terrorist activities or emergency actions resulting from roadside accidents, rail accidents or the presence of biological problems in the State of Nevada such as foot-and-mouth disease or mad cow disease. We have been participating with DEM in a number of exercises over the last couple of years the largest of which was held in Emmetsburg, Maryland last spring where approximately 90 state officials went to Emmetsburg and did a weeklong exercise. The scenario in that incident was a major earthquake in northern Nevada resulting in a wide variety of concerns, everything from sewage spills and wastewater spills, hazardous materials releases, power being out, major fires, lack of infrastructure through water, roadways and etc. The Division of Environmental Protection is a major part of the emergency preparedness plans for the State of Nevada. That plan is broken down into a number of parts called emergency support functions and DEP is involved in emergency support functions 11 and 13 I believe. Eleven deals with the handling of hazardous waste and other types of chemical hazards and 13 deals with decontamination procedures. So while the Division of Environmental Protection is not a first responder, we don't have the capabilities or responsibilities to go out and address bioterrorism or terrorism or a truck spill of hazardous materials, we do have those emergency support functions where when the command center is activated we participate and address with the resources we have and the resources we can get our hands on from the federal Environmental Protection Agency, from local hazardous material teams and other resources, private resources to address those incidents when they occur.

Next Monday I'll be participating with the Environmental Protection Agency and the other Region IX states, which is Arizona, Hawaii, California and the Trust Islands to address these types of incidents and how the states are responding and what additional resources are needed. I'll be participating, along with my counterparts, the State Health Division for the drinking water programs and also with

representatives from the Division of Emergency Response to address these sorts of issues. One of the concerns that I have in the State of Nevada is that we're very well covered with emergency response in Washoe County, in Clark County, Douglas County, Carson City, and Lyon County because there are very strong and capable emergency response teams. I am concerned about the outlying areas of Nevada including Elko where we have a lot of mining presence in hazardous materials, Ely and other parts of the State. So I think one of the areas that I would like to concentrate on and express my concerns to EPA on is hopefully to get some additional resources to address those concerns in the rural parts of the State of Nevada. Maybe set up some regional response teams in the more rural parts of the State to address incidents when they may occur. With that are there any, Paul, do you have some questions?

Commissioner Iverson: A week ago, or two weeks ago we had the EPA liaison with the State come to our Board meeting and at that time he described a meeting that's taking place in California. Is this the one you're going to? EPA is bringing all of the representatives to talk about emergency planning in all of the Region IX states.

Mr. Biaggi: That's right, but with a spin towards terrorism.

Commissioner Iverson: Is that on the 17th or 18th?

Mr. Biaggi: 17th and 18th. I will only be there for the 17th, but emergency response will be there for both days.

Commissioner Iverson: Okay.

Mr. Biaggi: I should also mention that Paul and I participated in a day-long exercise with emergency management in the event foot-and-mouth disease comes to the State of Nevada. It was an eye opener in how fast these things can come about and the serious ramifications that an incident like that would have in terms of stressing our ability to respond to it and the economic consequences of such an incident not only statewide, regionally and nationwide. It can have very serious ramifications.

Chairman Close: Any questions?

Commissioner Ricci: Allen on all of the mining facilities and unloading facilities where they have them all up along Interstate 80, doesn't each one of those mining companies or chemical companies have an emergency action plan that they have to submit with you or somebody to take care of any spills that may occur.

Mr. Biaggi: They do. They all have emergency action plans as do the mines. In fact, earlier this year Jolaine and Verne and I visited a cyanide manufacturing facility located outside of Winnemucca. I was very impressed with the emergency response capabilities of that facility and how they track their trucks by satellite knowing exactly where they are on the roads at any time. Whether they're full, whether they're unloaded, where they're at. Very impressive and many of the other facilities have similar type systems. I think it's a real bright

spot that in the almost 25 years that there's been major mining using cyanide in the State of Nevada there has not been a major incident to report as of yet and hopefully that will continue with the diligence of the companies and the transporters and the manufacturers in Nevada.

Commissioner Ricci:

You're not just saying that for Tim's benefit are you?

Mr. Biaggi:

A little bit.

Commissioner Crowley:

I just want to say thank you for those nice comments.

Commissioner Ricci:

Not to belabor your presentation here, but what's happened with the arsenic thing out in Fallon?

Mr. Biaggi:

I'll get to that.

Commissioner Ricci:

I thought you said you were through.

Mr. Biaggi:

No, I said I was through with that item. Since Hugh mentioned Fallon, the Division in concert with the State Health Division has been undertaking environmental sampling in the Fallon area for the leukemia cluster. We started that activity on the 8th of October and we finished it on Tuesday of last week. The Division had approximately 40 staff members involved for this effort and we sampled 68 homes in the Fallon area, both case families and controls for household dust, for exterior soil, for interior air and for radiological contaminants for radon in air. That has resulted in approximately 16,240 data points. It's a tremendous amount of information that we have gathered out of this. Everything from volatile organics to pesticides, herbicides, heavy metals, as I mentioned, the radiological contaminants, that will be coupled with the biological sampling that was done by the Centers for Disease Control and the Health Division and an attempt is going to be made on a causal relationship between the leukemia and some sort of an environmental factor. I think as I have reported to you in the past, similar activities have been done in about 100 other cancer clusters throughout the country and the causal effects have only been found in one or two of those. But this effort is actually more broad and more ambitious than some of those others and hopefully that cause and effect relationship will be identified. The final report on that evaluation of all this information will not be out until probably this time next year. It takes a lot of information, a lot of analysis to go through this information.

With regard to the arsenic issues, the Environmental Protection Agency did modify the standard on arsenic down from its previous 50 down to 10 ppb. Fallon has received a good bit of support from the federal government to help them meet the arsenic values in their drinking water over the next few years. That standard does not go into place until 2006.

Some of the things coming up for the Environmental Commission over the next couple of months, next week we have the Oil Dri

hearing. That is an appeal to a mining reclamation permit for a kitty litter mine here in Washoe County. It's a very contentious issue, one that is very high profile and I'm not exactly sure, David maybe you can help me out, who is on that panel?

Mr. Cowperthwaite:

Crawforth, Doppe, Robinson.

Mr. Biaggi:

Probably why they're not here right now, right? I anticipate that will go all day and the appeal was lodged by the Reno-Sparks Indian Colony and Great Basin Mine Watch.

Commissioner Crawforth:

I think that Oil Dri is owned by Wal-Mart.

Mr. Biaggi:

Really? That I did not know. Another hearing that will be ongoing probably in January/February time frame is another fairly high profile contentious issue and that is with regard to the Las Vegas wastewater facility discharge permits. There's three permits: Henderson, Clark County and City of Las Vegas. There's been appeals made with regard primarily to the flow numbers and potential impacts to the Las Vegas Wash and Lake Mead. There is some legal issues ongoing right now in terms of intervention by the permit holders into this process and I'm hoping that all of that will be dispensed with right after the first of the year so we can move on with the hearing on that one and I don't believe that the date has been set, nor has the panel members been set on that, is that correct?

Mr. Cowperthwaite:

No, we're still jumping around. Some of you will be called.

Commissioner Crowley:

Can I ask a question on that? Is that a recurring permit? Is that why you're doing this?

Mr. Biaggi:

Permits are renewed once every five years and so this is the five-year renewal process for all three of these permits.

There was a lawsuit that I've spoken to you about with regard against the BLM on 3809, the mining requirements. BLM has modified the 3809 regulations and our concern with that was continuing consistency between the BLM program and the State of Nevada program and the working relationship, which we have with our federal partners in that situation. With BLM's modifications to 3809 that lawsuit has been dropped.

We have run into some issues with regard to Chemical Accident Prevention Program, which is a large set of regulations you heard last time. There's been three major incidents over the last few weeks or few months with the CAPP program. The first was Depressurized Technologies Incorporated in Douglas County, which had an explosion at their facility. This wasn't under the CAPP program, but was regulated under the Resource Conservation Recovery Act, hazardous waste program. That incident killed one worker and injured very seriously two others. We have filed Findings of Notices of Violation and Administrative Orders against that company for violations of hazardous waste law.

Aerotech was a facility, and I do say was, in the Las Vegas area that manufactured model rocket engines, solid fuels. That facility had a catastrophic explosion which leveled that facility and a number of other businesses in the small industrial area where it was located. That facility also was not under the Chemical Accident Prevention Program because of the ammonium perchlorate they had on site. We believe, however, in reviewing the definition of what constitutes an explosive under the CAPP program, that that facility should have been enrolled in this program and we have filed actions against that facility as well. Both DTI and Aerotech have indicated their desire to reopen in the State of Nevada and we have some concerns about that, obviously, from their past records.

Advanced Specialty Gases operated a plant, which manufactured a highly toxic gas used for the electronics industry. The facility was located near Dayton. A year ago last July they had a catastrophic explosion which blew the roof off the facility and caused a small brush fire. That facility has been, we've been going around and around with them as has Lyon County because this facility is in an area where residential development and other industrial development can occur and there's been an encroachment on the facility with housing developments. Lyon County two months ago decided to revoke the Special Use Permit for that facility which effectively put them out of business and as of last week a lawsuit was filed against Lyon County requesting damages in excess of \$5 million. So, the Division will be a party, I'm sure to that action eventually.

With that, the other things going on that we're anticipating over the next couple of months is that in January we'll be seeing budget issues starting coming forward again, budget instructions and we'll be starting to prepare our budgets for the next biennium and then we'll start working on legislative issues probably in the next couple of months in anticipation of the 2003 session.

Is there anything else you'd like to ask me about or questions? I'd be happy to answer.

Commissioner Johnson:

I have two items. One would be regarding the budget and I would like to see the ongoing report on the Mojave refurbishing and I think the issue of the permit fees on that facility should be revisited in case they're not in active pursuit of complying with their consent decree.

Mr. Biaggi:

I can address a little of that right now. Mojave has been in the office a number of times. They have expressed to me every full intention to comply with the dates and deadlines within their consent agreement with the Sierra Club. Of course, what that means to us is

dramatically reduced fees into the program. This is an issue that I have been bringing up to the Nevada legislature for the last two sessions that we're going to have to look at some major reforms of fees in order to support the program and that is one of the things that we'll be pursuing in our budget. But if you'd like I will continue to bring those issues forward.

Commissioner Johnson:

And I thank you for what you sent me after the last meeting. The other issue concerns my concern with the regulation of heavy-duty diesels as opposed to light-duty. Half-ton vehicles have to go through a dynamometer test and all such things, but we've more or less accepted that the snap test, the visual seeing smoking diesels and that sort of thing's, but my read through our regulations I think there's a tag to the penalty at a 70 percent opacity, which doesn't recognize the different requirements of the generation of diesel engines. Plus I would like to see those cut points dropped, but I think first off just to ask a review of what we have and its relevance to the regulated environment that's there. I know Clark County is anticipating using remote sensing rather than the visual determination, but I don't know what that status is either. It's been ongoing for a number of years.

Mr. Biaggi:

Okay. We'll bring that forward for the next hearing. David, will you put that on the agenda please?

Chairman Close:

Any questions? Thank you.

Mr. Cowperthwaite:

I guess the issue is cleanup in the exhibits, exhibits 1 through 6 that relate to the issue, do you want . . . ?

Chairman Close:

That was withdrawn so I'm not sure, and I think . . .

Mr. Cowperthwaite:

It's appropriate then to accept these exhibits at this point then?

Chairman Close:

I guess there's no harm in accepting them, but if this comes back on again, if it is brought back on, we ought to have these brought back before us so we can . . .

Mr. Cowperthwaite:

Okay. I'll just put them in the file.

Chairman Close:

Tom you'll be sure to keep us advised as to any progress on that Walker River thing and the lake and any improvements in the flow that's anticipated or anything of that nature? I think that we want to be kept fully advised on that thing. Anything else?

The meeting was adjourned at 2:40 p.m.

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: December 11, 2001

Location: NDOW - Reno

#	Item	Item Description	Reference Petition #	Offered	Accepted
1	2 Page Letter	Letter dated November 27, 2001 by State of Delaware Department of Natural Resources and Environmental Control supporting petition 2002-02	2002-02	Yes	No
2	1 Page Letter	Letter dated November 7, 2001 by North Carolina Department of Environment and Natural Resources supporting petition 2002-02	2002-02	Yes	No
3	1 Page Letter	Letter dated November 8, 2001 by Northeast States for Coordinated Air Use Management supporting petition 2002-02	2002-02	Yes	No
4	1 Page Letter	Letter dated November 9, 2001 by Pennsylvania Department of Environmental Protection supporting petition 2002-02	2002-02	Yes	No
5	2 Page Letter	Letter dated November 9, 2001 by Minnesota Pollution Control Agency supporting petition 2002-02	2002-02	Yes	No
6	1 Page Letter	Letter dated November 16, 2001 by Commonwealth of Massachusetts Executive Office of Environmental Affairs Department of Environmental Protection supporting petition 2002-02	2002-02	Yes	No
7	80 Page Bound Document and 23 page summary	Water Quality Standards Review and Rationale for Proposed Revisions to the Nevada Water Pollution Control Regulations (NAC 445A.159 - NAC 445A.169) Walker River, Desert Creek and Sweetwater Creek dated November 2001 by Nevada Division of Environmental Protection, Bureau of Water Quality Planning and Workshop and Miscel. Documents	2002-03 2002-04	Yes	Yes
8	2 Page Fax	Fax dated May 2, 2001 from Jim Smith, Wellington, opposing petition 2002-04	2002-04	Yes	Yes
9	45 Page Bound Document	Walker Lake Water Quality Standards Rationale, Rationale for Proposed Changes to the Nevada Water Pollution Control Regulations dated November 2001 by the Nevada Division of Environmental Protection, Bureau of Water Quality Planning	2002-04	Yes	Yes
10	2 Page Letter with 3 Page Attachment	Letter dated December 7, 2001 from Robert J. Wickenden, Director of Public Works, Nye County Department of Public Works regarding NOAV 1596	NOAV 1596	Yes	Yes
11	7 Page Fax	Fax dated December 10, 2001 from Robert D. Williams, U.S. Fish & Wildlife Service, Nevada Fish & Wildlife Office, regarding Nevada State water quality standards for the Walker River and new water quality standards for Walker Lake.	2002-03 2002-04	Yes	Yes
12	1 Page Letter with 2 Page Regulation Enclosure	Letter dated December 6, 2001 from Nolan W. Lloyd, Chairman, Board of County Commissioners, County of Elko regarding amendments to NAC 445A.0586, 445A.100, 445A.309, and 445A.372.	2002-01	Yes	Yes

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: December 11, 2001

Location: NDOW - Reno

#	Item	Item Description	Reference Petition #	Offered	Accepted
13	1 Page Letter	Letter dated December 10, 2001 from William J. Frey, Deputy Attorney General, Civil Division, State of Nevada Office of the Attorney General regarding State of Nevada, Division of Environmental Protection v. County of Elko, Nevada Supreme Court Case No. 36591	2002-01	Yes	Yes
14	1 Page Map 11 x 17	Walker River Reaches and Water Quality Standards Revisions by the Nevada Division of Environmental Protection, undated	2002-03	Yes	Yes
15	3 Pages of Tables 11 x 17	Comparison of Water Quality Standards Walker River Basin, Nevada Division of Environmental Protection, undated	2002-03	Yes	Yes
16	4 Page Letter	Letter from Gordon DePaoli, representing the Walker River Irrigation District dated December 5, 2001 supporting the Walker River and Lake water quality standards	2002-03 2002-04	Yes	Yes

Note: Items 1, 2, 3, 4, 5 and 6 were not accepted by the Environmental Commission because the regulation 2002-02 was withdrawn by the Division of Environmental Protection from further consideration. The Commission accepted the withdrawal of this regulation on December 11, 2001.