

# The Nevada State Environmental Commission

A publication of the  
Rose Institute of State and Local Government  
Claremont McKenna College Claremont, California  
1973 - 1990  
by  
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*As I was born a citizen of a free State, and a member of the Sovereign, I feel that, however feeble the influence my voice can have on public affairs, the right of voting on them makes it my duty to study them: and I am happy, when I reflect upon governments, to find my inquiries always furnish me with new reasons for loving that of my own country. **Jean Jacques Rousseau***

## Introduction

This study of the Nevada State Environmental Commission inaugurates a series on government and the environment by the Rose Institute of State and Local Government of Claremont McKenna College.

Concern about the environment became a theme of American politics early in the 1970s. Whether it is merely a fashion or, conversely, a permanent tendency of public opinion and policy, there is no question that governments at all levels of the American federal system have been obliged to respond to the development of environmental consciousness over the last two decades.

Nevada was one of the first states to respond, creating a commission with immense regulatory power over air and water quality, and solid and hazardous waste disposal. Its jurisdiction and powers touch potentially every aspect of the economy, large industry and small business alike, every community, and the way of life of every Nevadan. As more than one person associated with the State Environmental Commission has noted, if the Commission "wanted to close down Southern Nevada, it could do so."

Because the American political system is finely tuned to public opinion, "when public opinion expresses itself, government invariably responds. Responses may take several forms, although the most frequent are legislation and regulation. A virtual chorus of public opinion has led, by action of state legislatures or by the initiative process, to the creation in several Western states of dedicated governmental bodies with specific mandates over the air, water, land and the precious life that inhabits them. In turn, these bodies, such as the State Environmental Commission of Nevada, have built an impressive record of regulation that has had significant impact on a broad range of behaviors with respect to the environment.

There are many governments in America-over 120,000 according to one estimate, including national, state, local and special purpose governments. Each of these, in one way or another, has been affected by the environmental movement. The burden, however, for satisfying the public's appetite for action on a wide range of environmental issues has fallen principally on state government. Because environmental problems - as, for example, air pollution, reach across the boundaries of local political jurisdictions, only state government has the power and the means to deal effectively with them. Furthermore, federal legislation and the prospect of federal grants have led to the initiation of many state programs, making the states the partner of the federal government in environmental protection. For example, the State Environmental Commission was conceived as part of the response of the State of Nevada to the Federal Clean Air Act of 1970. Finally, because of the federal role in environmental protection, only the states have the requisite authority to check federal regulation where it is deemed deleterious to local circumstances or interests. This, too, is a role, albeit informal, of the State Environmental Commission. It is for these reasons that this series of publications will focus on the attempt by states to regulate the environment.

Throughout the country, local and state governments have been besieged by a variety of associations, running the gamut from ad hoc citizens' groups to highly structured, well funded and professionally driven organizations, lobbying for greater attention to environmental concerns. These same groups have also turned their attention to the private sector where, from small business to land developers, from industry to public utilities, demands for environmental safety and sensitivity are changing the very way Americans do business. It is no exaggeration to say that in many parts of the country, land developers spend as much - if not more - of their time addressing environmental issues as they do on the details of actually constructing their projects. Today, government and the

private sector live under a new reality and operate under the jurisdiction of an even greater government, the government of the environment. The one thing certain about change is that it produces controversy.

Many people today call themselves "environmentalists," although this has not at all diminished the controversy between those whose cause is preserving the "quality of life" and the supporters of economic growth and "progress," the symbolic terms around which much of the public debate has taken place. Furthermore, controversy cuts across traditional lines of partisanship and economic class. For example, public opinion surveys indicate that conservative Republicans are frequently the strongest supporters of no-growth measures, while many liberal Democrats, especially those who are poor, blue collar or belong to an ethnic or racial minority support growth as a source of employment and progress.

Controversy has also generated a debate over values and questions of genuine significance. The proponents of growth bemoan the regulation, bureaucracy and "red tape," the trappings of "big government," that they identify with the demands of the environmental movement. Environmental regulatory bodies, they charge, have enormous power over the lives of millions of persons, regulating areas of daily life, business and government in ways that would have been seen by an earlier generations of Americans as inconsistent with community values and beyond the scope of legitimate government. These regulatory bodies are often insulated from the political process, leading to charges of political irresponsibility. They are composed of appointed Directors and Commissioners, men and women who it is said, answer to no one but their collective beliefs and judgments or to the beliefs and judgments of staff, and who create policy and regulation without being subject to the usual checks and balances of government.

And, indeed, it is true that in many jurisdictions the permit process for emitting pollutants into the air, for building, for dumping solid and hazardous waste and for many other environmentally sensitive activities has led to increased time, costs, frustration and anger over what used to be simple economic decisions. Compounding the red tape are the politics and lobbying of special-interest environmental and ad hoc citizens groups that, in bringing pressure on government, delay proposed projects, thus adding even more to time, cost and frustration. The environmental movement has introduced into the panorama of American group interest politics a new species of single or special interest advocacy, that to many seems unbending in its demands – unwilling to compromise. To many, these groups seem "un-democratic."

The charge is also made that professionals of environmental organizations have "cozy relationships" with staff of government environmental institutions. Furthermore, many who have had to deal with these government bureaus believe that governmental regulatory bodies, especially staff, are "out to get them" and, thus, intentionally delay projects and make the regulatory process for

obtaining permits more complex and cumbersome than it needs to be. Contending that their frustration is with the process, not the environment, for which they profess concern, they claim that all they want is that government should perform its job in a more business-like manner. Members of the private sector are often over-heard lamenting their encounters with environmental bureaucrats and staff. They claim to feel demeaned by the power, and thus, by the behavior, of staff whose apparent sense of self-importance, energized by ideological commitment, is distasteful to men and women who have had to "make it on their own" in the private sector.

By contrast, those who champion the environment and related "quality of life" issues believe that precious natural resources are being diminished rapidly as the result of actions by uncaring or greedy politicians, businessmen and special interests, and by an uninformed electorate. Armed with voluminous data and scientific expertise, they point out the damage of this trend to human health, to the human living environment, indeed, to the entire planet. They know that the biological clock is ticking, that time is limited, and that action is needed now if our environment is to be saved. In order to salvage the environment from further devastation, they argue, it is necessary to take immediate action, circumventing "politics as usual" by creating dedicated governmental institutions whose first concern is the environment. Frequently, this circumvention has taken the form of a ballot initiative by which the people in their capacity as electors go around the cumbersome and increasingly suspect legislative process.

It is not to be denied, even by critics, that the case for the environment has been made by virtue of the everyday experiences of Americans. Air pollution from industry and auto emissions, a substance all too often visible to the naked eye, has endangered whole regions of the country, from urban populations to the forest life in our national parks. The careless or intentional dumping of hazardous waste has polluted land and water for which there is little remedy short of the spending of thousands, sometimes millions of taxpayer dollars. Even then, the remedy may leave the land and water unfit for human or animal use for generations.

If proponents of economic growth complain about the cozy relationship between government staff and professionals of environmental organizations, environmentalists cite an equally invidious relationship, that of elected officials and special-interest money. If businessmen feel demeaned by their encounter with the staff of environmental bureaus, environmentalists feel, simultaneously alienated and outraged by what they perceive as the arrogance and corruption of the relationship between special-interest money and elected politicians. And while the advocates of economic growth argue that environmental regulatory bodies are insulated from the political process and, thus, are politically irresponsible, environmentalists argue that "business as usual" has led to the devastation of the environment around us. Both camps have their list of miscreants, which would be too long to reproduce here.

Politically, today, the environmental cause occupies the moral high ground and has the appearance of a moral crusade. One of the truths about American politics is that morality makes good politics. In this respect, environmentalists have won the debate – one of the reasons why today most people call themselves environmentalists: people, regardless of their interest, have been intimidated by the moral overtone of the environmental cause. Throughout American history until the 1970s, those who championed economic growth and progress commanded the moral high ground. Today they have been made to look, or have made themselves look, self-serving, greedy and uncaring, creating for themselves an uphill battle in any contest for public opinion and political power.

Perhaps the only check on the success of the environmental movement is the sheer volume of environmental concerns daily raining down on the public and their elected representatives. From protecting human health from environmental pollution to protecting endangered species and the natural beauty of our coast lines, deserts and mountains, just to mention a few, the environmental movement has placed an enormous number of demands on the public agenda. Under normal circumstances the political system would have difficulty digesting the volume and multiplicity of such demands; but they become particularly difficult to deal with today because of the often technical or scientific nature of proposed solutions to environmental problems and because they appear to pose a threat to employment and other economic benefits. What the public and elected officials do understand is cost; and often solutions to environmental problems are looked upon as "pocket book" issues, just one more item the Legislature and the taxpayer has to fund.

Unfortunately, the public debate over the environment is almost always expressed in extremist terms – "tree huggers" and "nature Nazis" versus those who "rape" the land and "exploit" natural resources for "profit." These are just a few of the emotional "buzz" words that mobilize passions and serve as symbols to divide citizens into factions and antagonists. By contrast, the Nevada State Environmental Commission was established by men and women of an essentially conservative, business-oriented disposition and political bent. Prompted by federal action, they created a single governmental body that they invested with immense power over polluters of the air, water and soil. Perhaps the example of Nevada points the way to a solution that avoids the extremes of rhetoric and passion that presently characterize the debate, and a solution that represents a serious attempt by government to protect the environment while protecting other vital state interests.

In part, the present controversy is the result of society trying to cope with a new set of problems that hitherto were unrecognized as problems or were believed to be beyond the scope of government intervention. Feeling their way through the thicket of environmental problems, the public and their elected officials have reached for solutions, often in the absence of experience and knowledge. They have created new administrations and bureaucracies, expanding the size and scope of government in pursuit of solutions to problems that, because of the scientific or technological nature of the solutions, are often little understood either by the public or by responsible persons in government.

Time, which brings forth experience and custom, will help to settle controversy. What is new and innovative today will one day become accepted practice and traditional. Until then, careful study and scrutiny of these various attempts by state government to cope with environmental concerns, and research such as this publication inaugurates, will help to guide the public in its quest for better government and a more wholesome environment.

This series of public service publications will focus on how – and how well-these institutions are doing their jobs. Furthermore, they will provide information gathered from interviews and public documents about the history and evolution of these agencies, the persons charged with formal responsibility for their administration, and the key issues that are pending or may soon come before them. Finally, each volume will contain an essay by an expert familiar with the work of the particular institution and with the broader context of government and the environment in his or her state.

As with any project, there is always one person who makes a difference. Brian Greenspun, Publisher and Editor of the *Las Vegas Sun*, showed many kindnesses, including paving the way for a friendly reception in Nevada and agreeing to publish this manuscript. Pat Deadder, the Federal Documents Librarian of the Nevada State Library, showed tolerance and good will for the many requests for hard to find documents on the origin and history of the Commission. Kevin Unck's research assistance helped in the task of compiling this manuscript. Many Nevadans patiently submitted to interviews, often more than once, as information was gathered and checked on the workings of the Commission. Their contribution, especially that of the Commissioners and of the Commission's Chairs, past and present, was particularly helpful in sorting out opinion, finding and confirming facts, and adding a sense of "real life" to the study of this government institution. Misstatements of fact or opinion are solely the fault of the author and constitute no reflection on those who generously gave of their time and effort, to whom the author's sincere appreciation is now expressed. It must be noted, also, that the opinions expressed are the author's own and do not necessarily represent the opinions of the Board of the Governors of the Rose Institute. -- Alfred Balitzer Claremont, California

## History

The forerunner of the State Environmental Commission, the State Commission of Environmental Protection, was established in 1971 by an act of the State Legislature. It was not funded, however, until 1973 when, at the same time, a series of amendments to the 1971 legislation established the State Environmental Commission. These years, 1971-1973, constituted the first phase of an effort by the State of Nevada to come to grips with growing environmental concerns through government

regulation. They are significant years because of the formative influence they had on the character, mission and powers of the State Environmental Commission.

### **1971: An Imperfect Beginning**

In April, 1971 the State legislature passed the Nevada Air Pollution Act, a bill that also provided for the establishment of the State Commission of Environmental Protection. Charged with developing and enforcing air quality regulations for the state of Nevada, the Commission was given sweeping powers to control sources of air pollution. Both the legislative and executive branches were prompted to action by amendments in 1970 to the Federal Clean Air Act requiring each state to establish its own clean air plan and implementation mechanism. The central purpose of the commission as defined in Section 12 of the legislation, “designated” the Commission “as the air pollution control agency of the state for the purposes of the Federal Act” and “authorized” it “to take all action necessary or appropriate to secure to this state the benefits of the Federal Act.” As has been the case so frequently in the history of contemporary American federalism, the prospect of federal grants provided an incentive for state officials to take action in an area in which local opinion, interest and circumstances would have contributed to inertia.

To Assist the Commission with its regulatory function, and Environmental Protection Hearing Board was created with responsibility for hearing appeals involving actions or orders issued by the Bureau of Environmental Health, a division of the Department of Health, Welfare and Rehabilitation, charged with implementing Commission decisions. In addition to its quasi-judicial function, the Hearing Board was also charged with developing information and making recommendations to the commission about air quality control regulations. The hearing Board, a committee of five gubernatorial appointees, had limited powers: it was not empowered to make decisions, rather, it could only make recommendations to the Commission whose decisions were binding. This power to render quasi-judicial decisions was the real source of the Commission’s power. Most executive branch commissions are merely advisory bodies; by contrast, the State Commission of Environmental Protection had genuine power behind its rule-making authority – power that could significantly impact Nevada’s economy and way of life.

Not only did the Department of Health, Welfare and Rehabilitation implement the Commission's regulations, it also supplied the Commission with its staff and technical support. Placing the Commission within the Department of Health, Welfare and Rehabilitation was a logical choice, given the intention of the Legislature. The 1971 legislation giving the Commission jurisdiction over air quality -- and, shortly thereafter, water quality -- had the effect of equating the Commission's responsibility and, by inference, its definition of environmental problems, with matters of public health. Indeed, the Commission was created pursuant to the "police power" of the state "to protect the health, peace, safety and general welfare of its people." The broad perspective of environmental concern

that informs public opinion today was only hinted at in the 1971 legislation, which anticipated "quality of life" issues by linking the regulation of air quality to the prevention of "injury to plant and animal life" and to preserving "visibility and scenic, esthetic and historic values of the state."

The State Commission of Environmental Protection and its successor, the State Environmental Commission, were designed to serve as "Nevada's primary arm in combating pollution." Although others, especially in the executive branch of government, were thinking more broadly about the environment, it was the narrower view of the Commission's powers--the concern with pollution, thus with public health -- that guided the Commission and that was to guide the new State Environmental Commission when it was established by the Legislature in 1973.

1971 was a busy year for the State Legislature and the Commission. Besides the Air Pollution Control Act, the Legislature enacted the Water Pollution Control Act, adding water pollution to the Commission's jurisdiction and giving the Commission substantial administrative and regulatory responsibility. Early in 1972, the Commission adopted the Nevada Air Quality Regulations pursuant to the air pollution control law of the previous year. The Commission's regulations went substantially beyond Federal standards and were generally greeted with approval by those who followed and had an interest in environmental issues. However good the beginning, mounting environmental concern demonstrated that the State's first major effort at regulating the environment was insufficient: in an action anticipating future events, the very same agency heads who composed the Commission noted that their work constituted "stopgaps" in light of "present and future needs for total environmental quality."

### **1971-1973: The Governor Looks at the Total Environment**

In 1971 Federal grants were not the only stimulus motivating government's interest in the environment. Environmental consciousness was beginning to perk, as demonstrated by Governor Michael O'Callaghan's Executive Order of February, 1971, creating the Governor's Environmental Council. The popularity of the Governor gave him the freedom to champion causes -- such as, for example, consumer affairs -- that had not yet permeated public opinion and that were often unpopular in the Legislature. The Governor's Environmental Council had one assignment: to prepare a report by January, 1973, assessing the total environmental needs of the state and providing the Governor with recommendations for meeting those needs. Unlike the State Commission of Environmental Protection, the Council's mandate was broad, including subjects of water pollution, air pollution, solid waste, recycling, radioactive waste, land use planning, mining, natural resource allocation, population growth, green belts, wildlife preservation, mass transit, noise pollution, off-road vehicles, environmental education and the reorganization of state government to address present and future environmental needs.



The Commission and the Council shared the same membership: they were heads of government agencies, including the Chief of the Bureau of Environmental Health of the Health Division of the Department of Health, Welfare and Rehabilitation, the Director of the Nevada Department of Fish and Game, the State Highway Engineer, the State Forester Firewarden, the State Engineer, the Director of the State Department of Conservation and Natural Resources, the Secretary-Manager of the State Planning Board and the Executive Director of the State Department of Agriculture. These men, all heads of government agencies, were to be the principal architects of the State Environmental Commission.

In the case of both air and water quality, the Council's Report found fault with the 1971 laws that created overlapping and confusing jurisdictions between the Commission and other government agencies, making decision-making, administration and implementation clumsy and difficult. The Report applauded the scope and depth of the Commission's regulations in these areas, but found fault with implementation because of inadequate staffing, insufficient budget and lack of dedicated laboratory facilities.

The Governor's Council recommended that the governmental process be "streamlined" by creating a new "State Environmental Commission" that "centralized" in one body "environmental rule-making authority." Furthermore, to avoid the "duplication of function and effort", it recommended that "administrative authority... be centralized within the Bureau of Environmental Health."

The Council proposed a Commission of nine members, including six representatives of government agencies, including the Department of Fish and Game, the Department of Agriculture, the Division of Water Resources and the Division of Forestry of the Department of Conservation and Natural Resources, the Department of Urban Planning, and the Health Division of the Department of Health, Welfare and Rehabilitation. The remaining three appointees would be appointed by the Governor, including "at-large, industry, and conservation representatives."

The Council also recommended that the Hearing Board be retained and be given authority to make binding decisions, taking this power out of the hands of the Commission. Thus, the Commission would surrender its quasi-judicial power, instead focusing on its regulatory responsibilities for air and water. The Council also advocated that the Commission have significant staff of its own and a budget to allow it to meet its responsibilities.

The Council concluded its discussion of a proposal for a new environmental commission by addressing a point of controversy: "These recommendations basically reject the proposition that a new bureaucratic superstructure containing a separate environmental protection agency should be created." Environmental groups advocating the creation of a super environmental agency lobbied the

Legislature and the Governor's Council during the time its Report was being prepared. Even within the executive branch of government this suggestion had supporters. For example, the Environmental Advisory Committee advocated the creation of a seven-person commission with authority to make policy independent of the state Legislature. In addition, the Environmental Advisory Committee would have given cabinet level rank to the Executive Director of the proposed Commission, making the Commission independent of all other government agencies and empowering it to coordinate the activities of other agencies where environmental issues were concerned. Those proposing such a commission believed that legislative inertia and special-interest orientation, in addition to the growing urgency of environmental problems, necessitated a strong, independent environmental agency. To others, it seemed that this proposal would have created nothing less than the equivalent of an environmental Tsar.

By contrast, the Governor's Council recommended that a new Commission be attached to and operate within an already existing department of government. Furthermore, it proposed a commission with power to establish regulations on the basis of legislatively directed policies. Under its proposal, the elected members of the Legislature, not an independent Commission, would be the seat of policy-making authority, maintaining the union between political responsibility and policy-making with respect to environmental issues.

This gentlemen's disagreement in Nevada in the early 1970s anticipated a controversy, often passionate and strident, that would sweep into its vortex environmentalists and other political activists, legislators and the public over the next two decades -- controversy that continues to this moment. It placed the state on the cutting edge of what was to become a nationwide debate between those who wanted to take authority over the environment out of the hands of the Legislature, depositing it in a separate and independent body of government, and those who wanted to maintain legislative responsibility.

The Governor's Council offered four reasons in support of its position.

First, the existing organization which has made significant progress is retained and strengthened. Secondly, the program will be economical to administer, especially since expertise is drawn from existing state agencies. Thirdly, the reorganization is simple in conceptual framework and brings together representatives of state agencies involved in environmental protection as a team. Lastly, Nevada citizen representatives for the first time will have a direct vote in all Commission proceedings.

The Council's Report prevailed with the Legislature over the idea of creating a super environmental agency. In fact, the latter concept never had much of a chance to begin with. The Council, composed of agency heads, had every reason to oppose the creation of a super environmental

agency that would have preempted the jurisdiction, powers and, worse, the budget and staff of their own agencies. The Council's first line of defense was the question of cost. It was estimated that the establishment of a new environmental agency, independent of and unattached to any existing division of government, would have cost the state in excess of one million dollars during its first year of operation - a compelling argument with any legislative body. Associated with the issue of cost was the idea of creating another government bureaucracy -- not just another bureaucracy but a super agency -- and in an area of the state's life that affected so many key interests and industries. The specter of such an agency was anathema to the fundamentally conservative political culture of the state and the State Legislature.

There is, however, another significant and perhaps more important reason why the Council was able to prevail so easily over the less tutored representatives of environmental activist groups and over the Legislature. The agency heads composing the Council knew from experience and personal relationships just how far the Legislature was prepared to go in creating a new Commission. A revolt of conservative Senators against the proposed State Environmental Commission was only quelled after Senators received guarantees that a substantial number of Commission seats would be held by Agency heads, persons whom they knew, with whom they had worked and in whom they had some confidence. A broad range of senators were also displeased by the suggestion of the Council's Report that a representative of a conservation group should hold a seat on the new Commission. This smelled of radicalism in a state with a "frontier" political culture and a strong economic orientation toward certain industries. Felling ran so strong that Senator John Fransway voted against the establishment of the Commission – the Commission of which he would later become the second Chairman.

The Council judiciously framed its arguments for the Legislature, such as its suggestion to place "at-large" representatives on the proposed Commission. Although the Legislature objected to a representative of an environmental group on the Commission, public input was thought important. The idea of public representation on the Commission also gave the Legislature wiggle room. From its point of view, public representation seemed a tidy way of balancing and, thus, of dispensing with the demand for a representative of the environmental community. From the Council's point of view, public representation on the proposed Commission was a democratic response to the idea of a super agency headed by an environmental Tsar. The notion of at-large members appealed to an reinforced basic democratic philosophy – that the public or their elected representatives, not an appointed Director, should set key public policy and regulation.

### **1973: Birth of the Commission**

After a number of compromises, the State Legislature adopted the broad outline and many of the specific suggestions of the Report of the Governor's Council. Perhaps this is testimony to the

popularity of Governor O'Callaghan who, during his tenure, introduced and pursued many innovative ideas. In May, 1973, amendments to the 1971 legislation transformed the State Commission of Environmental Protection into the State Environmental Commission. The commission was to be composed of nine representatives, including the Director of the Nevada Department of Fish and Game, the State Forester Firewarden, the State Engineer, the Executive Director of the State Department of Agriculture, a member of the State Board of Health (to be designated by the Board), and four public members to be appointed by and to serve at the pleasure of the Governor "who have demonstrated knowledge and expertise." The chairman of the Commission would also be appointed by the Governor. Thus five heads of government agencies that were formerly associated with the State Commission of Environmental Protection and with the Governor's Council were dropped from the new Commission in favor of four public members and a representative of the Board of Health.

Not only did the Commission get a new name, it also got a new home, it now became a division of the State Department of Conservation and Natural Resources. The Commission was given broad jurisdiction and generous powers over air and water quality. Environmental rule making was at last centralized in one government body, with the anticipation that subjects other than air and water would be added to the Commission's responsibilities in the future. Furthermore, the quasi-judicial duties that had been divided between the Hearing Board and the State Commission of Environmental Protection were united and incorporated in the new Commission, thus ending the division of function and responsibility that had been a subject of criticism by the Governor's Council. Overall, the jurisdiction and powers of the new Commission made it potentially the singularly most powerful environmental agency in any of the Western states.

The new Commission's first Chairman was former State Assemblyman Norman Glaser, a Democrat who had lost his Assembly seat in the redistricting shuffle of 1973. He would serve until successfully running for the State Senate in 1976. In 1975 the State Legislature gave the Environmental Commission regulatory authority over solid waste, increasing its responsibilities at the expense of the State Board of Health. Also in 1975, the Legislature asked the Commission to conduct a cost feasibility study of the possibility of implementing a mandatory vehicle emission inspection program. This marked the beginning of the State's attempt to come to grips with the role of auto emissions as a contributing factor to air quality, an area in which the Commission would play an ever increasing role.

### **Mid 70s: Politics and the Commission**

In the mid 1970s, the Commission drew the public's attention to itself for the first time as it found itself embroiled in a statewide controversy. The problem began at the Kennecott Copper smelter in Ely, Nevada -- in rural Nevada, in the "boondocks of the boondocks", as one former Commissioner put it. Kennecott, the principal employer in Ely, was releasing pollutants into the air in violation of standards established by the Federal Environmental Protection Agency. Glaser and the Commission

sought to intervene with the EPA inserting the commissions authority as the responsible state agency for air quality between the federal government and Kennecott. It was not just the interests of Kennecott that were on Glaser's mind, indeed, on the minds of many state officials. The Ely smelter employed hundreds of persons, and closing the smelter meant economic disaster for this isolated Nevada community. In response to the EPA and to the Commission, Kennecott introduced a number of improvements to its smelter, including scrubbers, but still failed to satisfy EPA standards. The EPA ordered the smelter closed.

In the midst of the controversy, Glaser resigned to run for the State Senate and the Governor appointed former Senator John Fransway as Commission Chairman. Fransway, who describes himself as an "ultra-conservative," served as a Republican member of the Senate for twelve years. Fransway recalls that he was the only member of the Senate to vote against the Commission. The Governor assured Fransway that this was a commission with real powers, not just an advisory board, and that Fransway was needed to balance the growing liberalism of the Commission, a theme that was certain to entice Fransway back into public service. In particular, the Governor wanted Fransway to insert himself into the Kennecott controversy, and appeared to have confidence in Fransway's tenacity to get the job done. The Governor "took a lot of heat" for the Fransway appointment, undoubtedly balanced by the heat he was taking over events in Ely. Fransway did not disappoint the Governor. He and the Commission backed the EPA down, reopened the smelter, and ended the crisis in Ely.

In part, Fransway saw his mission as "keeping the feds out of Nevada." His attitude, an expression of old fashioned Nevada "frontier" pride as much as an expression of conservative political beliefs, was shared by many of his fellow citizens, including many of his fellow Commissioners. The crisis in Ely precipitated the first of many instances where the Commission served to protect local interests from federal regulators. Although the Commission is "charged with bringing Nevada practices into conformity with federal regulations, it has frequently acted to protect Nevada's economy and communities from "outsiders," including what many residents consider to be excessive or zealous federal edicts. This role of the Commission is one that has evolved out of its responsibility as the lead government agency in the areas of air quality, water quality and waste; and although a de facto role, it has become an important Commission function.

### **Late 70s: The Commission Grows**

In 1977, another amendment to the 1971 legislation required that one of the public members of the Commission be "a licensed contractor or builder," the first time that any qualification had been added to one of the Commission's at-large seats, setting a precedent that would be used again in the future. The amendment slipped through the Legislature with hardly a murmur. Although the Governor's Council recommended Commission representation from "industry," to put a licensed contractor or

builder on the Commission was to recognize the increasing difficulty of real estate developers with the growing body of environmental regulations and with environmental groups, especially in Southern Nevada. It also recognized the influence that this industry could bring to bear on the State Legislature. Although a pro-developer act, the Legislature institutionalized for the first time representation with a business point of view, adding what many believed to be a necessary correction to Commission's direction.

Addition of a businessman to the Commission was greeted as a welcome balance to the growing power of staff. In these early years of the Commission's history, the Commission, working out its own identity, faced a number of internal problems, including relations with the Department of Conservation and Natural Resources. Several Commissioners thought that the Department's staff was "arrogant and dictatorial." Staff, it was believed, was anti-business, and often failed to appreciate local circumstances, particularly the problems of small business or of large industries vital to employment and the state's overall economy. Commissioners, it seems, frequently contemplated reversing the decisions of staff, particularly in violation hearings when the Commission acted as a hearing board, although they seldom exercised the power or reversal in fact. On the occasions when the Commission did overturn staff decisions or returned items for the staff to reconsider their recommendations, Commissioners seem to have taken special delight.

The Commission had one full-time staff person of its own in 1977; this was increased to two full time employees in 1979 -- but not without a struggle, Fransway wanted to make the Commission a separate and independent division of the Department of Conservation and Natural Resources. His budget, which was submitted to the Department before it went to the Legislature, came back to him as an allocation of the overall Department budget. He bristled at this, partly because he did not believe that the Commission was getting an adequate budget and partly because his full-time staff person was assigned other duties by the Department when the Commission was not meeting. To add insult to injury, the Department allocated Fransway a part-time secretary, Fransway went to Glaser, now a Senator, and asked him for help in obtaining a full-time secretary, thus adding an additional staff person to the Commission.

The staff is not the only function that increased from 1978 to 1979. Commission expenditures increased from \$36,735 to \$50,520. During 1979, legislation was passed adding requirements for the Commission to establish several new standards, policies and controls in the areas of air, water and waste. The Commission responded by publishing the following regulations: Air Quality Regulations, Diffuse Source Regulations, Hazardous Waste Regulations, Mobile Equipment Regulations, Solid Waste Regulations and Water Pollution Control Regulations. 1979 was one of the most active years in the Commission's history.

## **1981: Politics Again**

In 1981, a flap involving the Board of Health removed one of the most respected members of the Commission and once again demonstrated the power of the Governor's agenda over the Commission. That year, Dr. Thorne Butler, who had served on the Commission from its inception in 1973 as the representative of the Board of Health, was not reappointed to the Board by Governor Robert List, thus ending his service on the Commission. Butler was known for his intelligence, insights, and for his dispassionate approach to problems. In the late 1970s, List wanted to close the low level radioactive dump in Beatty, but the State Board of Health would not cooperate. Butler was one of the members of the Board opposed to closing the dump. List had the Attorney General, Richard Bryan, sue the members of the Board of Health. The Board won the case; but in 1981, List got what he wanted by appointing new members to the Board of Health. A new Board met and voted to close the dump.

There have been only a few occasions when the Governor has used his power of appointment to affect the composition, operations or the behavior of the Commission. The appointment of Fransway and the failure to reappoint Butler to the Board of Health are the most significant. Most gubernatorial appointments of the Commission's public members have reflected fairly ordinary political judgments, such as the decision to reward Glaser with the Chairmanship of the Commission in 1973 after he had lost his Assembly seat during redistricting. Indeed, throughout its history, the Commission has been uniquely free of political influence from both the executive and legislative branches of state government. Even private sector influence has been relatively benign. Only three Commissioners of the present Commission admit to being approached or "lobbied" by private sector interests, and then only on rare occasion. Several other Commissioners admitted surprise that they have never received so much as a telephone call or letter on behalf of a private interest.

## **1980s: The Past Decade**

In 1983, State Government, strapped for revenue by the recession, cut the budget of the Commission, eliminating its own staff, and shifting staff support to a division of the Department of Conservation and Natural Resources, the Division of Environmental Protection. It was at this time that the Director of the Division of Environmental Protection assumed responsibility for staffing the Commission and became its Executive Secretary. These cuts resulted in a significant drop in Commission expenditures, from \$53,896 in 1983 to \$4,979 in 1984.

It was also during this time that a new Commissioner was added, the Executive Director of the Department of Minerals. Mining was a chief source of water pollution in the state, and the

Commission was hearing an increasing number of cases relating to mining. Fransway and other Commissioners believed that they needed the Executive Director on the Commission for his expertise and judgment. Again the Legislature amended the 1971 act and again, with hardly a murmur. This addition boosted the Commission's membership to an even ten members. In the midst of these changes, the Commission developed regulations governing hazardous waste and revised regulations governing automotive inspection maintenance programs in several counties.

In 1985, John Fransway was succeeded by Melvin Close, Jr., one of the co-sponsors of the 1971 bill. Fransway had made himself unpopular with builders in Clark County by his support of water pollution regulations. Governor Richard Bryan fired him, he believes, for "stepping on the toes of too many Las Vegas people." Close was a distinguished attorney and former Democratic State Senator who for years had served as Chairman of the Senate Judiciary Committee.

During Close's Chairmanship the Commission has devoted substantial attention to reviewing, revising and updating existing regulations. In addition, in 1986, the Commission adopted new regulations governing ambient air emissions of toxic materials, and more recently new regulations controlling the impact of mining on water quality. It has also moved aggressively into the area of hazardous waste disposal. In 1988, the Commission adopted the Statewide Hazardous Waste Management Plan. Among other things, these regulations sought to create a balance between out-of-state hazardous waste disposal in Nevada and the economic benefits to small counties from out-of-state dumping.

This is another example of how the Commission has buffered local interests and needs against the more extreme demands of the organized environmental community, walking a thin line between environmental concerns and economic reality. It is also an example of how the Commission typically operates – on the basis of consensus. The Commission's decision making process considers a multiplicity of interest when formulating new regulations or, when sitting as a hearing board, considering violations of existing regulations. This is, perhaps, no more than a reflection of its own diversity and representation of interests. Although in final form the Commission's regulations tend to be consensus oriented, its decisions are also framed by a strong consciousness of the laws that Commissioners are charged with administering, regulating and enforcing, and by an overall sympathy with the environment. Thus, each of the Commission's decisions has had the effect of nibbling away just a little bit more at the state's environmental problems.

### **1990s: The Present Commission**

During the 1989 Legislature, the 1971 legislation was amended once again, expanding the public members from four to five, and designating the new public member to be one who "possesses expertise in performing mining reclamation." This amendment created the eleventh seat on the



Commission and shows the increasing concern of the Legislature for the impact of mining on the environment. It also shows a change of emphasis in legislative thinking.

In 1984 when the Director of the Department of Minerals was placed on the Commission, most observers looked upon this addition as a pro-industry appointment. In 1989, the addition of an expert to the Commission in mining reclamation suggested a pro-environment emphasis or, at the least, an attempt by the Legislature to create a balance between industry and environmental interests. This is underscored by the fact that the conflict of interest rules of Commission membership made it likely that the new Commissioner would be drawn from the academic community.

The members of the Environmental Commission are [were]:

**Government Appointees:**

Melvin D. Close, Las Vegas, Chairman  
Marla Boies Griswold, Wells  
Harold J. Ober, Las Vegas  
Fred E. Wright, Sparks  
Gerald F. Gifford, Reno

**Agency Heads and Representatives:**

William A. Molini, Director, Dept. of Wildlife (Vice Chair)  
Thomas W. Ballow, Executive Director, Dept. of Agriculture, Reno  
R. Michael Turnipseed, State Engineer, Carson City  
Russ Fields, Director, Dept. of Minerals, Carson City  
Lowell V. (Lody) Smith, State Forester Firewarden, Carson City  
William B. Bentley, M. D. Las Vegas, - State Board of Health

*Readers Note: The actual current list of SEC Commissioners is on the web at:*  
<http://www.sec.nv.gov/main/member.htm>

Only one member of the Commission has served since its inception in 1973, Thomas Ballow. Dr. William Bentley has served on the Commission since 1981, while Melvin Close, Marla Griswold, Fred Wright and Harold Ober are each in their second term. Ober is a licensed contractor and a developer and sees himself as bringing a business point of view to the Commission. Marla Griswold, the lone woman on the Commission, is from a well-known Nevada family. She is a rancher, and her seat is seen as the voice for this important segment of Nevada's history and economy. Professor Fred Gifford, who is an expert in mining reclamation and who holds the newest seat on the Commission, is from the academic community. Of the members of the Commission, the three from Southern Nevada are Close, Ober, and Bentley. Since its inception all Commissioners have been appointed by

Governors O'Callaghan(D), List (R), Bryan (D) and Bob Miller (D), three democrats and one Republican.

As to the Chairmen of the Commission, Close and his two predecessors were appointed by Governors O'Callaghan and Bryan (Close was reappointed by, Governor Miller), all Democrat governors; all three Chairman were former State Legislators. Except for the addition of two members and the rearrangement of the Commission's staffing, structurally the Commission has changed little since its inception in 1973. As with children, the Commission's early years were its most formative, defining its purpose and molding its character. In a later chapter we shall consider the charges of the Commission's critics. Many of its critics seek to be helpful and offer positive suggestions. Equally, many fail to understand the character and purpose of the Commission as revealed by its history and thus they ask of the Commission what it cannot give and what it was not designed to accomplish.

### **Rules And Procedures**

The State Environmental Commission attempts to meet at least once a month, but, like any other governmental agency, it is constrained by its budget. The budget is one factor in determining the number of meetings per year; another is the schedule of the Commissioners, since each has a busy schedule associated with his or her full-time occupation and personal commitments. Because the number of times the Commission meets per year varies, the Commission has no set dates for its meetings. Thus, meetings are scheduled as needed. In recent years, Commission meetings have been convened five or six times annually.

The Commission is required to notify the public at least 30 days prior to a meeting. Notice must be given of Commission meetings in newspapers around the state once a week for 3 weeks. This process provides those who wish to appear before the Commission with ample time to prepare evidence for their presentation.

The Commission also maintains a mailing list that is open to any interested party. Those on the mailing list are notified of upcoming meetings, including date, time and place, and the subject of the meeting. In addition, the mailing list is used to provide its members with information on specific subjects. When the Commission adopts regulations or takes any decisions regarding that subject, copies are sent to those who have indicated a prior interest.

A majority of the Commission constitutes a quorum. Furthermore, the Commission decisions are based on the votes of a majority of those present at any particular meeting. Thus, it is conceivable that Commission decisions would reflect the votes of only four of its members. Commission meetings are known to have been canceled because it was not possible to raise a quorum. The Commission

Operates according to commonly accepted parliamentary procedures as laid out in the State Administrative Code.

The matters that come before the Commission as a whole concern the adoption, amendment or review of regulations, standards or codes pursuant to the mandate given to it by the State Legislature. When the Commission's deliberations result in new or amended regulations, standards and rules, it is for the purpose of preventing, correcting or mitigating existing or potentially undesirable situations.

Appeals come before the Commission when a party protests a decision by the Director of the Division of Environmental Protection, the enforcement agency of the Commission, or by the Commission involving a permit, fine, regulation, rule or standard. When the Commission convenes as a hearing board to consider appeals, it does not meet as a whole. Rather, appeals are usually heard by "three man panels." Panels are convened as needed, and their membership is usually selected on the basis of who is available at the time. Some Commissioners serve more frequently than others because of the convenience of their personal schedules. These panels require a substantial amount of work, and not many Commissioners are known to volunteer for them. When the Commission hears an appeal, a set procedure must be followed a copy of which appears in Appendix C. ( **Readers Note: the SEC "Rules of Practice" are on line at the following address:** <http://www.sec.nv.gov/archives/regdoc/p2003-10a.pdf>)

### **The Commission And Its Critics: An Evaluation**

The Environmental Commission is one of the best kept secrets in the State of Nevada. Over a period of three months, the staff of the Rose Institute of State and Local Government conducted face to face interviews with thirty seven key opinion leaders from around the state, including state legislators, county commissioners, representatives of the print and electronic media, Academics, business leaders, environmental activists and civic leaders. Many of those interviewed had never heard of the Environmental Commission; those who had heard of it could seldom recognize the names of the Commission's members; and almost all were unaware of the role and powers of the Commission.

### **The Critique**

The Commission's low profile has not prevented a body of criticism from emerging on the part of state legislators, county commissioners, environmental activists, business leaders and others whose interests or principles have been touched in one way or another by the decisions of the Commission. Indeed, during interviews with members of the Commission, important suggestions were made about enlarging the scope of the Commission's work, altering its composition and improving its operations.

From our interviews certain criticisms were noted. Criticism of the Commission falls into two categories: 1) The composition and structure of the Commission, including the representation of special interests and the role of staff: 2) the failure of the Commission to assert its powers more aggressively.

Critics charge that:

- There are too many representatives of government agencies on the Commission and not enough public representatives;
- The heads of government agencies, who account for a majority of Commission members, represent the special concerns of their department's constituents rather than the public interest;
- Public members of the Commission are appointed without reference to environmental credentials or interests but, rather, because they represent particular industries or commercial interests;
- Because of the composition of the commission, special interests have played an influential role out of keeping with the Commission's mandate;
- The Commission lacks representation from the environmental activist community, such as the Sierra Club;
- There is insufficient representation from Southern Nevada on the Commission;
- There are not enough women on the Commission;
- Business interests, or a business point of view, are not sufficiently represented on the Commission;
- The Commission rubber stamps the determinations of the staff of the Department of Environmental Protection;
- The Commission, having no staff of its own, is unable to assert its powers over a broader range of issues;
- Staff, which tends to be anti-business, dominates the Commission;

- Because the Governor alone appoints the members of the Commission; the State Legislature cannot exercise oversight over the Commission;
- The Commission, which is not subject to the usual checks and balances of representative government, lacks political responsibility;
- The Commission has too much power for a body that has no formal responsibility to the Legislature or to public opinion;
- Members of the Commission enjoy the honor but not the responsibility or the work;
- Because Commission members are busy with their own jobs and lives, it is often difficult to raise a quorum for Commission meetings and for the three person panels that conduct much of the Commission's business;
- Given the importance of environmental concerns, a part-time Commission is insufficient for the job at hand;
- The Commission is not a sufficiently "high powered" body to manage the state's environmental problems; and its lack of public recognition fails to make it a rallying point for public opinion and concern about the environment;
- The Commission is "reactive rather than proactive;"
- The lack of environmental consciousness in a state with a frontier outlook infects the Commission, making it insensitive to urban interests and less activist than its mandate calls for;
- The Commission has failed to move aggressively on air quality standards, on the dumping of solid and hazardous waste, and on the growing water shortage crisis;
- The Commission has failed to protect Nevada from environmental damage by out-of-state polluters, particularly California, making Nevada the dumping ground for California waste and adding to the dangerous levels of auto emissions from the influx of new California residents.
- The Commission serves as a buffer between the implementation of federal regulation and local Nevada communities, thus blocking the full impact of badly needed federal regulations on such problems as air pollution;

- The Commission is wrongly named: it is less environmental than health and safety-oriented. Its health and safety concerns are based on the principal industries that dominated Nevada's economy at the time the Commission was empowered. The Commission, if it is to be a true environmental commission, needs to be restructured and empowered to treat the whole of the environment with clear authority to plan for the future.

Do the Commission's critics raise genuine issues? Some of the criticisms appear contradictory, perhaps even self-serving. For example, some of the very same persons who criticize the Commission because its members represent special-interest constituencies propose adding to the Commission's membership a representative of the environmental activist community, another special interest advocate. Perhaps these critics are merely seeking a balance between various and competing interests and points of view. Or do they mean that the only, or the predominant, point of view that should be represented on the Commission is that of the organized environmental community?

### **The Commission: Make-up and Consensus**

The composition of the Commission's membership was designed to represent a spectrum of opinions and interests, thus insuring that the Commission's decision-making process would result from a consensus- building process. This is reflected in Governor's O'Callaghan appointments to the Commission and in the appointments of all subsequent Governors.

Consulting the history of the Commission illuminates the character of its membership and the way in which it conducts its business. Although the Report of the Governor's Council proposed only general guidelines as to the membership of a new Commission, it was understood that many of the same department and agency heads who were members of the Council and of the State Commission of Environmental Protection would be members of whatever new Commission emerged from the Legislature. To pack a new Commission with representatives of government bureaus seemed quite reasonable by the standards of the day. Information and expertise were naturally associated with these bureaus; to utilize their expertise and other resources, such as laboratory facilities, was cost effective. Finally, the involvement of department and agency heads was necessary if the Legislature was to give its approval to establishing a powerful commission over the environment.

Given the importance of a new commission to the departments and agencies over which heads of government bureaus presided, it might have been expected that these government officials would design an institution drawing a majority of its members from their own ranks. In fact, this did not occur. The Council's Report recommended that the Commission have three public members, one representing industry, one conservation, and a third drawn from the public at-large. The Legislature

enlarged upon the Council's recommendation by requiring four public members, thus insuring the public access to the Commission's decision-making process. According to the views of the time, a body of nine -- four government heads, a member of the Board of Health and four public representatives -- guaranteed that the Commission would have a broad base of expertise, in addition to ample public input. The State Legislature enacted into law a Commission that balanced government and public representation and, furthermore, utilized the public members to establish representation for several interests of importance to the State's economy.

Between 1977 and 1989 further definition was provided by the Legislature to the interests to be represented by the Commission's public members. In 1977, the Legislature amended the 1971 legislation requiring that one of the four public members be a representative who is a licensed contractor or builder. The Commission had such a person on it from the beginning in 1973. The 1977 amendment was in the nature of a *fait accompli*. The person who holds that seat today, Harold Ober, sees himself as bringing a "business point of view" to the deliberations of the Commission and to the findings of staff. In 1983, the Executive Director of the Department of Minerals was added to the Commission--another government representative--and balanced in 1989 by a public representative with expertise in "mining reclamation." These two complementary seats recognize the importance of mining in the State's economy and its impact on the environment. One of the public seats has traditionally gone to a representative of agriculture or ranching. This seat, held today by Marla Griswold, provides balance to the seat held by the Executive Director of the Department of Agriculture. Not only do Commission members represent a variety of interests but, in addition, the Legislature has paired interests within the Commission so that government and private sector members balance one another.

The Governor's Council and the Legislature sought to create a balance between the various major and competing interests of the State, both public and private, that affected the environment, including economic interests. After all, in 1973, economic issues played a much greater role in public opinion than environmental issues, the latter only beginning to emerge as a object of general public concern. The idea of a Commission that was balanced, and thus, of a Commission that operated by consensus, was conceived as the right and proper approach to environmental problems by the Governor and State Legislature.

The legislative experience of the Commission's three Chairs, in addition to the goodwill exhibited by the Commissioners, reinforces the consensus orientation of the Commission. Although Close was one of the authors of the 1971 legislation establishing the State Commission of Environmental Protection, neither he nor his two predecessors had significant expertise in environmental issues. The first three Chairmen of the Commission, all former legislators, were appointed or reappointed by Governors O'Callaghan, Bryan and Miller for reasons that complement but that were not essentially related to environmental concerns. Among these are skills that the Chairmen earned or

demonstrated as legislators and that caught the eye of the Governors, such as the legal expertise of Close, the ability of the Chairs to mobilize the Commission for specific actions desired by the Governor, as the case of Fransway, and, to a much lesser extent, the benefits that come from awarding positions for political service. Glaser and Close are conservative to moderate Democrats. Fransway is a conservative Republican. All three possessed a concern for business and industry as variables in any environmental equation. Their professional and legislative backgrounds, in addition to their political beliefs, informed their behavior as commission Chairs, and made them more likely to promote consensus than confrontation.

That the membership of the present Commission operates in a relatively harmonious fashion given the contentious nature of many of the issues before it, is thus, no accident. For nearly a score of years since its inception, the Commission has maintained an identity characterized in a general way by a unique Nevada outlook and in particular by the kinds of men who have appointed its members, the disposition and sentiments of the members themselves, and the kind of men who have chaired it. For example, even though Governor O'Callaghan and Senator Fransway have very different political ideologies, they describe themselves as "friends," and share a straight-talking directness and a concern for Nevada's well-being that transcends party and ideological lines. All of the Commissioners, past and present, who were interviewed for this study describe their relations with one another in warm terms, even when admitting the existence of significant differences over environmental issues and political ideology.

There is much pride among these Nevadans, which has produced a "rally round the flag" attitude among Commissioners when it comes to their responsibilities and sense of purpose. For example, during interviews, nearly every member of the present Commission spoke about protecting Nevada from becoming "a dumping ground for California's waste." Although most of the Commissioners were born and reared in other states, three coming from California, the feeling of local pride and, thus, of common purpose, sense of duty and, in the case of the public members, the honor which comes from serving as a gubernatorial appointee has imparted to the Commissioners a sense of unity and dedication that generally reaches beyond the government agency or private sector interest that each represents. These sentiments, contribute substantially to the consensus orientation of the Commission.

None of the Commissioners is inclined to add a member to the Commission from the organized environmental community -- all of them declaring that they themselves are "environmentalists" and, thus, that the Commission already includes representation of a pro-environmental point of view. Perhaps what is really on the minds of the Commissioners is their perception that environmental activists are extreme in their demands and not consensus oriented. Undoubtedly the State Legislature, which held this point of view in 1973 and which is responsible for amending the membership of the Commission, also shares this point of view -- although with greater representation



for Southern Nevada following redistricting this attitude may change. The demographics and interests of Commission members are weighted in favor of rural Nevada. With the continuing growth of Nevada as an urban state, it is already one of the most highly urbanized states in the Union and promises to become even more urbanized over the next decade -- perhaps there will be an even greater demand for a representative of urban interests on the Commission than from the activist environmental community.

The membership of the Commission was by all measures -- certainly by comparison with other states -- conceived in a liberal spirit. To those who believe that there are too many representatives of government on the Commission, it should be noted that in 1971 the public was only beginning to exhibit the interest in environmental issues that today dominates political discourse. The far-reaching Report of the Governor's Council, the authors of which were heads of government bureaus, demonstrates concern about panoply of environmental subjects that only in recent years has informed and solidified public thinking about the environment. By comparison, those who criticize the special-interest representation of the Commission's public members, find fault with them, not because they represent special-interests, but because they do not represent the right special-interests, the organized environmental community. It is true that public members have been appointed without any prior knowledge of, or special identification with environmental issues. On-the-job training in this powerful but part-time body may put public members at a disadvantage vis-à-vis its government members and staff. On the other hand, the Legislature did not establish the public's role on the Commission on the basis of familiarity with, or expertise in, environmental issues. Rather, it designed a role for public members whose standing in the community and knowledge of their own industry would allow them to speak to environmental issues within the broader context of Nevada's economy and way of life. The legislation and amendments creating the membership of the Commission have remained consistent in character and purpose. Unless the composition of the Commission is to be entirely redrawn, those critics who wish to change its membership need to build a case for new members based on the historical evolution of the Commission's membership -- that is, to argue that an additional member would represent an important and now missing element in the consensus-building approach to the Commission's work.

### **Staff: Good or Bad?**

One of the most frequently heard criticisms of the Commission regards staff. From 1973 to 1982 the Commission had its own full-time staff. During the recession of 1982, the Commission's staff was replaced with staff from the Division of Environmental Protection, with the Director of the Division acting as Executive Secretary of the Commission.

Was the Commission more active or more activist when it possessed its own staff? Prior to 1982, the Commission compiled an impressive record of regulations in such areas as air quality, water

quality and waste disposal. It has refined and added to these regulations since. There is little in the Commission's history to suggest that it was more active, more aggressive or operated any better in any particular period of its existence.

Yet, the Commission is dependent on the research, findings and recommendations of staff. Several of the Commissioners indicated that they generally accept the recommendations of staff; indeed, some estimated that they accept as a matter of course approximately 85 percent of staff recommendations. Although some Commissioners seemed uncomfortable about this, they quickly pointed out the numerous instances when Commissioners required more information from staff or asked staff to reconsider its recommendations. The staff generally receive a favorable rating from the Commissioners, even from those who perceive an anti-business sentiment in staff attitudes. The rally round-the-flag attitude of Commissioners even embraces the role of staff.

Criticism of the role of staff or of the lack of an independent Commission staff, however keenly felt, is misdirected. Staff serves a part-time commission, the members of which are busy men and women in their own vocations and lives. Critics of Commission staff are, in fact, expressing frustration with what they see as the Commission's failure to play a more decisive role in planning for the future of the State's environment and in addressing what they believe are critical environmental problems. Those critics who see, in staff behavior and recommendations, insensitivity to the needs of business, although there is truth in their critique, should recognize that staff at all levels of government tend to exhibit similar insensitivity. Because of their own special interests, staff represents a check on the enthusiasm of Commissioners for business or industry interests. By the same token, Commissioners are responsible for disciplining the ideological fervor of staff – which is admittedly more difficult with a Commission composed of part-time members.

### **Reactive Vs. Proactive**

The commission is often accused by its critics of being “reactive” rather than “proactive.” Certainly, its powers do not conform to such a description. In 1973 the Commission was given jurisdiction over air and water. In 1975 the Commission was given added regulatory authority for solid waste, further enlarging its jurisdiction and powers. The various mandates given to the Commission by the Legislature are broad and contain a full amplitude of authority.

In addition, the Commission is more than an advisory board which is the character of most executive branch commissions. Rather, it was given the power to enforce its regulations by way of its quasi-judicial power to hear violations and levy fines. The Commission has the power to shut down individual companies, indeed, whole industries. Perhaps the Commission has not taken a more active stance because Commissioners are unaware of their powers: most appear not to have read the founding legislation and amendments that shaped the Commission's membership and powers.

On the other hand, experience has taught most of the Commissioners about their powers. Two Commissioners noted that “if the Commission wanted to close down Southern Nevada, it could do so.”

As part of the charge that the Commission is “reactive” rather than “proactive,” its critics point to the absence of an annual report on the state of Nevada’s environment. In fact, they want a Commission with authority to plan comprehensively for Nevada’s environment. Perhaps the most significant report comprehending the whole of Nevada’s environment was the Report of the Governor’s Council that initiated the present Commission. The Report called for the creation of a commission, centralizing all rule-making and regulation-setting authority over pollution within its jurisdiction. That recommendation was far-reaching. In other states, such as California, responsibilities for air, water and waste are divided among several state agencies. Placing all the authority for these subjects in the hands of a single commission combined power and efficiency in an effective manner. Pursuant to its jurisdiction and powers, the Commission over the last seventeen years has adopted and published comprehensive rules covering air, water and waste. Furthermore, the Commission's policy-making authority has been enhanced and its regulations refined by its quasi-judicial function, which creates policy as the result of a piecemeal decision making process. The only limitation on the Commission's power is its legislative mandate. While there is nothing in the legislation and amendments creating the Commission preventing it from issuing an annual report on the state of Nevada's environment, within the definition of its legislative mandate, such a report is extraneous to its principal duties. What critics really seem to want is the kind of super environmental agency that was debated by the Report of the Governor's Council and that was rejected by the Council and the Legislature in favor of the present Commission.

Except for the difficulty of organizing the Commission's work around part-time Commissioners who have busy lives of their own, this part-time Commission has performed well, as well as any full-time Commission given its legislative mandate and powers. Of course, there is always room for change. If the people of Nevada want a Commission that is "proactive" -- a super environmental agency -- they will need to modify significantly the legislation and amendments that brought the Commission into being. A full-time "professional" Commission with a substantial full-time staff will be able to take a more aggressive stance towards environmental problems. While it might satisfy the appetite of those who want more positive governmental action in this growing area of public concern, it will also be more contentious and produce a new set of political conflicts. Until now, the resent Commission reflects and suits the political culture of this "frontier state."

Change is taking place rapidly, however. Contrary to popular perception, Nevada has become one of the most urbanized states in the Union. As Southern Nevada gains political clout in the State and in the State Legislature, people who are facing increased challenges by the environment may wish

change the way environmental business has been done in the past. These are questions that only the people will be able to decide.

### **Imminent Problems**

The State Environmental Commission has regulatory authority over air, water and waste. A majority of the Commissioners interviewed felt that the most important issues coming before the Commission in the near future would be air and waste.

Established as a part of Nevada's Air Pollution Control Act, the Commission's initial mandate from the Legislature was to take all necessary action to secure to the State the benefits of the Federal Clean Air Act. This authority continues to direct the work of the Commission today. Nevada has a problem meeting Federal Air Quality Standards in two of its counties, Clark and Washoe, particularly in terms of such measurements as PM10, carbon monoxide and ozone. Air quality in these two counties needs to be brought under control, thus enabling the State to continue to receive federal funds, but without significant disruption to the local economy. To strike a balance between public health and the economy is a never ending concern of the Commission and should be expected to influence its decisions in the matter of future air quality regulations.

The normal winter inversion traps automobile emissions in Clark and Washoe Counties, two metropolitan areas built in large basins. The enormous growth in population in recent years, caused by immigration of Californians and others in search of affordable housing and improved living conditions, has exacerbated air pollution in these areas, lowering the quality of life and making air quality a universal concern. This situation has already led to the development of stringent air quality regulations. The Commission's regulatory work in this field is experienced by the residents of Nevada daily. For example, Commission regulations requiring mandatory emissions inspection before a vehicle can be registered affect every car owner in the state (although, ironically, almost no one seems to know that the State Environmental Commission exists).

Auto emissions are an issue that most Commissioners feel deserve more attention from the Commission. There are other issues also impacting air quality over which Commissioners have expressed concern, including the problem of wood burning stoves in Northern Nevada, industrial emissions and dust, the two causes of which are agriculture and large-scale land developments that inadequately control dust during construction. Although dust is only a problem in certain areas of the State, it often becomes a major problem in those areas. For instance, construction in the Reno area tends to strip the land of vegetation, causing the land in high wind areas to become a dust bowl. Once the dust is whipped up, it carries into urbanized areas and settles. The Commission has already addressed some dust control problems, but the members feel they will be addressing more of these in the near future.

Another issue of concern to Commissioners is the problem of hazardous waste disposal in Nevada, an issue that may well come before the Commission soon and one that attracted controversy in the recent election. Many of the Commissioners felt that Nevada had permitted too much hazardous waste disposal from California and other surrounding states, and nearly all expressed the belief that "Nevada should not become a dumping ground for California's waste.

More than one commissioner was concerned about the transportation of hazardous waste into and through the State, for which there are few rules. He was particularly concerned about the cost of cleaning up toxic waste spills, the immediate impact of which falls on the State, and of the possible contamination to the State's water supply. Another Commissioner expressed concern about the fact that hazardous waste is transported through highly urbanized areas, a danger of which most local residents are unaware.

To keep Nevada from becoming a dumping ground for out-of-state waste, several Commissioners felt that the State's dumping fees for hazardous waste, the setting of which is a function of the Commission, should be comparable to those of surrounding states. At this time, dumping fees in Nevada, \$3 per ton, are lower, in some instances substantially, and thus more attractive than the fees of most surrounding states. In California, for example, dumping fees are at least five times the cost, and can range as high as twenty times the cost of what they are in Nevada. This makes it economically beneficial for out-of-state dumpers to haul hazardous waste from long distances to waste sites in Nevada. Is it, however, of economic benefit to Nevada?

At least two Commissioners felt that there was some economic benefit to local, especially rural communities, from the dumping of out-of-state waste and, thus, that dumping fees should remain lower than the fees of surrounding states. Another Commissioner thought that raising fees might make the dumping of out-of-state waste more profitable than it is now, thus stimulating more local enterprise and providing an increased economic benefit to the state. Most Commissioners thought that there was no particular economic benefit to Nevada from the dumping of out-of-state waste. Citing the limited availability of space for waste disposal, almost all Commissioners asserted the opinion that a compelling case must be made before Nevada accepts additional out-of-state waste.

Dumping fees are a question of economic concern for some Commissioners. This is another example of how the Commission balances a concern for local economies, particularly rural ones, with environmental concerns and dangers.

The availability of landfills was also cited as a problem by several Commissioners. Existing landfills are running out of room. When prompted, a few Commissioners mentioned the need for recycling programs, a subject which is only on the horizon of this "frontier" state.

The following essay by Dr. Glenn C. Miller, a leader in the Sierra Club, a respected scientist from the University of Nevada, Reno-cited by several members of the State Environmental Commission as an expert on Nevada's environmental problems -- makes the case for a more aggressive Commission.

The growing environmental concern in the state, particularly in urban areas, from reputable members of the organized environmental community and from the media, can be expected to have an increasing impact on legislation and public policy in the near future. How the Commission deals with such problems as air and waste will significantly determine the evolution of its composition, structure, powers and influence. If it cannot deal with these problems effectively -- to the satisfaction of such constituencies as urban dwellers, environmental activists and the media -- there will be mounting pressure to place members of the organized environmental community on the Commission. There may even be a move to create a more comprehensive Commission, one that replaces part-time commissioners with full-time, professional members. To a large extent, the future of the Commission is in the hands of the current Commissioners whose significant powers over environmental polluters are little known and understood.

**Nevada's Environmental Commission:  
Changes Needed for the 1990s  
Glenn C. Miller**

The Environmental Commission has been given broad authority by the legislature to rule on regulations designed to protect air, soil and water. In the last three years it has passed fundamentally new Nevada regulations on management of hazardous wastes, protection of groundwater and requirements for reclamation of mined lands. This relatively unknown regulatory body thus can affect not only the quality of life in Nevada, but also the businesses which must comply with the regulations. Because it works in a relatively unpublicized manner, few residents of Nevada are aware of its existence, and its actions are not often subject to substantial controversy.

Yet the Commission has been in existence since 1971 and has adopted regulations which are the basis for protection of the Nevada environment. In the following comments, an environmental perspective will be presented on the makeup of the Commission, how well it is working and, finally, how the role of the Commission can be enhanced to reflect the growing public support for protection of the Nevada environment.

**The Members of the Commission**

The membership of the Environmental Commission has been set by various legislative acts, most recently during the 1989 legislature. The membership reflects a rather conservative attitude of Nevada legislators for establishment of environmental regulations and at times appears protective of economic interests rather than the environment. Commercial interests are well represented legislatively on the Commission; environmental protection interests are much less so. Industries which have typically had the major impacts on Nevada's environment and are responsive to those industries have permanent seats, while interests dedicated to protection of the environments have no such legislatively mandated slots.

For example, the mining industry has had a substantially negative impact on surface water, groundwater and surface productivity of Nevada lands during the previous 140 years. Mercury contamination of the Carson River and Lake Lahontan, numerous leaking cyanide tailings impoundments and large amounts of highly disturbed lands are a legacy of this industry. Yet mining has a permanent representative on the Commission in the form of the executive director of the Department of Minerals. The executive director serves at the pleasure of the Minerals Commission and must be selected by the Governor from three names submitted by the Minerals Commission. The Minerals Commission is composed of seven members, six of which must be "familiar" with various aspects of mining or energy development. Not surprisingly, the Minerals Commission has historically been a strong advocate for mining and represents mining interests. The majority of funding for the Department of Minerals is legislatively mandated from fees on mining activity, and is not subject to controls of general funds. Thus, mining interests have their own representative on the Environmental Commission who can be removed by the Minerals Commission when simple policy differences exist but not by the governor or any other elected official.

The executive director of the Department of Agriculture also sits on the Environmental Commission under a similar appointment. He has historically represented agricultural interests on the Environmental Commission, since his policy is set by the Agricultural Commission, which is composed of persons actively engaged in agricultural activities. Although agriculture is by no means working in opposite directions of environmental protection the hearing records of the Commission indicate positions of the agricultural representative as opposing stronger water quality regulations and opposition to regulations which would have strengthened environmental regulation in rural areas of the state.

Of the public members appointed by the governor one must be a general engineering contractor or a general building contractor. Although this person does not report to an industrial board as do the mining and agricultural representatives, specification of a contractor will give that industry a clear voice on the Commission. Regulation on issues such as dust suppression from construction, wetlands protection, water quality, and air quality can all impact the construction industry. Having a

building contractor on the Environmental Commission offers a sympathetic and protective ear for that industry.

During the 1989 legislature, the mining interests, as part of a final compromise on the mining reclamation legislation demanded that one additional member be added to the Environmental Commission who is a person "familiar" with mining reclamation. One can assume that they expected that the only persons who could be considered were mining reclamation specialists or consultants, who generally would represent mining interests. However, a later section of the legislation which originally established the Commission precludes anyone from membership on the Commission who has derived a significant portion of his income during the previous two years from any organization who has held an air pollution permit. Since essentially all mining companies are required to have air pollution permits, this clause effectively excluded anyone who had worked in the mining industry for the previous two years. This left the position open to members of the academic community, or other members of the public who are "familiar" with reclamation.

Typically, one of the remaining members of the Commission has represented rural interests. Other members include the director of the Department of Wildlife, the State Engineer, the State Forester, and a member of the state Board of Health. The three agency representatives serve at pleasure of the Governor, although historically, they have not been removed because of political considerations. Of these members, the representative of the Board of Health has been the strongest and most articulate advocate for protecting environmental quality.

Three (or four if the rural representative is included) of the ten positions directly represent commercial interests who have historically been subject to environmental regulation. Conversely, none of the legislatively mandated appointments represent environmental/conservation advocacy positions. Preliminary discussions on legislation prior to the 1989 Legislature which would have required representation from conservation interests were not fruitful. Such legislation was, however introduced for representation on a related committee, the State Multiple Use Advisory Committee on Federal lands, which also does not have a member representing environmental advocacy interests. Predominantly republican members of the Senate Committee on Government Affairs were highly negative to suggestion of including an environmental advocate, and complained that since essentially all persons are interested in protecting the environment, such a person would be not possible to identify. However, several examples exist in other states where environmentalists are specifically appointed to legislative committees. One example of such a requirement in Nevada is on the Washoe County Regulations Variance Board which requires that "one member must be actively involved in the work of a conservation/ecological group or organization."

### **So How Well Does The Commission Function?**



Actually, quite well. But this is most likely due to the fact that the Division of Environmental Protection provides the staff support for the Commission and for at least the last decade, the Division has provided technically and environmentally sound draft regulations and support. As is often the case, the person who first puts the pen to the paper writing regulations has the most impact on the substance of those regulations. The Division has, particularly in the past five years, developed staff capability and an increasingly strong regulatory climate. This record of regulation development could be reversed if the Division staff changed substantially, and the Commission could rapidly be stripped of credible information on which to base decisions.

Because the Environmental Commission is composed of ten busy people who meet four to six times each year, they rarely become involved with initial creation of the documents. The Commission has, however, several times required substantial rewrites of regulations. An example of this was during the passage of regulations on groundwater protection from the mining industry. Draft regulations from the Division received strong objections from the mining industry and were consequently rewritten, even though comments were accepted from the industry during the initial development of those regulations. In this case the Commission bowed to a powerful interest group, and received very little comment from the environmental community.

A second example of a rather uninformed change in regulations by the Commission was during the recent adoption of the mining regulations. This regulation had been carefully constructed and negotiated by the Division staff, the minerals industry and environmental representatives. One large question which remained was whether the Division could require backfilling of open pits. The legislation clearly gave it the authority in cases where it was feasible, but the industry lobbyists successfully added language to the regulations at the hearing which effectively removes that authority. This language may well not be consistent with the legislation. During the hearing, it was doubtful whether a majority of the Commission members were aware of the specifics of the legislation.

An additional reason for the success of the Commission is that the regulations developed are often responses to federal mandates which set minimal standards for states. Portions of the hazardous waste regulations are examples. Although the Commission could make regulations more stringent than minimal federal standards, they cannot relax the federal baseline requirements.

Finally, the Commission is composed of professional state agency persons who regularly use and interpret regulations. Being acquainted with regulations gives the Commission a sense of rationality as to what can and cannot be realistically required. This is a conservative approach and can overemphasize bureaucratic inertia, but it does have merit. A second criticism is that the agency representatives of agriculture and minerals have a large amount of leverage to modify regulations

which affect their industries, and this criticism has been levied particularly at the agricultural representative and a previous minerals representative.

### **What Changes Are Needed For The 1990's**

The membership of the Commission should be adjusted. Three persons representing interests of environmental protection organizations should be legislatively required to be members of the Environmental Commission, to balance representatives of mining, agriculture and construction. Having articulate, well prepared representatives for environmental protection at the Commission table will provide a clear voice for the environment, and help to direct the discussion and affect changes in regulations which would not be possible by a members of the audience attending the Commission hearing. Those environmental representatives should also be selected by the Governor, and would provide responsible articulation of environmental protection positions. The public overwhelmingly supports protection of the environment, and that support should be represented on the Commission.

Alternatively, the industrial representatives should be dropped from the commission and those positions could then be opened up to other public members. One other partial solution to the representation issue would be to give the governor the power to unilaterally hire and fire the executive directors of the Departments of Agriculture and Minerals. Both directors would then at least report to an elected official chosen by a majority of Nevadans. Whatever the solution is, the Commission makeup must be changed because it does not provide proportionate representation of the greater public interests.

Even with these problems, suggestions that the present Environmental Commission membership should be changed to reflect geographic and/or population representation would substantially politicize the Commission and make it subject to County and City governments who may desire special treatment in such areas as water quality regulations or sewer funding priorities. With membership changes suggested above, the Commission can continue to provide sound regulations for protection of Nevada environment.

The Commission should have its own staff. The Commission previously had a separate staff, which was cut during a budget slashing frenzy of a past legislature. At present, the Director [Administrator] of the Division of Environmental Protection serves as the secretary of the Commission. In some respects, the Division has excessive influence on the Commission. New staff members of the Commission with an executive director would provide a buffer from the Division and an appropriate sounding board for proposed regulations. This is particularly important when appeals are made on rulings by the Division of Environmental protection. If a member of the public wishes to appeal a ruling by the Division, it appeals to the Commission, which uses the Division as staff support. At the very least, a perception of a conflict of interest is possible, and in a recent appeal of an air pollution

permit of a mining company, the citizen who appealed did not feel that he had a fair shot at the hearing since the primary source of expertise was the staff who participated in the original decision. Commission staff would provide a more distant and presumably less biased interpretation of the conflict.

The mandate of the Commission should be enlarged to require yearly assessments of the state of Nevada's environment. Presently no state agency has the responsibility to develop broad analyses of the state of Nevada's environment. The present mining boom, for example, will result in impacts on Nevada's land and water which will last for many centuries. Yet no agency is making any long term assessments of this problem. Other issues receive varying levels of analyses, but are generally sporadic. Commission staff should be given a legislative mandate to develop a yearly assessment of the environmental problems in the state and provide comment on possible solutions. Although this would be only advisory, the focus by a credible, technically competent agency would be persuasive.

A Nevada Environmental Quality Act should be passed by the legislature, which would be under the purview of the Commission. The NEPA requirement of a thorough environmental analysis of major federal projects has been recognized as one of the most important environmental laws. Other states have passed similar legislation which requires similar analysis on non-federal projects. The rapid growth in Nevada has resulted in a variety of projects which clearly have had adverse environmental impacts, which would have been lessened if a proper analysis had been performed prior to the project initiation. The time has come for Nevada to similarly require environmental assessments of major projects.

The Environmental Commission should be given the authority to develop regulations for the environmental analyses and responsibility to see that they were carried out. The Environmental Commission should be paid appropriately for the work needed to understand and review the regulations. The Commission members have a variety of outside responsibilities for which they generally receive compensation. With the increasing level of responsibility to make sound decisions for protecting Nevada's environment, the Commission members should be paid appropriately for the work completed. At present they receive \$80 for the days of the meeting. That amount should be increased substantially to a professional payment level and include payment for time spent on reviewing the large numbers of documents they are required to read prior to making sound decision. A Commission appointment should no longer be considered largely a volunteer activity. Members should not suffer a financial penalty when they spend the extra time necessary to understand what they are voting on.

The development of regulations on pesticides and their effect on human health and the environment should be the responsibility of the Environmental Commission. Although the use of pesticides in Nevada is low in relation to many states, pesticides are used extensively in agricultural regions of

Nevada and in urban areas. At present the Department of Agriculture regulates pesticide use, which is largely controlled by the agricultural industry in Nevada. While some functions of pesticide use legitimately belong in the department of Agriculture, the authority for those regulations designed to protect human health and the environment need to be in an Agency which is distant from the industry. The logical choice is the Division of Environmental Protection through the Environmental Commission, since they have present authority for protecting air and water. The federal EPA regulates most pesticide use, not the U.S. Department of Agriculture and the same model should exist for Nevada.

### **Concluding Remarks**

The Environmental Commission has wide-ranging influence on the everyday lives of Nevadans, but few know of its existence or could describe its function. Due to a rather late developing public environmental awareness and a sometime weak environmental movement, the Commission has received only infrequent publicity. Certain industries, such as mining, are keenly aware of its importance, and the environmental community is becoming aware of what power it has. The authority and capability of the Commission need to be expanded to meet the challenges of the rapid growth in Nevada

A properly constituted and supported Environmental Commission should expand its responsibilities to include assessments of the quality of Nevada's environment. With this new planning function, in addition to its historical responsibilities, the Commission will provide a greater degree of assurance that Nevada's present environmental quality will be sustained over the long term.

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