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STATE ENVIRONMENTAL COMMISSION

Meeting of June 21, 2001

Laughlin Town Hall

Laughlin, Nevada

Walker Lake Excerpt of Minutes

MEMBERS PRESENT:

Alan Coyner, Vice Chairman

Terry Crawford

Mark Doppe

Fred Gifford

Paul Iverson

Joseph L. Johnson

Steve Robinson

Joey A. Villaflor

MEMBERS ABSENT:

Melvin Close, Chairman

Demar Dahl

Hugh Ricci

Staff Present:

Deputy Attorney General Susan Gray - Deputy Attorney General

David Cowperthwaite - Executive Secretary

Vice-Chairman Coyner: Good morning. My name is Alan Coyner. I am the administrator of the Nevada Division of Minerals, Vice-chairman of the Environmental Commission and I'll be chairing today's meeting. First of all, this is a large crowd for the Environmental Commission. I think it's probably one of our record meetings. Please come in and find an empty seat if you can. It's going to be a long day. We have a number of items to discuss and some are quite contentious so we're looking forward to it. First of all, thank you for having us down to Laughlin as well, those of you that are citizens here. We're happy to be here. This meeting has been properly noticed for the State Environmental Commission to be held here this morning in Laughlin. It has been properly posted. The first item on our agenda is **Item I which is Approval of Exhibits of May 10, 2001 hearing**. This is a housekeeping measure, an action item and I need a motion from the Commission for approval.

Comm. Crawford: I'll move for approval.

Commissioner Johnson: I'll second.

The motion carried unanimously.

Vice-Chairman Coyner: On the order this morning, I know that many of you are here, of course, or most all of you are here for the Southern California Edison item. There is a brief item that we would like to dispose of as a Commission, which is the Walker Lake and Walker River quality standards item. We've been assured by the Division that this will not take a very long time. So I'm going to ask your indulgence for about 10 or 15 minutes so that we can dispose of this agenda item. I'm going to take it out of order. So at this time I'll call on the administrator of the Nevada Division of Environmental Protection, Allen Biaggi.

Allen Biaggi: Thank you Mr. Chairman, Commission members. My name is Allen Biaggi and I'm the Administrator of the Nevada Division of Environmental Protection. The item before you today . . .

1
2 Vice-Chairman Coyner: First of all, can everyone hear the speaker from the podium? I didn't think that microphone was on.
3 Thank you.
4
5 Mr. Biaggi: The item before you today relates to the standards of the Walker River and of Walker Lake. And
6 as I know the Commission recalls we've had many, many hours of discussion and deliberation
7 concerning this issue both in December of the year 2000 and February of this year. As you'll recall
8 this item was discussed at the last Commission meeting on May 10th and there was a lot of concern
9 and debate at that time about a piece of legislation that was passed by the Nevada legislature, SCR
10 40, dealing with water quality standards for Walker Lake and Walker River. Since that time we
11 have received some clarification on the impact of that bill and it essentially invalidated the petition
12 that was brought before you and you approved concerning water quality standards for the lake and
13 for the river. The Commission took some action on the May 10th meeting and we have reviewed
14 the minutes of that meeting and the purpose of my being here today is to ask for some clarification
15 and for some direction from the Commission with regard to moving forward on standards for this
16 very important water body. Since the May 10th meeting and on May 14th to be exact, the Division
17 was provided a copy of a notice sent by the Western Environmental Law Center on behalf of
18 Mineral County to Christine Todd-Whitman, the administrator of the U.S. Environmental
19 Protection Agency and to Laura Yoshi who is the acting regional administrator for EPA in Region
20 IX San Francisco. This is a 60-day notice of intent to sue for Nevada not adopting water quality
21 standards primarily for Walker Lake. We believe it's in the best interest of the State of Nevada to
22 negotiate with the parties of the downstream users and with the upstream agricultural community in
23 an attempt to reach some sort of a settlement that is amicable and best interest of all the parties.
24 We feel this is a much better solution than moving forward into litigation or having U.S. EPA
25 establish standards in lieu of the State of Nevada. So what I'm asking today is a little bit of
26 direction and your support in allowing the Division to move forward and make overtures to both
27 parties in entering settlement discussions for the potential litigation.

29 Vice-Chairman Coyner: Thank you Allen. And I think you're basically waiting for clarification from this Commission that
30 we in no way restricted you at our last meeting from doing that.

31 Mr. Biaggi: That's correct. There's some concern that has been expressed by myself, by my staff and others
32 outside of the agency that there's a perception that the Commission directed the Division not to do
33 any further action on the Walker River and move to other water bodies for establishment or review
34 of water quality standards.

35 Vice-Chairman Coyner: I think at the pleasure of the Commission with regards for clarification on this point and since we
36 do have draft minutes included on our agenda, I'll just point out three portions of those minutes that
37 I believe make it clear that we did not in any way restrict Allen's ability to do so. I draw your
38 attention to page 11 of 19, about the middle of the page when the initial motion was made by
39 Commissioner Gifford and at that position in the middle of the page, page 11, the motion was
40 made, "I move that the Commission do nothing with respect to this petition." Secondly, I'll bring
41 your attention to page 14 of 19, approximately $\frac{3}{4}$ of the way down the page, Commissioner Gifford
42 again states, "For clarification on the motion as I made it I did not intend anything on Allen's part.
43 If Allen elects to do something fine. If he wants to invest another two years, that's fine. But the
44 motion did not include that. The motion is simply that at this point in time the Commission do
45 nothing with this petition." And finally, on page 17 of 19 I direct you to Commissioner Crawforth's

1 Commissioner Crawford's comments about 1/3 of the way down, "I just wanted to clarify on the
2 motion that we don't want to see it back again and the motion doesn't include any instructions for
3 the Division to go do anything and it doesn't include us talking to the Legislative Commission.
4 That's not in the motion?" Then Commissioner Gifford replied, "That's right. It is not." So I
5 think we're fairly clear on that point with regards that we did not intend to restrict Allen's ability to
6 do actions with regards to Walker Lake or Walker River standards.

7 Commissioner Johnson: For the record this is Commissioner Johnson. That is what I perceived our actions to be at the
8 May 10th meeting.

9 Vice-Chairman Coyner: Thank you Allen. Any other comment?

10 Mr. Biaggi: I would just like to point out that Mr. Spooner and Mr. DePaoli are here if they would like to say
11 anything. I think that maybe that would be appropriate.

12 Vice-Chairman Coyner: Let me officially call for public comment on the Walker River, Walker Lake standards. I will limit
13 your comments to five minutes please. Is there anyone wishing to speak on it? Gordon shakes his
14 head no, all right. In the face of this crowd I would probably say the same thing Gordon.

15 Mr. Biaggi: No I think that gives us the direction that we need and the clarification that we need in order to
16 move forward and just for the Commission's edification you're likely to see, I hope you're likely to
17 see a revised petition come before you for your September 2001 meeting. Thank you.

18 Vice-Chairman Coyner: Thank you Allen. Commissioner Doppe?

19 Commissioner Doppe: I have a comment on that though for you Mr. Biaggi, the record stands obviously as to what our
20 action was, but I would say that a underlying tone at least from my perspective was that we, as a
21 Division, as a Commission, have already spent 18 months negotiating a settlement based on the
22 best science that we had, based on participation from a number of communities that we had and we
23 presented that negotiated settlement, effectively is what it was, to the State legislature and they told
24 us basically where to put it. And my comment at the time I believe and it's probably in the minutes
25 somewhere was that it would strike me as odd that they would send this back for another 18 months
26 (inaudible) or another 3 months which is spectacular and come up with a negotiated settlement that
27 does work. So I'm going to be very interested to see what you come up with in 3 months that
28 certainly brings 100 years of warring factions together that you weren't able to do in 18 months
29 before. And let's let-her-rip.

30 Mr. Biaggi: Commissioner Doppe I agree. This is a very contentious issue. As you know, we've been working
31 on it for many, many months. And I think it's worth the effort to try and come up with a
32 settlement, particularly in the face of potential litigation, which is probably going to drag out for
33 many, many, many years. So, you know, I think the Division is willing to put some additional
34 work into this and work with all of the parties and at least give it a shot of trying to come up with
35 something that works for everyone.

36 Commissioner Doppe: I do have one question for you though. How much time, now that the Division has spent a
37 significant amount of its past 18 months working on this one issue only to have it handed back to us
38 and say you know it doesn't work, how much time are you now going to have to detract from the
39 next body of water where you could have a meaningful impact and we're not going to be able to do
40 it because we're still bogged down at the Walker Lake where we've already come up with a good
41 answer that didn't fly, but it was a good answer.

42 Mr. Biaggi: Well I think your point is well taken and it is going to take resources away from other water bodies.
43 But if we go into litigation, that's going to take tremendous amounts of resources away from other
44 water bodies as well. So the Division is sort of caught in a catch-22, damned if we are, damned if
45 we don't and we believe, as I said, the best way to settle this is through amicable settlements

1 settlements between all of the parties. I think it's worth pursuing.

2 Vice-Chairman Coyner: Commissioner Crawford?

3 Comm. Crawford: Allen I guess I'm curious about the process that you're looking at. As you're aware, there's a
4 number of activities going on with the Walker River system and several litigations already in
5 process and there's discussions of settlement negotiations on the litigation that's already been filed
6 and potential negotiations on the issues on the Walker River system, if you will. Are you looking
7 at participating in those, or setting up a separate negotiation process?

8 Mr. Biaggi: Mr. Crawford we're looking at a separate process. We believe that there is not a distinct nexus
9 right now between the other litigation and this one and we feel that it would probably be in the best
10 interest of all the parties to keep them separate at this time. They may ultimately be rolled in
11 together, but at this time I think we would do well to keep them apart.

12 Comm. Crawford: So your process will be purely to work on the water quality standards with all the parties who have
13 expressed an interest in that and try to come back with a petition for standards for the river by
14 September?

15 Mr. Biaggi: That's correct and one of the things I think we'll be looking at is perhaps addressing those
16 standards that were generally non-controversial. For example, for the river I don't think there was
17 anyone who had tremendous heartburn about what we were proposing for the river. With regard to
18 the lake, it was TDS, perhaps?? chlorides perhaps arsenic that were of greatest concern. Maybe
19 there's something that we can do that gets us some partial standards in place while we work on
20 these more controversial water quality parameters.

21 Comm. Crawford: As I recall you were at the last meeting you asked us not to make you go back and do this one
22 again. And you were going to move on to the Humboldt River. Will this activity preclude you
23 from moving on to the Humboldt now?

24 Mr. Biaggi: Well, as I mentioned to Mr. Doppe, it will take resources away from what we're doing on the other
25 river systems, but there's been this tremendous new issue that's come up and that's the 60-day
26 notice of intent to sue. So, we're in there whether we like it or not. We're going to have to address
27 this issue and take it head-on.

28 Comm. Crawford: The new 800 lb. gorilla?

29 Mr. Biaggi: That's right.

30 Commissioner Iverson: Alan?

31 Vice-Chairman Coyner: Commissioner Iverson?

32 Commissioner Iverson: Allen I think your approach is really good and in fact I think it will be a learning experience
33 because I think this is not the last conflict we will have over water in the State of Nevada and once
34 you've learned from this exercise and going back and negotiating with those folks that were
35 involved with this, I think will be beneficial to the Commission and to your division as we address
36 other water bodies in the State of Nevada. So I support you and commend you for your interest in
37 resolving this issue.

38 Mr. Biaggi: Thank you.

39 Vice-Chairman Coyner: Commissioner Crawford?

40 **Comm. Crawford: Mr. Chairman if I could maybe if, I agree with you, I don't know that there's a question on it
41 but maybe it would be appropriate that I make a motion that we encourage the Department
42 to move ahead with these negotiations on the finalization of the water quality standards for
43 the Walker River system and wish him well.**

44 **Vice-Chairman Coyner: There's a motion on the floor from Commissioner Crawford. Is there a second to that
45 motion?**

1 **Comm. Doppe:** I'll second it for a discussion.
2 **Vice-Chairman Coyner:** Seconded by Commissioner Doppe. The discussion now will range on the implications of that
3 motion in terms of dictating policy to the Division with regards to workload issues and to
4 what extent we want to tell Mr. Biaggi how to do his job.
5 **DAG Gray:** I would be concerned that that might be a little bit beyond the scope of the agenda. The
6 agenda specifically (inaudible) the petition and I'm afraid that if we were to actually give that
7 direction it would be a little bit beyond that description.
8 **Vice-Chairman Coyner:** I'm in agreement with the attorney general. So I'm going to strike the motion.
9 **Comm. Crawford:** I'll withdraw it. (inaudible) for clarification so. . .
10 **Vice-Chairman Coyner:** Any other comment from the Commission on the Walker River, Walker Lake issue? There was
11 none.