

NDOJ

OFFICE OF THE ATTORNEY GENERAL Nevada Department of Justice



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FOR IMMEDIATE RELEASE
DATE: January 30, 2004

CONSUMER ALERT: A NEW TWIST ON AN OLD BANK SCAM

Carson City - Attorney General Brian Sandoval is warning Nevada residents to be aware of a scam similar to the African/Nigerian Scam. The current scam comes in the form of an unsolicited e-mail from a foreign bank official. This person claims he has access to approximately \$8 million dollars of unclaimed money from a person who perished in the Egyptian airliner crash of 1999. The bank official claims that the laws of his country do not allow such funds to go unclaimed for more than 5 years, and if such funds remain unclaimed for more than 5 years, the country's treasury recalls the money. As a result, the bank official needs your help to prevent that from happening.

The goal of the scam artist is to convince the victim that he or she has been singled out to participate in a very lucrative - although questionable - arrangement. The latest version requests that the victim send personal information as soon as possible such as fax numbers and telephone numbers. Eventually, the scam artist will request that the victim make a large deposit of his own money to open a bank account with the bank. The scam artist will assure the victim of the success of this venture and request that the victim treat all communications with utmost secrecy. But, in the end, something will happen to prevent the success of the transfer, and the victim will be unable to receive his deposit back.

The Attorney General's Bureau of Consumer Protection offers the following tips to avoid becoming a victim of this scam:

- Never send money to someone you do not know, have never met, and only communicated with through e-mail.
- Avoid responding to such e-mails. A response only informs the scam artist that he has an active e-mail giving him future opportunities.

- Look for improperly spelled words, misused words, or improper punctuation throughout the e-mail. The scam artist will do this to make the e-mail appear that is from a foreign country and thus, more genuine.
- Avoid opportunities in which the offering party requests that you keep your communications secret.
- Remember if it sounds too good to be true, it is too good to be true. Do not be a victim.

For more information regarding consumer scams and deceptive trade practices, you may contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 or (702) 486-3786.

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FOR IMMEDIATE RELEASE
DATE: January 30, 2004

ENFORCEMENT REDUCING YOUTH ACCESS TO TOBACCO, UNDERAGE TOBACCO USE

Carson City--Attorney General Brian Sandoval announced today that reports from the Nevada Department of Education confirm that fewer underage youths are purchasing cigarettes at stores and more are being asked for ID when they try. The Nevada Department of Education recently released the results of the Youth Risk Behavior Survey, and results show that the percentage of high school students who are regular smokers and who buy their own cigarettes at a store has dropped by 41% since 1995. Further, the percentage of students who buy their own cigarettes and are not asked for ID when they are purchasing has fell by 37 %. These results confirm the Attorney General's own survey showing that underage youths are able to buy tobacco from Nevada stores only 11.2% of the time.

In addition, smoking and smokeless tobacco use is decreasing among Nevada's high school students. In 1995, 33% of Nevada high school students had smoked on one day in the last 30 days. In 2003, that dropped to 19.6 %, a 41% reduction. Further, in 1995, 73% of Nevada high school students tried smoking. By 2003, that had dropped to 57%, a 21% reduction. The percentage of students who used chewing tobacco on one or more of the last 30 days dropped by 67% from 1995.

"Everyone in Nevada, the health community, the schools, and retailers have partnered to reduce the problem of smoking and tobacco use by our children," said Senior Deputy Attorney General John Albrecht. "These results show that when we work together, we are successful."

Peter Krueger, State Executive of the Nevada Petroleum Marketers and Convenience Stores stated, "The encouraging results of the Youth Risk Survey validate our belief that the

partnership between the Attorney General and our convenience stores is working and that both the use and buy rate among children are down significantly.”

The Department of Education surveys a range of behaviors among Nevada high school and middle school students every other year. The complete results are available on the internet at <http://health2k.state.nv.us/nihds/yrbs>.

The Attorney General’s office has conducted compliance checks on stores that sell tobacco since 1995. This is required by a federal law. Every store in Nevada is visited 2 to 3 times per year. The underage youths who assist in these checks must tell the truth if asked their age and cannot misrepresent their age.

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**FOR IMMEDIATE RELEASE
DATE: January 29, 2004**

INTERNET AUCTION SCAMMER SENTENCED IN FELONY THEFT

Las Vegas--Attorney General Brian Sandoval today announced that Susan Christine Thomas was sentenced by District Court Judge Donald Mosley yesterday following a guilty plea to felony Theft by Obtaining Money under False Pretenses. Thomas tendered \$17,000.00 in restitution prior to being sentenced pursuant to the terms of her guilty plea agreement. Judge Mosley sentenced Thomas to a term of a minimum of 24 months and a maximum of 60 months in the Nevada State Prison, such term to be suspended and Thomas was placed on probation subject to terms including monthly restitution payments and prohibition from conducting transactions over the Internet. Thomas was ordered to pay a total amount of \$63,392 in restitution to her victims.

The sentence was a result of a six-count felony Criminal Complaint filed by the Attorney General's Bureau of Consumer Protection on April 8, 2003 alleging that Susan Thomas placed high-dollar value items of art (sculptures, statues and serigraphs) up for bid on the online auction website eBay. Thomas told bidders that she would ship the art to them within seven to ten days of receiving their payment. Thomas also stated that she would send the winning bidders appraisals and Certificates of Authenticity with the art. Each victim paid Thomas between \$2,750.00 and \$12,650.00 for the art. After receiving the money, Thomas failed to send the art work to the bidders and refused to provide refunds.

The Attorney General's Bureau of Consumer Protection offers the following tips to avoid becoming a victim of this type of scam:

- Identify the seller and check the seller's feedback rating.
- Do your homework. Be sure you understand what you are bidding on, its relative value and all terms and conditions of the sale, including the seller's return policies and who pays for shipping.
- Establish your top price and stick to it.
- Evaluate your payment options. If possible, use a credit card. It offers the most protection if there's a problem. Consider using an independent escrow service if the price is significant or if the seller doesn't accept credit cards.

If you believe that you have been a victim of an Internet Scam, or would like further information, please call the Attorney General's Bureau of Consumer Protection in Las Vegas at (702) 486-3194; or in Reno at (775) 688-1818; or in Carson City at (775) 687-6300. Consumer protection information can be found on the Attorney General's Web site at [**ag.state.nv.us**](http://ag.state.nv.us).

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FOR IMMEDIATE RELEASE
DATE: January 15, 2004

BOARD OF REGENTS VIOLATE OPEN MEETING LAW

Carson City—Attorney General Brian Sandoval announced today the filing of a lawsuit in Clark County against the Board Of Regents following an investigation into a number of Open Meeting Law complaints received in late November and early December stemming from Special Meetings of the Board held on November 17th and 20th, 2003. The violations are discussed in an Open Meeting Law opinion also issued today.

“This Office has exclusive jurisdiction over violations of the Open Meeting Law. In the interest of public integrity and open government, the Law requires that we liberally construe its provisions when determining whether a violation has occurred,” said Sandoval.

In a recent ruling against the Board of Regents, the Nevada Supreme Court found that the Open Meeting Law was enacted to enable citizens to participate in government, and to ensure the ability of the press to report on the actions of government.

The violations include deliberating and taking action in closed session; deliberating and forming recommendations and a consensus during closed session; discussing the character, alleged misconduct and professional competency of elected officials during closed session; failing to provide adequate notice to persons under consideration for disciplinary action, and; failing to provide an agenda that contained a clear and complete statement of the topics considered during the open and closed portions of the meetings.

The Attorney General’s Office has asked the Court to void a number of actions taken by the Board in violation of the Open Meeting Law, to declare certain conduct in violation of the Law, and to determine whether the provisions of the Open Meeting Law require that those discussed in closed session be permitted to attend.

“Placing these issues before the Court will clarify our citizens’ ability to participate in open government, and ensure the integrity of our public process,” said Sandoval.

###

1 **I. JURISDICTION**

2 1. Pursuant to NRS 241.040(4), Plaintiff is required to investigate and prosecute any
3 violation of chapter 241 of the Nevada Revised Statutes.

4 2. Pursuant to NRS 241.037, Plaintiff may bring an action in any court of competent
5 jurisdiction to have an action taken by a public body declared void or for an injunction against any
6 public body or person to require compliance with or prevent violations of the provisions of the
7 Nevada Open Meeting Law, NRS chapter 241.

8 **II. ALLEGATIONS**

9 Based upon information and belief, Plaintiff alleges as follows:

10 1. At all times pertinent to this action, Plaintiff has held the position as the duly elected
11 Attorney General of the State of Nevada with his principle office being located in Carson City,
12 Nevada.

13 2. At all times pertinent hereto, Defendant, the duly elected Board of Regents of the
14 University and Community College System of Nevada (Board), consisting of Regents Stavros
15 Anthony, Mark Alden, Marcia Bandera, Jill Talbot Derby, Thalia Dondero, Douglas Hill, Linda
16 Howard, Thomas Kirkpatrick, Howard Rosenberg, Jack Schofield, Douglas Seastrand, Steve
17 Sisolak, and Bret Whipple, was a public body as defined by NRS 241.015, and as a public body,
18 the Board of Regents was required to comply with the Nevada Open Meeting Law, NRS chapter
19 241 (Open Meeting Law). The Regents are herein named as one board defendant pursuant to
20 NRS 12.105.

21 3. The allegations contained herein arose in the County of Clark, State of Nevada.

22 4. Pursuant to NRS 241.010, it is the declaration and intent of the Legislature that all
23 public bodies exist to aid in the conduct of the people's business, and that their actions be taken
24 openly and their deliberations be conducted openly.

25 5. Pursuant to NRS 241.015, "action" means, *inter alia*, a decision made or an
26 affirmative vote taken by a majority of the members present during a meeting of a public body, or
27 a commitment or promise made by a majority of the members present during a meeting of a
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1 public body.

2 6. Pursuant to NRS 241.015, a meeting means the gathering of members of a public
3 body at which a quorum is present to deliberate toward a decision or to make a decision on any
4 matter over which the public body has supervision, control, jurisdiction, or advisory power.

5 7. Pursuant to NRS 241.020, meetings of a public body must be open and public,
6 properly noticed, and meet the agenda requirements of NRS 241.020.

7 8. Pursuant to NRS 241.030 and NRS 241.033, a public body may hold a closed
8 session to consider the character, misconduct, competence or health of a person.

9 9. Pursuant to NRS 241.031, a public body may not hold a closed session to consider
10 the character, alleged misconduct, professional competence, or health of an elected member of a
11 public body.

12 10. Pursuant to NRS 241.035, a public body shall keep written minutes of each of its
13 meetings.

14 11. Pursuant to NRS 241.034, a public body shall not consider at a meeting whether to
15 take administrative action against a person without giving the person proper notice.

16 12. Pursuant to NRS 241.036, the action of any public body taken in violation of any
17 provision of the Open Meeting Law is void.

18 13. On November 17, 2003, a Special Meeting of the Board was held in Las Vegas,
19 Nevada.

20 14. The agenda for the November 17, 2003 meeting stated the following:

21 **CALL TO ORDER** 11:00 a.m., Monday, November 17, 2003

22 **CLOSED SESSION**

23 **1. PERSONNEL SESSION**

INFORMATION

24 **1.1 CLOSED SESSION**

25 In compliance with NRS 241.030, a closed session will be held for purposes
26 of discussion of the character, alleged misconduct, professional
27 competence, or physical or mental health of certain executive employees of
28

1 the UCCSN.

2 **1.2 RETURN TO OPEN SESSION**

3 The Board will return to open session.

4 **2. PERSONNEL ACTIONS AND RELATED MATTERS ACTION**

5 If deemed necessary by the Board of Regents, the Board may take a
6 number of possible actions in response to the information received by the
7 Board, including possible personnel or disciplinary actions. The Board may
8 also issue directives to certain executive officers and employees of the
9 UCCSN in response to any alleged conduct and may also issue directives to
10 UCCSN personnel relating to possible amendments to Board policies and
11 the continuation of the investigation. In the event the Board of Regents
12 determines that personnel or disciplinary actions should be initiated, in
13 conformity with the UCCSN Code, Board of Regents' policies and the
14 statutory and contractual rights of employees, such as actions may include:
15 warning; reprimand; reduction in pay; suspension; termination; or
16 reassignment. The Board of Regents may also make interim appointments
17 and take any other action deemed appropriate.

18 **3. PUBLIC COMMENT INFORMATION**

19 **4. NEW BUSINESS INFORMATION**

20 15. The open and closed meetings of the Board commenced on November 17 and
21 concluded on November 20, 2003.

22 16. On November 20, 2003, in open meeting, the Board took the following actions:

- 23 (a) To forward the results of the investigation to the Attorney General and FBI to
24 take appropriate actions;
- 25 (b) To remove Dr. Ronald Remington as President of CCSN immediately and
26 have Chancellor Nichols take action to return him to the proper academic
27 department;
- 28

- 1 (c) To direct the interim president, or if one is not selected soon, the Chancellor,
2 to reassign John Cummings to the faculty at CCSN effective immediately
3 and prohibit him from serving in an administrative capacity at CCSN until a
4 majority vote of the Regents changed the motion, and have the Board Chair
5 select an independent special administrative code officer to review and
6 evaluate the materials in the investigation with respect to Mr. Cummings and
7 at his/her discretion be empowered to commence a Chapter 6 termination
8 procedure for a tenured faculty member and if the procedure was begun
9 under Chapter 6, the permanent interim president or permanent president
10 were not available at that time;
- 11 (d) That the Chair and Chancellor develop and deliver a message to all
12 personnel of CCSN acknowledging the Board's sincere thanks and
13 appreciation for the service and contributions to higher education in
14 Nevada, that the staff are dedicated and hardworking members of the team,
15 however there are a few individuals at CCSN who have violated directives
16 established for orderly completion of their charges and that will come to an
17 immediate stop, any future violations will be immediately identified and
18 appropriate Chapter 7 actions initiated, and to keep up the good work, and;
- 19 (e) That at the next Board meeting, December 11-12, 2003, the following 4
20 items be addressed for information/action: (a) discuss the policy on whether
21 UCCSN employees can serve in the System and legislature, and address
22 NRS section 241.031; (b) discuss the way lobbying efforts are handled in
23 the legislature and the only persons to go to the legislature are the
24 Chancellor and who she directs; (c) tighter control of lobbyist and host
25 expenditures by all System employees, and; (4) tighten up personnel and
26 hiring practices at all institutions for all employees.

27 17. On November 20, 2003, during the open meeting, the following motions were made
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1 by certain Regents and failed:

- 2 (a) Motion to direct the interim president or, in the absence of an interim
3 president, the Chancellor, that a letter of non-reappointment be sent to the
4 professional employee, Chris Giunchigliani, to notify her that she would not
5 be reappointed to her position when the current contract expired;
- 6 (b) Motion to direct whoever is in charge, the Chancellor or interim president, to
7 issue a letter of non-reappointment to Brigit Jones;
- 8 (c) Motion to issue a termination notice to Brigit Jones;
- 9 (d) Motion to direct the interim president or Chancellor to terminate Ms. Jones;
- 10 (e) Motion for the Chancellor to take the results of the investigation and consult
11 with the interim president and allow that person to make any managerial
12 changes necessary at the institution, and;
- 13 (f) Motion for the Chancellor and interim president to review the current job
14 description and performance standards and requirements for Ms. Jones for
15 accuracy and put in place a monitoring program to ensure standards and
16 performance expectations are met.

17 18. The Board violated the Open Meeting Law during the closed session when it
18 deliberated and took action to allow UCCSN Chancellor Jane Nichols to be present during the
19 closed meeting.

20 19. The Board violated the Open Meeting Law during the closed session when it
21 considered the character, alleged misconduct, and professional competence of a certain
22 lobbyist.

23 20. The Board violated the Open Meeting Law by deliberating and forming
24 recommendations and a consensus during the course of the closed session.

25 21. The Board violated the Open Meeting Law during the closed session when it
26 considered the character, alleged misconduct, and professional competence of two elected
27 members of a public body.

1 22. The Board violated the Open Meeting Law when it did not provide proper notice that
2 administrative action may be taken against certain UCCSN employees at the November 20, 2003
3 meeting.

4 23. The Board violated the agenda requirements of the Open Meeting Law by not
5 providing a clear and complete statement of the topics to be considered and actions taken at the
6 November 17 and November 20, 2003 closed and open meetings.

7 WHEREFORE, PLAINTIFF PRAYS FOR DECLARATORY RELIEF AS FOLLOWS:

8 1. That this Court issue a judgment declaring the following specific actions of the
9 Board void pursuant to NRS 241.036 and NRS 241.037: (a) the Board's decision to allow
10 Chancellor Nichols to participate in the closed meeting; (b) the Board's decision to remove Dr.
11 Ronald Remington as President of CCSN immediately and to have Chancellor Nichols take
12 action to return him to the proper academic department, and; (c) the Board's decision to direct
13 the interim president, or the Chancellor, to reassign John Cummings to the faculty at CCSN
14 effective immediately, to prohibit him from serving in an administrative capacity at CCSN until a
15 majority vote of the Regents changed the motion, to have the Board Chair select an independent
16 special administrative code officer to review and evaluate the materials in the investigation with
17 respect to Mr. Cummings, and at his/her discretion, be empowered to commence a Chapter 6
18 termination procedure for a tenured faculty member; and, if the procedure was begun under
19 Chapter 6, to allow the Board Chair and Chancellor to appoint a committee pursuant to Chapter 6
20 if the permanent interim president or permanent president were not available at that time;

21 2. That this Court issue a judgment declaring that the Board violated the Open
22 Meeting Law by: (a) deliberating and forming recommendations and a consensus during the
23 course of the closed session; (b) by considering, during the closed session, the character,
24 alleged misconduct, professional competence, or physical or mental health of elected officials,
25 and of non-executive employees and others; (c) by not providing notice that administrative action
26 might be taken against certain persons, and; (d) by violating the agenda requirements of the
27 Open Meeting Law with regards to both the closed and open meetings of the Board.



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January 13, 2004

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Ms. Andrea (Ande) Engleman
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Dear Ladies and Gentlemen:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

This office has received four complaints alleging violations of the Open Meeting Law at a Special Meeting of the Board of Regents (Board) held on November 17, 2003, and the continuance of the Special Meeting of the Board to November 20, 2003.¹ The

¹ Regent Mark Alden has submitted two additional complaints — one on December 1, 2003, alleging that certain Regents privately discussed disciplinary action against certain UCCSN employees and came to a decision regarding the actions taken at the November 20, 2003 special meeting of the Board prior to that meeting, and a second stemming from the UCCSN meeting of December 12, 2003, alleging that the chair of the Audit Committee violated the Open Meeting Law by discussing certain persons who were not noticed pursuant to NRS 241.033. These complaints are currently being investigated by our office, and separate determinations are forthcoming.

alleged violations of the Open Meeting Law are as follows:²

1. Was an appropriate motion to close the meetings made and passed?
2. Did the Board violate the Open Meeting Law by deliberating and taking action in closed session on whether to allow Chancellor Nichols to be present during the closed session?
3. Did the Board violate the Open Meeting Law by deliberating and forming recommendations and a consensus during the course of the closed session?
4. Did the Board violate the Open Meeting Law by considering, during closed session, the character, alleged misconduct, professional competence, or physical or mental health of elected officials?
5. Did the Board properly notify each person whose character, alleged misconduct, professional competence, or physical or mental health, which was considered at the time and place of the closed session, in accordance with the Open Meeting Law?
6. Did the Board violate the Open Meeting Law when it did not provide notice that administrative action may be taken against certain individuals?
7. Did the Board Chair violate the Open Meeting Law by excluding certain persons from attending the closed session?
8. Did the agenda, and actions taken at the meetings, comply with the Open Meeting Law?

Our investigation consisted of a review of the audio recording and written minutes of the open and closed portions of the November 17 and 20 meetings; the agenda for the November 17, 2003 meeting; the notices that were served pursuant to NRS 241.033 to

² It is important to note that certain complainants raise issues beyond the scope of the Open Meeting Law. Accordingly, for purposes of this opinion, only allegations implicating violations of the Open Meeting Law will be addressed.

In addition, complainant Andrea Engleman alleges an Open Meeting Law violation concerning the decision to initiate the investigation referred to in this opinion, and alleges violations concerning providing minutes of the closed session to those entitled. Upon this office's review of the evidence presently available, there is nothing before us to indicate the Open Meeting Law was violated on these two points.

Finally, this opinion addresses additional Open Meeting Law issues not raised by the complainants but which have been determined by this office to be violations of the Open Meeting Law.

those persons whose character, alleged misconduct, and professional competence were considered during the closed session; relevant pleadings from two consolidated cases currently pending before the Eighth Judicial District Court of Clark County, Nevada - *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275; and; the December 5, 2003, and December 22, 2003 letters responding to the allegations made by complainants from the Board's General Counsel Thomas Ray.

FACTS

By way of background, in a letter dated September 4, 2003, from University and Community College System of Nevada (UCCSN) Chancellor Jane A. Nichols to Dr. Ronald Remington, then President of the Community College of Southern Nevada (CCSN), Chancellor Nichols notified Mr. Remington that she would be initiating an investigation concerning allegations made by a CCSN employee regarding the propriety of certain hiring and other employment practices, including actions of certain UCCSN employees during the 2003 legislative session.³

Thereafter, UCCSN called a Special Meeting of the Board commencing Monday, November 17, 2003, 11:00 a.m., in Las Vegas. The agenda for the meeting stated the following:

CALL TO ORDER 11:00 a.m., Monday, November 17, 2003

CLOSED SESSION

1. PERSONNEL SESSION

INFORMATION

1.1 CLOSED SESSION

In compliance with NRS 241.030, a closed session will be held for purposes of discussion of the character, alleged misconduct, professional competence, or physical or mental health of certain executive employees of the UCCSN.

1.2 RETURN TO OPEN SESSION

The Board will return to open session.

Chair Anthony stated the Regents, legal counsel, including Walt Ayers and Mary Dugan, the investigator, Suzanne Ernst, Fini Dobyms, Lisa Martinovic and Chancellor Nichols could stay in the closed session.

Regent Alden objected. Regents Sisolak and Howard objected as well. General Counsel Ray suggested an appeal of the Chair's decision should be held during the closed session. He noted there was the possibility of litigation and recommended that further discussion take place in closed session. Regent Sisolak asked if the parties involved were entitled to hear the debate. General Counsel Ray answered no. Regent Alden asked whether that discussion would be disingenuous to parties excluded and would set precedence for litigation of unfairness. General Counsel Ray recommended the Board terminate discussion now in the open session, adding that all discussion should take place in closed session

The Board then voted 12—1 to go into the closed session.

It is the understanding of this office that the minutes of the closed session have not been made a part of the public record. Accordingly, while we must proceed cautiously and not reveal the specific comments made during the closed session, we do believe it appropriate to generally summarize what, in this office's opinion and based upon the evidence presented, occurred during the closed session.

The closed session of November 17 began with a heated discussion regarding the Chair's decision to allow Chancellor Nichols to be present during the closed session. In closed session, a motion was made to exclude Chancellor Nichols from the session, which failed, 9—4.

The closed session proceeded with a presentation and discussion of the results of the investigation initiated by Chancellor Nichols concerning the character, alleged misconduct, and professional competence of certain UCCSN employees, certain members of the Legislature, and a certain lobbyist. In addition, certain Regents discussed a need for new UCCSN policies relating to employment and lobbying practices in the context of the discussion of the individuals under consideration. Regents also discussed Board policies, and state and federal laws as they related to the alleged conduct of the individuals who were the subjects of the closed session.

The November 17 closed session continued for approximately nine hours before it was recessed and the Board returned to open session. In open session, the Board voted to recess the meeting until November 20, 2003.

The November 20, 2003 meeting commenced at 12:05 p.m. In open session, one Regent expressed concern that the Board had violated NRS 241.031 by considering the character, alleged misconduct, and professional competence of two elected officials. Counsel for the Board responded by stating that the purpose of NRS 241.031 is that a closed meeting could not be held to discuss the character or consider the conduct of an elected official, and that this meeting was to consider the conduct of employees of UCCSN; he stated he would not allow the closed meeting to go into a session about a member of an elected body.

While still in open session, one Regent moved to appeal the Chair's ruling to have Chancellor Nichols sit in on the closed session. Another Regent seconded the motion, objecting that the vote taken in closed session to allow the Chancellor to be present during the closed session should be done in the open portion of the meeting. General Counsel Ray stated a motion for reconsideration could be made to appeal the decision of the Chair but it would need to be done in closed session. The Board then went back into closed session, and a motion was made to approve reconsidering the motion to include the Chancellor in the room during the discussion. Debate on the issue ensued, and a vote on the motion was taken; the motion failed, 8—4, and the Chancellor was permitted to remain in the closed session.⁴

The closed session continued with the presentation of the results of the investigation and related discussion among the Regents. Upon completion of the presentation, the Board was presented with options as to what action it could take against certain employees. Each Regent was then told he/she could discuss what he/she felt based upon the investigation. The lengthy and quite substantive discussion involved each Regent's reactions and feelings about the information they had received, including the adequacy and results of the investigation.

Regarding whether action should be taken by the Board, some members stated they felt action should be taken, one member recommended termination of certain employees, and another implied termination.

The Board went back into open session and voted to approve the following actions:

1. To forward the results of the investigation to the Attorney General and FBI to take appropriate actions;
2. To remove Dr. Ronald Remington as President of CCSN immediately and have Chancellor Nichols take action to return him to the proper academic department;
3. To direct the interim president, or if one is not selected soon, the Chancellor,

⁴ One Regent was absent.

- to reassign John Cummings to the faculty at CCSN effective immediately and prohibit him from serving in an administrative capacity at CCSN until a majority vote of the Regents changed the motion, and have the Board Chair select an independent special administrative code officer to review and evaluate the materials in the investigation with respect to Mr. Cummings and at his/her discretion be empowered to commence a Chapter 6 termination procedure for a tenured faculty member and if the procedure was begun under Chapter 6, the Board Chair and Chancellor appoint a committee pursuant to Chapter 6 if a permanent interim president or permanent president were not available at that time;
4. That the Chair and Chancellor develop and deliver a message to all personnel of CCSN acknowledging the Board's sincere thanks and appreciation for the service and contributions to higher education in Nevada, that the staff are dedicated and hardworking members of the team, however there are a few individuals at CCSN who have violated directives established for orderly completion of their charges and that will come to an immediate stop, any future violations will be immediately identified and appropriate Chapter 7 actions initiated, and to keep up the good work, and;
 5. That at the next Board meeting, December 11-12, 2003, the following 4 items be addressed for information/action: (a) discuss the policy on whether UCCSN employees can serve in the System and legislature, and address NRS section 241.031; (b) discuss the way lobbying efforts are handled in the legislature and the only persons to go to the legislature are the Chancellor and who she directs; (c) tighter control of lobbyist and host expenditures by all System employees, and; (4) tighten up personnel and hiring practices at all institutions for all employees.

In addition, the following motions were made and failed:

1. Motion to direct the interim president or, in the absence of an interim president, the Chancellor, that a letter of non-reappointment be sent to the professional employee, Chris Giunchigliani, to notify her that she would not be reappointed to her position when the current contract expired;
2. Motion to direct whoever is in charge, the Chancellor or interim president, to issue a letter of non-reappointment to Brigit Jones;
3. Motion to issue a termination notice to Brigit Jones;
4. Motion to direct the interim president or Chancellor to terminate Ms. Jones;
5. Motion for the Chancellor to take the results of the investigation and consult with the interim president and allow that person to make any managerial changes necessary at the institution, and;
6. Motion for the Chancellor and interim president to review the current job description and performance standards and requirements for Ms. Jones for accuracy and put in place a monitoring program to ensure standards and

performance expectations are met.

Special Meeting of the Board of Regents, Minutes (November 17 and 20, 2003).

ANALYSIS

In enacting the Open Meeting Law in 1960, the Nevada Legislature stated "This act being necessary to secure and preserve the public health, safety, convenience and welfare of the people of the State of Nevada, it shall be liberally construed to effect its purpose." Assembly Bill 1, Sec. 12, Fiftieth Session (1960). In finding that the Board of Regents violated the Open Meeting Law, the Nevada Supreme Court recently reaffirmed this important public policy by stating:

NRS 241.020(2)(c)(1) requires that a public body provide an agenda consisting of a 'clear and complete statement of the topics scheduled to be considered during the meeting.' NRS 241.010 explains that the Legislature enacted the Open Meeting Law to ensure that all public bodies deliberate and take action openly because 'all public bodies exist to aid in the conduct of the people's business'. Indeed, the legislative history of NRS 241.020(2)(c)(1) illustrates that the Legislature enacted the statute because 'incomplete and poorly written agendas deprive citizens of their right to take part in government' and interfere with the 'press'[s] ability to report the actions of government.'

The Legislature evidently enacted NRS 241.020(2)(c)(1) to ensure that the public is on notice regarding what will be discussed at public meetings. By not requiring strict compliance with agenda requirements, the 'clear and complete' standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of the stated agenda topic, thereby circumventing the notice requirement. . . . [W]e conclude that the plain language of NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda.

....

. . . Nevada's Open Meeting Law seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.

Sandoval v. Board of Regents, 119 Nev. Adv. Op. 19 at 7—9 (May 2, 2003).⁵

Accordingly, in addressing the following allegations, this office will strictly adhere to the mandates of the Nevada Legislature and the Nevada Supreme Court, and will liberally construe all provisions of the Open Meeting Law so that the purpose of preserving the welfare of the people of the State of Nevada will be accomplished.

1. Was an appropriate motion to close the meetings made and passed?

As a threshold matter, this office notes that the Open Meeting Law does not require a public body to go into a closed session to consider the character, alleged misconduct, or professional competence of a person.⁶ Rather, the election by a public body to go into a closed session under these circumstances is solely within the discretion of the public body.⁷

Here, prior to going into closed session on November 17, and again on November 20, the Board voted to close the meeting and stated the purpose for which the closed session would be held. Each motion complied with this office's previous opinions as to the appropriate manner in which to proceed to a closed session. NEVADA OPEN MEETING LAW MANUAL, § 9.06 (9th ed. 2001). Accordingly, with the exception of the findings set forth in this opinion with regards to the agenda, this office finds that the Board did not violate the Open Meeting Law when it voted to go into a closed session under the circumstances then present.

2. Did the Board violate the Open Meeting Law by deliberating and taking action in closed session on whether to allow Chancellor Nichols to be present during the closed session?

Because the Open Meeting Law is silent on who may attend a closed session, we have generally recommended that it is up to the chairperson to decide who shall be included in the closed session. See NEVADA OPEN MEETING LAW MANUAL, § 9.06 (9th ed.

⁵ See generally *McKay v. Board of Supervisors*, 102 Nev. 644 (1986); *McKay v. Board of County Commissioners*, 103 Nev. 490 (1987). NRS 241.010 further provides it is the intent of the law that actions be taken openly, and that deliberations be conducted openly.

⁶ See *Del Papa v. Board of Regents*, 114 Nev. 388, 394 (1998) (The spirit and policy behind NRS 241 favors open meetings). NEVADA OPEN MEETING LAW MANUAL, §§ 9.04, 9.06 (9th ed. 2001)

⁷ However, § 9.06 of the Open Meeting Law Manual states "an agenda item denoting an authorized closed session and a motion to go into the session may avoid naming the individual although it is recommended the public body consider naming the individual if the closed session involves a controversy in which there is a strong and legitimate public interest."

2001). In many cases, this is simply a procedural decision made by the Chair.

In the instant case, the Chair made the decision to allow the Chancellor to be present during the closed session. However, controversy quickly ensued over this decision. It is unequivocal from the minutes of both the open and closed session that the decision to allow the Chancellor, who was a subject of the investigation and a witness, to participate in the closed session was not a procedural decision, but a substantive decision. Such decision was within the control of the Board, and one which was of such great importance to the Board that it compelled them to debate and take action, not once, but twice during the closed session.⁸

It is firmly established under Nevada law that a Board cannot deliberate and take action during a closed session.⁹ The minutes from the closed session of the Board clearly demonstrate a lengthy deliberation over whether to allow the Chancellor to participate in the closed session, and a vote.

Accordingly, we find that the Board violated the Open Meeting Law by deliberating and taking action in closed session on whether the Chancellor would be permitted to participate in the closed session.

3. Did the Board violate the Open Meeting Law by deliberating and forming recommendations and a consensus during the course of the closed sessions?

In allowing closed sessions pursuant to NRS 241.030, the legislature expressly stated: “4. The exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.”

Moreover, pursuant to NRS 241.030, during a closed session, a public body is only permitted to consider, that is, “to think about” the information presented.¹⁰ A public body may not form recommendations or decisions about an action to take or build a consensus during a closed session. See NEVADA OPEN MEETING LAW MANUAL, §§ 9.04 and 9.06 (9th ed. 2001).

⁸ There is no question that what occurred in the closed session was “action” pursuant to NRS 241.015(1), which provides: 1. “Action” means: (a) A decision made by a majority of the members present during a meeting of the public body; (b) A commitment or promise made by a majority of the members present during a meeting of a public body,

⁹ See *McKay v. Board of Supervisors*, 102 Nev. 644 (1986).

¹⁰ *Id.*

As previously stated, upon completion of the presentation during the closed session of November 20, the Board was presented with options as to what action it could take against certain UCCSN employees. After hearing the options, each Regent was then told he/she could discuss what he/she felt based upon the investigation. The lengthy and quite substantive discussion involved each Regent expressing his/her reactions and feelings about the information they he/she had received, including the adequacy and results of the investigation.

Moreover, regarding whether action should be taken by the Board against certain UCCSN employees, some members even stated they felt action should be taken, one member recommended termination of certain employees, and another implied termination.

Upon a thorough review of the audio tapes and written minutes of the closed session of November 20, it is this office's opinion that this portion of the closed meeting went far beyond "thinking about" or consideration of the character, alleged misconduct, and professional competence of certain UCCSN employees. Rather, the Board deliberated and formed recommendations and a consensus regarding whether to take action.

Indeed, this office's review of the tapes and minutes revealed that it is fairly simple to measure a Regent's judgment and position on whether he/she felt it necessary to take action against certain UCCSN employees.¹¹

Accordingly, we find the Board violated the Open Meeting Law by deliberating and forming recommendations during the course of the closed session.

4. Did the Board violate the Open Meeting Law by considering, during closed sessions, the character, alleged misconduct, professional competence, or physical or mental health of elected officials?

Pursuant to NRS 241.031, a public body shall not hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body. Such a law is fundamental because there is a strong and legitimate public interest to hear and witness discussions by public bodies of an elected official.

During the closed session, the character, alleged misconduct, and professional

¹¹ To "deliberate" is to examine, weigh, and reflect upon the reasons for or against the choice. Deliberation thus connotes not only collective discussion, but also the collective acquisition or the exchange of facts preliminary to the ultimate decision. See *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968).

competence of two elected officials was discussed; one of them being complainant Ms. Chris Giunchigliani. Counsel for the Board felt there was no violation of NRS 241.031, claiming the Board was discussing Ms. Giunchigliani in the context of her being an employee of UCCSN. We do not find this reasoning persuasive or conclusive in establishing that there was no violation of NRS 241.031.

Ms. Giunchigliani has dual roles — one as a legislator and one as a UCCSN employee. The alleged misconduct of Ms. Giunchigliani discussed by the Board occurred during the 2003 Legislative Session, in her capacity as an elected official. While the Regents may have discussed her character and alleged misconduct in her capacity as an employee of UCCSN, they also discussed her character and alleged misconduct in her capacity as an elected official; the Board's discussion regarding the two responsibilities are inextricably intertwined.

Accordingly, we find the Board violated section NRS 241.031 by considering the character, alleged misconduct, and professional competency of Assemblywoman Giunchigliani during closed session. In addition, we find the Board violated NRS 241.031 when it went into closed session to consider the character, alleged misconduct, and professional competency of a certain Assemblyman.¹²

5. Did the Board properly notify each person whose character, alleged misconduct, professional competence, or physical or mental health, which was considered at the time and place of the closed session, in accordance with the Open Meeting Law?

NRS 241.033(1) provides that a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least five working days before the meeting if delivered personally or 21 working days if sent by certified mail.

The information provided to this office establishes that, with the exception of one individual lobbyist, proper notice pursuant to NRS 241.033(1) was given to each person whose character, alleged misconduct, professional competence, or physical or mental health was to be considered at the closed session. With regard to the aforementioned individual, this office finds the Board violated NRS 241.033(1), and intends to inform this person of this office's conclusion. However, due to issues of privacy, the identity of this

¹² While the Open Meeting Law does not apply to the Legislative body, this office does not believe the intent of NRS 241.031 is to allow discussion of elected members of the Legislature in closed session. Such an interpretation would provide a road map for the practical abolition of NRS 241.031.

individual shall remain confidential.

6. Did the Board violate the Open Meeting Law when it did not provide notice that administrative action may be taken against certain individuals?

The notice given under NRS 241.033(1) stated that:

NOTICE IS HEREBY GIVEN that, pursuant to NRS 241.033, the Board of Regents of the University and Community College System of Nevada intends to conduct a closed personnel session to consider certain employment practices and use of personnel employed by the Community College of Southern Nevada. This discussion may include matters related to your professional competence, character or any alleged misconduct.

NOTICE IS FURTHER GIVEN that this personnel session will be conducted during a special Board of Regents meeting on November 17, 2003. The meeting commences at 11:00 a.m. The meeting will be held at the Tam Alumni Center, University of Nevada, Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.

NOTICE IS FURTHER GIVEN that pursuant to NRS 241.033, you are entitled to this written notice of the Board of Regents intention to hold this meeting.

Those persons did not receive notice pursuant to NRS 241.034 which provides, in pertinent part:

1. A public body shall not consider at a meeting whether to:
 - (a) Take administrative action against a person; or
 - (b) Acquire real property owned by a person by the exercise of the power of eminent domain, unless the public body has given written notice to that person of the time and place of the meeting.
2. The written notice required pursuant to subsection 1 must be:
 - (a) Delivered personally to that person at least 5 working days before the meeting; or

(b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting. A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in subsection 1 relating to that person at a meeting.

The Eighth Judicial District Court of Clark County, Nevada, in considering a motion for a temporary restraining order filed by the Plaintiffs in consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275 found no violation of NRS 241.034. The Court's Findings of Fact and Conclusions of Law state, in pertinent part:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[T]he Court finds that both Pltfs [sic] had notice pursuant to NRS 241.033 and 241.034 of an impending meeting that would consider their character and fitness as an employee. Although proof of such notice to the Board is a prerequisite to any actions taken pursuant to NRS 241.033, and 241.034, both Pltfs [sic] in their pleading acknowledged timely service of the notice that the Board would be meeting to discuss conduct, character, and fitness in relation to employment.

A reasonable and objective person would assume that such notice brought with it notification that some form of action regarding one's employment status might occur. Nothing by statute requires such notice to have the actual wording 'administrative action may take place.'¹³

This office takes a different view of the facts, circumstances, and law applicable to this situation. The notice requirements of NRS 241.034 are clear: if a public body considers whether to take administrative action against a person at a meeting of the public body, it must specifically notify the person of this fact; to find otherwise undermines the clear language of the statute.

In applying the Eighth Judicial District Court's reasoning, a person would have to speculate as to whether administrative action might be taken against him. However, this is not what

¹³ See consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275, *Findings of Fact, Conclusions of Law, and Order* at 2: 7—17 (December 30, 2003).

the Legislature intended. In adding NRS 241.034 to the Open Meeting Law, the Legislative history provides:

. . . The second part of the amendment is to require *more specific* and personal notice be given to persons in two circumstances: if the public body is going to be considering whether to take administrative action against a person or if the public body is going to be considering whether to acquire the person's property by imminent [sic] domain

See Journal of the Nevada State Assembly (comments of Assemblyman Bache), 955 (April 25, 2001) (emphasis added).

. . . Finally, AB 225 creates an *additional* notice requirement under the open meeting law before a public body considers taking an administrative action against a person It must personally deliver written notice to that person at least five working days before the meeting or send notice by certified mail to the last-known address of the person at least 21 working days before the meeting.

See Journal of the Nevada State Assembly (comments of Assemblyman Bache), 1024 (April 26, 2001) (emphasis added).

Accordingly, NRS 241.034 is an *additional* notice requirement that a public body may take administrative action, such as discipline, against a person. Such notice cannot be inferred by receiving notice pursuant to NRS 241.033 that a public body may be meeting to consider one's character, alleged misconduct, or professional competence. Hence, it is the opinion of this office that the Board violated NRS 241.034.

7. Did the Board Chair violate the Open Meeting Law by excluding certain persons from attending the closed sessions?

Of all those who were given notice that their character, alleged misconduct, and professional competence might be considered at the Board's closed meeting, only Chancellor Nichols was permitted to attend; the others were expressly excluded.

As aforementioned, NRS 241.033 is silent on the exclusion of a person whose character, alleged misconduct, professional competence, or physical or mental health will be considered during a closed session. While this office has opined on the issue of excluding disruptive persons and witnesses from meetings of public bodies,¹⁴ whether a

¹⁴ See NEVADA OPEN MEETING MANUAL, §§ 8.05, 8.06 (9th ed. 2001).

person is properly excluded from a closed session under these circumstances is a novel issue.

The Eighth Judicial District Court of Clark County, Nevada, in considering the motion for a temporary restraining order in consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275 found the following: "Pltfs [sic] were not entitled pursuant to statute to be present during the closed session, although by statute, if such a closed meeting occurs, then Pltfs [sic] are entitled to a transcript of the closed meeting proceedings. . . ." ¹⁵

This office is not aware of any facts that explain why, among similarly situated individuals, that the Chancellor was allowed to attend the closed meeting while the others were excluded. Indeed, the Chancellor was not only allowed to attend, but was given the opportunity to address the Board on the findings of the investigation relative to her alleged conduct, while the others were not.

It is the position of this office that the Legislature and the law contemplated and intended that persons who are at risk of a public body taking administrative action against them have the fundamental right to confront the public body that is considering administrative action against them. Moreover, the Legislature and law certainly would not permit a public body to discriminate among similarly situated persons and allow only one of them to attend and be heard at a closed meeting of the public body where their conduct is subject to administration action.

For these reasons, and given the important nature and the public interest with regard to the issue of who is entitled to attend a closed meeting of this nature, this office will request a court of competent jurisdiction to declare whether the closed session provisions of the Open Meeting Law require that those considered during the closed session be permitted to attend the closed session.

8. Did the agenda, and actions taken at the November 17 and November 20, 2003 meetings comply with the Open Meeting Law?

As aforementioned, the agenda for the November 17 meeting provided, in pertinent part:

¹⁵ See consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275, *Findings of Fact, Conclusions of Law, and Order* at 2: 18—20 (December 30, 2003).

CLOSED SESSION

1. PERSONNEL SESSION

INFORMATION

1.1 CLOSED SESSION

In compliance with NRS 241.030, a closed session will be held for purposes of discussion of the character, alleged misconduct, professional competence, or physical or mental health of certain executive employees of the UCCSN.

1.2 RETURN TO OPEN SESSION

The Board will return to open session.

2. PERSONNEL ACTIONS AND RELATED MATTERS

ACTION

If deemed necessary by the Board of Regents, the Board may take a number of possible actions in response to the information received by the Board, including possible personnel or disciplinary actions. The Board may also issue directives to certain executive officers and employees of the UCCSN in response to any alleged conduct and may also issue directives to UCCSN personnel relating to possible amendments to Board policies and the continuation of the investigation. In the event the Board of Regents determines that personnel or disciplinary actions should be initiated, in conformity with the UCCSN Code, Board of Regents' policies and the statutory and contractual rights of employees, such as actions may include: warning; reprimand; reduction in pay; suspension; termination; or reassignment. The Board of Regents may also make interim appointments and take any other action deemed appropriate.

As previously stated, in *Sandoval v. Board of Regents*, 119 Nev. Adv. Op. 19 (May 2, 2003) the Nevada Supreme Court clearly pronounced, when finding the Board in violation of the Open Meeting Law, that an agenda must be written to ensure that the public is on notice regarding what will be discussed at public meetings. This pronouncement is clearly relevant to the present case. NRS 241.020(2)(c) requires, at a minimum, that an agenda include a clear and complete statement of the topics scheduled to be *considered* during the meeting, and a list describing the items on which action may be taken and *clearly denoting* that action may be taken on those items.

While this Office recognizes that NRS 241.030(1) contemplates some degree of

confidentiality, we have always opined that when the public body is going to take action concerning a person, the agenda must specify the name of the person; this is especially true when there is a strong legitimate public interest in the person(s), as in the case at hand.¹⁶ The actions taken and the topics considered by the Board at the November 17 and 20 meetings were of great public interest, as evidenced by subsequent press reports and public turnout at the December meeting of the Board of Regents, where reconsideration of their November decisions was on the agenda.

Section 2 of the agenda for the November 17 meeting did not include the names of the persons who might be subject to disciplinary or other action by the Board. At the very least, and consistent with the prior opinions of this office, those persons should have been named under Section 2 of the agenda. Accordingly, we find that failing to name Dr. Ronald Remington, Mr. Cummings, Assemblywoman Chris Giunchigliani, and Topazia "Brigit" Jones, all persons whom either action was taken or recommended to be taken, was a violation of NRS 241.030(1).

In addition, Section 1 of the agenda only noted that consideration would be made of "executive employees" of UCCSN. However, it is clear from this office's review of this matter that the character, alleged misconduct, and professional competence of persons other than "executive employees" of UCCSN was considered during the closed session. Accordingly, we find that the Board violated NRS 241.030(1) in this regard as well.

CONCLUSION

Based upon the foregoing violations, pursuant to NRS 241.036 and NRS 241.037, this Office will file an action against the Board of Regents seeking avoidance of the following actions taken by the Board at its November 17 and 20, 2003 meetings: (1) voting in closed session to allow Chancellor Nichols to participate in the closed session; (2) voting to remove Dr. Ronald Remington as President of CCSN immediately and to have Chancellor Nichols take action to return him to the proper academic department, and; (3) voting to direct the interim president or the Chancellor, to reassign John Cummings to the faculty at CCSN effective immediately, to prohibit him from serving in an administrative capacity at CCSN until a majority vote of the Regents changed the motion, to have the Board Chair select an independent special administrative code officer to review and evaluate the materials in the investigation with respect to Mr. Cummings, and at his/her discretion be empowered to commence a Chapter 6 termination procedure for a tenured faculty member and, if the procedure was begun under Chapter 6, to allow the Board Chair and Chancellor to appoint a committee pursuant to Chapter 6 if a permanent interim

¹⁶ See NEVADA OPEN MEETING LAW MANUAL, §§ 9.06 and 9.07 (9th ed. 2001).

president or permanent president were not available at that time.

In addition, this office will seek declaratory relief that: (1) the Board violated the Open Meeting Law by deliberating and forming recommendations and a consensus on matters outside the scope of the closed session; (2) the Board violated the Open Meeting Law by considering, during closed session, the character, alleged misconduct, professional competence, or physical or mental health of elected officials, and of non-executive employees and others; (3) the Board violated the Open Meeting Law by not providing notice that administrative action might be taken against certain persons, and; (4) that the Board violated the agenda requirements of the Open Meeting Law with regard to both the closed and open session of the Board meetings. This office will also be seeking the court's declaration on whether the closed session provisions of the Open Meeting Law require that those considered during the closed session be permitted to attend the closed session.

Finally, consistent with prior actions against the Board, this office will seek an injunction requiring the Board to comply with the provisions of the Open Meeting Law, and prohibiting future violations of this nature.

By: _____
BRIAN SANDOVAL
Attorney General
State of Nevada

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FOR IMMEDIATE RELEASE
DATE: January 13, 2004

PRISON FOR SECURITIES FRAUD AGAINST ELDERLY

Las Vegas— Attorney General Brian Sandoval announced today that Mr. Lawrence Yanez was sentenced this morning to a maximum of 15 years in prison on numerous counts of Securities Fraud Against A Person Over the Age of 65, selling unregistered securities and transacting business as an unlicensed broker. Mr. Yanez will serve a minimum sentence of 5 years and a maximum sentence of 15 years. Mr. Yanez was also ordered to pay restitution in the amount of \$314,932.48. The Secretary of State's Securities Division seized \$50,998.43, which is marked for restitution.

Mr. Yanez contacted his victims through telephone solicitations. As a part of those solicitations, he alleged he was a securities broker and offered to sell securities in Creative Business Solutions and Nevada Heart and Imaging Center. The investigation revealed that neither company existed and that Mr. Yanez lived off of the investments of his victims. Mr. Yanez preyed on elderly victims, in some cases defrauding victims to the extent that they lost whole retirement investments. The Defendant raised \$314,932.48 over a 2-year period.

Mr. Yanez was arrested September 11, 2003, and through a negotiated plea agreement by the Bureau of Consumer protection under the direction of Consumer Advocate Timothy Hay, Mr. Yanez pleaded guilty to 4 counts of Securities Fraud Against a Person 65 Years of Age or Older, 1 count of Selling an Unregistered Security, and 1 count of Transacting Business as an Unlicensed Broker-Dealer on October 29, 2003.

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FOR IMMEDIATE RELEASE
DATE: January 12, 2004

INSURANCE CLAIM TO COVER SON'S THEFT

Winnemucca—Attorney General Brian Sandoval announced that the Nevada Department of Justice, Insurance Fraud Unit, prevailed in a case of felony insurance fraud and the perpetrator was sentenced today.

A Winnemucca jury found Patrick Lee Miller of Winnemucca guilty on November 6, 2003. Today, Miller was sentenced by District Court Judge John Iroz to four years in prison.

The judge suspended the sentence and placed Miller on probation on the condition that he pay investigative fees incurred by both The Office of The Attorney General and Nationwide Mutual Insurance Company totaling \$12,000.00. Also as a condition of probation, Miller was ordered to be evaluated for drug and alcohol addictions and, if so indicated, to enter treatment program at his own expense.

Miller made a claim with Nationwide Insurance Company for over \$60,000.00 alleging that an unknown man dressed in a Ninja outfit had broken in to his home and stole many items in his residence. In fact his minor son had been stealing from Miller for months. Miller concealed the fact that his son was a suspect because he knew that his insurance would not cover items stolen from his minor son. The insurance company denied the claim but incurred considerable expense in investigative fees and then brought the matter to the attention of the Insurance Fraud Unit.

“Insurance Fraud is a felony in the State of Nevada and carries a punishment of 1-4 years and a \$5000.00 fine,” said Ronda Clifton, Deputy Attorney General. “Even if the claim was not paid by the insurance company, lying to an insurance company in support of a claim for payment is a felony even if no money is ultimately paid out.”

If you have any information regarding insurance fraud, please call the Nevada Attorney General's Insurance Fraud Hotline at 1-800-266-8688. For more information about the Insurance Fraud Unit of the Nevada Department of Justice, please visit the Attorney General's website at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: February 20, 2004

CONSUMER ALERT: Medicare Prescription Drug Card Fraud Alert

Carson City—Attorney General Brian Sandoval today issued an alert to consumers about a Medicare prescription discount drug card scam.

“Be wary of people misrepresenting themselves as Medicare officials, going from door-to-door or by telephone selling ‘Medicare Approved’ discount cards. These cards have not been approved and enrollment will not begin until April, 2004,” said Sandoval. Until then, Medicare beneficiaries should not give ANYONE their personal identifying information.

The U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, offer these guidelines for your protection:

- A Medicare beneficiary should NEVER share personal information such as their bank account number, social security number or health insurance card number (or Medicare number) with any individual who calls or comes to the door claiming to sell ANY Medicare related product.
- Medicare-approved card sponsors will not market their cards door-to-door or over the phone.
- The Medicare-approved discount cards are not currently available. The names of the card sponsors will be made public in late March and the companies will begin to market their cards through commercial advertising and direct mail beginning in April.

Individuals who believe they may have been the victim of the Medicare discount card scam should contact the Attorney General’s Office, Bureau of Consumer Protection at (775) 687-6300. Additional consumer protection information can also be found on the Attorney General’s web site at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: February 13, 2004

***** MEDIA ADVISORY *****
VOLUNTEER INCOME TAX ASSISTANCE

Carson City—Attorney General Brian Sandoval urges members of the Northern Nevada press to attend an informal press conference in Reno to highlight a state-wide, multi-partner, volunteer program to assist people with basic income tax returns, particularly those with low and limited income, individuals with disabilities, non-English speaking and elderly taxpayers.

The Children's Cabinet
1090 South Rock Blvd
Reno
1030 a.m. Tuesday, February 17th

Tax assistance volunteers will be on hand to answer questions and demonstrate how the program works. Nevada Legal Services, the Children's Cabinet and the Internal Revenue Service have combined forces to provide resources and assist in the procurement and training of volunteers in order to provide this valuable service to the community.

**More information on the tax service itself and on how to volunteer
state-wide by calling 1-800-657-5482**

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FOR IMMEDIATE RELEASE
DATE: February 11, 2004

VICTIMS STILL SOUGHT IN LAS VEGAS VALLEY AUTO SCAM

Las Vegas—Attorney General Brian Sandoval announced today the arrests of Eddie Lopez, Jose Aguilera, Monica Page and Misty Huff, following an investigation by the Attorney General's Bureau of Consumer Protection. Investigators determined that the four accused took part in an auto scam that operated primarily by a scheme in which customers wishing to sell were duped out of their vehicles.

Attorney General Sandoval and Consumer Advocate Timothy Hay urge the media alert the public to this scam, as there are an undetermined number of unaware victims who have either been defrauded of their vehicles or are driving (and paying for) vehicles they do not legally possess.

Lopez was booked into the Clark County Detention Center on eighteen counts of theft and one count of forgery. Aguilera was charged with one count of accessory to theft; Page was charged with two counts of accessory to theft and one count of theft and Huff was charged with one count of theft. All of the charges are felonies. The four, who were arrested following execution of a search warrant earlier today, conducted business as A&E Auto Savers and Alternative Auto.

Numerous consumers complained that they entered into agreements with A&E Auto Savers and Alternative Auto that defrauded victims out of their cars. Lopez, Aguilera, Page, and Huff participated in the activities as either CEO or representatives of the companies. It is alleged that A&E Auto Savers or Alternative Auto, contacted consumers who were attempting to sell their vehicles through the newspaper. The representative of A&E told the consumer that A&E would take the car, sub-lease it to a third party, and guarantee that all payments would be made to the consumer's lien holder. A&E would then take the vehicle, make a few payments to the lien holder, and then the vehicle would disappear.

Any vehicles that A&E actually sub-leased, the company indicated to the sub-lessee that he was entering into a purchase agreement for the vehicle with A&E. However, A&E did not have lawful authority to sell the vehicle. The sub-lessee would pay A&E for the vehicle, but A&E never made payments to the original lien holder of the vehicle. Thus, the consumer made payments on a vehicle he did not lawfully possess.

Consumers should be advised that it is usually a violation of a contract with a lien holder to enter into such sub-lease agreements, and they become vulnerable to scams such as those run by those arrested.

As in all criminal matters, the allegations are merely accusations and individuals are presumed innocent unless and until proven guilty in court.

Individuals who may have been victimized by the individuals known as Eddie Lopez, Jose Aguilera, Monica Page and/or Misty Huff or A&E Auto Savers or Alternative Auto should call the Attorney General's Bureau of Consumer Protection in Las Vegas at (702) 486-3194; or in Carson City at (775) 684-6300. Additional consumer protection information can be found on the Attorney General's web site at <http://ag.state.nv.us>

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February 6, 2004

February 2nd through the 6th is National Consumer Awareness Week. In conjunction with the National Association of Attorneys General, the Nevada Attorney General's Bureau of Consumer Protection is issuing a daily press release designed to increase consumer awareness of a particular subject. This year's theme is "Financial Literacy: Earning a Lifetime of Dividends."

CONSUMER ALERT: AUTOMATIC DEBIT SCAMS

Carson City—Attorney General Brian Sandoval and Consumer Advocate Timothy Hay today issued an advisory to consumers about a telemarketing-related scam increasing in popularity: unauthorized debits from a consumer's checking account. Sandoval warns, "While automatic debiting of your checking account can be a legitimate payment method, the system is subject to abuse. If a caller asks for your checking account number or other information printed on your check, you should follow the same warning that applies to your credit card number—do not give out any information unless you are familiar with the company and you agree to pay for something."

The Attorney General's Bureau of Consumer Protection, under the direction of Consumer Advocate, Timothy Hay, reports that complaints of unauthorized automatic debiting are on the rise. The most common scams usually start with the consumer receiving a postcard or a telephone call saying he or she may have won a prize or can qualify for a major credit card, regardless of past credit problems. The consumer responds to the offer, which sounds too good to pass up, and winds up giving the caller information regarding his or

her checking account, either without knowing why or because the caller says it will help ensure qualification for the offer. Once the caller has the account information, the consumer's checking account may be debited without the consumer's signature, and the consumer likely will not discover the bank has paid the draft until it appears on a monthly statement.

Perhaps more disturbing is the increase in complaints from consumers who give out their checking account information with full knowledge of the circumstances, but then they attempt to limit the authorization in some way, for instance asking the company to hold off putting through the automatic debit until the consumer calls back to confirm. Often, the consumer has difficulty following up with the company and the debit goes through anyway. The problem then is proving the debit was not authorized when, in most cases, the consumer has been recorded providing the checking account information and the debit authorization but not providing the terms of the limitation.

"Consumers should be aware that once they give their verifiable authorization for the debit to the telemarketer, there is very little that can be done to reverse the transaction, and consumers are left with few options other than to request a refund from the company if the company is legitimate and offers refunds," Hay said. "Greater consumer protections are available in general if goods or services are purchased through a credit card rather than debiting an account directly."

The Bureau of Consumer Protection offers the following suggestions to help a consumer to avoid being the victim of an automatic debit scam:

- **Know your caller.** Do not give out your checking account information over the phone unless you know the company and understand why the information is necessary.
- **Make sure the entire call is taped.** If someone says they are taping your call, ask why. Do not be afraid to ask questions. If they are taping to verify your debit authorization, and you attempt to limit your authorization in some way, make certain that portion of the call is also recorded. Of course, the only way to be certain you are not being debited without your authorization is to wait to give your checking account information and debit authorization until you are absolutely sure you want to make a purchase.
- **Understand the limited refund options available if you make a purchase by debit.** Unlike most credit card companies, which offer dispute researching as an additional layer of purchase protection, banks have limited, if any, dispute options and automatic debits from your checking account are usually final. You should immediately advise a bank of an unauthorized debit to prevent further debiting, but you will likely need to pursue a refund directly from the company.

Individuals who believe they may have been the victim of an automatic debit scam, or

individuals who would like more information on consumer protection issues in Nevada, may contact the Attorney General's Bureau of Consumer Protection in Las Vegas, at (702) 486-3194, or in Carson City, at (775) 687-6300. Additional consumer protection information can also be found on the Attorney General's web site at <http://ag.state.nv.us> and on the Consumer Affairs Division website at www.fyiconsumer.org, Patricia Morse Jarman, Commissioner.

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FOR IMMEDIATE RELEASE
DATE: February 5, 2004

MEDIA ADVISORY: **Cyber Forensics Lab Grand Opening** **-Photo Opportunity-**

Las Vegas—The National Nuclear Security Administration (NNSA/Nevada Site Office) and the Nevada Cyber Crime Task Force have formed a partnership to solve technology crimes and protect the nation's nuclear information assets. Local, state and federal dignitaries will dedicate the state-of-the-art cyber forensics laboratory at 2:00 p.m. on February 6. The 10,000 square foot facility will house technical experts performing multiple functions including forensic examination of computer evidence, the nuclear weapons complex cyber forensics lab and an intrusion analysis center for the nuclear weapons complex. Demonstrations of cyber crime investigation tools will follow the ribbon cutting ceremony during an informal Open House.

WHAT: Cyber Crime Task Force Ribbon Cutting Ceremony/Media Open House - Tour of Facility

WHERE: North Las Vegas; for directions and to RSVP call: Darwin Morgan at (702) 295-3521 or Tom Sargent at (775) 684-1114

WHEN: 2:00 p.m. through 6 p.m., Friday, February 6, 2004

NNSA's Information Assurance Response Center (IARC) provides a centralized location to assess computer security nationwide for the nuclear weapons complex which includes the fastest and most complex computer systems in the world. The IARC staff use cutting edge technology to thwart attacks on computer systems and networks.

The Nevada Cyber Crime Task Force mission is to combat electronic and computer-related crime in Nevada. It facilitates cooperation between local, state and federal law enforcement officers to protect businesses and citizens from cyber criminals. This comprehensive and collaborative effort has resulted in numerous successes already in solving crimes that occur via or utilize computers and computer networks.



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February 5, 2004

February 2nd through the 6th is National Consumer Awareness Week. In conjunction with the National Association of Attorneys General, the Nevada Attorney General's Bureau of Consumer Protection is issuing a daily press release designed to increase consumer awareness of a particular subject. This year's theme is "Financial Literacy: Earning a Lifetime of Dividends."

CONSUMER ALERT: FRAUDULENT LOAN BROKERS

Carson City—Attorney General Brian Sandoval and Consumer Advocate Timothy Hay urge Nevada consumers to be aware of fraudulent loan brokers and other individuals who misrepresent the availability of credit and credit terms. Fraudulent loan brokers often advertise "advance-fee" loans, in which the borrower is guaranteed a loan or credit card. However, the borrower must pay a fee in advance, often hundreds of dollars before one even gets to "apply" for the loan or receive a credit card. Once the con artist receives the money, they disappear and the loan applicant is left with nothing.

Advertisements for these promised loans are often found in the classified section of local and national newspapers, as well as on the Internet. They may also be found on local cable stations, and in flyers circulated in neighborhoods, shopping centers and military bases. The ads often contain a toll-free "800" number or a "900" number, which results in the caller incurring additional charges on their phone bill.

Consumers need to be aware that Federal law prohibits a lender from asking for or accepting payment for their loan services until the consumer actually receives a loan or credit.

Consumer Advocate Timothy Hay, of the Attorney General's Bureau of Consumer Protection and Commissioner Patricia Morse Jarman of the Nevada Consumer Affairs Division offer the following tips for consumers to remember when applying for a loan or credit:

Deal only with established, reputable lenders. Legitimate lenders never "guarantee" a loan or credit card before you apply, especially if you have bad credit, no credit or a bankruptcy.

Legitimate lenders don't charge for "processing." If you apply for a real estate loan, it is acceptable for the lender to charge you money for a credit report or appraisal. However, this should not be confused with having to pay for simply "processing" a loan application.

Get it in writing. If you do not have a confirmed offer in writing and you are asked to pay in advance, don't do it. It is against the law.

Be selective when providing personal information. Never provide your Social Security Number, credit card account number, bank account information, or other vital information in response to an e-mail or telephone solicitation in which you are contacted first by the provider.

Individuals who believe they may have been a victim of an advance-fee loan scam, or individuals who would like further information on consumer protection issues in Nevada may call the Attorney General's Bureau of Consumer Protection in Las Vegas at 702-486-3194; or in Carson City at (775) 687-6300. Additional consumer protection information can be found on the Attorney General's web site at <http://ag.state.nv.us> and on the Consumer Affairs Division web site at www.fyiconsumer.org.

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FOR IMMEDIATE RELEASE
DATE: February 4, 2004

LEADING RAIL ATTORNEY JOINS YUCCA LEGAL TEAM

Carson City—Nevada's Attorney General Brian Sandoval today announced that prominent transportation attorney Paul H. Lamboley has been added to the state's Yucca Mountain legal team.

A Nevadan, Lamboley is a former Commissioner and Vice Chairman of the Interstate Commerce Commission, where for six years he adjudicated numerous critical rail issues, including rate and access cases, railroad restructuring, hazardous materials transportation, labor relations, and antitrust. He was active in Congressional relations and served as the inter-agency liaison for civil and military emergency preparedness programs, and chaired a special task force on carrier insurance issues.

"Paul is a world-class rail lawyer," Sandoval said, "and, as a Nevadan, we know his heart is in the right place on DOE's Yucca proposal."

Lamboley maintains offices in both Washington D.C. and Reno, where he specializes in transportation and environmental-related litigation and administrative practice for a variety of industry and government clients. He served as lead counsel for the City of Reno team in the Union Pacific/Southern Pacific merger proceedings before Federal agencies and courts.

Lamboley has held adjunct or guest lecturer appointments at Georgetown University, Notre Dame, Stanford, University of Wisconsin, and University of Nevada. He holds a B.S. degree from Notre Dame, and a law degree from University of Wisconsin. He clerked for Justice David Zenoff of the Nevada Supreme Court, and has litigated cases in federal and

state courts nationwide, up through the Nevada, California, and United States Supreme Courts.

Lamboley joins Nevada's Yucca Mountain legal team under subcontract to Egan, Fitzpatrick, Malsch & Cynkar of McLean, Virginia. His engagement comes just as the Department of Energy is soon to announce development of a 319-mile rail route for radioactive waste transport from Caliente to Yucca Mountain.

Mr. Sandoval added, "Like everything else the Energy Department has done on the Yucca project, the new rail route was hastily conceived and is a grab bag of legal and technical slip-ups. We're delighted to have Paul Lamboley to supplement our legal arsenal."

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FOR IMMEDIATE RELEASE
February 4, 2004

February 2nd through the 6th is National Consumer Awareness Week. In conjunction with the National Association of Attorneys General, the Nevada Attorney General's Bureau of Consumer Protection is issuing a daily press release designed to increase consumer awareness of a particular subject. This year's theme is "Financial Literacy: Earning a Lifetime of Dividends."

CONSUMER ALERT: PROTECTING YOUR MOST VALUABLE ASSET

Carson City—Attorney General Brian Sandoval and Consumer Advocate Timothy Hay urge consumers to protect their most valuable asset: their homes.

With the continued low interest rates, new consumer abuses in home equity loans continue to increase. Consumer Advocate Timothy Hay stated, "The Bureau of Consumer Protection has observed an increase of abuses in the home mortgage industry in Nevada as opportunities expand for home ownership."

For example, lenders convince consumers to mortgage their homes to their maximum appraisal value. As a result, consumers lose the equity in their home as well as the ability to pay their monthly house payments because of the new loan. The lenders do not care because they usually receive fees on the new loan and will foreclose on the homes and receive the equity that homeowners worked several years to build.

Another abuse on the rise involves pressuring the homeowner under duress to sign over the deed or quit-claim the property. In this case, a consumer may be unable to make monthly payments. The original lender has threatened to, or begun to, foreclose on the

property. A subsequent lender contacts the consumer with an offer to find new financing. As a requirement, however, the new lender requires the consumer to sign the deed over to the new lender or quit-claim the property to the new lender. At this point, the consumer is no longer the owner of the property. The new lender can sell the property and the consumer will not receive any of the proceeds. Also, the new lender will treat the consumer as a tenant and the consumer's mortgage payments as rent. If the consumer fails to make a payment, the new lender can evict the consumer.

The Attorney General's Bureau of Consumer Protection offers the following tips before refinancing your home:

- Make sure that you can afford the new monthly payment.
- Watch out for a payment that seems extremely low only to have a huge balloon payment at the end of the term of the loan.
- Do not sign any document you have not read or has blanks to be filled in after you sign the document.
- Do not agree to a loan that has products you do not want (credit insurance, for example, which is typically more expensive from a lender.)
- Do not let the promise of extra cash or lower monthly payments cloud your good judgment.
- Never deed your home to someone else without first consulting a lawyer or trusted family member or friend.

Nevada consumers with concerns or complaints regarding home loan abuses should contact the Attorney General's Office at (702) 486-3194, or in Carson City at (775) 687-6300. General consumer protection information can be found on the Attorney General's website at <http://ag.state.nv.us> and on the Nevada Consumer Affairs Division ("CAD"), website at www.fyiconsumer.org, Patricia Morse Jarman, Commissioner.

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FOR IMMEDIATE RELEASE
DATE: February 3, 2004

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February 2nd through the 6th is National Consumer Awareness Week. In conjunction with the National Association of Attorneys General, the Nevada Attorney General's Bureau of Consumer Protection is issuing a daily press release designed to increase consumer awareness of a particular subject. This year's theme is "Financial Literacy: Earning a Lifetime of Dividends."

ATTORNEY GENERAL ISSUES CONSUMER ALERT REGARDING "YO-YO SALES" PERFORMED BY AUTO DEALERSHIPS

Carson City—Attorney General Brian Sandoval and Consumer Advocate Timothy Hay urge Nevada consumers to be wary of so-called "Yo-yo Sales" being performed by auto dealerships throughout Nevada. "This is one of the most widespread automobile dealer abuses today for new and used car sales and automotive leases," said Consumer Advocate Timothy Hay. "Unfortunately, 'Yo-Yo Sales' are standard operating procedure at unscrupulous dealerships."

In this practice, the dealership delivers a car to the consumer without finalizing financing. However, more often than not, the consumer believes the financing is final because the dealership quotes the consumer a particularly low interest rate and assures the consumer everything is approved for the sale of the car. Several days later, the dealership contacts the consumer and informs the consumer the financing "fell through." The dealership then offers the consumer a new significantly higher rate. If the consumer rejects these terms, the dealership repossesses the vehicle and, often times, attempts to collect a temporary high rental fee or the dealership attempts to bind the consumer to the original contract. The problem with this transaction is its one-sided

nature. The dealership expects the consumer to comply with the contract but the dealer has the right to rescind it at its discretion.

Consumer Advocate Timothy Hay who heads the Attorney General's Bureau of Consumer Protection and Commissioner Patricia Morse Jarman of the Nevada Consumer Affairs Division offer the following tips for consumers to follow before entering into a contingent automobile purchase:

- Consumers who choose to buy a car with contingent financing should call the finance manager the next business day and request copies of the approval documents.
- The consumer and the auto dealership should establish specific procedures for finalizing the sale, such as a provision that the transaction will terminate, if the low interest rate is not obtained.
- The consumer should request a right to cancel until financing is obtained.
- If the dealership refuses to accept these terms, the consumer should walk away from the transaction.

“Consumers should be aware that if they are asked to return to the dealership to refinance the vehicle, they can walk away from the transaction and do not have to pay a rental fee,” Hay said. “In other words, if the dealership has exercised its right to rescind the first contract, you are under no obligation to agree to a new contract.”

Nevada consumers with concerns or complaints regarding this type of sales transaction should contact the Attorney General's Bureau of Consumer Protection at (702) 486-3194, or in Carson City at (775) 687-6300. Additional consumer protection information can be found on the Attorney General's website at <http://ag.state.nv.us> and on the Consumer Affairs Division website at www.fyiconsumer.org.

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FOR IMMEDIATE RELEASE
DATE: February 2, 2004

FORMER CARSON CITY BUSINESSMAN SENTENCED FOR FELONY INSURANCE FRAUD

Carson City—Attorney General Brian Sandoval announced that Tye Fortuna, 31 of Big Fork, Montana was sentenced today by Judge Michael R. Griffin in the Carson City District Courthouse after pleading guilty to felony Insurance Fraud.

Tye Fortuna previously was a Carson City resident and the former owner of Sierra Earth and Stone Corporation. He reported to Zurich Insurance Company that a large piece of construction equipment, a 2000 Komatsu Front Loader, was stolen from a job site in Carson City, Nevada. The insurance company paid Fortuna \$89,375.00 for the alleged theft. However, a subsequent anonymous tip to The Insurance Fraud Unit of the Attorney General's Office indicated that Fortuna falsely reported the front loader stolen to his insurance company. An investigation was initiated by the Insurance Fraud Unit with the assistance of the National Insurance Crime Bureau and Montana law enforcement authorities. The investigation, which included a trip to Montana by Insurance Fraud Unit investigators, revealed Fortuna had personally loaded the equipment on a trailer and moved the front loader to a friend's property in Big Fork, Montana and changed all of the identification numbers in order to cover up his crime. The Insurance Fraud Unit charged Fortuna with insurance fraud, a felony punishable by up to 4 years in prison and a \$5000.00 fine.

The court sentenced Fortuna to 12-32 months in prison. Judge Griffin suspended the sentence and placed Fortuna on probation for 5 years. The loader was returned to the insurance company which presently has a high bid for purchase of \$46,375.00. Therefore, the court ordered Fortuna to pay the victim, Zurich Insurance Company, \$43,000.00 in restitution and \$5,000.00 to the Attorney General's Insurance Fraud Unit to help cover their investigative costs.

Prosecutor Ronda Clifton stated: "A concerned citizen's phone call led to cooperative efforts between the Insurance Fraud Unit, the National Insurance Crime Bureau and local law enforcement in the state of Montana which resulted in bringing Fortuna before the court."

If you have any information regarding insurance fraud, please call the Nevada Attorney General's Insurance Fraud Hotline at 1-800-266-8688. For more information about Nevada's Insurance Fraud Unit, please visit the Attorney General's website at <http://ag.state.nv.us>

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**FOR IMMEDIATE RELEASE
February 2 2004**

February 2nd through the 6th is National Consumer Awareness Week. In conjunction with the National Association of Attorneys General, the Nevada Department of Justice, Bureau of Consumer Protection, is issuing a daily press release designed to increase consumer awareness of a particular subject. This year's theme is "Financial Literacy: Earning a Lifetime of Dividends."

CONSUMER ALERT: THE HIGH COST OF PAYDAY LOANS

Carson City – As part of National Consumer Awareness Week, the Attorney General's Bureau of Consumer Protection warns consumers about the high costs associated with payday loans.

Payday loan companies are common throughout Nevada. The companies make small, short-term, high interest loans that go by a variety of names including payday loans, cash advance loans, check advance loans, post-dated check loans or deferred deposit check loans.

The loans work like this: a borrower writes a personal check payable to the lender for the amount he or she wishes to borrow plus a fee. The company gives the borrower the amount of the check minus the fee. Fees charged for payday loans are usually a percentage of the face value of the check or a fee charged per amount borrowed – for example, for every \$50 or \$100 loaned. If the borrower wishes to extend or "roll-over" the loan for more time, the borrower must pay fees for each extension.

Consumers should know that payday loans are an extremely costly way to obtain cash. There are no limits on the amount of interest and/or fees that a lender may charge in Nevada. This often means that the fees associated with the loan and/or the annual percentage rate (APR) is substantial.

Timothy Hay of the Attorney General's Bureau of Consumer Protection urges consumers to consider these possibilities before choosing a payday loan:

- When you need credit, shop carefully and compare offers. Look for the credit offer with the lowest APR. Consider a small loan from a credit union, an advance on pay from your employer, or a loan from family or friends. A cash advance on a credit card also may be a possibility but it may have a higher interest rate than other sources of funds. In all cases, find out the terms of the offer before you decide.
- Compare the APR and the finance charge (which includes loan fees, interest and other types of credit costs) of all credit offers to get the lowest cost.
- Ask your creditors for more time to pay your bills. Find out what they will charge for that service – a late charge, additional finance charges or a higher interest rate may actually be less expensive than other credit arrangements.
- If you need help working out a debt repayment plan with creditors or developing a budget, contact your local non-profit consumer credit counseling service. These services are available at little or no cost.
- If you decide that you must use a payday loan, borrow only as much as you can afford to pay with your next paycheck and still have enough to make it to the next payday.

If you would like further information, please call the Attorney General's Bureau of Consumer Protection in Las Vegas at (702) 486-3194; or in Carson City at (775) 687-6300. Additional consumer protection information can also be found on the Attorney General's website at ag.state.nv.us and the Nevada Consumer Affairs Division ("CAD"), website at www.fyiconsumer.org, Patricia Morse Jarman, Commissioner.

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ANN WILKINSON
Assistant Attorney General

March 31, 2004

**ATTORNEY GENERAL'S FINDING ADOPTING
NATIONAL DO-NOT-CALL REGISTRY FOR NEVADA**

Nevada's newly-enacted Telecommunication Solicitation Act (the "Act") specifies that if a federal agency establishes a single national database of telephone numbers of persons who request not to receive unsolicited telephone calls for the sale of goods or services ("national registry"), the Attorney General shall, to the extent consistent with federal law, examine that database and the federal law relating to that database for purposes of the Act. NRS 228.540(1). Based upon this examination, the Attorney General may issue a finding that:

1. The part of the single national database that relates to this state is adequate to serve as the registry for purposes of the Act; and
2. It is in the best interests of this state for the Attorney General to use the part of the single national database that relates to Nevada as the registry for purposes of the Act.

If such a finding is issued by the Nevada Attorney General, then the part of the single national database that relates to Nevada shall be deemed the registry for purposes of enforcing the Act, and enforcement of the Act becomes effective May 1, 2004.

BACKGROUND

The 2003 Legislature passed Assembly Bill 232 ("A.B. 232"). The Governor signed it into law on June 10, 2003. The provisions of A.B. 232 that relate to the Act are codified at NRS 228.500 to NRS 228.650.

The Act, commonly referred to as Nevada's Do Not Call law, prohibits telephone solicitors from making unsolicited telephone calls for the sale of goods or services to a telephone number in Nevada's registry. NRS 228.590(1). Although most telephone solicitors are covered by this law, some exceptions apply if they meet certain requirements. For example, charitable, religious or political organizations and telephone solicitors that have a preexisting business relationship with a Nevada caller, are exempted from this law.

At the time the Nevada Legislature was considering passage of A.B. 232, the Federal Trade Commission and Federal Communications Commission were working together to establish national do not call regulations (now codified at 16 C.F.R. § 310.4(b)(1)(iii)(B) and 47 C.F.R. § 64.1200(c)(2)), and a single national registry of telephone numbers that consumers could join to indicate that they did not wish to receive unsolicited calls from telemarketers. Although the Federal Trade Commission eventually began accepting registrations on July 27, 2003, it was uncertain whether the national registry would remain in effect once multiple constitutional challenges were filed. Aware of this, the Nevada Legislature assigned the Attorney General with the responsibility of determining whether Nevada should use the Nevada portion of the national registry for purposes of the Act, or whether the Attorney General should create and maintain a separate registry for Nevada. NRS 228.540(1).

FINDING

- I. **The Attorney General finds that the part of the single national database that relates to this state is adequate to serve as the registry for purposes of the Act.**
 - a. The Federal Trade Commission created a national registry to implement and enforce the national do not call regulations. Although these regulations are not identical to the Act, the need for a registry is the same. If consumers join the national registry, they are specifying that they do not want to receive unsolicited calls from telephone solicitors. If Nevada residents were to join a Nevada-specific registry, they would be requesting the same relief. Hence, the national registry and a Nevada-specific registry have identical purposes.
 - b. The national registry offers convenient, free, and secure registration for consumers. Consumers may register on the internet (www.ag.state.nv.us or www.donotcall.gov) by filling out a simple, secure form and confirming their registration in a subsequent email. Also, consumers may register by calling a toll-free number (1-888-382-1222, or for the hearing-impaired at 1-866-290-4236) from the telephone number they want to register. Consumers may also easily verify their registration on the internet, or by calling a toll-free number as well.
 - c. The national registry's list of telephone numbers is kept current, and as a result is accurate. Once consumers complete the registration process, their telephone numbers are automatically reflected in the national registry by the next day. Registrations are valid for five years, or until consumers ask to be taken off the national registry or the registered telephone number is disconnected. Telephone solicitors are also prohibited from using their purchased versions of the national registry for any other purpose but for complying with the national do not call regulations. 16 C.F.R. § 310.4(b)(1)(iii)(B)(2).
 - d. The national registry is well-known by consumers, including Nevada residents. In a recent national consumer poll (Harris Poll at www.harrisinteractive.com/harris_poll/index.asp?PID=439), 91% of the

surveyed adults had heard of the national registry, and 57% of the surveyed adults had actually joined the national registry. 455,819 Nevada telephone numbers were already reflected in the national registry as of December 31, 2003. The Attorney General has also encouraged Nevada residents to join the national registry through news releases and the Attorney General's official internet web site. Furthermore, for other states that have do not call laws, the trend is to use the national registry for its residents, versus maintaining separate state-specific registries.

- e. The national do not call regulations, and as a result the national registry, have been declared constitutional by the federal courts. Although telephone solicitors have argued various constitutional claims, such as the First Amendment prevented the federal government from establishing regulations that restricted commercial sales calls but not charitable or political calls, an Appeals Court has decisively found the national do not call regulations constitutional. *Mainstream Marketing Services, Inc., v. Federal Trade Commission*, No. 03-1429, No. 03-6258, 03-9571, 03-9594, 2004 U.S. App. LEXIS 2564 (10th Cir. Feb. 17, 2004). Given this and the extensive processes that the federal government used in adopting its do not call regulations, Nevada can reasonably expect that the national registry will remain in existence for the foreseeable future, and hence is adequate to serve as the registry for the Act.
- II. The Attorney General finds that it is in the best interests of this state for the Attorney General to use the part of the single national database that relates to Nevada as the registry for purposes of the Act.**
- a. Given the existence of a national registry, creating an additional Nevada-specific registry would be duplicative and burdensome for Nevada's residents and the Attorney General's Office. Also, federal law requires the Attorney General's office to repeat all Nevada telephone numbers in the national registry in a Nevada-specific registry. 47 U.S.C. § 227(e)(2). This would create unnecessary, duplicate data between the registries.
 - b. By using the national registry, registered Nevada residents who are still receiving unsolicited telephone calls for the sale of goods or services can simultaneously file Nevada-specific and national complaints using national complaint procedures. To file a complaint, Nevada residents simply need to visit the national registry web site (www.donotcall.gov) or call a toll-free telephone number (1-888-382-1222, or for the hearing-impaired at 1-866-290-4236), and provide either the telephone solicitors' names or telephone numbers, and the date the solicitors called them. The Attorney General can then use the Federal Trade Commission's Consumer Sentinel to access and investigate complaints (which may violate the Act and the national do not call regulations), and receive other helpful reports.
 - c. Telephone solicitors are already familiar with the national registry and how to access its data. For instance, telephone solicitors must purchase access to the national registry and update their versions of the data at least every three months. The data is securely and automatically

downloaded in common file formats from a national registry web site devoted to this purpose (telemarketing.donotcall.gov). If the Attorney General creates its own registry, telephone solicitors would need to learn, purchase and follow another process to ensure compliance with the Act, hence increasing regulatory burdens.

- d. By using the national registry, the Attorney General would not need to spend Nevada dollars to create and maintain a separate registry, and telephone solicitor registry-access procedures. Maintaining a secure, robust, sophisticated database of telephone numbers always available requires extensive technical expertise and is extremely costly. For instance, Congress authorized \$18.1 million to fund the national registry. 68 Fed. Reg. 44144, 44146 (July 25, 2003). It is in the best interests of Nevada to use the Nevada portion of the national registry and not incur expense creating its own registry for purposes of enforcing the Act.

Based upon the foregoing, the Attorney General hereby finds:

1. The part of the single national database that relates to this state is adequate to serve as the registry for purposes of the Act; and
2. It is in the best interests of this state for the Attorney General to use the part of the single national database that relates to Nevada as the registry for purposes of the Act.

As a result, the part of the single national database that relates to Nevada is deemed the registry for purposes of enforcing the Act, and the Act shall become effective May 1, 2004.

Dated this 31st day of March, 2004.

BRIAN SANDOVAL
Nevada Attorney General

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FOR IMMEDIATE RELEASE
DATE: March 31, 2004

NEVADA TO USE NATIONAL DO NOT CALL REGISTRY

Carson City—Attorney General Brian Sandoval today issued a finding that the Nevada portion of the national do not call registry shall serve as the registry for Nevada's newly-enacted "do not call" law. Nevada's law, in addition to the federal do not call law, prohibits most telemarketers from placing calls to Nevada numbers on the national do not call registry.

"Utilizing the Nevada portion of the national do not call registry will save the state time and money and keeps the process simple and straightforward for consumers, the telemarketing industry, and our enforcement agency, the Bureau of Consumer Protection," said Sandoval. "The national registry already contains more than 450,000 Nevada telephone numbers, and the feedback has been very positive, so using it instead of two separate registries and two separate complaint processes makes sense for both consumers and the industry."

Nevadans who have already registered nationally do not have to register again. For Nevadans that would like to limit the telemarketing calls they receive but have not yet registered, they can register for free under both the Nevada and federal do not call laws:

- Visit the Attorney General's website at <http://ag.state.nv.us>, which links to the national do not call site, or
- Visit the national do not call web site directly at <http://donotcall.gov>, or
- Call toll free (888) 382-1222 (or TTY (866) 290-4236) from the number one seeks to register.

Starting May 1, 2004, Nevadans can use the same complaint process for filing Nevada and federal do not call complaints against non-exempt telemarketers, as long as they have been registered for at least three months. To file a complaint, Nevadans should

visit the national do not call registry web site, <http://donotcall.gov>, or call toll free (888) 382-1222 (or TTY (866) 290-4236).

Nevadans who want to learn more about Nevada's do not call law can visit the Attorney General's web site at <http://ag.state.nv.us>, or call (702) 486-3132. Nevada's law may be viewed on the Legislature's web site at <http://leg.state.nv.us/NRS/NRS-228.html#NRS228Sec500>.

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-----Original Message-----

From: DHS Press Office

Sent: Tuesday, March 30, 2004 4:45 PM

Subject: SECRETARY TOM RIDGE ANNOUNCES APPOINTMENT OF TWO NEW MEMBERS OF THE HOMELAND SECURITY ADVISORY COUNCIL'S STATE AND LOCAL OFFICIALS SENIOR ADVISORY COMMITTEE

U.S. Department of Homeland Security

Press Release

March 30, 2004

Contact: Press Office 202-282-8010, Valerie Smith

SECRETARY TOM RIDGE ANNOUNCES APPOINTMENT OF TWO NEW MEMBERS OF THE HOMELAND SECURITY ADVISORY COUNCIL'S STATE AND LOCAL OFFICIALS SENIOR ADVISORY COMMITTEE

(Washington, DC) Mar. 30, 2004 - Secretary of Homeland Security Tom Ridge is pleased to announce the appointments of Alaska Governor Frank Murkowski and Nevada Attorney General Brian Sandoval to serve as members of the State and Local Officials Senior Advisory Committee (SLSAC) of the Homeland Security Advisory Council. The Secretary also appointed Fraternal Order of Police Grand Lodge President and current member of the Homeland Security Advisory Council Chuck Canterbury to serve as the Vice Chair of the Emergency Response Senior Advisory Committee.

Secretary Ridge established these two committees to provide the Homeland Security Advisory Council with advice on increasing America's security from experts representing state and local governments and first preventer and responder communities.

"I look forward to working with such dedicated leaders and public servants as Frank Murkowski, Brian Sandoval, and Chuck Canterbury. Their state and local leadership experience and expertise will bring valuable insights to our work to build a truly national homeland security effort to better secure our nation," said Secretary Ridge.

Governor Frank Murkowski was elected Alaska's tenth Governor on December 2, 2002. In 1980 he was elected to the U.S. Senate where he served Alaska for 22 years. He is a recognized expert on such topics as energy policy, fossil fuel, and nuclear development, electricity restructuring, and climate change. Governor Murkowski has been active in local and community affairs having served as the president of the Alaska State Chamber of Commerce and Alaska Bankers Association and serves as a member of Young Presidents Organizations, Elks, American Legion, and Pioneers of Alaska. He assumed the presidency of the Council of State Governments on January 2004 and represents the group on the SLSAC.

Brian Sandoval was sworn in as Nevada's Attorney General on January 6, 2003. In 1998 he was appointed to serve on the Nevada Gaming Commission. One year later, he was appointed as Chairman of the Nevada Gaming Policy Review Panel. He also served two terms in the Nevada Legislature, where he sponsored fourteen bills that became law. Attorney General Sandoval is a member of the Nevada State Boards of Pardons, Prisons, Examiners, Transportation, Domestic Violence and Private Investigators and the Board of Trustees for Children's Cabinet of Reno, Nevada, St. Jude's Ranch and Washoe County, Nevada Law Library.

Chuck Canterbury of South Carolina currently serves as the President of the Grand Lodge of the Fraternal Order of Police, an organization representing more than 300,000 law enforcement professionals nation-wide. He is a retired Major of the Horry County Police Department where his career of more than 25 years included service in the Patrol Division and the Criminal Investigations Division. He also served as the Training Division Supervisor, during which he was certified as an instructor in basic law enforcement, firearms, chemical weapons, and pursuit driving.

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FOR IMMEDIATE RELEASE
DATE: March 17, 2004

NEVADA SUES DOE TO ENFORCE STATE FUNDING FOR NEVADA'S YUCCA MOUNTAIN OVERSIGHT

Las Vegas—Nevada Attorney General Brian Sandoval today announced the filing of a lawsuit against Energy Secretary Spencer Abraham and the U.S. Department of Energy ("DOE") in the federal Court of Appeals for the D.C. Circuit in Washington. According to the suit, Abraham and the DOE violated federal law by failing to provide oversight funds to both the state of Nevada and local governments affected by the proposed Yucca Mountain nuclear waste repository.

The Nuclear Waste Policy Act requires the Secretary to make such grants from a "Nuclear Waste Fund" that has been collected through nuclear utility ratemaking fees, and which now amounts to over \$8 billion. The Act provides that all expenses of nuclear waste disposal "should be the responsibility of the generators and owners of such waste." Congress requires issuance of grants to ensure that Nevada is able to conduct appropriate oversight to evaluate the health, safety, and environmental impacts of the repository, and to participate meaningfully in upcoming Nuclear Regulatory Commission ("NRC") licensing proceedings for the project, scheduled to begin in December 2004.

"It's an outrage," said Sandoval, "and tragically it's just the latest in a long record of deception, rule-bending and law-breaking in order to make the case for an unsuitable site. It defies law, and it strangles our ability to account for the health and safety of Nevadans."

Sandoval then elaborated: "This fiscal year, DOE reduced Nevada's oversight grant from \$5 million to only \$1 million, at a time when our scientific and technical experts are preparing critical studies to aid the NRC in its safety evaluation. It's a blatant conflict of interest when the agency in charge of funding your participation moves to sabotage your participation," he said. "That's not what Congress had in mind."

The lawsuit asks the Court to suspend all of DOE's licensing activities for the Yucca project until the Secretary complies with the law, and it requests the Court to direct DOE to make the requisite grants.

Secretary Abraham neither replied to a February 2003 letter from Nevada's Governor Kenny Guinn about the funding, nor to a December 2003 letter from Sandoval citing Nevada's acute need for the funds as licensing proceedings commence. Yucca program Director Margaret Chu likewise ignored a detailed request from Robert R. Loux, Executive Director of the Nevada Agency for Nuclear Projects, for establishment of a reasonable funding mechanism that would ensure Nevada could participate meaningfully in the NRC proceeding. The Nuclear Waste Police Act contains extensive provisions requiring cooperation with the state affected by any repository.

For more information, see the Agency for Nuclear Projects website at:
<http://www.state.nv.us/nucwaste/>.

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FOR IMMEDIATE RELEASE
DATE: March 12, 2004

GRAND JURY INDICTS FOR SECURITIES FRAUD

Las Vegas—Attorney General Brian Sandoval announced today that a Clark County Grand Jury returned a criminal indictment against John L. Myers, age 51, of Las Vegas, on fourteen counts of securities fraud and two counts of offer to sell or sale of an unregistered security. The investigation and prosecution are being conducted by the Attorney General's Bureau of Consumer Protection under the direction of Timothy Hay, Chief Deputy Attorney General, Consumer Advocate.

Myers gained the trust of several consumers as a financial advisor and allegedly sold them securities in various development schemes, without ever actually investing their money. Several consumers invested a total of approximately \$169,500.00. Myers made a variety of assurances to compel the consumers to invest, however those assurances proved to be false.

An indictment is merely an accusation. As always, defendants are presumed innocent until and unless proven guilty in a court of law.

Consumers who believe they have been victims of a securities scam or other forms of fraudulent business practices should contact the Attorney General's Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in Las Vegas, or visit the Attorney General's website at: <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: March 10, 2004

TELEPHONE SCAMMER USES AG'S OFFICE FOR AUTHENTICITY

Las Vegas—Attorney General Brian Sandoval urges Nevada consumers to be wary of a telephone scam artist using the Attorney General's Office as a front for legitimacy, to the extent that a return verification caller masquerades as the Attorney General himself.

"The verification call, allegedly from me, is nothing less than an outrageous and misleading endorsement of the company and a false claim of a guarantee from our office that the prize offered is legitimate," said Sandoval.

At least one consumer has reported the scam, which begins with a claim that the receiver of the call has won a substantial sum of money, in one case \$350,000.00. The caller claimed that the sum must be insured or underwritten in order to be received by the winner, and that will cost \$3,500.00. Moments later, the potential victim received a call from someone claiming to be Attorney Brian Sandoval, that his office had investigated the company in question, and that the prize offer was legitimate.

Scams where money is required up front in order to collect a prize are unfortunately common. Legitimate sweepstakes are prohibited from such behavior, to the point where a purchase of a good or service is not required in order to enter. Consumers are reminded not to provide identification, bank, or credit card information over the phone unless you have placed the call yourself and know who you are transacting with.

To report scam activity or fraudulent or deceptive trade practices, contact the Attorney General's Bureau of Consumer Protection in Las Vegas at (702) 486-3194; or in Carson City

at (775) 684-6300. Additional consumer protection information can be found on the Attorney General's web site at <http://ag.state.nv.us>

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FOR IMMEDIATE RELEASE
March 1, 2004

PERSONAL CARE ASSISTANT SENTENCED FOR MEDICAID FRAUD

Las Vegas –Attorney General Brian Sandoval announced today that Janice Proctor, age 51, was sentenced for two counts of Conspiracy to Commit Medicaid Fraud. The case was heard in front of Clark County District Court Judge Sally Loehrer.

Proctor was sentenced to 12 months on each of the counts to be served concurrently which was suspended. She was given three (3) days credit for time served, and placed on 2 years probation. In addition, she was ordered to pay restitution in the amount of \$1,110.00. The prosecution of the case was handled by the Medicaid Fraud Control Unit (MFCU).

According to MFCU director Tim Terry, Proctor received payment for services she did not render. Specifically, Proctor submitted billing information to two different home health agencies for services performed for just one patient. Each of the home health agencies then submitted claims to Nevada Medicaid causing a double payment.

“With the difficult fiscal times this state is facing, eliminating fraud within the Medicaid program is more important than ever. Our office is committed to doing all it can to reduce the occurrence of Medicaid fraud here in Nevada, and this conviction and sentencing is further evidence of that”.

The Medicaid Fraud Control Unit investigates and prosecutes instances of patient abuse or neglect, in addition to investigating and prosecuting provider fraud. Anyone wishing to report suspicions regarding any of these concerns may contact the Medicaid Fraud Control Unit in Carson City at (775) 684-1191, or in Las Vegas at (702) 486-3187. Medicaid Fraud information can also be found on the Attorney General’s website at <http://ag.state.nv.us>

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FOR IMMEDIATE RELEASE
DATE: April 26, 2004

TWO LIFE SENTENCES, NO PAROLE FOR INMATE MURDER

Carson City—Attorney General Brian Sandoval announced today that inmate Paul Derischebourg, age 30, of Las Vegas, was sentenced to two consecutive life terms with no possibility of parole for the killing of a fellow inmate at Ely State Prison. Derischebourg previously plead guilty March 22 before Judge Steven Dobrescu in the 7th Judicial District Court, White Pine County.

Derischebourg was incarcerated at the time of the killing for sexual assault as well as another aggravated assault charge. According to the charges, fellow inmate Jacob Armstrong was assigned to Derischebourg's cell and within nine minutes of his arrival was stabbed numerous times with a knife Derischebourg had hidden in or beneath a mattress.

Derischebourg was represented by White Pine County Public Defender Paul Geise. The state was represented by Chief Deputy Attorney General Gerald Gardner: "Our office has general jurisdiction over inmate crimes as inmates are wards of the state during the term of their incarceration. Derischebourg has more than provided justification for his remaining incarcerated for the balance of his life. He's dangerous behind bars, so he represents a clear danger to society. We're pleased with Judge Dobrescu's order keeping him behind bars with no possibility of parole."

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FOR IMMEDIATE RELEASE
DATE: April 26, 2004

NEVADA JOINS 19 STATES IN MEDCO SETTLEMENT

Carson City—Attorney General Brian Sandoval, through the Bureau of Consumer Protection under the direction of Consumer Advocate Timothy Hay, joined Attorneys General from 19 other states today in announcing the settlement of claims under Nevada's Deceptive Trade Practices Act against Medco Health Solutions, Inc. (Medco), the world's largest pharmaceutical benefits management (PBM) company. An investigation by the states into Medco's drug switching practices began more than two years ago and was spearheaded by Attorneys General in Maine, Massachusetts, and Pennsylvania. During stages of the investigation, the states consulted with the Office of the United States Attorney for the Eastern District of Pennsylvania.

The attorneys general filed complaints in state courts today alleging that Medco encouraged prescribers to switch patients to different prescription drugs but failed at times to pass on the resulting savings to patients or their health care plans. The drug switches generally benefited Medco despite Medco's claims that they saved patients and health plans money. Medco did not tell prescribers or patients that the switches would increase rebate payments from drug manufacturers to Medco. The states allege that the drug switches resulted in increased costs to health plans and patients, primarily in follow-up doctor visits and tests. For example, Medco switched patients from certain cholesterol lowering medications to Zocor, but that switch required patients to usually receive follow-up blood tests.

The participating states are: Arizona, California, Connecticut, Delaware, Florida, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Nevada, New York, North Carolina, Oregon, Pennsylvania, Texas, Vermont, Virginia and Washington.

The settlement prohibits Medco from soliciting drug switches when:

The net drug cost of the proposed drug exceeds the cost of the prescribed drug;

The prescribed drug has a generic equivalent and the proposed drug does not;

The switch is made to avoid competition from generic drugs; or

It is made more often than once in two years within a therapeutic class of drugs for any patient.

The settlement requires Medco to:

Disclose to prescribers and patients the minimum or actual cost savings for health plans and the difference in co-payments made by patients;

Disclose to prescribers and patients Medco's financial incentives for certain drug switches;

Disclose to prescribers material differences in side effects between prescribed drugs and proposed drugs;

Reimburse patients for out-of-pocket costs for drug switch-related health care costs and notify patients and prescribers that such reimbursement is available;

Obtain express, verifiable authorization from the prescriber for all drug switches;

Inform patients that they may decline the drug switch and receive the initially prescribed drug;

Monitor the effects of drug switches on the health of patients; and

Adopt a certain code of ethics and professional standards.

In addition, Medco will pay \$20 million to the states (\$235,537 to Nevada), \$6.6 million to the states in fees and costs (\$110,000 to Nevada), and about \$2.5 million to patients who incurred expenses related to a certain switch between cholesterol controlling drugs.

Nevada's share of the latter figure will depend upon Nevada patients' response to the claims process as set forth in a consent judgment, whereby Medco is required to identify and pay affected consumers. Medco must mail to each potential affected consumer a "Reimbursement Notice and Claim Form" within four months of the effective date of the settlement, and Medco must also certify to the participating Attorneys General that they have complied with the order within one year from the settlement date.

"We're pleased to be able to assist Nevada consumers with this settlement," said John McGlamery, Deputy Attorney General. "The state itself is to receive \$235,537, and we're exploring suitable options for the dispensation of that money, such as Nevada's Senior Rx program, which helps senior citizens on fixed incomes with drug expenses."

States receiving a monetary payment must use the funds to benefit low income, disabled, or elderly consumers of prescription medications, to promote lower drug costs for residents of the state, or to fund other programs reasonably targeted to benefit a substantial number of persons affected by the conduct covered in the complaint.

Medco is the nation's largest PBM, with over 62 million covered lives. PBMs contract with health plans to process prescription drug payments to pharmacies for drugs provided to patients enrolled in the health plan. In the thirty years since the first PBMs appeared, their services have evolved to include complex rebate programs, pharmacy networks, and drug utilization reviews. On the web: <http://medco.com>.

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FOR IMMEDIATE RELEASE
DATE: April 23, 2004

PRIVATE INVESTIGATOR LICENSING BOARD: REGULATED OCCUPATIONS, ANNOUNCEMENTS

Carson City—Attorney General Brian Sandoval announced today a number of developments with regard to the Private Investigator's Licensing Board. The Board is charged with the licensing and regulation of private investigators, private patrol (security) personnel, process servers, re-possessors of property, canine handlers, and polygraph examiners:

On April 2, 2004 the Board held a special meeting and voted for a licensing fee increase to fund an in-house investigator, to be located in Southern Nevada.

On April 5, 2004 the Private Investigator's Licensing Board hired a new in-house investigator, Mr. Rene Botello, for its Northern Nevada office.

The new investigator in the Southern part of the state will be more readily available to seek out and cite companies or individuals for unlicensed activity among the different occupations that are regulated by the Private Investigator's Licensing Board. Each unlicensed activity citation is \$2500.00 for the first offense, \$5,000.00 for a second, and \$10,000.00 for a third.

The Private Investigator's Licensing Board urges persons and companies who hire personnel to perform such work to call 775-687-3223 and verify that a candidate is indeed validly licensed. Failure to do so can place a company or person at legal and/or financial liability risk. Questions and inquiries about private investigators, private patrol (security) personnel, process servers, re-possessors of property, canine handlers, and polygraph examiners and the Board itself may also be directed to that number.

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FOR IMMEDIATE RELEASE
DATE: April 22, 2004

RETAIL STORES SEARCHED FOR COUNTERFEIT MERCHANDISE

Carson City—Attorney General Brian Sandoval announced today that search and seizure warrants were executed Wednesday evening at four HOT CATS stores in Las Vegas and Reno. Three of the stores are located in Las Vegas (one each in the Galleria Mall, Fashion Show Mall and Meadows Mall) and one store is located in Reno (in the Meadwood Mall).

The Attorney General's Bureau of Consumer Protection, under the direction of Consumer Advocate Timothy Hay, obtained the search warrants after receiving complaints that the HOT CATS stores were engaged in deceptive trade practices and were committing criminal offenses by advertising, displaying and selling counterfeit merchandise, or merchandise with false trademarks. It is suspected that HOT CATS has displayed and sold counterfeit clothing, hats, stickers and other logo merchandise that bear counterfeit trade names, or designs, including brand names such as Spitfire, Von Dutch, Warner Brothers, Fox Racing, Independent, Roxy/Quicksilver, Jack Daniels, Playboy, Hustler and Volcom.

“Selling counterfeit merchandise undermines a fundamental tenet of the marketplace: owners of intellectual and trademark property have the right to expect that sanctions will be taken if their property is stolen by imitators.” said Deputy Attorney General Tracey Brierly. “Such activity makes it more difficult for legitimate retailers to compete and, further, results in decreased legitimate sales. According to the International Anti-Counterfeiting Coalition, counterfeiting robs the U.S. of more than \$200 billion a year. Lack of prosecution and enormous profit potential has also made criminal counterfeiting an attractive enterprise for organized criminal groups and terrorist organizations.”

It is suspected that the proprietors have committed the criminal offenses of Counterfeiting - Selling, Displaying, Advertising, or Having in their Possession with the Intent to Sell Goods with a False Trademark of a value in excess of \$1,000 or more than 100 units, a felony.

As in all criminal matters, the allegations are merely accusations and individuals are presumed innocent unless and until proven guilty in court.

Those who believe that they may have purchased counterfeit merchandise from a HOT CATS store or who believe they may have information regarding this matter should call the Attorney General's Bureau of Consumer Protection in Las Vegas at (702) 486-3194; in Reno at (775) 688-1818; or in Carson City at (775) 687-6300. Additional consumer protection information may be found on the Attorney General's web site at [**http://ag.state.nv.us**](http://ag.state.nv.us)

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FOR IMMEDIATE RELEASE
DATE: April 20, 2004

Nevada Receives Annual Tobacco Settlement Payment

Carson City--Attorney General Brian Sandoval today announced that the State of Nevada received its annual payment of \$36,494,661.00 under the tobacco Master Settlement Agreement. In 1998, forty six states signed the tobacco settlement agreement with the major cigarette manufacturers who agreed to pay over \$200 billion over the following 25 years to the states. The four remaining states signed their own agreements with the companies. In addition, the companies agree to cigarette marketing restrictions.

"This office is charged with ensuring that the settlement is honored," said Sandoval. "Nevada uses these payments to fund the Millennium Scholarships, prescription drug and assisted living programs for senior citizens and efforts to prevent and treat tobacco-related illnesses. Better educated people use significantly less tobacco, so the Millennium Scholarships are one way to reduce smoking among Nevada's youth; another is our enforcement of laws to prevent minors from purchasing tobacco products. The Master Settlement payments end in twenty years, so the Scholarships, along with our efforts to prevent underage smoking, are an investment in future cost reduction for our state."

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FOR IMMEDIATE RELEASE
DATE: April 2, 2004

APPLICATIONS AVAILABLE FOR VIOLENCE AGAINST WOMEN GRANT PROGRAM

Carson City--Attorney General Brian Sandoval has announced that applications for funding under the "**STOP**" (Service - Training - Officers - Prosecution) Violence Against Women Act (VAWA) Grant program are now available. Nevada has been allocated funds from the U.S. Department of Justice (DOJ) under the VAWA Grant program. The grant money will be awarded to qualified programs that meet the specific federal and state VAWA Grant objectives.

The purpose of the **STOP** Violence Against Women Program is to encourage the development and implementation of more effective law enforcement, court and prosecution strategies to combat violent crimes against women, and the development and enhancement of victim services in cases involving crimes against women.

The Attorney General's Office will administer the **STOP** Grant funds on behalf of programs throughout Nevada. Since the inception of this program in 1995, over \$8 million has been distributed statewide to organizations and groups to assist in combating crimes against women.

Sub-grant application kits are available on the Attorney General web page at <http://ag.state.nv.us>. Pre-Application workshops will be held on the following dates to provide additional information on the program and the application process:

Reno – Airport Plaza Hotel
April 5, 2003 from 9:00am – 12:00 noon
Elko – Stockman's Hotel/Casino
April 8th, 2003 from 9:00 am – 12:00 noon
Las Vegas – Grant Sawyer Building, Room 4700
April 15, 2003 from 9:00 am – 12:00 noon

For more information on the grants and/or workshops, please call Dorene Whitworth, Office of the Attorney General, at (775) 684-1124. Applications are due by May 14, 2004.

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FOR IMMEDIATE RELEASE
DATE: May 28, 2004

THREE YEAR SENTENCE IN CELLULAR TELEPHONE SCAM

Carson City—Attorney General Brian Sandoval today announced that Washoe County District Court Judge Brent Adams sentenced John Conlin, age 51, of Reno, to three years in Nevada State Prison for theft by false pretenses in a scheme to steal cellular telephone services from Cricket Communications and sell those services to unwitting consumers. Conlin pled no contest to theft in April. The case was prosecuted by the Attorney General's Bureau of Consumer Protection.

Conlin defrauded a number of Reno area consumers who thought they were purchasing cellular telephone services from his company, Crystal Clear Communications, when their cell phones were "activated" by Conlin. Conlin represented to consumers that he was "activating" the cell phones on his own private cellular telephone network. Conlin was in fact setting up fraudulent accounts with Cricket Communications using false names and social security numbers, and activating those telephones to steal telephone services from Cricket Communications. Customers would later find their telephone service abruptly terminated because Conlin had failed to pay Cricket Communications for the phony telephone accounts. Records indicate that Conlin's fraudulent activities cost Cricket Communications \$3,283.00 in unpaid cellular telephone services.

For more information on how you can help prevent illegal deceptive trade practices you may contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in southern Nevada, or on the web at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: May 19, 2004

GRAND JURY INDICTS FOR CONSUMER AUTO FRAUD

Las Vegas—Attorney General Brian Sandoval announced today that a Clark County Grand Jury returned a criminal indictment against Eddie Lopez, 23, Jose Aguilera, 29, and Misty Huff, 27, doing business as A&E Auto Saver or Alternative Auto of Las Vegas. The three were arrested on February 11, 2004 with Eddie Lopez charged with 18 felony counts of Theft and 1 felony count of Forgery, and both Jose Aguilera and Misty Huff charged with one felony count of Accessory to Theft.

Following further investigation by the Attorney General's Bureau of Consumer Protection the Grand Jury was convened and returned 29 counts of theft for Lopez; 2 counts of Theft—Aiding and Abetting for Aguilera; and 13 counts of Theft—Aiding and Abetting for Huff. All three defendants were also indicted for racketeering.

The defendants sought out consumers who were unable to make payments on their vehicles. The defendants took possession of the vehicles promising to sell them to third-parties. However, the defendants never obtained legal title necessary to sell the vehicle, and they kept the majority of payments collected from the third-party purchasers. As a result, in each case there were two victims: one consumer would lose his or her vehicle and the other consumer would lose his or her money to the defendants.

An indictment is merely an accusation. As always, defendants are presumed innocent until and unless proven guilty in a court of law.

Consumers who believe they have been victims of a securities scam or other forms of fraudulent business practices should contact the Attorney General's Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in Las Vegas, or visit the Attorney General's website at: <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: May 19, 2004

MEDIA ADVISORY: **ANNUAL CHILD SAFETY DAY INFORMATIONAL FAIR**

Las Vegas—Attorney General Brian Sandoval urges press, parents and children to attend the Annual Child Safety Day event at the Circus Circus Adventuredome theme park:

Sunday, May 23rd 2004
11 a.m. to 3 p.m.
Circus Circus Adventuredome
Park Admission is free!

In addition to a wealth of fun and information for parents, children and caregivers, Nevada Child Seekers will be providing "Child ID" kits for parents that give them a ready and up-to-date package of identification information for parents to provide to authorities and the media in the unlikely—but devastating—event that a child is missing. The importance of up-to-date identification information on one's child cannot be stressed enough: when a child is missing, precious time is often wasted gathering such information. These kits are for the parents for just this purpose, and no information is retained by those providing the service. Nevada Child Seekers will take a photo of your child, obtain fingerprints, assist you with filling out an identification data sheet, and the entire kit is yours to keep in a safe place at home and, even more importantly, to take with you when you travel.

Circus Circus has generously provided floor space for the event, and over thirty other organizations have donated time, materials, and energy as well. Circus Circus has also donated 100 free ride tickets for youngsters residing at the Shade Tree Shelter for homeless women and children.

The Nevada Department of Justice, Office of the Attorney General hosts the Nevada Missing Children Clearinghouse, and works with agencies statewide and, indeed, outside of

the state and even internationally to secure the safe recovery of missing children. Of 16 abduction cases involving a total of 23 children, 12 cases are closed resulting in the recovery of 19 children, including 5 from Mexico.

Matt English, custodial father whose son was recently abducted and recovered, will also be attending the event and will be available for questions and interviews. For details on that recovery see: <http://www.ag.state.nv.us/agpress/2004/2YROLDRECOVEREDFOLLOWINGABDUCTION.pdf>.

The Attorney General's Office and the Nevada Missing Children Clearinghouse thank many agencies for their support in this endeavor, including: Metro, Henderson, and North Las Vegas Police Departments; Clark and Washoe County School District Police; Reno Police Department; Washoe County Sheriff; Child Protection Services/Child Haven; and the Family Courts statewide.

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FOR IMMEDIATE RELEASE
DATE: May 13, 2004

INSURANCE FRAUD UNIT RELEASES PERFORMANCE STATISTICS, OBTAINS FELONY GUILTY PLEA

Carson City—Attorney General Brian Sandoval announced that Timothy Lockwood, 49 and former officer of The Children’s Community Chest of Reno, Nevada pled guilty to felony Insurance Fraud before Judge Elliot in The Washoe County District Courthouse.

Timothy Lockwood, represented by Attorney David Houston, had previously spent time in prison on a gaming fraud conviction. Lockwood reported his son’s 1996 Mazda 626 as stolen to Geico Insurance Company in July of 2002; Geico paid over \$6,500.00 on the claim. An acquaintance of Lockwood’s with direct knowledge of the fraud reported it to the Insurance Fraud Unit of The Attorney General’s Office. Lockwood pled guilty the felony on May 6th and will be sentenced on July 9, 2004; he faces 1 to 4 years in prison and a \$5000.00 fine. Lockwood must also pay restitution and investigative costs of approximately \$20,000.00.

“Often it’s a concerned citizen’s phone call that prompts an investigation and brings an insurance fraud perpetrator to justice. Fraud harms all consumers by increasing premiums for everyone,” said Deputy Attorney General Ronda Clifton. “Our unit’s aggressive prosecution is sending the message that we have zero tolerance in this state for insurance fraud, and citizen involvement by reporting such crimes is an important part of the equation.”

Clifton continues: “Insurance fraud is a crime and a consumer issue that simply doesn’t get enough attention. Since our unit was established, we have tripled our convictions and increased our recoveries nearly ten-fold. We’re only getting to the tip of the iceberg, but we’re adaptable, dynamic and will continue to make gains.”

Attached separately are Insurance Fraud Unit statistics through May 13, 2004. Deputy Attorney General Ronda Clifton (775-688-1835) is available for questions and interviews in Reno, and Senior Deputy Attorney General Thom Gover (702-486-3120), head of the IFU, is available in Las Vegas.

If you have any information regarding insurance fraud, please call the Nevada Attorney General's Insurance Fraud Hotline at 1-800-266-8688. For more information about Nevada's Insurance Fraud Unit, please visit the Attorney General's website at <http://ag.state.nv.us>

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INSURANCE FRAUD UNIT



**NEVADA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

**FY 2004 STATISTICS
THROUGH 5/13/04**

The IFU received 395 new complaints of suspicious fraudulent claims from insurance companies (referrals) in fiscal year (FY) 2001, a 41.6% increase over FY 2000. The screening, reviewing, and/or investigation of 336 referrals led to their closure in FY 2001. In FY 2002, the IFU received 328 referrals of suspicious claims and closed 330 referrals after their review and/or investigation. In FY 2003, we received a record 412 referrals of suspicious claims, a 26% increase over fiscal 2002, and closed 318 referrals after reviewing and/or investigating said claims. We have received 369 referrals thus far in FY 2004 and closed 471 matters. We currently have 232 referrals open pending review and screening.

The **fiscal** year (July 1 - June 30) case comparisons since 1997:

Year	Convictions	Arrests	Actions #Initiated* / (#Defendants)	Restitution, Fines, Costs, Forfeitures
FY 1997	11	14	8 (8)	29,738.89
FY 1998	18	24	26 (30)	30,933.80
FY 1999	27	30	26 (28)	2,083,709.72
FY 2000	27	31	29 (36)	**451,299.07
FY 2001	34	35	23 (27)	***216,979.51
FY 2002	26	36	30 (31)	319,019.80
<u>FY 2003</u>	<u>33</u>	<u>39</u>	<u>34 (39)</u>	<u>289,401.45</u>
Totals	176	209	176 (199)	3,421,082.24
<hr/>				
FY 2003 %Increase Over 1997	300%	278%	425%	973%

To-Date 2004 22 25 23 144,675.80

* One action may include multiple defendants.

** \$67,149.64 - Kopystenski --prosecuted by the U.S. Attorney's Office, but the investigation was initiated and led by IFU Senior Investigator, Tom Strausbaugh.

*** \$25,904.46 – Hale—Federal prosecution for SBA loan fraud emanating from IFU investigation and conviction of Hale for state insurance fraud. Both cases were investigated and prosecuted by IFU.

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FOR IMMEDIATE RELEASE
DATE: May 13, 2004

SETTLEMENT RESOLVES MARKETING OF DRUGS FOR UNAPPROVED USES

Carson City—State Consumer Advocate and Chief Deputy Attorney General Timothy Hay today announced a nationwide Consumer Protection settlement with Warner-Lambert (a wholly owned subsidiary of Pfizer Inc., the world's largest pharmaceutical company) resolving allegations of deceptive "off-label" marketing of the blockbuster drug Neurontin®. In settling this consumer protection investigation, Warner-Lambert will pay the states a total of \$38 million dollars.

This settlement of state consumer protection claims is part of an unprecedented global 50-state settlement announced today that also resolves investigations by the National Association of Medicaid Fraud Control Units and the U.S. Attorney's Office. In total, Warner-Lambert will pay \$430 million dollars under these settlements.

The consumer protection investigation focused on alleged violations of state consumer protection laws that occurred when Warner-Lambert promoted Neurontin for various "off-label" indications – including various psychiatric disorders, back pain, and headache – even though the scientific evidence supporting the use of Neurontin for these indications was lacking. Neurontin is a prescription medication approved by the Food and Drug Administration ("FDA") for adjunctive treatment of epilepsy and treatment of post-herpetic neuralgia. Approximately 90% of Neurontin prescriptions, however, are for off-label purposes.

The consumer protection investigation was led by Vermont Attorney General William H. Sorrell, Oregon Attorney General Hardy Myers, Florida Attorney General Charles J. Crist, Jr., New York Attorney General Elliot Spitzer, Ohio Attorney General Jim Petro, and Texas Attorney General Gregg Abbott.

It is illegal for pharmaceutical manufacturers to promote the off-label use of their drugs, although doctors are permitted to prescribe for such uses. Warner-Lambert engaged

in off-label promotion of Neurontin in a variety of ways, dramatically increasing the prescribing of Neurontin for off-label indications—indications for which there is little or no scientific evidence of efficacy.

Among the methods used by Warner Lambert to deceptively promote Neurontin for off-label indications were:

- Continuing medical education classes (“CMEs”) that lacked balance and misrepresented the nature of the CME and provided expensive “perks” to attending physicians;
- A “publication strategy” that subsidized the production and dissemination of anecdotal reports favorable to off-label use of Neurontin and were of no scientific value;
- Payments to prescribers for “research” that was, in effect, a kickback for off-label prescribing; and,
- Providing incomplete information about Neurontin to the drug reference compendium “Drugdex.”

The settlement, by an Assurance of Voluntary Compliance or Discontinuance prohibits Warner-Lambert and its corporate parent Pfizer Inc. from the following activities:

- Making false, misleading or deceptive oral or written claims about Neurontin and from promoting off-label uses in violation of the federal Food, Drug and Cosmetic Act;
- Misrepresenting the nature of scientific evidence relating to Neurontin;
- Disseminating written materials that have not appeared in peer reviewed scientific journals in contravention of limitations set forth in the Assurance;
- Failing to make disclosures about funding of research and educational events related to Neurontin;
- Failing to require speakers at educational events related to Neurontin who have financial relationships with Warner Lambert or Pfizer from disclosing their relationship, including whether the speaker has been paid to promote Neurontin;
- Failing to comply with the Pharmaceutical Research and Manufacturers of America Code with respect to payments, gifts and remuneration to health care providers (compliance with this Code has previously been voluntary);
- Failing to comply with Accreditation Council for Continuing Medical Education Guidelines (compliance with the Guidelines has previously been voluntary);
- Misrepresenting the credentials of sales, medical and technical personnel;
- Providing information that is misleading or lacking in fair balance to drug reference compendia; and,

- Violating Federal anti-kickback laws.

Of the \$38 million dollars provided under the consumer protection settlement, \$28 million dollars will be used in a remediation program and a total of \$10 million dollars will be distributed to the participating Attorney General's offices to be used for attorney's fees and other costs of investigation. Nevada's share of the payment for attorney's fees and costs will be \$25,000.

Under the remediation program, up to \$6 million dollars of the fund will go toward a National Advertising Program to provide physicians and other prescribers with fair and balanced information about Neurontin and other drugs in its therapeutic class. At least \$21 million dollars will be used to fund a Prescriber and Consumer Education Program, which will make grant monies available to governmental entities, academic institutions, and not-for-profit organizations sponsored by a participating Attorney General that provide prescribers and/or consumers with fair and balanced information about drugs. Finally, up to \$1 million dollars of the fund will be utilized to evaluate the effectiveness of the remediation program.

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FOR IMMEDIATE RELEASE
DATE: May 12, 2004

DEPUTY AG ELECTED PRESIDENT OF VICTIM'S RIGHTS GROUP

Las Vegas—Attorney General Brian Sandoval today announced that Victor Schulze, Capital Case Coordinator for the Nevada Department of Justice Special Prosecutions Unit, has been elected President of the Community Coalition for Victims' Rights.

The Community Coalition for Victims' Rights (CCVR) is an alliance of community service agencies in Clark County that work to support victims of crime and their families through assistance, education, information, and legislative updates. CCVR is instrumental in sponsoring and coordinating the various events of Victims' Rights Week each April. CCVR is also celebrating its 25th anniversary this year.

CCVR was founded when former Governor Bob Miller was Clark County District Attorney, and, as Governor, Miller was instrumental in supporting the group's success. Member agencies include the Children's Advocacy Center, Families of Murder Victims, Las Vegas Metropolitan Police Department, North Las Vegas Police Department, Henderson Police Department, Clark County District Attorney, Office of the Attorney General, Safe House, Safe Nest, Shade Tree, Stop DUI!, the U.S. Attorney's Office, Court Appointed Special Advocates, and the Rape Crisis Center, among others.

"We're very proud of the work that Victor does both within and without the office. The Community Coalition does a great deal of practical work and watchdogging on behalf of the victims of crime," said Sandoval. "Victor's example is testimony to his own dedication and to that of our staff statewide who contribute extraordinary time and effort on the job for the citizens of Nevada as well as off the job for our communities."

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FOR IMMEDIATE RELEASE
DATE: May 4, 2004

2 YEAR OLD RECOVERED FOLLOWING ABDUCTION *Non-custodial parent fled with child to Alabama*

Carson City—Attorney General Brian Sandoval today announced that Kristin Strickland, 19, was arrested in Talladega, Alabama today on a felony abduction charge, Removal of a Child from a Person Having Custody or From the Jurisdiction of a Court (NRS 200.359).

Strickland's whereabouts had been unknown since February 12, 2004 when she disappeared along with son Cameryn English and many of his belongings from father Matthew English's residence. Cameryn turned two years of age on April 23 during the time of his abduction. Strickland's arrest was obtained when she applied for a driver's license in Talladega and a routine check revealed the warrant for her arrest.

Strickland is in the custody of local Talladega authorities and will be extradited to Nevada to face charges. It is expected that father and son will be reunited this week.

"As a father and as one whose work involves child abductions and recovery, a missing child is extraordinarily disturbing and every parent's nightmare," said Deputy Attorney General Matthew Dushoff. "Unfortunately, it is not every time that things turn out well, but thanks to the hard work of people in our office such as Investigator Kelley Reynolds and Child Advocate Rene Hulse, it does more often than not. It's rewarding, and we're thrilled that father and son will be together again very soon."

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FOR IMMEDIATE RELEASE
DATE: June 24, 2004

****** MEDIA ADVISORY ******

THEFT AND FRAUD PREVENTION FOR SENIORS *Free vehicle theft-prevention locks* **Crime Prevention Fair Saturday, June 26**

Las Vegas—Attorney General Brian Sandoval urges members of the press and the public—particularly seniors and their caregivers—to attend a free crime prevention fair this Saturday, June 26, 2004, from 9 am to 1 pm at Desert Breeze Park located at Spring Mountain and Durango.

The fair is sponsored by the Nevada Department of Justice (NDOJ); Nevada Division for Aging; Las Vegas Metropolitan Police Department (LVMPD); the Clark County Seniors and Law Enforcement Together (SALT) Council; Courtesy Motors, Shred-It Las Vegas, Station Casinos, Las Vegas Color Graphics, and Coca-Cola. Coca-Cola will be on site with a mobile refrigerated unit vehicle to give away free cans of Coke's new "C2" soda, and plenty of water will be available.

Activities and information provided are directed toward assisting Clark County seniors in risk reduction and preventing vehicle, identity theft and other forms of theft and fraud. Participants can enroll in LVMPD's "Watch Your Car" campaign, which permits police to stop a registrant's vehicle and verify ownership if spotted between the hours of 1 a.m. and 5 a.m., the hours when seniors typically are not driving their cars and during which most vehicle thefts occur.

Registrants will receive distinctive stickers to display on their cars identifying their enrollment in the program. *Free steering wheel locks*, provided by Courtesy Motors, will be provided to the first 250 participants, 55 years and older, who have elected to register their vehicles in the "Watch Your Car" project.

Shred-It Las Vegas will have a mobile shredder on premises capable of shredding documents in seconds. Participants are encouraged to bring documents containing sensitive, identifying information (but that are no longer needed) for shredding in order to reduce their risk of becoming a victim of identity theft.

"Seniors are vulnerable to theft and fraud crimes because they're inherently trusting," said Attorney General Brian Sandoval, "and they are the least likely to fully recover when victimized, whether physically, financially, or both. A stolen vehicle can rob a senior citizen of their independence and often results in fear and isolation. Recovery from identity theft requires months, sometimes years. That kind of stress is devastating to our senior citizens, and that's why we're so proactive and aggressive when it comes to our senior protection efforts."

The purpose of Clark County Seniors and Law Enforcement Together (SALT) is to design programs and outreach events to enhance the safety and security of Clark County seniors. SALT is a 501 (c) (3) non-profit organization and is Nevada's chapter of a national consortium including the National Sheriff's Association, the International Chiefs of Police, and AARP. SALT membership includes representatives of all area law enforcement agencies, senior service providers, and members of AARP.

According to Jo Anne Embry, chairwoman of SALT and a program officer with the NDOJ, "This is the first of what we hope to be many events to alert our community to the countless scams targeting seniors and robbing them of their money, safety, and security. There will be a wealth of tips on how to avoid becoming a victim as well as resources to assist in recovery when victimized by crime."

For more information on the fair, contact Jo Anne Embry, Nevada Department of Justice, Office of the Attorney General, at 702-486-3154, or Bill Tullock, LVMPD at 702-0229-5804.

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FOR IMMEDIATE RELEASE
DATE: June 17, 2004

CONSUMER ALERT: **New Medicare Prescription Drug Cards Prompt Scam Artists**

Carson City—Attorney General Brian Sandoval reminds consumers to be alert with regard to scams related to the new Medicare prescription discount drug cards made available to consumers under the Medicare Prescription Drug, Improvement and Modernization Act.

The cards allow qualifying seniors to obtain discounts of 10 to 25 percent on medications. The prescription drug program took effect June 1, and providers began selling the discount cards the first week in May. There are about 70 different national and state plans operated by private companies that have been approved to offer the discount cards.

The federal government estimates that more than 7 million seniors are expected to enroll in the discount card program. According to Consumer Advocate Timothy Hay, "A huge number of potential first-time customers means the potential market for scam artists is enormous as well."

Recently, some states have reported receiving complaints that low income seniors qualifying for financial assistance have been contacted by con artists and told they must provide personal banking information in order to place the promised \$600 prescription drug credit into their accounts. Other complaints involve illegal use of government logos by discount card sellers who are not authorized to take part in the Medicare program.

The U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, offer the following guidelines for your protection, and seniors should ask these questions before signing for a drug discount card:

- Has the Medicare program approved this card? Check the information from the Medicare program – don't just rely on literature from the discount card provider.

- Does this card cover the drugs I take?
- Will the drugs covered by this card change? If so, how often?
- How much will I save? To see how much you would save by using a particular Medicare card, list your monthly drug costs, and calculate the savings the card would offer on each drug.
- Does the pharmacy where I shop accept this card? Ask your pharmacist – don't rely on literature from the discount card provider.

Individuals who believe they may have been the victim of Medicare Discount Card scam may contact the Attorney General's Office, Bureau of Consumer Protection at (775) 687-6300. Additional consumer protection information can also be found on the Attorney General's web site at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: June 17, 2004

“UPBEAT” PARENTS SUPPORT THEIR CHILDREN

Carson City—In honor of Father’s Day, the Nevada Attorney General’s Office and the Nevada Division of Child Support Enforcement would like to recognize and publicly thank those parents who take their responsibilities seriously and provide for their children through support payments. While “deadbeat” parents are the ones that all too often make headlines, most non-custodial parents do in fact meet their child support obligations.

“Child support payments are the most obvious means of providing for children, and many parents making them—and making them on time—struggle to do so. It costs the state many times over when children are not supported financially by those responsible, so to those who do, we’d like to say thanks,” said Deputy Attorney General Donald Winne.

Says Attorney General Brian Sandoval, “I’d like to add something to that, as a father and one who values time with my family, and this is directed to all parents: financial support is your obligation to be sure, but please remember that the most important thing to spend on your children is time. You don’t get quality without a measure of quantity.”

The Nevada Department of Justice publishes this message each Father's day because it is important to recognize those who live up to their obligation and commitment, though it is our duty to find and prosecute those who do not.

Below is a list of “upbeat” parents from throughout the state. The names were provided by Child Support Enforcement programs within county District Attorney offices. Each person listed has given his or her permission to publicize their name. To interview one of the parents listed, please contact your local district attorney’s office.

WHATEVER YOUR NEWS AGENCY CAN DO TO HELP WITH PUBLIC
ACKNOWLEDGEMENT OF THESE INDIVIDUALS AND THE IMPORTANT ROLE THEY
PLAY ON BEHALF OF THEIR CHILDREN IS APPRECIATED.

Clark County: Samuel Adkins, Keith Burns, Samuel Miranda

Churchill County: Randall Engeseth, Michael Parrott, Jack Petersen

Humboldt County: Stephen Fuchs

White Pine County: Ryan Niecko, Arthur Neagle

“Thank you for thinking of me.” —Samuel Adkins

“I stay in contact with my children by phone every week until I can visit them in Las Vegas. I ask them how they are doing in school and ask when I can send their Christmas and Birthday presents. I like when I call my daughter because she tells “knock knock” jokes. I am also proud of my son and my other daughter because they are doing good in school and in the school choir. I can’t wait until I can see them because I miss them very much.”

—Samuel Miranda

“Just the word 'parent' means so much, in many different ways. It can be expressed and defined by joyfulness, happiness, being proud, responsibilities, teaching, learning, caring and nurturing are just what come to my mind when I think of the joy of being a parent. I hope what I have shown as a parent will make them feel the same joy when they become a parent. Being a non-custodial parent meant all your parental responsibilities are still there and to give support for the parent who is in the home of the children. I have always tried to keep up the communication and respect with my children, to show that I am always there in their hearts and minds, even if I am not there physically. Never let them forget who the other parent is, show support and visit them often, call, and send little notes. The rewards are wonderful, because when your children refer to their Dad to other children as the 'Best Dad,' it makes us feel we have done a pretty good job.”

—Stephen Fuchs

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FOR IMMEDIATE RELEASE
DATE: June 15, 2004

BOULDER CITY COUPLE GUILTY OF EXPLOITING ELDERLY NEIGHBOR

Las Vegas—Attorney General Brian Sandoval announced today that Terry Atwood (age 54) and Deneen Atwood (age 53) each pled guilty to Theft from the Elderly, a misdemeanor offense. Justice of the Peace Victor L. Miller sentenced the pair to serve a combined 100 hours of community service, and pay \$900 as restitution, costs and penalties, in addition to the two days of jail time already served by each.

The case was prosecuted by the Medicaid Fraud Control Unit (MFCU). According to MFCU Chief and Deputy Attorney General Tim Terry, the charges stem from an investigation that the Atwoods obtained personal property of an elderly neighbor and kept that property under their own control. The elderly neighbor was in a hospital during the time the incidents unfolded.

“Often, crimes against the elderly go unreported because the victims are fearful of coming forward or are unable to do so due to infirmities,” said Deputy Attorney General Terry. “Nevada has a mandatory reporting statute requiring many different types of professionals, including lawyers, clergy and health care workers to report their knowledge or reasonable belief that abuse, neglect, exploitation or isolation of the elderly has occurred. This case was initiated when one such professional complied with the statute and reported their concerns, and we welcome that action.”

Anyone suspecting the abuse or neglect of an elderly person may report it to the MFCU at (775) 684-1191 (Carson City) or (702) 486-3420 (Las Vegas); or to the Aging Services Division (775) 688-2964 (Reno), (775) 687-4210 (Carson City) or (702) 486-3545 (Las Vegas); or to any local law enforcement agency. Medicaid fraud and elder abuse or neglect information can be found on the Attorney General’s web site at <http://ag.state.nv.us>

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FOR IMMEDIATE RELEASE
DATE: June 11, 2004

JURY CONVICTS ELY INMATE OF CONSPIRACY, DRUG POSSESSION

Ely—Attorney General Brian Sandoval announced today that a White Pine County jury found Ely State Prison inmate Christopher Kyriacou, age 28, guilty of Possession of a Controlled Substance by a State Prisoner and Conspiracy to Commit an Unauthorized Act Relating to a Controlled Substance.

The charges stem from a February 2001 investigation by Department of Public Safety and Corrections officials that uncovered a drug smuggling plot involving an Ely State Prison correctional officer. Senior Deputy Attorney General Conrad Hafen and Deputy Attorney General Joseph Long prosecuted the case. District Judge Dan L. Papez presided over the trial.

The jury deliberated for approximately 2 hours Wednesday night before returning its verdict. Former Ely Prison correctional officer Scott Eagle, age 33, testified during the trial that he conspired with Kyriacou to obtain marijuana from Las Vegas resident Ramin Zabeti, age 26, which he then smuggled into the prison and gave to Kyriacou. The drugs were found hidden in a kitchen area within the prison. The prosecution also presented letters written by Kyriacou to Zabeti that detailed the drug smuggling plot. Telephone records confirmed numerous calls from Kyriacou to Zabeti and from Zabeti to Eagle in the days before the drugs were discovered. A search warrant executed at Zabeti's Las Vegas residence resulted in the discovery of additional narcotics.

"This case is the result of the hard work and cooperation of White Pine County law enforcement officers, Nevada Division of Investigations, and investigators with the Ely State Prison," said Senior Deputy Attorney General Conrad Hafen. "Their investigative efforts enable us to vigorously prosecute crimes committed by state inmates, which are the original jurisdiction of our office."

Eagle was charged by the White Pine District Attorney's Office and in July 2001 pled guilty to Conspiring to Commit an Unauthorized Act Related to a Controlled Substance. Eagle was sentenced to a term of 12 to 30 months, which he served in a prison outside Nevada. Zabeti was tried and convicted in Clark County in 2003 for possession of a controlled substance.

Kyriacou is serving a 20 to life term for a 1996 conviction for murder and robbery. His new conviction could result in up to 9 additional years in prison, which must be served in addition to his current sentence.

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FOR IMMEDIATE RELEASE
DATE: June 11, 2004

CONSUMER ALERT: SCAM ARTISTS POSE AS GOVERNMENT AGENCIES OR SWEEPSTAKES OFFICIALS

Carson City—Attorney General Brian Sandoval urges Nevada residents to beware of telephone calls or e-mails where the solicitor claims to be from a government agency or sweepstakes company. Consumer Advocate Timothy Hay says the Bureau of Consumer Protection has noticed a recent surge in consumer complaints regarding this type of scam.

The scam artist contacts a consumer, usually by telephone, and tells the consumer that he represents U.S. Customs, a police department, a state lottery or a sweepstakes company. The scam artist informs the consumer that the consumer has won a large amount of money, a package was intercepted with a large sum of checks made payable to the consumer, or a large amount of misplaced government money was found which rightfully belongs to the consumer. In all of these instances, the scammer tells the consumer to send \$200.00 to \$2,500.00 via automatic fund transfer from the consumer's checking account or by Western Union or other wire service to pay costs or taxes on these funds. Unfortunately, the consumer sends the money and receives nothing in return.

Other recent complaints involve telemarketers alleging to collect money on behalf of local law enforcement agencies. Often a very small amount and sometimes none of a consumer's donation goes to the law enforcement agency. In fact, a majority of the consumer's donation is typically used to pay the costs of running the telemarketing operation including profits.

The Attorney General's Bureau of Consumer Protection offers the following tips to avoid becoming a victim of these scams:

Never send money to someone you do not know, have never met, and have only communicated with via the telephone or e-mail.

Anyone representing themselves as a government agent via telephone or e-mail who asks for money should be viewed as suspicious and potentially a scam artist.

If you want to donate money to your local law enforcement agency, you should contact the agency directly to make the donation.

Remember: If it sounds too good to be true, it probably is.

For more information regarding consumer scams and deceptive trade practices, you may contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 or (702) 486-3786, or visit our website: <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: June 10, 2004

NEW YORK FATHER REUNITED WITH DAUGHTERS

Non-custodial mother abducted them, fled to Texas, Mexico, then Vegas

Las Vegas—Attorney General Brian Sandoval today announced that two girls missing from Newburgh, New York since September 11, 2001 have been reunited with their custodial father, Mario Medina, after having been recovered by the Nevada Missing Children Clearinghouse, part of the Nevada Department of Justice.

On September 11, 2001, the children's mother, Marbella Miranda (age 29), abducted Alenis and Ziari Medina, presently aged 6 and 7 years respectively, in Newburgh New York. Miranda took the children to Texas and then to Mexico.

Only three weeks ago, Miranda arrived in Las Vegas and, after seeing pictures of her children on Telemundo, a Hispanic television station, called the listed New York number to inform authorities there that the children were not in fact abducted, rather, they were with her, their mother. Miranda is not the custodial parent according to the New York authorities, who contacted child recovery Investigator Kelley Reynolds with the Nevada Missing Children Clearinghouse. Reynolds found Miranda and recovered the children. New York authorities are issuing a warrant for the arrest and extradition of Miranda.

The Nevada Department of Justice, Office of the Attorney General hosts the Nevada Missing Children Clearinghouse, and works with agencies statewide and, indeed, outside of the state and even internationally to secure the safe recovery of missing children. For more information about this and other children's safety issues, see the "Nevada Kids" section of the Attorney General's website at: <http://www.ag.state.nv.us/>.

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FOR IMMEDIATE RELEASE
DATE: June 10, 2004

SETTLEMENT WITH FORD MOTOR CREDIT COMPANY OVER "RED CARPET" LEASING PROGRAM

Carson City—Attorney General Brian Sandoval joined forces with thirty-eight other states to reach today's announced settlement with Ford Credit which impacts more than 150 thousand Ford consumers nationwide.

The settlement is the result of the cooperation of Ford Credit and the 1,300 participating Ford and Lincoln Mercury dealers. Ford Credit will pay \$500,000.00 in fees and costs in addition to all consumer restitution and the costs of administering the settlement. Ford and Lincoln Mercury Dealers will pay \$5.8 million for their part in the settlement. Consumers who are notified by Ford Credit may qualify for a restitution check of \$100.00 from Ford Credit.

The settlement involves Ford Motor Credit's leasing practices. The "Red Carpet" leasing program came under the scrutiny of the multi-state group when investigators discovered that early termination of vehicle leases where the lessees purchased the vehicles resulted in charges that were sometimes higher than the actual balance owed on the lease. Dealers would keep the extra amount charged to the consumers and discharge the lease obligation to Ford Credit. Because the dealers, not Ford Motor Credit, provided the payoff figure, consumers were unaware of the increased charges.

Ford has agreed to change its Red Carpet lease contract language to clearly explain a consumer's rights when terminating a vehicle lease early. The change involves not only Ford Credit branches but also the practices at the Ford and Lincoln Mercury stores.

Ford Credit has also agreed to pay for the administration of the settlement. Consumers for the years of 1991 through 1994 will receive direct notice from Ford Credit. Other consumers may also participate by calling the administrator of the settlement at 1-800-221-3312 or visiting: <http://www.gilardi.com/fordcreditrcagsettlement>.

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FOR IMMEDIATE RELEASE
DATE: June 2, 2004

MULTI-STATE ANTI-CANCER DRUG (TAXOL®) SETTLEMENT

Carson City—Nevada Attorney General Brian Sandoval and Consumer Advocate Timothy Hay today announced that settlement checks totaling \$104,207.00 are being mailed to 192 Nevada consumers who submitted claims for purchases of the anticancer drug Taxol® or its generic form Paclitaxel. A letter from Attorney General Brian Sandoval explaining the payments accompanies each check.

The settlement was recovered in an antitrust case in federal District Court for the District of Columbia in which Attorney General Brian Sandoval joined the attorneys general of the other 49 states, the District of Columbia and U.S. territories as counsel for a class of individual consumers who paid for Taxol® and its generic equivalent Paclitaxel. The lawsuit asserted that, because of invalid patents claimed by Bristol-Myers Squibb Company for its anticancer drug Taxol®, lower cost generic substitutes were delayed in arriving on the market resulting in higher prices to those who paid for the drug. In November 2003, the Court approved a settlement negotiated by the Attorneys General on behalf of consumers in all the states and territories.

As a result of that settlement, individuals who paid all or part of the cost for treatments with Taxol® or Paclitaxel, during the period from January 1, 1999 through February 28, 2003, and who submitted valid claims during the court-established claims period ending February 29, 2004, will receive reimbursement of at least \$525.00. Consumers who paid the entire cost for two or more treatments will be paid \$438.00 for each such treatment. Nationally, 12,723 consumers will recover a total of \$7,242,114.00.

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FOR IMMEDIATE RELEASE
DATE: July 28, 2004

PAST OFFICER OF CHILDREN'S COMMUNITY CHEST SENTENCED FOR INSURANCE FRAUD

Carson City—Attorney General Brian Sandoval announced today that Timothy Lockwood, age 50, of Reno was sentenced today after pleading guilty to felony Insurance Fraud before Judge Brent Adams in the Washoe County District Courthouse.

Timothy Lockwood, a past officer of The Children's Community Chest was represented by Attorney David Houston. The felony charge stems from Lockwood arranging to have his son's vehicle "stolen" in July of 2002 so that he no longer had to make car payments.

Lockwood fraudulently reported to Geico Insurance Company that his son's 1996 Mazda 626 had been stolen; Geico subsequently paid the the claim of \$8000.00. Concerned citizens brought this crime to the attention of the Insurance Fraud Unit of the Nevada Department of Justice, and Lockwood was subsequently arrested on April 20, 2004. Lockwood agreed to plead guilty to a felony in this case and pay full restitution on both this and a prior case involving another son. During the investigation involving the Mazda 626 claim, it was discovered that Lockwood had another son drive his Toyota Tercel into a construction dumpster in 1999, filing claims for that incident with both an insurance company and against the owner of the dumpster. The statute of limitations had run out on that incident, but prosecutor Ronda Clifton was still successful in obtaining restitution on behalf of the parties harmed.

Judge Adams sentenced Lockwood to 36 months in prison but suspended the sentence and placed Lockwood on probation so that he could pay the restitution totaling \$18,000.00, five thousand of which is to reimburse the Attorney General's office for the cost of investigation.

Lockwood had previously spent time in prison for gaming fraud.

If you have any information regarding insurance fraud, please call the Nevada Attorney General's Insurance Fraud Hotline at 1-800-266-8688. For more information about Nevada's Insurance Fraud Unit, please visit the Nevada Department of Justice website at www.ag.state.nv.us.

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FOR IMMEDIATE RELEASE
DATE: July 21, 2004

SETTLEMENT IN CLAIMS AGAINST THREE WIRELESS CARRIERS

Carson City—Attorney General Brian Sandoval today announced that Attorneys General from thirty-two states entered into settlements with three of the nation's largest wireless telephone carriers: Verizon Wireless, Cingular Wireless, and Sprint PCS. Terms require the carriers to provide coverage maps to consumers, gives consumers at least two weeks to terminate service contracts without incurring any penalties, and also changes the way these carriers advertise and sell their services and coverage. The wireless carriers also agreed to pay a total of \$5 million to the Attorneys General to cover the costs of the multi-state inquiry and to fund consumer education.

Consumers may be familiar with the maps previously provided by wireless carriers which consisted of a map of the entire calling area, in some cases, the entire United States, colored in. Carriers referred to these maps as "rate maps," indicating where rates were available. Coverage was not necessarily available in the entire calling area or the entire United States for a variety of reasons, including lack of cell towers, lack of roaming agreements, lack of capacity to accommodate all calls during certain high peak times, and physical obstructions, such as buildings, hills, and trees.

Verizon Wireless, Cingular Wireless, and Sprint PCS will now provide coverage maps to consumers that are as accurate as possible under current technology.

Additionally, the three carriers have agreed to provide new customers with a minimum of 14 days to try out their wireless service to make sure service is available where they need and want it. During the return period, new customers will be permitted to terminate their service contracts for any reason without paying the early termination fee provided for in the contract. The three carriers have further agreed to provide a new return policy permitting new customers to terminate their service contracts for any reason within 3 days without

paying the early termination fee and the carrier will return any activation fee the consumer may have paid when he or she signed up for the service.

Other provisions of the agreement call for certain disclosures in the carriers' advertisements and through their retail, Internet, and telemarketing sales channels which are designed to provide consumers with comprehensive information about the costs and limitations of their wireless service.

These settlements resolve state consumer protection investigations of the carriers focusing on alleged misleading advertisements and unclear disclosures relating to service agreement terms and wireless coverage areas. The states entering into the settlement with the carriers are Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming.

For more information on how you can help prevent illegal deceptive trade practices you may contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in southern Nevada.

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FOR IMMEDIATE RELEASE
DATE: July 20, 2004

COURT RULING FAVORS STATE OVER PHARMACEUTICAL MANUFACTURERS

Carson City—Attorney General Brian Sandoval today announced that Washoe County District Court Judge Steven R. Kosach has issued an important ruling in Nevada's Average Wholesale Price (AWP) litigation against numerous pharmaceutical manufacturers including Abbott Labs, Baxter, Bristol-Myers Squibb, Dey, GlaxoSmithKline, and Pharmacia.

Judge Kosach has rejected all but one of the arguments presented by the manufacturers asking that the lawsuit be dismissed allowing the state to proceed with its claim that a host of pharmaceutical manufacturers have defrauded the state Medicaid program and consumers through a practice of inflating the Average Wholesale Price of drugs.

Nevada Medicaid, Medicare, and many private programs throughout the state pay for prescription drugs on the basis of AWP. The state alleges that pharmaceutical manufacturers engaged in an illegal practice of inflating the reported AWP for drugs thereby causing Nevada Medicaid and other payors to overpay for prescription drugs. The allegations assert violations of the state's Medicaid, False Claims, and Deceptive Trade Practices statutes.

According to Chief Deputy Attorney General Tim Terry, "Pre-trial discovery will begin in earnest leading to a jury trial of the issues to be heard on the merits. This case is incredibly important to Nevada health care consumers—particularly those with limited incomes. Any willful practice that artificially inflates the price of prescription drugs on the market is a fraud exacted upon consumers." The state's case is being prosecuted with the assistance of special counsel Hagens Berman in Seattle, WA.

Nevada is involved in similar litigation against other pharmaceutical manufacturers in federal court in Boston, MA. That court has also ruled that the state's case may proceed.

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ATTORNEY GENERAL

JUL 20 2004

MEDICAID FRAUD CONTROL UNIT

FILED

JUL 16 2004

RONALD A. LONGTIN, JR., CLERK

By: K. Rogers
DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CV02-00260

Dept. No. 8

ABBOTT LABORATORIES, INC.; BAXTER
INTERNATIONAL, INC.; BAXTER HEALTHCARE
CORPORATION; BRISTOL-MYERS SQUIBB
COMPANY; ONCOLOGY THERAPEUTICS
NEW YORK CORP.; APOTHECON, INC.; DEY,
INC.; GLAXOSMITHKLINE P.L.C; SMITHKLINE
BEECHAM CORPORTION; GLAXO WELLCOME,
INC; PHARMACIA CORPORATION;
PHARMACIA & UPJOHN, INC.; and TAP
PHARMACEUTICAL PRODUCTS, INC., et al.,

Defendants.

ORDER

Abbott Laboratories, Inc (hereinafter "Abbott"), Baxter Pharmaceutical Products, Inc. (hereinafter "Baxter"), Bristol-Myers Squibb, Oncology Therapeutics Network Corp. and Apothecon, Inc. (hereinafter "Bristol-Myers"), Dey, Inc. (hereinafter "Dey"), SmithKline Beecham Corporation, d/b/a GlaxoSmithkline P.L.C. (hereinafter "GlaxoSmithKline"), Pharmacia Corporation and Pharmacia & Upjohn Co. (hereinafter "Pharmacia") and TAP Pharmaceutical Products, Inc. (hereinafter "TAP")(collectively "Defendants") present this Court with a *Motion to Dismiss the First Amended Complaint*. Baxter International, Inc. and

1 Baxter Healthcare Corporation (hereinafter “Baxter”) filed a *Joinder in Defendants’ Motion*
2 *to Dismiss the First Amend Complaint*. The State of Nevada (hereinafter “Plaintiff”)
3 opposes this motion. This Court, having considered all papers and pleadings finds and
4 concludes as follows.

5 On November 3, 2003, Plaintiff filed a *First Amended Complaint* against Defendants
6 alleging that Defendants, by reporting the Average Wholesale Price (hereinafter “AWPs”
7 at a level higher than the providers’ actual acquisition costs, violated the Nevada
8 Deceptive Trade Practices statute (Count I, violations of NRS 598.0903, et seq.),
9 Deceptive Trade Practices Directed at Elderly Nevada Residents (Count II, violations of
10 NRS 598.0973), Deceptive Trade Practices (Claim III, violations of NRS 598.0973),
11 Racketeering (Count IV, violation of NRS 207.400, et. seq.), Medicaid Fraud (Count V,
12 violations of NRS 422.540, et. seq.), False Claims (Count VI, violations of NRS 357, et.
13 seq.), and Punitive Damages Claim Brought on Behalf of the State of Nevada (Count VII).
14 Defendants now move this Court to grant their Motion to Dismiss.

15 First, Defendants argue that they are entitled to have Plaintiff’s cause of action
16 dismissed pursuant to NRCP 9(b) and NRCP 12. First, Defendants argue that Plaintiff’s
17 have failed to state a claim in which relief can be granted because Plaintiff cannot recover
18 under fraud or deceptive based theories when the decision to base drug reimbursement on
19 AWPs was a voluntary decision on the part of the Plaintiff. Defendant argues that the
20 public record defeats Counts I through VI of Plaintiff’s claims. Defendant basis their
21 argument on the federal government’s criticism of state Medicaid programs use of AWPs
22 as a reimbursement benchmark, press reports on AWPs, and the federal Medicare
23 program’s use of AWPs.

24 In opposition, Plaintiff argues that Defendants are not entitled to have the cause of
25 action dismissed. First, Plaintiff argues that there is no basis for dismissing the AWPs
26 Claims based on the Defendants’ argument that the Plaintiff had “government knowledge.”
27 Plaintiff argues that while this Court has the authority to take judicial notice of matters of
28 public record, it should not do so in this case because the facts cited in the public record

are subject to reasonable dispute. Additionally, Plaintiff argues that Defendants' argument
2 invokes factual issues that cannot be decided on a Rule 12(b)(5) motion to dismiss.

3 In reply, Defendants reaffirm their argument that they are entitled to have Plaintiff's
4 cause of action dismissed because Plaintiff cannot recover under fraud or deception based
5 theories because it had knowledge that the AWP's did not represent the actual costs but
6 voluntarily chose to base their drug reimbursement plan on AWP's.

Upon review, this Court is persuaded by Plaintiff's argument that this Court should not
8 take judicial notice of matters of public record because the public record in this action is
9 subject to reasonable dispute. "The court may take into account matters of public record,
orders, items present in the record of the case, and any exhibits attached to the complaint
when ruling motion to dismiss for failure to state a claim upon which relief can be granted.

12 Breliant v. Preferred Equities Corp., 109 Nev. 842, 847 (1993). However, "a court may not
13 take judicial notice of a fact that is subject to reasonable dispute." Lee v. City of Los
14 Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001). Thus, this Court determines that the public
15 record in this action is subject to reasonable dispute. Therefore, this Court will not take
16 judicial notice of the public record presented by Defendant.

17 Second, Defendants argue that Plaintiff's *Complaint* lacks the particularity required by
18 NRCP 9(b). Defendants argue that in order to satisfy NRCP 9(b) the Plaintiff must detail
19 the time, place, identity of parties involved and nature of the fraud. Additionally,
20 Defendants argue that Plaintiff's claims cannot proceed without additional specific
21 allegations informing the Defendants of the nature of Plaintiff's claims. Furthermore,
22 Defendants argue that Plaintiff's private payor allegations are insufficient because the state
23 fails to identify the third party payors, specify the drugs that are the subject of the alleged
24 fraud, or allege anything about the percentage discounts off AWP's that particular third
25 party payors negotiated in their arm's length transaction with pharmacy benefit managers
26 (PBMs). Moreover, Defendants argue that Plaintiff's allegations pertaining to "other"
27 alleged "hidden and improper inducements" are also devoid of any particulars because
28 Plaintiff has failed to allege a specific transaction occurred.

1 In opposition, Plaintiff argues that the generalized scheme to defraud by Defendants is
2 supported by specific allegations directed against each Defendant, which satisfies NRCP
3 9(b). Additionally, Plaintiff argues that *First Amended Complaint* satisfies NRCP 9(b)'s
4 particularity requirement by clearly setting forth a general outline of the general scheme to
5 defraud which is sufficient to provide the Defendants with notice of the grounds on which
6 Plaintiff's claims are based

7 In reply, Defendants reaffirm their argument that they are entitled to have Plaintiff's
8 cause of action dismissed because Plaintiff's Complaint fails to satisfy NRCP 9(b) because
9 it failed to allege the specific nature of the fraud

10 Upon review, this Court determines that Plaintiff has satisfied its burden in alleging the
11 specific nature of the fraud, pursuant to NRCP 9(b). NRCP 9(b) requires that "in all
12 averments of fraud or mistake, the circumstances constituting fraud or mistake shall be
13 stated with particularity." This Court is persuaded by Plaintiff's argument that the *First*
14 *Amended Complaint* satisfies NRCP 9(b) because it has clearly set forth a general outline
15 of the general scheme to defraud and is sufficient to provide the Defendant with notice.
16 Additionally, this Court is not persuaded with Defendant's argument that Plaintiff must
17 detail time, place, identity of parties involved and nature of the fraud for each and every
18 allegation. "Where the alleged scheme of fraud is complex and far-reaching, pleading
19 every instance of fraud would be extremely ungainly, if not impossible." In re
20 Pharmaceutical Industry Average Wholesale Litigation, 307 F.Supp.2d 196, 208 (D. Mass.
21 2004), see also: U.S. ex rel. Franklin v. Parke-Davis, 147 F.Supp.2d 39, 46 (D.Mass.
22 2001). "Courts facing similar claims under the False Claims Act have not placed the bar so
23 high as to require pleading with total insight." Id. In the Plaintiff's *First Amended*
24 *Complaint*, Plaintiff describes the general outline of the fraud scheme for the brand name
25 drugs and for generic drugs, how the AWP inflation scheme impacts the reimbursement
26 systems, congressional and federal investigations and examples of specific AWP inflation
27 by each Defendant. Thus, this Court determines that Plaintiff has pled sufficient allegations

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concerning the fraudulent scheme with enough specificity to comply with the requirements
2 of NRCP 9(b)

3 Third, Defendant argues that the Plaintiff fails to state a claim under the Nevada
4 Medicaid Fraud Statute, False Claims Statute and the Deceptive Trade Practice Statute.

5 Defendant argues that since the AWP's reported by Defendants to the publishers cannot
6 be said to be false, the elements of a Medicaid fraud claim are not satisfied. Additionally,
7 Defendant argues that because there are no standards in place to govern the calculation

8 of AWP's, Defendants cannot be said to have knowingly caused a false claim to be

9 presented to Plaintiff in violation of the False Claims statute. Furthermore, Defendant

10 argues that since there are no standards by which to measure an undiscounted list price
that generally does not reflect what is being paid in the market, AWP's cannot be said to be

11 false in violation of the Deceptive Trade Practices statute.

12 In opposition, Plaintiff argues that it has properly stated a claim for relief for Medicaid
13 Fraud, False Claims and Deceptive Trade Practices. Plaintiff argues that this Court should
14 reject Defendants' argument that the AWP's are not false, misleading, or deceptive

15 because there is no agreed understanding of AWP's because there are factual issues that
16 cannot be determined on a motion to dismiss.

17 In reply, Defendants reaffirm their argument that they are entitled to have Plaintiff's
18 cause of action dismissed for failure to state a claim under the Nevada Medicaid Statute,
19 False Claims Statute, and the Deceptive Trade Practices Statute.

20 Upon review, this Court determines that Plaintiff has properly stated a claim for relief for
21 Medicaid Fraud, False Claims, and Deceptive Trade Practices. This Court determines that
22 Plaintiff has pled allegations concerning violations of Medicaid Fraud, False Claims, and

23 Deceptive Trade Practices with specificity, pursuant to NRCP 9(b). Additionally, this Court
24 determines that Plaintiff has pled the allegations sufficiently to provide the Defendants with
25 notice of the grounds on which the Plaintiff's claims are based. Therefore, this Court

26 determines that Plaintiff has properly pled claims in which relief can be granted under the
27 Medicaid Fraud, False Claims, and Deceptive Trade Practices statute.
28

Fourth, Defendants argue that Plaintiff's cause of action alleging a violation of Nevada's RICO statute must be dismissed on numerous grounds. Defendants argue that Plaintiff does not allege a viable enterprise, Plaintiff cannot show that the Defendants directly caused the higher drug prices, and Plaintiff lacks standing to sue under the statute.

In opposition, Plaintiff argues that it has properly alleged a Nevada RICO claim because it has alleged the existence of a viable Rico enterprise, properly alleged causation, and has standing under the statute. Plaintiff argues the alleged "Manufacturer-Publisher Enterprises" has an ongoing, continuing structure, exists separate and apart from the racketeering activity, and has a common purpose. Additionally, Plaintiff argues that it has adequately alleged causation because it has alleged a direct injury to business or property and there are no intervening acts that break the Holmes causation test. Furthermore, Plaintiff argues that it has standing to raise a RICO claim because it is a "Person" under the RICO statute.

In reply, Defendants reaffirm their argument that they are entitled to have Plaintiff's cause of action dismissed for failure to state a civil RICO claim because Plaintiff failed to allege a viable RICO enterprise, failed to show the Defendant directly cause the higher drug prices, and lacks standing to sue.

Upon review, this Court determines that Plaintiff's have failed to state a claim in which relief can be granted. This Court is persuaded by Defendant's argument that Plaintiff does not allege a viable enterprise under the RICO statute. In interpreting the Nevada Civil RICO statute, the Nevada Supreme Court has consistently relied on case law that interprets the federal civil RICO statute. See; Allum v. Valley Bank of Nevada, 109 Nev. 280, 283-86 (1993), Hale v. Burkhardt, 104 Nev. 632 (1988). This Court is not persuaded by Plaintiff's allegation that the "Manufacturer-Publisher Enterprises" is a viable RICO enterprise. These allegations of an association-in-fact enterprise are not sufficient to state a claim for relief. An enterprise must be "a group of persons associated together for a common purpose of engaging in a course of conduct." United States v. Turkette, 452 U.S. 576, 580 (1981). This Court determines that the Manufacturer-Publisher, as described, do

1 not share a common purpose more specific than the common endeavor of reaping a profit.
2 The publishers financial interest lies in earning money through selling books listing the
3 AWP numbers and the spread is not relevant to their financial well being. Additionally, this
4 Court determines that Plaintiff has failed to cite sufficient facts to support the allegation that
5 the publishers knew of the fraudulent nature of the AWPs they published. This Court is not
6 persuaded by Plaintiff's allegations that the publishers knew of the fraud because of a
7 1992 survey, various congressional bodies and government agencies reports and the
8 State of Texas prosecuting Dey for its AWP practices. This Court is persuaded by the
9 United States District Court of D. Massachusetts findings that "the publishers' printing of
10 fraudulent AWP's under a contract with the manufacturers does not constitute an
11 enterprise." In re Pharmaceutical Industry Average Wholesale Litigation, 307 F.Supp.2d at
12 205. Therefore, this Court determines that Plaintiff has failed to state a claim for relief
13 under Nevada's Civil RICO statute and accordingly, Count IV of Plaintiff's *First Amended*
14 *Complaint* is DISMISSED. However, this Court determines that Plaintiff shall have leave
15 to amend its First Amended Complaint.

16 Fifth, Defendants argue that the Plaintiff's claims relating to multi-source drugs should
17 be dismissed because they do not make economic or factual sense and do not fit the
18 paradigm of the Plaintiff's *Complaint*. In opposition, Plaintiff argues that Defendants fraud
19 involving multiple-source drugs falls within the AWPs inflation scheme. Plaintiff argues that
20 Defendants' argument that the claim makes no economic or factual sense and does not fit
21 the paradigm of the *Complaint* is purely factual and should be a question for the jury and
22 cannot be disposed of in the face of allegations stating the opposite. In reply, Defendants
23 reaffirm their argument that they are entitled to have Plaintiff's cause of action dismissed
24 because Plaintiff's claim relating to multi-source drugs should be dismissed because the
25 claim does not fit the paradigm of the *Complaint*.

26 Upon review, this Court determines that the allegations are specific enough to satisfy
27 the requirements of NRCP 9(b). This Court is persuaded by Plaintiff's argument that the
28 allegations fall within the paradigm of the *Complaint* and cannot be disposed of. Thus, this

1 Court determines that Defendant is not entitled to have Plaintiff's claims relating to multi-
2 source drugs dismissed.

3 Therefore, this Court determines that dismissal of Counts I, II, III, V, VI, and VII of
4 Plaintiff's Complaint is not appropriate at this time. Additionally, this Court determines that
5 Defendant is entitled to have Count IV of Plaintiff's Complaint dismissed. However, this
6 Court determines that Plaintiff shall have leave to amend Count V of its First Amended
7 Complaint and accordingly, shall have thirty (30) days in which to plead further.

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Dated this 16 day of July, 2004.



DISTRICT JUDGE

CERTIFICATE OF MAILING

2 The undersigned hereby certifies that on the 16 day of July, 2004, she
3 mailed copies of the foregoing ORDER in Case No. CV02-00260 to the following

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FOR IMMEDIATE RELEASE
DATE: June 16, 2004

SENIOR DEPUTY ATTORNEY GENERAL HONORED AT CONFERENCE OF WESTERN STATES ATTORNEYS GENERAL *First Nevadan to be so honored*

Carson City—Attorney General Brian Sandoval today announced that Senior Deputy Attorney General Charles Wayne Howle received the “Idaho Justice Jim Jones Public Service Award” at the annual Conference of Western Attorneys General (CWAG) earlier this week in Vail Colorado.

Deputy Howle has worked for the Attorney General since 1990, serving as counsel for the Nevada Division of Wildlife and other natural resource agencies. He also serves as counsel to the Nevada Indian Commission. Presently, he supervises the Attorney General's Conservation and Natural Resources Section, comprised of nine attorneys.

The presentation of the award, by CWAG Executive Director Tom Gede, cited Deputy Howle's years of preparing issue papers, developing positions, and consulting on litigation, in cooperation with peers in other western states, through the Western Attorneys General Litigation Action Committee. Mr. Howle has also made many presentations himself in the past at the CWAG annual meetings.

Gede also referenced Howle's work for the State of Nevada, including litigations for the State's natural resource agencies, as well as his delivery of arguments before the United States Supreme Court in 2001 in the matter of *Nevada v. Hicks*.

Mr. Howle, born in 1956 at Fort Knox, Kentucky, spent his childhood in South Carolina, Ohio, and Geneva, Switzerland. In 1978, he received a bachelor of arts degree from the College of Charleston, South Carolina, with a major in political science.

His practice of law began as a law clerk for Judge Charles McGee in Reno, Nevada. He then spent a year at the law firm of Hill Cassas deLipkau, a natural resource firm in Reno, before joining the Attorney General's Office.

While with the state of Nevada, Mr. Howle has performed trial and appellate work in both state and federal courts; defended state employees and agencies in civil rights actions; defended the State against claims of tribal hunting rights; been involved in various public lands disputes; represented the state in various wildlife-related cases; and defended the state against tort claimants. Howle also performs general counsel duties for his client agencies, such as contract review, opinion writing, assisting on legislative measures, and providing representation at administrative hearings. In addition, he advises the Attorney General on natural resource, public lands, and tribal issues.

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FOR IMMEDIATE RELEASE
DATE: July 9, 2004

SOUND SCIENCE TRUMPS YUCCA MOUNTAIN

Carson City—Attorney General Brian Sandoval today announced that the ruling of the Circuit Court of Appeals in Washington, D.C. is a sound victory for Nevada. “The Court ruled in our favor on our most critical case. If we were to choose a case to win, the EPA case would be the one because it is fundamental to the basis for site selection, licensing, groundwater and other issues. Simply put, Yucca is stopped in its tracks because the Court recognizes that the project isn’t rooted in sound science. We wouldn’t trade places with the opposition.”

The D.C. Circuit’s opinions on Nevada’s Yucca Mountain cases, released today, offered stunning victories for the state that :

- The Court *vacated* the primary EPA rule governing the project, holding that not only was EPA’s rule inconsistent with the Congressionally-mandated recommendations of the National Academy of Sciences, but EPA *deliberately rejected* the sound advice of the scientific community and adopted a standard that is not safe. In order to move forward, the EPA will have to promulgate a new rule, a process that would take years to achieve. That rule will have to extend the regulatory compliance period to at least the time of the peak radiation hazard for the repository, which is somewhere between 300,000 and a million years. “This alone is a fatal blow to the repository,” said Sandoval.
- The evidence indicates DOE *cannot satisfy* this extended requirement given Yucca’s porous geology. The Court cites Lake Barrett, former head of the Yucca program saying that DOE cannot meet this more stringent requirement. Moreover, since DOE based its site suitability determination on NRC’s illegal 10,000-year requirement, Nevada may now challenge DOE’s refusal to disqualify the site as evaluated against the stricter standard. “While DOE may attempt to tinker with the cadaver, wasting taxpayer and utility ratepayer money, the futility of such action will soon become

evident to DOE,” said Joe Egan, of Egan and Associates, the McLean Virginia law firm representing Nevada.

- The Court *vacated* the NRC rule governing repository licensing. This means there is currently no rule against which to license the project. NRC will have to wait until EPA puts out a new rule, and then it too will have to promulgate a new rule. As a practical matter, the NRC licensing proceeding is on hold. If it is ever re-instituted, DOE will have to prove what Nevada has always desired it to—that the *geology* of the mountain is capable of containment of a leak, that the *geology* is sufficient to retard radiation hazards to a safe level *for all time*. “DOE cannot succeed in that endeavor,” said Sandoval.
- The Court preserved Nevada’s ability to fully litigate the numerous defects in DOE’s Environmental Impact Statement during the NRC licensing proceeding. This means issues such as DOE’s rejection of the “no-action” alternative (continued on-site storage), its transportation plan, and its violation of Nevada’s hazardous waste laws are now fully addressable in courts of law. “DOE had argued that these issues were moot. DOE lost,” said Sandoval.
- The Court rejected every one of the Nuclear Energy Institute’s challenges to the groundwater safety standards that were imposed on the repository by EPA. The Nuclear Energy Institute had sought to diminish the stringency of EPA’s rules.
- Finally, the Court affirmed that the higher standard of “reasonable assurance of safety” must be used to judge the repository in licensing, not the watered-down “reasonable expectation of safety” that NRC had desired.

“Truth and our country’s justice system trump political influence,” said Sandoval. “Our Founding Fathers put a system in place to ensure this would be the case, and, sure enough, it worked today. Nevada has endeavored for 25 years to obtain a victory, and we have it. This is a great day for Nevada and, indeed, the Nation.”

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FOR IMMEDIATE RELEASE
DATE: July 2, 2004

STUDENT SURVEY: Youth Smoking Down in Nevada

Carson City—A annual study conducted by the US Centers for Disease Control and the Nevada Department of Education confirms that fewer Nevada high school students obtained cigarettes by purchasing them in stores in 2003. The Youth Risk Behavior Survey is a self-assessment given to a sample of high school students nationwide.

According to the summary: the percentage of Nevada high school students who attempt to purchase cigarettes in stores dropped by 35% from 2001 to 2003 and the percentage of students who actually purchased cigarettes in stores in the previous month dropped by 46% during that same period.

In addition, fewer Nevada high school students are smoking. In 1993, 28.3% of high school students smoked an entire cigarette before the age of 13. In 2003, only 18.8% of high school students smoked an entire cigarette before age 13. Similarly, the percentage of Nevada high school students who smoked cigarettes on 20 or more days of the last 30 days dropped from 14.4% to 8.8%. Further, the students who smoke are smoking less. The percentage of students who smoked at least two cigarettes on the days they smoked dropped from 20.8 % to 11.8%.

"This is good news, as disease due to smoking is preventable," said Deputy Attorney General John Albrecht. "Our enforcement activities geared toward preventing minors from purchasing tobacco products are paying off, along with the many campaigns statewide to educate young people about the dangers of smoking. The public health community, schools, and retailers have all cooperated in this effort, and the future dividends are enormous—and enormously positive."

Since 1995, the Attorney General's office has enforced the state law that prohibits the sale of tobacco to minors. Every retail store that sells tobacco is checked at least twice per year under this program. Results of every purchase attempt are sent to the store after the

check is completed. This enforcement program is required by the federal government or a state may lose federal substance abuse treatment funding.

The entire youth risk behavior survey is available at: <http://apps.nccd.cdc.gov.yrbss>.

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FOR IMMEDIATE RELEASE
DATE: August 27, 2004

MEDIA ADVISORY: INTERNET EDUCATION AND SAFETY COURSES

Carson City—Attorney General Brian Sandoval urges parents, teachers, librarians, and youth services staff to attend training courses that help prevent victimization of children over the Internet. Members of the press are also welcome to attend either or both of the events described below. There are two offerings, one is a comprehensive train-the-trainer course for staff of organizations whose mission and/or activities includes supervision or protection of children; the other is a short course geared toward parents and caregivers.

The Internet and Your Child: Trainer Certification Course

September 15 to 18, 8:00 a.m. to 5:00 p.m.
Truckee Meadows Community College
Red Mountain Building, Room 204

The tuition of \$175 is waived if the attendee commits to conduct two 7-hour training sessions within one year. The sponsors' goal is to train as many trainers as possible, and have them in turn inform concerned parents and caregivers. Attorney General Brian Sandoval will welcome attendees September 15 at 9:00 a.m.

The Internet and Your Child: A Parent Internet Education and Safety Course

September 18, 9:00 a.m. to 4:00 p.m.
Truckee Meadows Community College
Sierra Building, Room 101

This course is free to all attendees.

For more information, please contact Lorrie Adams at (775) 688-1813.

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FOR IMMEDIATE RELEASE
DATE: August 27, 2004

SENIOR FEST 2004 RETURNS TO PARK LANE MALL TUESDAY, AUG. 31

Carson City—Attorney General Brian Sandoval urges Northern Nevada's "seasoned citizens," children and caregivers to seniors, as well as members of the press to attend "**Senior Fest 2004**" at Reno's Park Lane Mall this Tuesday, Aug. 31, from 9 a.m. to 2 p.m.

Senior Fest, in its eighth year, is so popular that it attracts five to seven thousand attendees and is now held twice annually.

Tuesday's event will feature 100-plus informational booths with everything from health screenings by Washoe Health System and area physicians, opticians and technicians to local service providers who assist seniors in making decisions regarding health, finances and future planning. The "West Wing" of Park Lane Mall will be dedicated to a "Candidates Forum" where people can meet the candidates for office, get to know them, and discuss issues going into the primary election. Entertainment will be provided by the Reno Big Band along with casino showroom performers. There will be a silent auction to benefit the Alzheimer's Association and the Nevada Department of Justice's Senior Protection Unit will provide a rotating series of seminars to educate attendees on how to detect and avoid fraud, identity theft, telemarketing and Internet scams.

A farmers market will be held August 31 to coincide with Senior Fest. Produce and fresh vegetables will be sold near the Plumb Lane entrance. Park Lane Mall has plenty of convenient parking and five entrances. For booth information or participation please call Chris McMullen at Senior Spectrum, (775) 348-0717.

The event is free and sponsored by Senior Spectrum newspaper in partnership with KBDB 1400 AM, Nevada Matters and Park Lane Mall. Sponsors include Lexus of Reno, Reno Toyota, Senior Dimensions, Lakeside Manor, the Eldorado, the Atlantis, Subway at Park Lane Mall, the Salvation Army, and Washoe Health Systems.

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FOR IMMEDIATE RELEASE
DATE: August 24, 2004

NEVADA SETTLES WITH MAKERS OF GENERIC VERSIONS OF CHILDREN'S MOTRIN®

Carson City—Attorney General Brian Sandoval and Consumer Advocate Timothy Hay announced today that they filed and settled an antitrust enforcement action with 49 other states and territories against Perrigo Company and Alpharma, Inc., charging the companies with antitrust violations that harmed competition in the market for over-the-counter generic store-brand versions of liquid suspension Children's Motrin®. The civil complaint and settlement order were filed in the U.S. District Court for the District of Columbia. As part of a joint investigation, the Federal Trade Commission also filed its own lawsuit against Perrigo and Alpharma in the same court.

"We are committed to enforcing Nevada's antitrust laws against anti-competitive actions," said Hay. "Marketplace manipulation is a crime against consumers, in this case children and those who care for them. We simply will not tolerate any such behavior."

To resolve this civil law enforcement action, Perrigo and Alpharma agreed to make combined payments of \$10,000.00 each to Nevada and the other litigating states and territories. Also, Perrigo and Alpharma will pay approximately \$1 million into funds administered by the National Association of Attorneys General to help support future antitrust enforcement efforts. This relief helps ensure that the companies will not engage in similar conduct in the future.

Perrigo and Alpharma are the only two FDA-approved manufacturers of generic over-the-counter versions of liquid suspension ibuprofen, a drug product used to temporarily reduce fever and relieve minor aches and pains in children. The states allege that, in 1998, Perrigo and Alpharma entered into an agreement that gave Perrigo 100% of the market for generic versions of this product. The states further allege that Alpharma never began selling its generic product, and that Perrigo captured a 100% share of the market. The lack of

competition caused retail stores that sell store brand products to pay more for this product than they would have paid in a competitive market.

Motrin® is a registered trademark of Johnson & Johnson, who is not a party in this lawsuit.

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FOR IMMEDIATE RELEASE
DATE: August 20, 2004

LARGEST COMPANY OUTSIDE TOBACCO MSA OPTS IN

Carson City—Attorney General Brian Sandoval today announced that Vibo Corporation of Miami, Florida, has joined the tobacco Master Settlement Agreement (“MSA”) as a Participating Manufacturer. Vibo, which does business as General Tobacco, sells a number of cigarette brands such as Bronco, GT One, Silver and Champion.

“Under current market conditions, this agreement will be worth \$1.7 billion to all the states over the next ten years,” said Chief Deputy Attorney General John Albrecht. Nevada’s share of that will be about \$10,370,000.00.”

The MSA was originally entered into between 46 States and the major tobacco companies in November 1998. Since that time, more than 40 other companies have joined the MSA.

In Nevada, MSA money is used to fund tobacco use reduction efforts, underage purchase prevention enforcement, some programs for seniors, and Nevada’s Millennium Scholarship Program—which is currently running short of revenue projections. Participating Manufacturers make substantial payments to the States, and as a result of today’s agreement Vibo will make an immediate payment of \$78 million to the MSA States, and make full payment of its ongoing obligations in each succeeding year. Nevada will receive \$463,000 next week as its share of this payment. Vibo agreed to make quarterly payments of these obligations to the States.

Participating Manufacturers under the MSA are bound by a wide array of restrictions on the advertising, promotion and marketing of cigarettes, including outright bans on targeting youth, outdoor advertising, and distribution of any merchandise advertising a cigarette brand. Since the MSA took effect, youth smoking rates nationally have dropped by more than 25% and overall smoking has declined nearly 20%.

Vibo's decision to join the MSA is especially significant because the company represents by far the largest tobacco product manufacturer remaining outside the MSA. Vibo is the exclusive US importer of cigarettes from Protabaco, S.A., of Bogota, Colombia, and today's agreement binds Protabaco to sell all of its cigarettes in the U.S. through Vibo and in accordance with the MSA.

Attorneys General Lawrence Wasden of Idaho and Tom Miller of Iowa, co-chairs of the Tobacco Committee of the National Association of Attorneys General, which coordinates State enforcement of the MSA, said: "Vibo's agreement to join the MSA is a very important indicator of a growing recognition by companies outside the agreement that it is in their interest to observe the public health restrictions of the MSA. Persuading the largest cigarette company outside the MSA to join the Agreement represents a great achievement for the MSA States."

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FOR IMMEDIATE RELEASE
DATE: August 20, 2004

TOBACCO YOUTH BUY RATE CUT IN HALF SINCE BEGINNING OF YEAR

Carson City—Attorney General Brian Sandoval announced today that the percentage of stores that sold cigarettes and other tobacco products to minors has dropped to 8.2% in July. This is the lowest monthly buy rate for the year 2004, dropping from 15.2% in January 2004. Approximately 600 stores were checked for compliance statewide during July.

“The Nevada retail community continues to do its part in reducing youth smoking by refusing to sell cigarettes to minors,” said Chief Deputy Attorney General John Albrecht. “Our part is to educate and enforce, but significant reductions in the underage buy rate are virtually impossible without the concern and cooperation of the retail outlets.”

Under a federal law passed in 1992, states must enforce laws that prohibit the sale of tobacco to minors. In 1995, the Nevada Legislature assigned this responsibility to the Attorney General’s office. Under the program, each of the 2,000 stores that sell tobacco in Nevada are checked for compliance three times per year, and about 30% of all Nevada stores give their clerks a reward for passing a tobacco compliance check.

Compliance checks are conducted in this way: a youth between the ages of 15 and 17 and one-half years enters a store to purchase cigarettes or smokeless tobacco. If asked for an ID the youth presents his or her own ID showing the youth is under 18 years of age. If tobacco is sold, the clerk or the store owner receives a citation. If no tobacco is sold, the clerk receives a congratulatory card from the Attorney General.

Under no circumstances is any misleading information given to a clerk during a compliance check: if asked their age, the youth states their age truthfully, and only the youth’s own valid ID is used. Below are youth buy rates since December 2003:

December	13.0%
January	15.2%

February	9.6%
March	11.8%
April	9.5%
May	10.5%
June	10.8%
July	8.2%

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FOR IMMEDIATE RELEASE
DATE: August 18, 2004

INTERNET E-MAIL SCAM ALERT

Carson City—The following consumer advisory is offered by the Nevada Office of the Attorney General, Bureau of Consumer Protection as part of an ongoing effort to educate consumers:

The Attorney General's office has been contacted by a number of consumers who have received what appear to be legitimate e-mails from US Bank, PayPal and other well-known business names asking consumers to provide information concerning their account, including private identifying information.

These e-mails usually contain official-looking logos; may include an apparently authentic Internet address to visit; and they will arrive from and include in the text body what appears to be a legitimate e-mail address for a recognizable company. NDOJ contact with the fraud divisions of the companies confirms that the e-mails are scams, and that legitimate banking and other companies *do not solicit personal identifying information or account information through the use of telemarketers or e-mail*. Legitimate companies have no need to do so if you are already a customer, and, if you are not, this information would be obtained from you by your personal visit to a branch or storefront, or your visit to their website—never via email or phone.

Do not provide any credit card, bank account or other personal identifying information to anyone via the Internet or telephone unless you the consumer are the one that initiated the contact. If you are contacted by e-mail, regular mail or telephone to provide personal information, locate the company's customer service number through an independent source, such as your local telephone directory, and call to confirm the request for information. Never provide such information to anyone who refuses to identify themselves, their address and local (non-800) telephone number.

Questions regarding these or other consumer issues can contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in southern Nevada. You may also visit the NDOJ website at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: August 3, 2004

DOMESTIC VIOLENCE PREVENTION COUNCIL SEEKS NEW MEMBERS

Carson City—Attorney General Brian Sandoval today announced that the Nevada Domestic Violence Prevention Council is seeking new members. The application is brief and submissions will be accepted now through August 20, 2004.

The mission of the Council includes providing direction to the Governor and the Legislature on statewide domestic violence policy and legislation; increasing public awareness of the magnitude and seriousness of domestic violence and sexual assault; advocating appropriate changes in law enforcement procedure and increasing access to legal and medical services to survivors in need.

As this is a statewide Council, it is their goal to be geographically balanced, culturally diverse, and representative of the various disciplines involved in domestic violence issues.

The Council meets quarterly in either Reno or Las Vegas and currently consists of a wide spectrum of community members, including educators, business and health care professionals, service providers, law enforcement, judiciary, prosecutors, and advocates, as well as domestic violence victims and survivors.

Travel and per diem reimbursement are provided for official Council functions.

The application is available on the Nevada Department of Justice website at the following link: <http://www.ag.state.nv.us>, under "Hot Topics."

For more information or to receive the application by mail or fax, please contact:

Lori Fralick
Domestic Violence Ombudsman
(775) 684-1115

llfralic@ag.state.nv.us

or:

Gabrielle Gillette

Domestic Violence Coordinator

(775) 684-1111

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FOR IMMEDIATE RELEASE
DATE: August 2, 2004

SETTLEMENT WITH DRUG MANUFACTURER OVER PRICING METHOD

Carson City—Attorney General Brian Sandoval announced today a national agreement in principle with pharmaceutical manufacturer Schering Plough, (“Schering”) to pay \$140.7 million to state Medicaid programs for damages and penalties from Schering’s underpayment of Medicaid Drug Rebates on its blockbuster antihistamine drug, Claritin. As part of the settlement the State of Nevada will recover \$816,000.00 in restitution and penalties. “The agreement in principle involves 49 states plus the District of Columbia,” said Chief Deputy Attorney General Tim Terry. “Finalization requires signatures from all participating states, and thus far 42 states have signed.”

The Federal Medicaid Drug Rebate statute requires that all pharmaceutical manufacturers which supply products to Medicaid recipients provide the Medicaid programs the benefit of the “best price” available for that product. The manufacturers are obligated to file “best price” information with the Centers for Medicare and Medicaid Services (“CMS”); CMS then uses this information to calculate rebates for the state Medicaid programs. The federal law requires the “best price” reported by manufacturers be inclusive of discounts, rebates, payments and other incentives. In this case it was alleged that Schering, when negotiating with two HMOs to keep Claritin on in lieu of a competitor product, provided the HMOs with certain discounts, concessions and incentives, which were then not reported to CMS as part of the Claritin “best price.” The result was that the states received millions less in rebates from Schering than would have been paid had “best price” reporting been done appropriately.

The alleged conduct impacting best price included Schering’s payment of a \$2.5 million “data processing fee” to one of the HMOs for utilization reports the HMO was otherwise already obligated to provide Schering; Schering’s “prepayment of rebates,” the equivalent of providing interest free loans; and Schering’s agreement to pay one HMO’s antihistamine costs if those costs reached a certain percentage over the prior year.

The states' settlement was reached in conjunction with a federal settlement negotiated by the United States Attorney's Office in Philadelphia, PA. Under the federal agreement Schering Sales Corporation, a subsidiary of Schering, will plead guilty to federal criminal anti-kickback charges, and pay a fine of \$52.5 million. Schering also entered into a civil false claims settlement in federal court in Philadelphia. Schering will pay a total of \$282.3 million to resolve its civil liability for underpaying Medicaid drug rebates.

As part of the agreement in principle with the states, Schering will be required to report accurate pricing information to the federal and state governments on many of its products. Schering also entered into a Corporate Integrity Agreement ("CIA") with the United States Department of Health and Human Services' Inspector General, which will require strict scrutiny of Schering's pricing and sales practices for the next five years.

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FOR IMMEDIATE RELEASE
DATE: September 17, 2004

TWO YEARS' JAIL TIME FOR INSURANCE FRAUD

Carson City—Attorney General Brian Sandoval announced that Tomasi Lautaha, 54 was sentenced yesterday to two years in jail for insurance fraud. Lautaha pled guilty to two counts of Conspiracy to Commit Insurance Fraud on July 20, 2004; he was arrested on the charges in August of last year.

Judge Connie Steinheimer sentenced Lautaha to a year in jail for each of the two counts (with no parole and no suspension), and further ordered him to pay over \$9,000.00 in restitution and investigative costs. Lautaha was convicted of burglary on June 25th, 2003 and contracting without a license earlier the same month. "Insurance fraud is paid for by consumers in the form of higher insurance premiums," said Deputy Attorney General Ronda Clifton. "And that, in turn, means higher prices for goods and services because businesses pay insurance premiums, too. It's a form of theft that people often think only harms the insurance company."

Lautaha submitted a claim to Insuremax Insurance Company alleging that his vehicle had been vandalized in September of 2001, and indicating that he owned the vehicle "free and clear" so that the check for payment would be written to him instead of the lien holder. He cashed the check for his own use and never got the car repaired. Lautaha also made a claim to Allied Insurance Company in February of 2002 alleging that his home had been burglarized. Lautaha exaggerated what was stolen, lied about how the burglary occurred, and claimed that he owned the rented home.

Insurance fraud increases the cost of goods and services for all consumers, and so it is not a victimless crime. If you have knowledge that someone has committed insurance fraud, please contact the Insurance Fraud Hotline at 1-800-266-8688. Information on how to combat insurance fraud can be found at the Attorney General's website at <http://ag.state.nv.us>.

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4 801 S. Rancho Dr., Ste. D-4
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5 (702) 384-7111
Attorney for Plaintiffs

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CLERK OF DISTRICT COURT

2004 SEP -1 P 2:35

CLERK OF DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 GENE GRIEGO, WAYNE BROTHERTON, JEFF DEAN,]
KEITH DENNISON, STEVE FRISHMAN, SID GIBSON,]
9 GENE J. GRIEGO, JUDY KALLAS, AGUSTIN
PASSALACQUA, and JUDY TREICHEL,
10 individually and on behalf of all others similarly situated,

CASE NO.: CV-S-04-0466-JCM-RJJ

11 Plaintiffs,

12 v.

13 BECHTEL NATIONAL, INC., a Nevada Corporation;
14 BECHTEL SAIC COMPANY, L.L.C., a Delaware
corporation; KIEWIT CONSTRUCTION
COMPANY, a Delaware corporation;
15 PARSONS BRINCKERHOFF QUADE & DOUGLAS,
INC., a New York corporation; PERKINELMER, INC., a
16 Massachusetts corporation, through its wholly-owned
subsidiary EG&G REYNOLDS ELECTRICAL &
17 ENGINEERING CO., INC., formerly known as
REYNOLDS ELECTRICAL & ENGINEERING
18 COMPANY, INC.; SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION, a Delaware
19 corporation; TRW, INC., through its wholly-owned
subsidiary TRW ENVIRONMENTAL SAFETY
20 SYSTEMS, INC., and now known as NORTHROP
GRUMMAN SPACE & MISSIONS SYSTEMS
21 CORPORATION, an Ohio corporation and wholly-owned
subsidiary of NORTHROP GRUMMAN CORPORATION,
22 a Delaware corporation; and DOES 1-100; and ROE
CORPORATIONS 1-100,

**SECOND AMENDED
CLASS ACTION
COMPLAINT**

23 Defendants.
24

25 Plaintiffs GENE GRIEGO, WAYNE BROTHERTON, JEFF DEAN, KEITH DENNISON,
26 STEVE FRISHMAN, SID GIBSON, GENE J. GRIEGO, JUDY KALLAS, AGUSTIN
27 PASSALACQUA, and JUDY TREICHEL, individually and on behalf of all others similarly situated,
28 bring this case to seek redress from the above-named Defendants for deliberately and deceitfully
exposing thousands of persons who worked in and visited the tunnels dug at Yucca Mountain,

1 Nevada, to dust containing high concentrations of extremely toxic minerals such as silica, erionite,
2 and mordenite. At the levels at which the air in the Yucca Mountain tunnels was commonly
3 contaminated by such dust, such exposure can cause debilitating, life-threatening diseases, many of
4 which are incurable, such as silicosis, lung cancer, and mesothelioma. (Indeed, erionite is the only
5 known cause for mesothelioma other than asbestos.) Several of the tunnel workers have already
6 contracted these fatal diseases. Moreover, these diseases can manifest themselves for up to 20 years
7 or more after inhalation; and it is highly likely that a certain percentage of the population of workers
8 and visitors who were exposed to this highly toxic dust will contract one or more of these diseases
9 during that time. The Defendants willfully and wantonly concealed these egregious dangers from
10 those workers and visitors and ignored governing regulations and standards of care by failing to
11 provide them protection from exposure to the deadly air in the Yucca Mountain tunnels. Defendants
12 followed this course of conduct in utter disregard for the long-term impact of such exposure on these
13 people and their families, in order to meet schedules, receive millions of dollars in bonuses, and
14 avoid additional labor costs. In short, to increase their profits, Defendants callously put in jeopardy
15 the health and futures of the workers in and visitors to the Yucca Mountain tunnels, and their
16 families and dependents.

17 NATURE OF THE CASE

18 1. Defendants intentionally, deliberately, callously, and/or with reckless disregard
19 exposed workers and visitors to known, highly carcinogenic airborne hazards inside miles of
20 exploratory and test tunnels dug beginning in 1992 at Yucca Mountain, the site of a proposed deep
21 geologic repository for the nation's high-level radioactive wastes. Moreover, Defendants
22 fraudulently concealed the nature of such hazards, and they took measures to deceive workers and
23 visitors by hiding, doctoring, or failing to accumulate key data on actual workplace conditions that,
24 if properly disclosed, would have caused the workers to cease working, and would have caused the
25 visitors not to enter Yucca's so-called Exploratory Studies Facility ("ESF"), a five-mile tunnel hewn
26 from volcanic rock. This deliberate concealment by Defendants continued for years until publicly
27 exposed early in 2004.

1 2. Yucca Mountain is intended to be the world's first and largest high-level nuclear
2 waste repository, with a projected development cost of at least \$57 billion. Thousands of national
3 and international scientists and dignitaries, including members of Congress and the Nevada
4 Legislature, the Governor of Nevada, public interest groups ranging from environmentalists to
5 members of the American Association of Retired Persons and the Girl Scouts, and school groups that
6 included students and teachers, have visited the project and descended into Yucca's tunnels.

7 3. The federal Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, does not permit
8 construction to occur anywhere at Yucca Mountain until the Nuclear Regulatory Commission
9 ("NRC") issues a construction permit, which has not occurred and will not occur for several years,
10 if at all. Thus, as a matter of law, no repository construction has taken place at Yucca Mountain,
11 even though extensive tunneling, drilling, boring, and testing has occurred for the sole purpose of
12 scientifically characterizing the rockform at the site.

13 4. From the beginning of their work at Yucca, the Defendants, overseeing the excavation
14 and characterization of its tunnels under contract or subcontract to the U.S. Department of Energy
15 ("DOE"), knew or should have known that the mountain was laced and laden with silica, erionite,
16 mordenite, and other zeolites, and that their tunneling operations to drill boreholes and several miles
17 of tunnels inside the mountain would, among other things, transform these minerals into fine, highly
18 toxic dust that would be inhaled easily and otherwise absorbed by workers and visitors, and tracked
19 with them into their homes, thus exposing their spouses, children, and other loved ones to the same
20 toxic materials.

21 5. For years Defendants did next-to-nothing to protect the health and safety of the
22 workers in and visitors to the ESF. Indeed, Defendants devised and/or condoned practices to avoid
23 respiratory and other protection for workers and visitors, and to alter data measuring particulate
24 levels in the tunnels to conceal the dangers to which they intentionally were exposing workers and
25 visitors in order to meet their schedules and reduce their costs, and so increase their profits.
26 Consequently, Defendants exposed workers in and visitors to the Yucca Mountain tunnels, without
27 their knowledge or consent, to life-threatening toxic dusts that Defendants knew cause diseases such
28

1 as silicosis, lung cancer, mesothelioma, tuberculosis, collagen vascular diseases, pneumoconiosis,
2 pulmonary fibrosis, and chronic obstructive pulmonary disease ("COPD"). Moreover, such diseases
3 caused by the inhalation of these highly toxic dusts may take 20 or more years after exposure to
4 manifest themselves. Indeed, it is highly likely that certain percentages of those exposed to the
5 highly toxic dusts from the Yucca tunnels who currently are not sick will eventually contract one or
6 more of these diseases. Thus, all those exposed will continue to live under the cloud that they may
7 contract a potentially fatal disease at some time in the future, leading to pain, suffering, and
8 premature fatality.

9 6. Defendants knew that the measured levels of toxic dusts inside the tunnels at Yucca
10 Mountain significantly exceeded applicable regulatory limits and required, at the very least, high-
11 quality respiratory protection and protective clothing. Yet Defendants concealed this information
12 from workers and visitors so as to avoid the added costs, schedule impacts, and inconvenience of
13 providing adequate respiratory protection and protective clothing for those workers and visitors,
14 knowing that the actual particulate levels were certain to cause harm. Some Defendants removed
15 boxes of records from the site and destroyed them, and DOE is now missing the records identifying
16 thousands of people who entered the tunnels. The workers and visitors so impacted reasonably
17 would have refused to enter, much less work in, the tunnels at Yucca Mountain without at least
18 adequate respiratory protection, ventilation, and protective clothing had Defendants disclosed the
19 facts to them. Defendants repeatedly misrepresented to the workers and visitors that conditions in
20 the tunnels were safe, both during and after drilling had occurred.

21 7. Thus, Defendants deliberately failed to disclose, or misrepresented, material facts
22 to the workers in and visitors to the Yucca Mountain tunnels. In so doing, Defendants deceived all
23 the workers in and visitors to the tunnels collectively; that is, Defendants pursued a course of
24 wrongful conduct directed against all the workers in and visitors to the tunnels in common.

25 8. Defendants were aware of the probable or certain dangerous consequences of their
26 conduct and willfully and deliberately failed to prevent those consequences. Accordingly,
27 Defendants have acted with a conscious disregard for the safety and rights of workers in and visitors
28

1 to the Yucca Mountain tunnels. Defendants have subjected the workers in and visitors to the tunnels
2 to cruel and unjust hardships in conscious disregard of these workers' and visitors' rights.
3 Defendants have engaged in intentional misrepresentation, deceit, and concealment of material facts
4 known to Defendants with the intention of depriving the workers in and visitors to the tunnels of
5 their right to know of the serious dangers to which they were being exposed by working in or
6 entering the tunnels without adequate respiratory protection, ventilation, and protective clothing.
7 Consequently, Defendants intentionally deprived the workers in and visitors to the Yucca Mountain
8 tunnels of their right to refuse to be exposed to such dangers, thereby causing them injury.

9 9. In sum, Defendants have committed battery, and have engaged in intentional, willful
10 or wanton misconduct, and fraudulent concealment. Defendants have engaged in abnormally
11 dangerous activity for which they are strictly liable. Furthermore, Defendants have acted with gross
12 negligence, have failed to warn, and have inflicted emotional distress. Defendants' callous and venal
13 behavior, and their longstanding concealment of that behavior, overwhelm and defeat the workers'
14 compensation exclusivity bar, to the extent that it may otherwise apply for some particular members
15 of the Plaintiff Classes in this action.

16 10. The workers in and visitors to the tunnels who are members of the four Plaintiff
17 Classes in this action suffer, and will or may suffer, from potentially fatal diseases due to
18 Defendants' conduct. In addition, as a result of the long period after exposure to the highly toxic
19 dusts of the tunnels during which those exposed are at elevated risk of contracting such diseases, the
20 members of the Plaintiff Classes have a reasonable fear that they or their families may contract such
21 diseases. Consequently, the members of the Plaintiff Classes are entitled to compensation and
22 punitive damages. Furthermore, Plaintiffs and members of the Plaintiff Classes seek permanent
23 injunctive relief in the form of (a) Defendant-provided adequate personal protection equipment, (b)
24 court-established medical monitoring program for diagnosis and information at no cost to the
25 workers or visitors, (c) and Defendant-installed, -operated, and -maintained efficient dust removal
26 systems that reduce toxic dust levels to recognized acceptable minimum levels and regular
27 monitoring of underground air using state-of-the-art monitoring equipment, especially if the NRC
28

1 issues a construction permit to build the repository.

2 **PARTIES**

3 11. **Plaintiffs:**

4 a. GENE GRIEGO is an adult resident of Clark County, Nevada. Until August
5 2004, he was employed by DOE's Los Alamos National Laboratories ("LANL") and worked on site
6 at the ESF from 1993 to August 2002 performing technical work characterizing the geology,
7 hydrology, and geochemistry of the Yucca Mountain site in order to assess its adequacy as a
8 repository for the permanent isolation and disposal of high-level radioactive wastes. He was not
9 involved in tunneling work but was present during tunneling work. Mr. Griego was diagnosed with
10 chronic obstructive pulmonary disease (COPD) on June 25, 2003. His latest breathing test returned
11 with a 64% spirometry reading. Mr. Griego is a life-long non-smoker.

12 b. WAYNE BROTHERTON is an adult resident of Nye County, Nevada. He
13 worked as an electrician for Kiewit and served as a union steward from the spring of 1994 until the
14 fall of 1995, as an electrician and foreman for Morrison-Knudsen from February 1998 until Bechtel
15 SAIC took over in 2001, and as a wireman and union steward for Bechtel SAIC until he ceased
16 working in March 2004.

17 c. JEFF DEAN is an adult resident of Clark County, Nevada. He worked swing
18 shift at the ESF for Kiewit from June 1995 until October 1998 on the tunnel boring machine
19 ("TBM"), operating and installing the muck conveyor, and doing surface drilling. He has silicosis.

20 d. KEITH DENNISON is an adult resident of Clark County, Nevada. As a miner
21 he worked 8-10 hours daily as a working-supervisor, drilling in the tunnels of Yucca Mountain, for
22 Reynolds Electrical & Engineering Co., Inc. ("REECO"), Kiewit, and Bechtel SAIC ("BSC"),
23 starting in April 1995 until he retired in February 2004. He has silicosis.

24 e. STEVE FRISHMAN is an adult resident of Lyon County, Nevada. A
25 geologist certified as an expert on nuclear waste programs, he has been and remains an independent
26 contractor working as a technical policy coordinator for the State of Nevada since 1987, and
27 particularly for Yucca Mountain. He has accompanied and continues to accompany countless
28

1 groups, scientists, and Congressional staffers through the ESF since its inception.

2 f. SID GIBSON is an adult resident of Clark County, Nevada. He worked as
3 an inspector for Raytheon at Yucca Mountain from 1992 through 1994. Medically retired, he has
4 silicosis and currently is prescribed five liters of oxygen per day.

5 g. GENE J. GRIEGO is an adult resident of Washoe County, Nevada. He was
6 employed by LANL and occasionally worked on site at the ESF from February 1996 to January 2001
7 to perform computerized testing.

8 h. JUDY KALLAS is an adult resident of Clark County, Nevada. A safety
9 engineer with a Master's degree in Industrial Safety & Health, she worked as an industrial hygienist
10 at the ESF for Kiewit during the spring and summer of 1996, including the tasks of monitoring air
11 quality for dust particulates. Kiewit fired her for "insubordination" – her unwillingness to follow
12 instructions to doctor her air-quality monitoring field notes in order to show air-quality conditions
13 as less toxic than what actually existed in the tunnels.

14 i. AGUSTIN PASSALACQUA is an adult resident of Clark County, Nevada.
15 He is a Title III Architectural Engineer who worked for Morrison-Knudsen on site from 1992
16 through 2001, a manager responsible to make sure that work performed followed technical
17 engineering specifications. He has pneumoconiosis NOS (505).

18 j. JUDY TREICHEL is an adult resident of Clark County, Nevada. Since 1987
19 she has been the Executive Director of a non-profit, public-interest group, The Nevada Nuclear
20 Waste Task Force ("NNWTF"). The NNWTF was a subcontractor to the State of Nevada from 1988
21 to 1996 providing public information. She has, and continues, to accompany countless tours to the
22 Yucca Mountain site at the request of the tour groups to provide a public viewpoint.

23 12. Defendants:

24 a. BECHTEL NATIONAL INC., a Nevada corporation and Bechtel
25 Corporation's government services company, is one of two entities that comprise Defendant
26 BECHTEL SAIC COMPANY, LLC. Defendant BECHTEL NATIONAL formally agreed with DOE
27 in November 2000 to guarantee the performance of work done by Defendant BECHTEL SAIC at
28

1 Yucca Mountain. It can be served at Corporation Trust Company of Nevada, 6100 Neil Road, Suite
2 500, Reno, Nevada 89511.

3 b. BECHTEL SAIC COMPANY, LLC ("BSC"), a Delaware corporation, is a
4 contractor for DOE performing currently as Management & Operator (M&O) of the ESF at Yucca
5 Mountain since November 2000. It is located at 1180 Town Center Drive, Las Vegas, Nevada
6 89144. On November 14, 2000, BSC replaced TRW as DOE's lead M&O contractor at Yucca
7 Mountain, responsible for safety, health, and regulatory compliance, as well as overall project
8 management. It comprises Bechtel National, Inc., and Science Applications International
9 Corporation. BSC can be served at The Corporation Trust Company of Nevada, 6100 Neil Road,
10 Suite 500, Reno, Nevada 89511.

11 c. KIEWIT CONSTRUCTION COMPANY ("Kiewit"), a Delaware corporation,
12 was subcontracted originally to Defendant REYNOLDS ELECTRICAL & ENGINEERING
13 COMPANY, INC., and later to Defendant TRW ENVIRONMENTAL SAFETY SYSTEMS, INC.,
14 to dig the ESF and provide technical support. It was on site from 1993 until completion of the cross-
15 drift tunnel of the ESF in 1998. Kiewit engaged defendant PARSONS BRINCKERHOFF QUADE
16 & DOUGLAS to assist with design, engineering, quality assurance, industrial hygiene, and other
17 aspects of the tunneling operation. Collectively, the two firms referred to themselves as
18 "KIEWIT/PB." It can be served at The Corporation Trust Company of Nevada, 6100 Neil Road,
19 Suite 500, Reno, Nevada, 89511.

20 d. PARSONS BRINCKERHOFF QUADE & DOUGLAS, INC. ("PB"), a New
21 York corporation, was under subcontract to defendant KIEWIT to provide technical support as well
22 as industrial hygiene services. Defendant PB remained on site until defendant KIEWIT left in
23 October 1998. It can be served at The Corporation Trust Company of Nevada, 6100 Neil Road,
24 Suite 500, Reno, Nevada, 89511.

25 e. PERKINELMER, INC., a Massachusetts corporation, was formerly known
26 as EG&G Inc., and is the parent company of REYNOLDS ELECTRICAL & ENGINEERING
27 COMPANY, INC. ("REECo"), now known as EG&G REYNOLDS ELECTRICAL &
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1 ENGINEERING COMPANY, INC.. REECo, a longstanding presence on the Nevada Test Site, was
2 under contract to DOE at Yucca Mountain until its contract expired in 1995, responsible for aspects
3 of site characterization, including boring, tunneling, and regulatory compliance that included safety
4 and health. PERKINELMER, INC.'s principal place of business is 45 William Street, Wellesley,
5 Massachusetts, 02181, and it can be served at CT Corporation System, 101 Federal Street, Boston,
6 Massachusetts, 02110.

7 f. SCIENCE APPLICATIONS INTERNATIONAL CORPORATION ("SAIC"),
8 a Delaware corporation and the second half of the Bechtel SAIC team (the current M&O), was a
9 longstanding contractor for DOE at Yucca Mountain and performed Technical & Management
10 Support Services ("T&MSS") work, including safety and health compliance, prior to joining with
11 Bechtel National to compete for the M&O prime contract. It can be served at The Corporation Trust
12 Company of Nevada, 6100 Neil Road, Suite 500, Reno, Nevada 89511.

13 g. TRW, INC. ("TRW"), now known as NORTHROP GRUMMAN SPACE &
14 MISSIONS SYSTEMS CORPORATION, was a contractor for DOE and performed work on the
15 ESF at Yucca Mountain through its wholly-owned subsidiary TRW ENVIRONMENTAL SAFETY
16 SYSTEMS, INC. ("TESS"), until it was replaced by Bechtel SAIC in November 2000. TRW was
17 responsible for safety, health, and regulatory compliance at the Yucca Mountain site, as well as
18 overall project management. Defendant TRW, now known as NORTHROP GRUMMAN SPACE
19 & MISSIONS SYSTEMS CORPORATION, can be served at The Corporation Trust Company of
20 Nevada, 6100 Neil Road, Suite 500, Reno, Nevada, 89511. NORTHROP GRUMMAN SPACE &
21 MISSION SYSTEMS CORPORATION is a wholly-owned subsidiary of NORTHROP GRUMMAN
22 CORPORATION, a Delaware corporation with headquarters at 1840 Century Park East, Los
23 Angeles, California, 90067.

24 JURISDICTION AND VENUE

25 13. As alleged in the original Complaint, Plaintiffs continue to believe that the Nevada
26 District Court for Clark County has jurisdiction of this case. However, on August 2, 2004, this Court
27 entered an order denying Plaintiffs' Motion to Remand, ruling that the activities alleged in the
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1 Complaint “occurred on a federal enclave over which this Court has original jurisdiction under 28
2 U.S.C. § 1331, as well as under 28 U.S.C. § 1442(a)(1) because it involves an action against persons
3 acting under an officer of the United States.”

4 **FACTS**

5 14. Yucca Mountain is located in a remote desert on federally-owned land near the
6 boundaries of the Nevada Test Site in Nye County, Nevada. It is approximately 90 miles northwest
7 of Las Vegas.

8 15. The Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, directed DOE to study
9 potential sites for a geologic repository for civilian nuclear waste. DOE did so through its Office of
10 Civilian Radioactive Waste Management (“OCRWM”). In 1987, Congress amended the Act and
11 directed DOE to study only Yucca Mountain. Since then, hundreds of world-renowned scientists
12 have conducted studies there. In fact, during 31 months for which DOE still has data, there were
13 59,025 recorded entries into the tunnels. According to DOE, the mountain is one of the most
14 thoroughly researched sites in the world, and DOE’s contractors and subcontractors have expended
15 several billions of dollars studying the geology, geophysics, and geochemistry of the site. With their
16 complete access to such studies, Defendants possessed and possess a substantial understanding of
17 the physical characteristics of and hazards associated with the Yucca Mountain volcanic rock.

18 16. The design of this waste repository, if the NRC licenses it for full construction,
19 eventually will include approximately 150 miles of tunnels located 1000 feet beneath the surface of
20 the mountain, varying in diameter from 16 to 25 feet. The initial process for developing the
21 repository included a “site characterization” project to evaluate the physical characteristics of the
22 Yucca rock and determine its suitability as a high-level radioactive waste dump. The site
23 characterization itself required boring into the mountain to assess scientifically the ability of Yucca
24 to isolate nuclear waste, followed by the drilling of several miles of tunnels into Yucca in what came
25 to be known as the ESF. Portions of the ESF tunnels are 25 feet in diameter. Digging the ESF with
26 unique boring equipment specially designed for the site characterization work at Yucca Mountain
27 constituted one of the largest tunneling operations in the world.

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1 17. Among companies that do tunneling work such as some of the Defendants, the so-
2 called "Hawk's Nest Incident" in the 1930's is legendary. Silicosis first received widespread public
3 attention in this country from this incident, when as many as 1500 workers died as a result of
4 breathing silica dust while tunneling through a mountain at Hawk's Nest, West Virginia, in what has
5 come to be widely regarded as America's worst industrial disaster. In that case, though the tunneling
6 company had been aware for years of the documented health risks of silica exposure, it had ordered
7 its workers to tunnel through a mountain known to have high silica concentrations without
8 respiratory protection and without protective clothing. Numerous books and articles about Hawk's
9 Nest have been written over the past 60 years, and the incident was even memorialized in a number
10 of popular songs. Defendants working in the field of rock boring and tunneling could not have failed
11 to know about Hawk's Nest and the dangers of unprotected silica exposure.

12 18. In 1991, as site characterization was about to begin, DOE entered into a Management
13 and Operations ("M&O") contract with TRW and its division TESS to manage the Yucca Mountain
14 project for DOE. Under prime contract No. DE-AC08-89NV10630, DOE also retained REECo to
15 assist with certain aspects of site characterization, including boring and tunneling, among other
16 things. REECo had been DOE's prime contractor at the adjacent Nevada Test Site. DOE also issued
17 notices to Yucca participants that it had determined that its Yucca contractors, including at that time
18 contractors TRW, TESS, REECo, and SAIC, were subject to DOE Acquisition Regulation 970.23,
19 which required them to comply with applicable DOE-prescribed Occupational Safety and Health
20 Administration ("OSHA") standards. DOE gave participants notice that, among other things, they
21 were to establish and implement programs and procedures to comply with DOE Order 5483.1A,
22 "Occupational Safety and Health Protection for DOE Contractor Employees at Government-Owned,
23 Contractor-Operated, Facilities." As part of such programs and procedures, they were to "furnish
24 to employees . . . a place of employment . . . as free from occupational safety and health hazards as
25 possible." They were to advise employees that they are afforded an opportunity "to observe
26 monitoring or measuring for toxic materials or harmful physical agents . . . and have access to the
27 results thereof." They were also to "notify employees of any information indicating that an exposure
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1 to toxic or harmful physical agents may have exceeded the limits specified by DOE-prescribed
2 OSHA standards.”

3 19. In response to DOE’s requirements, Defendants SAIC issued an “Environment, Safety
4 and Health Plan” for participants in the Yucca project on January 6, 1992. Among other things, this
5 plan committed participants to “health and safety practices that reduce potential safety and health
6 risks to as low as reasonably achievable.” The program was “structured to satisfy federal, state, and
7 local environmental regulatory requirements and DOE orders.”

8 20. On November 18, 1992, the National Institute for Occupational Safety and Health
9 (“NIOSH”) issued a nationwide Alert to warn companies and workers involved in any form of rock
10 drilling that they “may be at risk for developing silicosis – a chronic, irreversible, sometimes fatal,
11 respiratory disease which is completely preventable.” According to the Alert,

12 silicosis is caused by breathing in fine particles of crystalline silica – a
13 primary component of much of the earth’s crust. Once the silica particles
14 enter the lung, they become trapped, and areas of swelling (or nodules) form
15 around them. As the condition worsens, the nodules become progressively
16 larger and breathing becomes increasingly difficult. Eventually the worker
may die of respiratory failure. . . . The only known treatment for advanced
silicosis is a lung transplant. This high-risk procedure costs more than
\$300,000. . . . Silicosis has been diagnosed in rock drillers employed in . . .
tunnel construction.

17 To protect workers against silica exposures, NIOSH recommended pre-drilling worker exposure
18 assessments. During drilling, NIOSH recommended “control measures such as wet drilling and
19 exhaust ventilation,” “air monitoring,” “training,” “washable or disposable protective clothes at the
20 worksite,” “respiratory protection,” “signs to warn workers,” and “periodic medical examinations.”
21 Because excess silica exposures are so preventable with such measures, NIOSH Director Dr. J.
22 Donald Millar called silicosis “an occupational obscenity because there is no scientific excuse for
23 its persistence.”

24 21. In March 1993, TRW affirmed to DOE its awareness that Order 5483.1A was
25 applicable to it and its subcontractors operating at Yucca, and it provided input to DOE on DOE’s
26 issuance of a supplemental Order, No. 5480.9, concerning “Construction Project Safety and Health
27 Management,” which would also apply to activities at Yucca.

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1 22. In July 1993, REECo subcontracted with Kiewit Construction Company for technical
2 support and underground excavation for the ESF, under the general project management of
3 TRW/TESS. The subcontract provided that, in tunneling through Yucca, “dry dust collection must
4 be utilized,” and that “underground construction water application will be severely constrained,” but
5 it nevertheless required adherence to all applicable OSHA and DOE regulations and orders that DOE
6 had earlier prescribed.

7 23. By lower-tier subcontract dated July 30, 1993, Kiewit engaged Parsons, Brinckerhoff,
8 Quade & Douglas, Inc., to assist with design, engineering, quality assurance, and other aspects of
9 the tunneling operation. Collectively, the two firms referred to themselves as “Kiewit/PB.”

10 24. TRW’s M&O contract with DOE provided for lucrative award fees and bonuses to
11 TRW based on cost, schedule, and substantive performance criteria. In a March 1993 memorandum
12 to DOE’s Environmental Safety and Health Division (“EH”), DOE’s Yucca program office assured
13 EH that performance criteria for determining awards and bonuses for TRW included its adherence
14 to safety and health requirements as well as quality-based performance criteria for worker safety
15 plans, programs, procedures, implementation, and monitoring. The M&O contract also contained
16 financial penalties for TRW’s failure to meet schedule milestones. In short, TRW had a vested
17 interest in making its safety performance appear compliant and adequate whether or not it actually
18 was.

19 25. Before initial boring and tunneling for the ESF began, Defendants TRW, TESS,
20 SAIC, REECo, and Kiewit/PB knew or should have known that carcinogenic compounds that would
21 form inhalable dust existed at the site at drilling depth. In an interview with National Public Radio
22 on April 2, 2004, David McAteer, in charge of the U.S. Mine Safety & Health Administration
23 through the 1990s, said that Yucca participants were repeatedly warned about silica years before
24 actual drilling started there. As early as the late 1980s, preliminary drilling work by REECo and
25 SAIC had revealed substantial concentrations of silica as well as the fibrous mineral erionite – a
26 zeolite known to be highly carcinogenic, that is similar in composition and behavior to asbestos, but
27 thought to be up to 100 times more dangerous. In 1989, the federal Bureau of Mines warned the
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1 Yucca project of the "significant health hazards" from silica, cristoba lite, and zeolites that
2 construction of the proposed ESF would present. In 1992, Defendant SAIC notified DOE that it was
3 taking extensive silica samples at Yucca. A January 1993 internal memorandum shows that TRW
4 and TESS were aware of the presence of silica and zeolites in rock at Yucca and of their
5 carcinogenic potential. Also in 1993, during initial test borings, Defendants then on site hit a large
6 vein of erionite in test bore-hole UZ-14. They also discovered mordenite and crystalline silica
7 polymorphs (cristobalite, trydinite, and quartz), known carcinogens that also would be converted
8 into toxic dust through tunneling operations.

9 26. Defendants' discovery of erionite caused particular concern for DOE, whose scientists
10 warned that this fibrous mineral had been linked in studies worldwide to a high incidence of
11 mesothelioma (a rare, asbestos-associated cancer), and actually showed more mesotheliomas per unit
12 exposure than asbestos. One cited study concluded that "[n]o other dusts we have investigated have
13 produced this high incidence of tumors particularly following inhalation." DOE's scientists found
14 that all available data "support the premise that erionite is more potent than asbestos." And erionite
15 was not the only problem mineral besides silica. One toxicologist warned DOE that "[a]lmost
16 nothing is known about mordenite, but its size and shape are typical of other highly carcinogenic
17 fibrous materials." A 1994 LANL study concluded that established and probable human carcinogens
18 "are ubiquitous at Yucca Mountain, and therefore, when drilling the ESF at Yucca Mountain, a
19 thorough knowledge of the airborne particulates generated through such activities is crucial to
20 worker and environmental safety." Finally, it concluded that although most risks can be minimized
21 by use of "safe, modern mining practices," erionite may pose a special risk if encountered in
22 sufficient quantity even when standard modern tunneling practices are followed, due to "its
23 extremely high carcinogenic potential."

24 27. Recognizing these risks, in June 1994 REECO's Industrial Hygiene manager, Barry
25 C. McNeil, used DOE's Environmental Safety and Health Management Plan Information System
26 – an analytical tool – to assess the costs and benefits of REECO's enforcing compliance with DOE's
27 industrial hygiene requirements. He stated the hypothetical "Goal" of the activity as "providing a
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1 comprehensive IH [industrial hygiene] program for YMP [Yucca Mountain Project] participating
2 organizations,” including “Conducting a Respiratory Protection Program.” Noting that dust
3 exposures posed high hazards to visitors and workers, as well as “violations of Federal and State
4 regulatory laws,” he scored as “catastrophic” the risks to tunnel workers of not having an adequate
5 IH program “due to a potential for hazardous or excessive exposures causing either acute or chronic
6 injury/illness.”

7 28. But by the summer of 1994, McNeil was having major problems with his Kiewit/PB
8 subcontract managers, who, for schedule and cost reasons, did not want to employ respiratory
9 protection and other standard protective measures during their upcoming tunnel boring operation.
10 An audit of the project’s safety and health program recognized that “[t]here is potential of excessive
11 exposure during the early operation of the TBM [Tunnel Boring Machine] if K/PB dictates the
12 respiratory protection procedures. . . .” And a separate audit noted that workers and supervisors
13 preparing for the drilling were not being adequately trained in safety and health procedures, and
14 warned of the “[p]otential for serious injury due to untrained employees who are unfamiliar with the
15 hazards associated with ESF activities.” Turning a blind eye to Kiewit/PB’s unjustifiable
16 recalcitrance, REECo’s Yucca site manager misrepresented to DOE in a May 25, 1994 letter that
17 Kiewit/PB would be requiring respiratory protection for workers and was, thus, training them
18 accordingly.

19 29. Contrary to that representation, Kiewit/PB’s Environmental Safety and Health
20 Manager obstinately informed McNeil and REECo’s site manager in July 1994 “that K/PB
21 management *will not start* the TBM if the employees are required to wear full faced power air
22 purifying respirators (PAPR) equipment.”

23 30. At almost the same time, however, DOE mandated the contrary view. Having heard
24 from its scientists, on August 11, 1994, DOE issued to TRW, TESS, SAIC, and REECo, a directive
25 that “[d]ue to the possibility for exceeding respirable silica or nuisance dust levels . . . personnel
26 working in the tunnel *must* use appropriate respiratory protection.” Moreover, “[i]f sampling detects
27 conditions exceeding the respirator’s intended use, operations *will stop* until the situation is corrected
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1 and personnel are properly protected.” DOE also affirmed that “[p]rimary safety and health guidance
2 for this project is contained in 29 CFR 1910 [Occupational Safety and Health Standards] and 29 CFR
3 1926 [Safety and Health Regulations for Construction],” and that “[s]pecific guidance for air quality
4 is contained in 29 CFR 1926.55 [Gases, Vapors, Fumes, Dusts, and Mists] and 29 CFR 1910.1000
5 [Mineral Dusts Levels].”

6 31. Initial drilling of the ESF, using exclusively dry-drilling, began in October and
7 November of 1994. Notwithstanding DOE’s directives and Orders, and Defendants’ regulatory and
8 contract requirements, respiratory protection for workers was neither required nor used by
9 Defendants TRW, TESS, SAIC, REECo, and Kiewit/PB. Likewise, protective clothing was not
10 required, issued, or used. Although water would have helped calm the dust and reduce exposure to
11 the workers and visitors, the Defendants drilling the tunnels opted not to use water or to take
12 alternate precautions to minimize dust.

13 32. From the beginning of tunneling, scores of tunnel workers immediately complained
14 to Kiewit/PB and REECo management about poor ventilation and dusty conditions. Management
15 told some workers to don “painters’ masks” to quell the dust, which Defendants knew were wholly
16 ineffective in protecting against inhalable silica and other toxic mineral dusts. When workers
17 complained to Mr. McNeil and Kiewit/PB supervisors that it appeared to be so dusty in the tunnel
18 that regulatory requirements were likely being exceeded for mandatory respiratory protection,
19 management falsely told them that all dust levels, though sometimes “close to the threshold,” were
20 not in violation.

21 33. Defendants Kiewit/PB and TRW/TESS took other measures to conceal intentionally
22 the truth about the hazards at Yucca Mountain. In the spring of 1995, Mike Taylor, an industrial
23 hygienist from Los Alamos, attempted to brief Defendants Kiewit/PB and TRW/TESS, as well as
24 DOE officials Wendy Dixon, Richard Craun, and others, as to the severity of the occupational
25 hazards present in the ongoing drilling and tunneling operations. But Robert Law, a TRW manager,
26 cut short Mr. Taylor’s presentation, taking him out of the room and threatening to run him off the
27 project if he did not suppress his findings.

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1 34. The abhorrent working conditions persisted unabated during the increasingly massive
2 tunneling project through 1995. One worker reported his concerns to the NRC, who then wrote DOE
3 requesting information on who was in charge of occupational health and safety at Yucca. DOE
4 wrote back stating that, although it prescribed the rules and regulations to be followed at Yucca, the
5 “contractor organizations have the responsibility for developing and implementing safety and health
6 programs that comply with established Yucca Mountain Project policies.” Thus, the duty to
7 safeguard workers and visitors lay with the Defendants.

8 35. In October 1995, REECo’s “constructor” duties and responsibilities were transferred
9 to Kiewit/PB and TRW/TESS because REECo’s contract expired; REECo left the project. The
10 Kiewit/PB subcontract was assigned to TRW/TESS. REECo’s Mr. McNeil, however, stayed on the
11 project, taking a position with Kiewit/PB nearly identical to the one that he had had with REECo.

12 36. For its allegedly exemplary M&O performance in 1994 and 1995, misrepresented in
13 self-assessment reports to DOE, TRW/TESS received millions of extra dollars in “award fees” from
14 DOE.

15 37. During most of 1995 DOE’s Assistant Manager for Environment, Safety, and Health,
16 Ms. Wendy R. Dixon, was having difficulty conducting her assigned oversight responsibilities
17 because TRW/TESS, REECo, and Kiewit/PB were ignoring her requests to furnish her with
18 important occupational safety and health records from the tunneling operations, especially results
19 of air-quality monitoring that Defendants should have been undertaking since the beginning of the
20 operations. Accordingly, on November 15, 1995, she sent TRW’s Safety and Health Manager,
21 Charles W. Parker, a letter demanding copies of all industrial hygiene monitoring results.
22 Unbeknownst to her, there were no such results because, contrary to law and human decency,
23 Defendants had been doing little, if any, actual monitoring in the tunnels.

24 38. In response to Ms. Dixon’s directive, Mr. Parker quickly ordered air contaminant
25 monitoring for respirable silica and its hazardous constituents. Monitoring began on December 15,
26 1995, and was repeated in January 1996. Almost 82 percent (82%) of the samples taken showed
27 readings above the required action levels for cristobalite or quartz. An area sample for cristobalite
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1 showed values exceeding OSHA's Permissible Exposure Limits ("PELs"), made applicable to Yucca
2 through DOE Orders. In an internal memo discussing these findings, Mr. Parker noted that dust
3 levels for tunnel workers were almost certainly worse than even these troubling levels of excessive
4 dust indicated, because the samples had been taken only of and around lab testing personnel and
5 scientists examining the already-bored rock, and not around actual tunnel laborers and in work
6 locations where there was far more dust. Parker also noted the operation's persistent faulty
7 ventilation system. On February 1, 1996, Parker ordered it fixed, and he directed Kiewit/PB to begin
8 instituting routine air quality monitoring -- 15 months after tunneling had commenced. He did not
9 order wet drilling, protective clothing, or respiratory protection. Nor did he order that site workers
10 be informed of their overexposures or be medically examined. He did not stop operations pending
11 compliance.

12 39. During that same month, TRW agreed with Kiewit's Project Manager, Mr. W.D.
13 Wightman, to grant Kiewit/PB "a pass through of the grade awarded to TRW from DOE for the same
14 period," and accordingly, Kiewit/PB shared in the multi-million dollar performance award for 1995
15 that DOE had given to TRW. To help secure that result, Kiewit falsely represented to DOE on
16 February 12, 1996, that it was following all of DOE's air quality protection procedures.

17 40. By March 1996 the LANL geologists who DOE sent to study the rockform in the
18 already-bored tunnel areas were concerned enough about the lack of occupational safety and health
19 protection for tunnel personnel that they wrote to Mr. Parker, informing him of their findings "that
20 there are very large quantities of crystalline silica polymorphs being encountered by the TBM and
21 potentially being released to the atmosphere." That month -- 16 months after drilling began -- Parker
22 finally informed DOE's Wendy Dixon of the levels of excessive dust. In response, Ms. Dixon sent
23 TRW/TESS a stern letter on March 28, 1996, ordering TRW "to immediately begin implementation
24 of a respiratory protection program consistent with 29 CFR 1926.103."

25 41. On April 9, 1996, a federal Bureau of Mines research supervisor wrote Mr. Parker
26 to say that, in reviewing Kiewit/PB's routine air sample results from the time that they had begun
27 in early February through April 1, 1996, the data "indicate that something happened about the middle
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1 of February to lower the dust levels.” He posited how odd it was that many samples of quartz and
2 cristobalite taken after February 15 were showing “zero a high percentage of the time,” when in the
3 same locations prior to February 15 they were showing high values of those minerals. On
4 information and belief, Defendant Kiewit had begun doctoring air sampling data at approximately
5 this time.

6 42. A week later, four inspectors from the federal Mine Safety and Health Administration
7 (“MSHA”) arrived at the Yucca site “to conduct a regulatory compliance inspection.” Defendants
8 turned them away, refusing to allow them entry to the ESF. (MSHA later informed DOE in October
9 1996 that, based on its review of the facts, had it been given authority to inspect the ESF, it would
10 have issued citations to project contractors, stopped work, and set mandatory time limits for
11 abatement measures.)

12 43. By mid-1996, LANL scientists working at Yucca were so concerned about silica dust
13 that they dispatched their own industrial hygienist to assess whether Los Alamos personnel were in
14 danger. Upon reviewing the Kiewit/PB records and interviewing numerous site personnel, their
15 hygienist concluded that Kiewit/PB’s limited data showed that at least 30 workers had been exposed
16 to respirable dust containing crystalline silica at levels exceeding OSHA limits, and an additional
17 five were exposed to levels above the Threshold Limit Value (“TLV”). He concluded that at least
18 six of ten individuals who had been monitored by the MSHA were exposed “over the enforcement
19 level for the contaminant.” He determined that “no significant reductions in the silica-dust problem
20 were appreciated from recent ventilation system modifications.” Finally, he determined that,
21 contrary to laws applicable to the operation, “no data exist to determine whether [Los Alamos]
22 personnel are exposed to crystalline silica-dust levels” above regulatory limits. He concluded that
23 Los Alamos personnel “are being exposed to suspected carcinogens . . . and recognized health-
24 hazards,” and therefore, they should not go into the tunnels again without adequate respiratory
25 protection, additional training, and thorough medical and air monitoring.

26 44. But the facts were even worse than LANL scientists realized. During tunnel
27 excavation work in the spring and summer of 1996, Plaintiff Judy Kallas, a highly-experienced,
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1 industrial hygienist who had been hired in April 1996 by Kiewit/PB, took field measurements of
2 silica particulate levels in the tunnels to determine if they were within applicable limits and whether
3 respiratory protection was therefore legally mandatory for tunnel workers. Her measurements,
4 recorded in field notes, showed that silica density levels were routinely being exceeded and that
5 respiratory protection was indeed mandatory. Kallas reported that the dust was so dense that she
6 would have to wipe her glasses off when emerging from the tunnel just to be able to see. Yet, her
7 supervisor, Barry C. McNeil, ordered her to "change her field notes about the dust levels in the
8 tunnel" so that Defendants TRW and Kiewit/PB could avoid providing workers and visitors with
9 respiratory protection. From April through August 1996, Kallas' field notes were doctored by
10 McNeil or his supervisors, or by a reluctant Kallas at the direction of McNeil or his supervisors, on
11 nearly a daily basis. The corrupt scheme that McNeil and his Kiewit supervisors implemented
12 involved presenting air samples for laboratory analysis, but doctoring the recorded sampling times
13 so as to yield a fictional lower concentration of particulates than was actually present in the tunnel
14 environment. In this manner, Defendants were able to assert that they could avoid DOE and standard
15 industrial requirements for respiratory protection for workers and visitors and save on applicable
16 labor costs. (Defendants' project labor agreement with the union workforce at Yucca required that
17 workers be paid \$1.00 per hour over their normal hourly rate if they were required to wear
18 respirators.)

19 45. Ms. Kallas at first reluctantly participated in Defendants' corrupt scheme on threat
20 of losing her job. She complained about the doctored field data to senior management at Kiewit.
21 Thereafter, Toby Wightman (project manager for Kiewit) and Tina Lamone (assistant program
22 manager for Kiewit) came to see her on site and warned her that she was to do as she was told, that
23 the only reason that she had a job was because DOE said that Kiewit needed someone with her
24 credentials in the tunnels. In short, Kiewit management threatened to fire her if she did not do what
25 she was told. During Kallas' tenure, Defendants had just begun providing some workers with
26 respiratory protection, but this protection was knowingly substandard for the hazards presented,
27 resembling surgical masks with feeble rubber seals instead of HEPA-type filters of equivalent
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1 protection that is customary and mandatory for environments containing silica, erionite, or asbestos.
2 Kallas reported that the rubber seals on the substandard masks frequently would be broken in as little
3 as 20 minutes in the hot, sweaty tunnels.

4 46. Not surprisingly, Kiewit/PB fired Ms. Kallas on August 9, 1996, for
5 "insubordination" – her complaints and unwillingness to participate in Defendants' malfeasance.

6 47. In June 1996 TRW shut down operations to implement a rudimentary respiratory
7 protection program consisting of half-face and full-face dual-cartridge respirators, improved
8 ventilation, and a "clean" room supposedly free from dust in which employees could eat. In fact,
9 Kiewit was tasked to install two steel vent lines along the TBM tunnel. Instead, Kiewit chose to
10 install only one vent made of materials and in design contrary to the approved design specifications.
11 The line collapsed when an electrician on site, Plaintiff Wayne Brotherton, turned on the fan at the
12 portal, leading to the 1996 shutdown. Prior to the creation of a "clean" room, workers ate on-the-run
13 at their dusty workstations and were provided with no washing facilities. The 1996 changes, in any
14 event, were too little, too late. By then the tunnel was already two and a half miles long. For almost
15 two years workers and visitors had been exposed wantonly everyday to airborne free silica, erionite,
16 and other zeolites in the tunnel without any respiratory protection whatsoever, without knowing that
17 such inherently dangerous compounds were present, and unaware that field readings of particulate
18 levels were being doctored routinely to justify the absence of any protection or the application of
19 substandard protection.

20 48. It was not until August 19, 1996, that TRW began to require some form of respiratory
21 protection for some visitors. DOE by this time recognized that visitors exposed to many Yucca
22 operations "may exceed the exposure levels for silica." However, thousands of visitors had already
23 entered the ESF with no protection other than earplugs.

24 49. Dr. Jacob Paz, a former OSHA asbestos/erionite inspector who worked on site,
25 indicated that workers and visitors need adequate respiratory equipment and protective clothing to
26 help shield them from the carcinogenic hazards of the toxic dusts of Yucca Mountain. He noted that
27 clothing exposed to these toxic dusts must be discarded, not brought home and washed. This
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1 requirement is due to the fact that the minute, toxic fibers that comprise these dusts easily become
2 lodged on the clothing or bodies of workers in and visitors to the ESF, and so are easily transported
3 to workers' and visitors' homes where they can expose loved ones to harm. Although Defendants
4 provided some workers with protective clothing after April 1998, Defendants did not do so for any
5 visitors.

6 50. By September 1996, air samples were showing that silica levels in the tunnel were
7 increasing, yet TRW concluded that the costs and implementation times that would be required to
8 clean up the tunnel adequately were unreasonable. It was noted that "the floor of the alcoves is
9 caked with dust" and that the four miles of conveyor that had been built in the tunnel to carry away
10 the overburden "is not compatible with meeting a cristobalite standard." It was also noted that "the
11 existing ventilation system does not meet the original design, and that the problem is worse as a
12 result." TRW halted work in the tunnel briefly in September 1996, finally to adopt and employ new
13 and marginally safer procedures. But the demand for production over safety allowed the work to
14 restart in only 30 days, with little or no perceptible changes in place.

15 51. Although procedures that Kiewit/PB and TRW/TESS adopted in 1996 purported to
16 mandate respiratory protection for tunnel workers and other standard protective measures, many
17 tunnel workers still were not wearing respirators well into 1997 as boring continued. On January
18 8, 1997, TRW's Mr. Parker asked TRW Operations Manager, Robert M. Sandifer, to direct
19 Kiewit/PB to review their actual health and safety procedures and to "align their program" with
20 TRW's Safety and Health Plan, itself keyed to DOE's Orders and regulations. Kiewit/PB wrote back
21 to TRW on February 25, 1997, saying:

22 we regret that we are unable to comply with your directive to conform our
23 Safety and Health Plan/Procedures with the M&O Safety and Health Plan,
24 Revision 2, at this time. There are a number of basic subcontract conflicts
25 involved that are currently in the negotiation process with the subcontract
26 administrator. In addition, there are issues of funding and accountability that
27 must be elevated by both parties for resolution.

28 TRW acquiesced to this response.

52. Consequently, throughout 1997, TRW supervisors continued simply to complain to
Kiewit/PB's industrial hygienists, including Mr. McNeil, noting personnel working "in very dense

1 clouds of dust with varying degrees of respiratory protection,” and workers complaining that they
2 “can feel dust hitting them at more than 40 feet distance” from the TBM’s drill collar. One
3 supervisor complained that “personnel potentially grossly contaminated with silica and perhaps
4 erionite leave the site and proceed home with minimal or perhaps no decontamination.” But TRW
5 took no further effort to reign-in its belligerent subcontractor because it had schedules to meet and
6 bonuses to earn.

7 53. In short, although Defendants completed the five-mile long main tunnel loop at Yucca
8 in 1997 in record time, they did so by deliberately sacrificing their workforce and ESF visitors to
9 meet deadlines, save costs, and earn award fees, intentionally deceiving their workers about the
10 hazards, thereby imposing harm upon them. Defendants once again earned millions of dollars in
11 award fees in 1996 and 1997, a period during which they were repeatedly warned by their own
12 outside safety consultants that the excess exposures threatened to cause acute health effects in
13 workers, as well as chronic effects that would only manifest themselves long after the tunneling
14 operations ceased. “Chronic silicosis usually takes 20 to 45 years to develop,” consultant Thomas
15 T. McManus warned in a report to TRW’s Mr. Parker, and excess silica exposures have been
16 “associated with lung cancer” and with “stomach cancer.”

17 54. It was not until April 1998, when TRW/TESS and Kiewit/PB were about to
18 commence a second tunneling project at Yucca (“ECRB cross-drift”) that TRW’s Operations
19 Manager Robert Sandifer, noting that resumption of tunneling “once again presents the possibility
20 for our underground work crews to become grossly contaminated with silica containing dust,” finally
21 agreed to purchase protective clothing for the workforce. Nevertheless, DOE later found that, in the
22 new tunneling project as in the main ESF, Defendants were similarly “unable to maintain silica
23 levels below the threshold limit values established by the American Congress of Governmental
24 Industrial Hygienists.”

25 55. By November 2000, DOE had replaced TRW/TESS as the lead M&O of the Yucca
26 project with Bechtel/SAIC Company, LLC (“BSC”), an entity formed by Bechtel National, Inc., and
27 SAIC. Like SAIC, Bechtel had been operating at the site for years, through its Bechtel Nevada
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1 subsidiary. Defendant Bechtel National formally agreed with DOE to guarantee the performance of
2 BSC. On the strength of that guarantee, DOE signed a formal contract with BSC on November 14,
3 2000, and BSC assumed most of the personnel from the previous M&O and changing little but the
4 logos on their hats and the employer names on their badges. Thus, BSC assumed immediately the
5 concealed information about tunnel conditions, missing or fraudulent data, contract and regulatory
6 violations, and worker exposures that had been the hallmark of performance by TRW/TESS and
7 Kiewit/PB. This new entity likewise failed to disclose the numerous safety and health infractions
8 and doctored particulate readings that the assumed individuals knew had occurred in the tunnels,
9 thereby continuing the fraud upon workers and visitors that they had not been exposed to
10 unreasonable harms, when, in fact, their exposure to toxic dusts was, and would continue to be, a
11 critical assault on their health.

12 56. By the spring of 2001, DOE was finally beginning to appreciate the extent of the
13 problem it faced given the gross overexposures that had been occurring in the ESF. In an April 4,
14 2001, memo labeled "Sensitive," DOE's certified industrial hygienist Philip R. Boehme wrote to
15 Suzanne P. Mellington, Assistant Manager of DOE's Office of [Yucca] Project Execution, warning
16 that three workers had already contracted silicosis, and that future "illnesses may become the subject
17 of lawsuits, even class actions. Our counsel should be informed." Moreover, he said, "[t]he program
18 may become newsworthy. Our public affairs people should be warned." After reviewing the
19 project's safety and health records, he concluded that workers immediately should be notified and
20 should be monitored medically "through the rest of their lives," because "the data supports the
21 contention that workers were exposed at levels above the accepted limits." Boehme confirmed that
22 he had presented these facts, issues, and recommendations to BSC and its medical, safety, and health
23 professionals at a meeting only the previous day. At that meeting, "[t]hey reached a consensus
24 supporting the conclusions."

25 57. But contrary to that supposed "consensus," BSC did not notify the exposed workforce
26 and visitors, and it did not commence medical monitoring for those exposed. By June 21, 2001,
27 BSC knew that more than fifty percent (50%) of the tunnel workforce had been "overexposed,"
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1 affirming that, although protection had increased, the workforce “continue[d] to have
2 overexposures.” Complicating this reality, BSC knew that, contrary to regulatory requirements, there
3 were “no centralized past employment, work histories and medical records,” “no method established
4 to track past employees,” and no industrial hygiene data prior to November 1996.

5 58. Indeed, BSC soon discovered that conditions in the tunnel were actually worse than
6 once thought. In August 2001, the company dispatched its own certified industrial hygienist, Wilbert
7 L. Townsend, to take samples and to review the exposure data that TRW/TESS and Kiewit/PB had
8 compiled. After his review, Townsend informed his supervisors that, in fact, TRW/TESS and
9 Kiewit/PB – and more recently, BSC – had been using drastically incorrect Threshold Limit Values
10 for respirable dusts, with the result that action levels (*i.e.*, levels at which respiratory protection or
11 other protective measures were legally or managerially required) were excessively high. He
12 determined that the levels at which respiratory protection should have been, and should now be,
13 required were less than half of what Defendants had been applying for years. The historical
14 thresholds that Defendants used were 167 percent (167%) higher than DOE Orders and directives
15 allowed. BSC did not welcome this news, and began to apply the correct limits only in the fall of
16 2001, when all tunneling was complete.

17 59. On November 28, 2001, Townsend expressed alarm that many air samples recently
18 taken purportedly had read “zero” for silica in areas where the historical “silica concentration was
19 as high as fifty-one percent (51%) in some area air samples.” He also questioned the methodologies
20 that had been used for taking samples, and the samples’ lack of quality assurance. Returning to the
21 tunnels on January 31, 2002, he found that airborne dust samples still showed concentrations as high
22 as fourteen percent (14%) for cristobalite, fifteen percent (15%) for quartz, and twenty-nine percent
23 (29%) for crystalline silica. Moreover, workers still were not wearing respirators. He calculated
24 that, at the dust concentrations present, personnel working in the tunnel would be overexposed in
25 only 7.2 hours. Personnel were working 10-hour shifts at that time.

26 60. On February 20, 2002, Townsend took new readings in the tunnel’s South Ramp, and
27 calculated that workers there would be overexposed in as little as 3.74 hours. He warned BSC
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1 supervisors that "the respirable dust in our tunneling environment is not simply nuisance dust. It is
2 indeed biologically active."

3 61. Nevertheless, when visiting the project again on March 5, 2002, Townsend again
4 found that some workers even in the South Ramp were not wearing respirators. He calculated that,
5 at the concentrations he had sampled that same day, these workers would have been overexposed in
6 only 4.55 hours.

7 62. After his persistent complaints about the health and safety violations at the ESF,
8 Townsend was "let go" in March 2002. BSC continued to withhold exposure information from
9 workers, and it failed routinely to enforce respiratory protection requirements.

10 63. It was not until late 2003 that Plaintiff Gene Griego, a LANL scientist who had
11 worked in both the main and cross-drift tunnels, publicly blew the whistle on Defendants' conduct,
12 prompting DOE finally, in January 2004, to begin strictly enforcing its own rules and to notify all
13 workers of their potentially life-threatening exposures and of their need for medical monitoring. On
14 January 16, 2004, John Arthur, DOE's Deputy Director for OCRWM, issued to OCRWM's East and
15 West divisions a "Weekly Message" discussing a formal notice to be published in the DOE *News*,
16 which was circulated by email to OCRWM East and West on January 15, 2004. In the notice Arthur
17 and John Mitchell, General Manager of Defendant BSC, affirmed that there had been insufficient
18 respiratory protection available at the site and estimated that at least 1200-1500 people potentially
19 had been overexposed to airborne free silica in the tunnel. They stated that the notice had been sent
20 to "many former YMP workers, former contractor organizations, Nevada Test Site employees, the
21 media, external interested parties, and local, state, and national elected officials." Mr. Arthur added
22 further that the program comprehended exposure from both silica and erionite. He quoted Dr.
23 Margaret S. Y. Chu, Director of OCRWM, as saying that a new and expensive silicosis screening
24 program instituted by DOE for all those exposed was "the right thing to do."

25 64. These efforts, however, again were too little, too late. Federal government officials
26 now admit that individuals with as little as two hours exposure to the environment of the ESF may
27 merit monitoring. The International Agency for Research on Cancer has declared silica to be a
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1 known carcinogen. Human studies indicate that exposure to silica for even short periods causes
2 autoimmune diseases, COPD, and silicosis. Silicosis is a progressive disease for which there is no
3 cure, and, once contracted, its progression does not stop with a reduction or elimination of future
4 exposure. Advanced or complicated silicosis changes the lungs' normal elasticity into scar tissue,
5 which prevents normal inhalation and exhalation. Those afflicted slowly suffocate. Likewise, only
6 slight exposure to erionite greatly increases the likelihood of developing mesothelioma. Mordenite,
7 now also known to be pervasively present in the tunnel dust, is also believed to be carcinogenic. In
8 short, those who entered the tunnels at Yucca, especially those who did so routinely, have every
9 reason to fear for their lives, and for those of their families.

10 **CLASS ACTION ALLEGATIONS**

11 65. Plaintiffs bring this action on their own individual behalf and on behalf of all other
12 persons who worked in or visited the Yucca Mountain tunnels since 1992. Subject to later
13 expansion, the following classes are represented here:

14 **Class I:**

15 All persons (excluding Defendants, their officers, directors, agents, parents,
16 subsidiaries, and affiliates) who worked in the Yucca Mountain tunnels or who were
17 involved in boring, drilling, and/or tunneling operations there at any time from 1992
18 to 2003, but who were not employed by any of the named Defendants. These persons
19 are suing the named Defendants.

20 **Class II:**

21 All persons (excluding Defendants, their officers, directors, agents, parents,
22 subsidiaries, and affiliates) who worked in the Yucca Mountain tunnels or who were
23 involved in boring, drilling, and/or tunneling operations there at any time during the
24 period 1992 through November 14, 2000, and who were employed by the named
25 Defendants during that time. These persons are suing those named Defendants,
26 including their respective employers.

27 **Class III:**

1 All persons (excluding Defendants, their officers, directors, agents, parents,
2 subsidiaries, and affiliates) who worked in the Yucca Mountain tunnels after
3 November 14, 2000, or who were involved in boring, drilling, and/or tunneling
4 operations there at any time during the period November 14, 2000, through
5 December 31, 2003. These persons are suing the named Defendants other than
6 Bechtel National and BSC.

7 **Class IV:**

8 All persons (excluding Defendants, their officers, directors, agents, parents,
9 subsidiaries, and affiliates) who visited the Yucca Mountain tunnels for more than
10 two hours during the period 1992 through 2003. These persons are suing the named
11 Defendants.

12 66. The Plaintiff Classes are so numerous that joinder of each member would be
13 impracticable. DOE estimates that at least 1200-1500 workers were exposed significantly to silica
14 and erionite dusts at the site. Visitors likely number in the many thousands. Further, Defendants
15 likely possess records of workers and visitors from which to ascertain the Classes. Disposition of
16 their claims in this one case would save time and money, a benefit to all parties and to the Court.

17 67. Many questions of law or fact are common to and affect the Class as a whole,
18 including but not limited to whether:

19 a. Defendants knew or should have known that the Yucca Mountain ESF
20 contained carcinogenic materials such as silica and erionite that would create
21 inhalable toxic dusts when drilled;

22 b. Defendants knew or should have known that exposure to the toxic dusts could
23 lead to latent diseases such as silicosis, lung cancer, COPD, and increased risk of
24 pulmonary diseases;

25 c. Defendants chose to make meeting deadlines a higher priority than protecting
26 the safety and health of the Yucca Mountain ESF workers and visitors;

27 d. Defendants provided little or no personal protection equipment to workers
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1 and visitors from 1992 to 2003, and what little personal protection equipment
2 Defendants did provide to workers and visitors was knowingly inadequate to prevent
3 exposure to the toxic dusts at the site;

4 e. Defendants knew or should have known that from 1992 to 2003 the
5 respiratory ventilation system in the tunnels at the site was insufficient to remove the
6 airborne toxic dusts from the air, much less to protect on-site workers and visitors
7 from exposure to those dusts;

8 f. Defendants' conduct caused injury to Plaintiffs and the Class members, and
9 Plaintiffs and the Class are entitled to relief;

10 g. Defendants' course of conduct, and their scheme to deceive workers and
11 visitors collectively as to known hazards, so far exceeded and so far exceeds the
12 bounds of human decency as to amount to intentional harm inflicted on workers and
13 visitors in common;

14 h. Defendants' intentional malfeasance and fraudulent concealment of their
15 abhorrent behavior overwhelms and defeats the workers' compensation exclusivity
16 bar; and

17 i. Defendants' conduct was willful, wanton, and/or intentional, entitling
18 Plaintiffs and the Class to exemplary relief.

19 68. Plaintiffs suffer injuries typical to those of all four Classes. Plaintiffs and the
20 members of all four Classes bring their claims under the same legal and remedial theories, pursuant
21 to Nevada common law. Consequently, Plaintiffs' interests are coincident with, and not antagonistic
22 to, those of the members of all four Classes. Plaintiffs have retained counsel who, collectively, are
23 experienced in the science of Yucca Mountain, the injuries due to exposures to substances such as
24 silica, and complex and class action litigation. Counsel have dedicated their resources to this case.

25 69. The questions of law and fact which are common to the claims of Plaintiffs and Class
26 members also predominate over questions, if any, that may affect only individual Class members
27 because, among other reasons, Defendants have completely and deliberately failed to disclose
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1 material facts to all Class members, and so have engaged in a course of deceitful and wrongful
2 conduct collectively and generally applicable to all Class members.

3 70. This class action would preclude the potential for inconsistent or contradictory
4 individual judgments that would dispose of or impair the interests of other prospective class
5 members not parties to individual litigation. This class action would establish compatible and
6 consistent standards of conduct for Defendants.

7 71. Defendants have acted or, specifically here, refused to act on grounds collectively and
8 generally applicable to all Class members as a whole where they knew of the dangers, intentionally
9 exposed all Class members to them, and deprived all Class members of meaningful protection from
10 them.

11 72. Class action treatment is the superior (if not the only) method for the fair and efficient
12 adjudication of this controversy where common questions of law and fact predominate over
13 individual ones. Among other reasons, class treatment will permit a large number of similarly
14 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and
15 without the unnecessary duplication of evidence, effort, and expense that numerous individual
16 actions would engender. Individual litigation would congest the judicial system for years. The
17 benefits of proceeding by means of class action, including providing injured persons or entities with
18 a method for obtaining redress on claims that might not be practicable or possible to pursue
19 individually, substantially outweigh the difficulties, if any, which may arise in the management of
20 this case as a class action.

21 **CAUSES OF ACTION**

22 **Count I**
23 **(Battery)**

24 73. Plaintiffs repeat and reallege each and every prior allegation as if fully set out here.

25 74. Defendants had actual and/or constructive knowledge of the dangers of the highly
26 toxic dusts to which the workers in and visitors to the Yucca Mountain tunnels were exposed.

27 75. Defendants had actual and/or constructive knowledge of the probable consequences
28 to the health of the workers in and visitors to the Yucca Mountain tunnels of failing to take measures

1 to prevent such exposure.

2 76. The contact of the workers in and visitors to the Yucca Mountain tunnels with these
3 highly toxic dusts was unwanted, harmful, and offensive to them.

4 77. Defendants were key participants in, and were responsible for, the tunneling
5 operations that produced the highly toxic dusts to which the workers in and visitors to the Yucca
6 Mountain tunnels were exposed, and for the concealment or misrepresentation of actual tunnel
7 conditions from those workers and visitors.

8 78. Defendants knew or should have known with substantial certainty that their failure
9 to disclose, and their concealment of, the facts concerning the dangers of the highly toxic dusts in
10 the Yucca Mountain tunnels, Defendants' failure to provide the workers in and visitors to the tunnels
11 with effective respiratory equipment, and Defendants' failure to take other protective measures,
12 would bring about the unwanted, harmful, and offensive contact of those workers and visitors with
13 the highly toxic dusts in the tunnels.

14 79. Defendants' failure to disclose, and their concealment of, the facts concerning the
15 dangers of the highly toxic dusts in the Yucca Mountain tunnels, Defendants' failure to provide the
16 workers in and visitors to the tunnels with effective respiratory equipment, and Defendants' failure
17 to take other protective measures, caused the unwanted, harmful, and offensive contact of those
18 workers and visitors with the highly toxic dusts in the tunnels.

19 80. By warning the workers in and visitors to the Yucca Mountain tunnels of the dangers
20 of the highly toxic dusts in those tunnels, by providing them with effective respiratory equipment,
21 and by taking other protective measures, Defendants could have prevented the unwanted, harmful,
22 and offensive contact with the dusts suffered by those individuals.

23 81. By knowingly and recklessly failing to warn the workers in and visitors to the Yucca
24 Mountain tunnels of the dangers of the highly toxic dusts in those tunnels, by failing to provide them
25 with effective respiratory equipment, by deceiving them in a systematic scheme to doctor or
26 misrepresent particulate levels, and by failing to take other protective measures, Defendants intended
27 the unwanted, harmful, and offensive contact of those workers and visitors with the highly toxic
28

1 dusts.

2 **Count II**
3 (Willful or Wanton Misconduct)

4 82. Plaintiffs repeat and reallege each and every prior allegation as if fully set out here.

5 83. Defendants had actual and/or constructive knowledge of the dangers of the toxic dusts
6 to which the workers in and visitors to the Yucca Mountain tunnels were exposed.

7 84. Defendants had actual and/or constructive knowledge of the probable consequences
8 to the health of the workers in and visitors to the Yucca Mountain tunnels of failing to take measures
9 to prevent such exposure.

10 85. Defendants had a duty to warn the workers in and visitors to the Yucca Mountain
11 tunnels of the dangers of the highly toxic dusts in those tunnels, to provide them with effective
12 respiratory equipment, and to take other protective measures, to protect the workers in and visitors
13 to the Yucca Mountain tunnels from the risk of the physical harm that is caused by exposure to the
14 highly toxic dusts in the tunnels.

15 86. Defendants acted in reckless disregard of the safety of the workers in and visitors to
16 the Yucca Mountain tunnels by intentionally failing to warn those workers and visitors of the dangers
17 of the highly toxic dusts and gases in those tunnels, to provide them with effective respiratory
18 equipment, and to take other protective measures that would prevent exposure to those highly toxic
19 dusts.

20 87. By acting in such reckless disregard of the safety of the workers in and visitors to the
21 Yucca Mountain tunnels, Defendants created an unreasonable risk of physical harm to those workers
22 and visitors, a risk substantially greater than would have been the case had Defendants' conduct
23 merely been negligent.

24 88. The workers in and visitors to the Yucca Mountain tunnels who are members of the
25 plaintiff classes suffered, and will suffer, physical harm and emotional distress as a result of
26 Defendants' willful or wanton misconduct.

27 **Count III**
28 (Fraudulent Concealment)

1 98. The existence of highly toxic dusts in the Yucca Mountain tunnels posed a high
2 degree of risk of contracting various serious, and possibly fatal, diseases to those individuals who
3 worked in or visited those tunnels without being protected by respiratory equipment and/or other
4 measures.

5 99. The likelihood was great that the workers in and visitors to the Yucca Mountain
6 tunnels who were exposed to the highly toxic dusts in those tunnels, unprotected by respiratory
7 equipment and/or other measures, would contract a serious, and possibly fatal, disease as a result.

8 100. Drilling tunnels to evaluate the suitability of a site for the nation's only high-level
9 nuclear waste repository, and ultimately to build that repository, is not a normal or common activity.

10 101. Drilling tunnels through deposits of erionite, silica, mordenite, and other materials
11 that produce highly toxic dusts without the use of protective respiratory equipment and/or other
12 measures is not a normal or common activity.

13 102. Drilling tunnels into volcanic rock laced with silica, erionite, and mordenite, for the
14 purpose of isolating high-level nuclear waste, is a dangerous and abnormal activity.

15 103. The dangerous attributes of tunneling or visiting the Yucca Mountain tunnels without
16 respiratory equipment and/or other protective measures outweighs the value to the community of the
17 Yucca Mountain repository, in large measure because providing such equipment or taking such
18 measures would not prevent or significantly burden the completion of the Yucca Mountain
19 repository.

20 104. Insofar as Defendants contend that they have exercised a reasonable standard of care
21 with respect to the exposure of workers in and visitors to the Yucca Mountain tunnels to highly toxic
22 dusts and gases, the actions that Defendants contend met such a reasonable standard of care were
23 unable to, and did not, eliminate the health risks of such exposure to these individuals.

24 105. Defendants are strictly liable for the present and future harm caused by failing to
25 provide the workers in and visitors to the Yucca Mountain tunnels with appropriate respiratory
26 equipment or to take other protective measures to prevent their exposure to the highly toxic dusts
27 in the tunnels.

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Count V
(Gross Negligence)

106. Plaintiffs repeat and reallege each and every prior allegation as if fully set out here.

107. Defendants had a duty to disclose to the workers in and visitors to the Yucca Mountain tunnels the dangers of exposure to the highly toxic dusts in those tunnels and to provide those workers and visitors with effective respiratory equipment and/or to take other protective measures to prevent those individuals from being exposed to the highly toxic dusts in those tunnels.

108. Defendants heedlessly breached that duty – manifesting not even slight diligence or taking even scant care – by failing to provide the workers in and visitors to the Yucca Mountain tunnels with effective respiratory equipment or mandate the use of such equipment and/or to take other protective measures to prevent those individuals from being exposed to the highly toxic dusts in those tunnels, and by deliberately failing to disclose and concealing the material facts to those workers and visitors concerning the dangers of exposure to those dusts and gases. Thus, Defendants’ breach of their duty created an unreasonable risk of harm to those individuals, deprived those individuals of the ability to take steps to protect themselves, and created a high probability that substantial harm would result.

109. The diseases and other harm suffered by, and to be suffered by, the workers in and visitors to the Yucca Mountain tunnels who are members of the plaintiff classes would not have occurred but for the Defendants’ breach of their duty of care.

110. The diseases and other harm suffered by, and to be suffered by, the workers in and visitors to the Yucca Mountain tunnels who are members of the plaintiff classes were the foreseeable consequences of Defendants’ failure to disclose to the workers in and visitors to the tunnels of the dangers of exposure to the highly toxic dusts in those tunnels and to provide those workers and visitors with effective respiratory equipment, and/or to take other protective measures to prevent those individuals from being overexposed.

111. Defendants’ failure to disclose to the workers in and visitors to the Yucca Mountain tunnels the dangers of exposure to the highly toxic dusts in those tunnels and to provide those workers and visitors with effective respiratory equipment, and/or to take other protective measures

1 to prevent those individuals from being overexposed, was the proximate cause of the potentially fatal
2 diseases and other harm suffered by, and to be suffered by, those workers and visitors.

3 **Count VI**
4 (Failure to Warn)

5 112. Plaintiffs repeat and reallege each and every prior allegation as if fully set out here.

6 113. Defendants had actual and/or constructive knowledge of the dangers of the highly
7 toxic dusts to which the workers in and visitors to the Yucca Mountain tunnels were exposed when
8 Defendants failed to provide effective respiratory equipment and/or to take other protective measures
9 to prevent those individuals from being exposed to those dusts.

10 114. There was a special relationship between workers in the Yucca Mountain tunnels and
11 Defendants because those workers were employees or contractors of Defendants.

12 115. There was a special relationship between visitors to the Yucca Mountain tunnels and
13 Defendants because those visitors were the guests of Defendants or allowed to visit the tunnels only
14 with Defendants' permission as those tunnels are not open to the general public.

15 116. Defendants had a duty to warn the workers in and visitors to the Yucca Mountain
16 tunnels of the dangers to which they would be exposed by entering those tunnels without effective
17 respiratory equipment and/or other protective measures taken to prevent them from being exposed
18 to the highly toxic dusts in those tunnels.

19 117. Defendants not only breached that duty to warn, they took systematic measures to
20 deprive the workers in and visitors to the Yucca Mountain tunnels of the material facts concerning
21 the hazards they were exposed to while in the tunnels.

22 118. As a result of Defendants' breach of their duty to warn and their conduct to deprive
23 the workers in and visitors to the Yucca Mountain tunnels of the material facts concerning the
24 hazards that they were exposed to while in the tunnels, the workers in and visitors to the Yucca
25 Mountain tunnels who are members of the plaintiff classes have suffered, and will suffer, potentially
26 fatal diseases and other harms.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray, individually and on behalf of all others similarly situated, that

1 the Court will enter judgment as follows:

2 1. Declare and certify this action as a proper class action and Plaintiffs as the proper
3 class representatives;

4 2. Find, adjudge, and decree that Defendants' conduct has endangered the lives of all
5 who worked in or visited the Yucca Mountain tunnels from 1992-2003;

6 3. Find, adjudge, and decree that Defendants' conduct was unlawful;

7 4. Find, adjudge, and decree that Defendants are strictly liable for this unlawful conduct;

8 5. Find, adjudge, and decree that Defendants' conduct was so egregious as to amount
9 to intentional misconduct;

10 6. Find, adjudge, and decree that Plaintiffs are entitled to damages because Defendants'
11 intentional, egregious, and unlawful conduct overwhelms and defeats the exclusivity bar of workers'
12 compensation;

13 7. Order permanent injunctive relief (a) that requires Defendants to provide all workers
14 in and visitors to the tunnels with adequate personal protection equipment at no cost to the workers
15 or visitors and install, operate, and maintain dust removal systems that effectively reduce toxic dust
16 levels to recognized acceptable minimum levels, and (b) in the form of court-established, medical
17 monitoring for the purposes of diagnosis and information, at no cost to the workers or visitors;

18 8. Find, adjudge, and decree that Plaintiffs and the Classes are entitled to past and future
19 damages, as proven at trial, from Defendants jointly and severally;

20 9. Find, adjudge, and decree that Plaintiffs and the Classes are entitled to reasonable
21 costs of suit, attorneys' fees, and pre- and post-judgment interest;

22 10. Find, adjudge, and decree that Plaintiffs and the Classes are entitled to exemplary
23 damages; and

24 11. Award such other and further relief as this Court may deem necessary, proper, and/or
25 appropriate.

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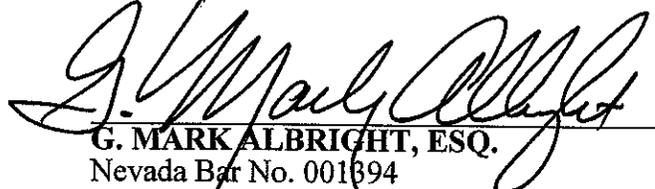
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JURY DEMAND

Plaintiffs repeat their demand for trial by jury of all issues so triable.

Respectfully submitted,



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FOR IMMEDIATE RELEASE
DATE: September 10, 2004

ILLEGAL DUMP NEAR CLARK COUNTY SHUT DOWN

Carson City—Attorney General Brian Sandoval announced today that Lincoln County Judge Daniel Papez ruled in favor of the Nevada Division of Environmental Protection (NDEP) by ordering Western Elite, Inc., a purported recycling facility outside Alamo, Nevada to stop accepting waste. The facility has represented itself as a recycling facility, however, an investigation and inspection revealed virtually no compliance with NDEP regulations governing such facilities.

The court found Western Elite had violated the court's previous order setting limits on the volume of waste Western Elite could maintain at its facility. The court further ordered Western Elite to reduce the nearly 1.5 million cubic yards of waste to comply with its previous order. NDEP was also awarded stipulated penalties.

Western Elite had been accepting construction and other waste primarily from Clark County. The facility is just over the Lincoln/Clark county line. "This ruling is a victory for NDEP and all Nevada assuring waste is properly managed and disposed of for the protection of the environment and the health and safety of Nevada citizens," said Susan Gray, Deputy Attorney General. "Western Elite was granted a reasonable amount of time by the court in which to comply, and they have not. As it stands, they've been operating an illegal—and unsafe—dump masquerading as a recycling facility, and that's not going to be tolerated. Nevada is not a wasteland, period."

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FOR IMMEDIATE RELEASE
DATE: September 7, 2004

NEVADA FILES SUIT OVER YUCCA WASTE SHIPMENT PLAN
previously rejected plan increases health, safety, terror risk

Carson City-Attorney General Brian Sandoval today announced the filing by Nevada of a new lawsuit against the Department of Energy ("DOE") broadly challenging its transportation plan for nuclear waste shipments to the proposed Yucca Mountain nuclear waste repository. Many, if not most, of those shipments would go through Las Vegas. The suit contends DOE's plan violates the National Environmental Policy Act, the Interstate Commerce Act, and regulations set by the Council on Environmental Quality, the Surface Transportation Board, and DOE itself. The case was filed in the D.C. Court of Appeals, the same court that in July ruled favorably for the state on another case challenging Yucca.

DOE's transportation plan, announced April 8, 2004, selects a 318-mile route from Caliente, Nevada, to Yucca Mountain in which to construct what would be the longest new rail line in the United States in over 80 years. To make the rail shipments, DOE selected a new national mode of transport that it had not previously analyzed: loading light-weight truck casks onto rail cars and shipping them by the thousands cross-country. DOE's previous analyses had assumed rail shipments would involve only newly designed, larger, and heavier rail casks. The larger casks would have sharply reduced the number of shipments, and are less vulnerable in accidents or terrorist attacks.

"It's uncanny how DOE manages to do precisely the wrong thing," Sandoval said. "With no public input whatsoever, DOE chose a new transport mode that DOE itself had rejected for study because it is the most expensive by a billion dollars, the most impractical, and has the highest health and safety risks."

Sandoval is also challenging DOE's right to play the role of lead agency in the new rail project, contending the law requires the federal Surface Transportation Board to assume that role. "DOE didn't even contact the Board before plunging ahead with the largest new rail project in decades," Sandoval said. "Given DOE's track record at building anything, the Board is a far better agency than DOE to run a project of this magnitude. It is also far less biased."

Finally, Sandoval is challenging DOE's failure to evaluate actual environmental impacts and land use conflicts within the one-mile wide swath of land along the 318-mile Caliente Route. "No landowners were contacted or given any notice that DOE was about to appropriate their land," Sandoval said, noting that DOE has already applied to the Bureau of Land Management to have set aside 308,600 specifically itemized acres for the new track. "DOE stood the mandatory review process on its head," he added. "First, DOE unilaterally proclaimed a new route, then it applied to withdraw the land, and only now has it announced it will begin to evaluate the environmental impacts along that route. The whole point of environmental review is to study the impacts before you make the decision, not after."

The State is asking the court to compel DOE to withdraw its transport decisions, issue a supplemental environmental impact statement, solicit public comment, and bring the Surface Transportation Board to the project as the lead or co-lead agency.

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FOR IMMEDIATE RELEASE
October 27, 2004

“PAYDAY LOANS”—More Dollars Than Sense?

Carson City—Attorney General Brian Sandoval today issued the following consumer advisory as a part of an ongoing effort by the Nevada Department of Justice, Bureau of Consumer Protection, to educate consumers:

Consumers short on cash have no trouble finding one of the “payday loan” or check-loan businesses that have exploded in Nevada. But consumers should be careful! These enticing promises of “*Cash ‘til payday! Instant cash!*” come with a hefty price tag. Because there is no statutory limit on loan interest rates in Nevada, consumers may pay astronomical interest rates and likely will only worsen their debt problems—even with loans from legitimate operators.

It is not uncommon for consumers to pay for the “convenience” of getting cash to tide them over until payday at an Annual Percentage Rate of interest (APR) of 300%-400%. But paying triple-digit interest rates for short-term loans just siphons more money out of budgets that may already be running on empty. A significant number of Nevada payday loan consumers are repeat customers making it that ever more difficult to get off the debt treadmill.

How payday loans work: If a consumer wants \$100.00 in cash, for example, the consumer would write a check for \$116.50, with the difference being the fee. The business gives the consumer \$100 cash on the spot and holds the check until the consumer’s next payday when the check is either deposited or redeemed. That two-week loan of \$100.00 at a cost of \$16.50 works out to an annual interest rate (APR) of over 434%. Compare that interest rate to, say, the 24% APR interest rate common for very high interest rate credit cards. A \$100.00 loan for two weeks at a 24% APR would cost the consumer approximately \$.92, which is obviously significantly cheaper than \$16.50.

What consumers can do: Consumers can pay themselves the fee instead of going to a payday lender. This will help build a savings reserve for emergencies. In the case of

emergency cash needed for important bills, look for alternatives. Many utility companies and other service providers have emergency assistance programs on the same short-term basis. If the trouble paying bills persists, debt counseling by a reputable, non-profit organization is the best long-term solution. Again, paying debts with triple-digit APR loans is only likely to sweep the consumer downward in a spiral of worsening debt.

Where consumers can complain: Any consumer who suspects they may have been the victim of an **illegal payday lending operation** should contact the **Financial Institutions Division** at (775) 684-1830 in northern Nevada or (702) 486-4120 in southern Nevada. Additional information is also available on their website at www.fid.state.nv.us.

Any consumer that wishes to seek **debt counseling** should contact **Consumer Credit Counseling Service** at (702) 364-0344 or toll-free at (800) 451-4505. Additional information is also available on their website at www.cccnevada.org.

Any consumer that has a question about his or her **personal legal rights** may contact **Clark County Legal Services** at (702) 386-1070 or toll-free at (800) 522-1070. Additional information is also available on their website at www.clarkcountylegal.com.

General questions regarding these or other consumer issues may be directed to either the Consumer Affairs Division of the Nevada Department of Business and Industry ("NCAD") or the Office of the Attorney General's Bureau of Consumer Protection ("BCP"). NCAD may be reached by calling (702) 486-7355 in southern Nevada or (775) 688-1800 in northern Nevada, or you may visit NCAD's website at www.fyiconsumer.org. The BCP may be reached by calling (702) 486-3194 in southern Nevada or (775) 687-6300 in northern Nevada, or you may visit the Attorney General's website at <http://ag.state.nv.us>.

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FOR IMMEDIATE RELEASE
DATE: October 22, 2004

INTERNET EMAIL SCAM ALERT

The following consumer advisory is offered by the Nevada Department of Justice, Bureau of Consumer Protection:

The Attorney General's office has been contacted by a number of consumers who have received emails from various banks, credit card companies and other financial businesses asking consumers to provide information concerning their account, including private identifying information. The emails usually contain official-looking logos and include an Internet address to respond to which appears to be a legitimate email address for those companies. Contact with the fraud divisions of the companies confirm that the emails are scams, and that legitimate banking and other companies do not solicit personal identifying information or account information through the use of telemarketers or email.

Should consumers receive such an email, a good place to check the authenticity of such email messages is www.antiphishing.org/phishing_archive.html. A check of the archives on that website is an excellent resource to identify such email scams.

Attorney General Brian Sandoval urges that consumers, "Never provide any credit card, bank accounts or other personal identifying information to anyone via the Internet or telephone unless you the consumer are the one that initiated the contact." Legitimate banks and other companies do not request such information by email or telephone solicitations. If you are contacted by email, regular mail or telephone to provide personal information, locate the company's customer service number through an independent source, such as your local telephone directory, and call to confirm the request for information. Never provide such information to anyone who refuses to identify him or herself or to provide their address and local (non-800) telephone number.

Questions regarding these or other consumer issues can contact the Nevada Office of the Attorney General, Bureau of Consumer Protection at (775) 687-6300 in northern Nevada, or (702) 486-3194 in southern Nevada.

Case No. 04-16155

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**SIERRA CLUB,
Plaintiff-Appellant**

v.

**UNITED STATES DEPARTMENT OF TRANSPORTATION et al.,
Defendants-Appellees**

**On Appeal From the United States District Court
For the District of Nevada
(Civil Action No. CV-S-02-0578-PMP)**

BRIEF OF THE STATE OF NEVADA AS AMICUS CURIAE

In Support of Federal Appellees, Seeking Affirmance of the District Court

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CAA	Clean Air Act
CMAQ	Congestion Mitigation and Air Quality
ED	Environmental Defense
EPA	Environmental Protection Agency
FAHA	Federal Aid Highway Act
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
HOV	High Occupancy Vehicle
MIS	Major Investment Study
MSAT	Mobile Source Air Toxic
NDOT	Nevada Department of Transportation
NEPA	National Environmental Policy Act
RTC	Regional Transportation Commission of Southern Nevada
SEIS	Supplemental Environmental Impact Statement

INTEREST OF THE AMICUS

Nevada is the fastest growing state in the nation.¹ The Las Vegas metropolitan area, where the US-95 Project (at issue in this appeal) is located, is the nation's fastest growing metropolitan area, expanding eighty-three (83%) between 1990 and 2000. This explosive growth is straining the existing infrastructure. In particular, Nevada's roads and highways have become severely congested as the local and state transportation entities struggle to cope with the rapidly growing population. The Northwest Region of the Las Vegas metropolitan area has experienced particularly rapid growth and is expected to increase by sixty-seven percent (67%) between 1996 and 2005. The US-95 project area will represent an estimated 35% of the greater Las Vegas Area's residents. Sierra Club's Excerpts of Record (ER), 316.

The Nevada Department of Transportation (NDOT) is charged with providing a safe and efficient highway transportation system for the people of the State of Nevada. The US-95 project is designed to meet part of these compelling needs. After completion of the Final Environmental Impact Statement (FEIS), Nevada started work on this much needed project in 2000. Prior to Sierra Club's

¹ Population Change and Distribution Census 2000 Brief, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, issued April 2001.

suit in 2002, Nevada had finished parts of the project and commenced work on all sections; considerably more work was completed prior to 2004, when Sierra Club first filed a motion for an injunction. Since work was suspended in 2004, the people of Nevada have suffered road congestion, compromised safety in construction zones, and potential loss of millions of dollars.

Nevada's transportation systems, including US-95, comply with all promulgated environmental standards. By providing mobility and reducing congestion, Nevada, like the rest of the nation, is reducing air pollution while contributing to improving the quality of life for its citizens. Sierra Club's claims to this Court should be rejected on the merits and to avoid imposing continued injury on the people of Las Vegas.

**STATEMENT OF THE ISSUES, STATEMENT OF THE CASE
AND STATEMENT OF FACTS**

Nevada adopts the Statement of the Issues, Statement of the Case and Statement of Facts presented in the brief of Federal Appellees (USDOT-Br.) 2-13.

SUMMARY OF ARGUMENT

The US-95 project is designed to meet burgeoning transportation demands with a combination of projects that improve existing roads, enhance bus transit and create new high occupancy vehicle (HOV) lanes, and add as little new highway as is feasible. The project evolved through a process of regional planning and

comprehensive environmental review. Sierra Club has failed to show that this process was flawed.

Nevada cannot and should not perform the kind of project level assessment of mobile source air toxic pollutants (MSATs) urged by Sierra Club. Adequate scientific tools and methodologies do not exist to do so. MSAT standards should be established by the Environmental Protection Agency (EPA) under the Clean Air Act (CAA) rather than by transportation agencies through a state-by-state, project-by-project set of hypothetical assessments. Not only is Sierra Club's approach unreasonable, it is unnecessary, as all available evidence indicates that air pollution, including MSATs, has diminished and is projected to decrease further under ongoing EPA programs.

Other Sierra Club claims have no merit. Section 109(h) of the Federal Aid Highway Act (FAHA) does not require elevation of air pollution controls over other factors. To the contrary, Congress mandates a balancing of environmental and other mobility and economic considerations in determining the overall public interest. Moreover, the open house meetings conducted for US-95 complied with 23 U.S.C. § 128. Nevada law and practice also offer multiple opportunities for public involvement in road projects.

Sierra Club's late-filed lawsuit and the injunction against US-95 have caused Nevada's citizens to suffer prolonged congestion, delay in needed projects and

added expense. This result is unwarranted under principles of laches and equity. Nevada also suggests that no further action or remedy is warranted in this case because there is no longer a proposal for a major federal action subject to the National Environmental Policy Act (NEPA).

ARGUMENT

I. The US-95 Project Complied with Federal Law

A. US-95 Involves More than Widening Highway Lanes

The US-95 project is a combination of travel improvements to address the transportation needs of Las Vegas, specifically the tremendous growth in the Northwest region. This complex project is described in the record. Exhibits to the Affidavit of John Terry (Terry Aff.), Attachment 1 hereto, assist the Court by providing aerial photographs, charts portraying the project, status of work, and a project timeline. In addition to widening highways through a portion of urban Las Vegas, which is all that Sierra Club addresses in this suit, the Project includes installation of a freeway management system², widening a portion of the Summerlin Parkway, construction of the first HOV lanes in Nevada, improvements to arterial streets and improvements in other public services within the right of way. ER 302. Also, the US-95 project involves NDOT improving a major portion

² This system includes dynamic messaging, on-ramp meters and the ability to coordinate freeway events with the traffic signals system in the Las Vegas Valley.

of the regional flood control system to meet a one hundred year flood event and alleviate local flooding that occurs now.

This Project is the largest project undertaken by NDOT and has been under construction since 2000. Widening sections of US-95 from Rainbow/Summerlin to Craig is complete. Substantially all of the design and right-of-way acquisition (right of entry) is complete. Terry Aff., ¶5 and Ex. B. Two hundred fifteen (215) single-family homes, six (6) condominiums, six (6) commercial properties (including two apartment complexes with 224 units), five (5) four-plex residences and two (2) eight-plex residences have been purchased and the residents and businesses relocated. Terry Aff., ¶13e. NDOT also purchased and replaced one city park and one elementary school. The community has suffered the disruptive impacts of the project under construction and now awaits the mobility and congestion-reducing benefits to come with completion.

1. The FEIS Properly Built on the Major Investment Study (MIS)

The FEIS properly reviewed alternatives to US-95 that were considered in the MIS. Highway and environmental law encourages federal reliance on state analysis of alternatives. 23 U.S.C. § 101(e) (“prevent needless duplication and unnecessary delays at all levels of government.”). CEQ regulations mandate federal and state cooperation “to the fullest extent possible to reduce duplication between NEPA and State and local requirements. . . .” 40 C.F.R. § 1506.2(b). The

courts confirm the same. *Laguna Greenbelt, Inc. v. U.S. Dept. of Transportation*, 42 F.3d 517, 524 n. 6 (9th Cir. 1994) (“The absence of a more thorough discussion in the EIS of alternatives that were discussed in and rejected as a result of prior state studies does not violate NEPA”); *North Buckhead Civic Ass’n v. Skinner*, 903 F.2d 1533, 1542-43 (11th Cir. 1990); *see also Stop H-3 Ass’n v. Dole*, 740 F.2d 1442, 1464-65 (9th Cir. 1984); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430, 442 (5th Cir. 1981).

2. All of the Analysis Supports the Need for the Project

There is no question, on this record, that the regional travel demand exceeds the capacity needed to provide safe mobility. What Sierra Club tends to overlook is that, by combining many elements, the US-95 project reflects the least amount of new highway pavement feasible to meet the burgeoning demand. The expansion that Sierra Club challenges adds one full service lane in each direction and an HOV lane on the most heavily traveled portion of US-95 between the Rainbow/Summerlin interchange and Martin Luther King Blvd. Terry Aff., ¶14. The project also includes substantial investment in bus transit to encourage reduction in use of single occupant vehicles. See FHWA Record of Decision, ER 499, 510; Affidavit Jacob Snow (Snow Aff.), ¶¶7, 8, filed with Brief of Amicus Regional Transportation Commission (RTC-Br.).

Sierra Club misrepresents the record in arguing that a fixed guideway (such as rail) was a feasible alternative that could handle projected travel demand. SC-Br. 48-49. The FEIS correctly concluded that a fixed guideway project lacked capacity to meet projected demand. ER 359 (“traffic studies for [the fixed guideway alternative] show that this Alternative would not provide an adequate level of service or relieve congestion on US-95 or on the regional street system.”). See also, USDOT-Br. 45-47.

Moreover, the FEIS correctly recognized that integrated rail transit was highly uncertain in Las Vegas. A rail or fixed guideway alternative in the Northwest corridor cannot meet several success criteria: sufficient population density to support ridership, adequate funding for both construction and operation and connection to a working fixed guideway in the resort corridor. Contrary to Sierra Club’s arguments (SC-Br. 21-22, 49-52), none of the conditions for success existed in 2000, nor are they imminent now. See Snow Aff., ¶5.

In short, it was reasonable for the FEIS to select US-95 alternatives that were capable of meeting the proven travel demand.

B. Emerging Air Pollution Scientific Debates Should Not be Determined at the Nevada Project Level

1. Mobile Source Air Quality is Improving While Research Continues

Every day, NDOT balances the complexities of mobility, safety, economic growth and air pollution to meet its citizen's needs. Economic growth helps all citizens, as does reduction of congestion and improving safety on roads. Reducing road congestion improves air quality.³ NDOT provides much-needed transportation services aware that air pollution levels have decreased while vehicle ownership, miles traveled and mobility improvements have increased, over the last thirty years.

Nationally, since 1970, while vehicle miles traveled increased by 155%, aggregate emissions of regulated air pollutants dropped by 51%. "Air Emissions Trends – Continued Progress through 2003", available at www.epa.gov/airtrends/econ-emissions.html. From "1990 to 1999, air toxic emissions have declined by 30%." *Id.* Emissions of PM 2.5 from highway vehicles dropped by 60% between 1990 and 2003. *Id.* Monitored emissions for benzene, a

³ The Congressional Research Service reiterated "the fundamental concept that lowering the number of miles traveled by motor vehicles, and reducing congestion to make vehicles operate more efficiently, can reduce emissions and improve overall air quality." *Highway and Transit Program Reauthorization: An Analysis of Environmental Protection Issues*, CRS Report for Congress RL 32057, updated June 21, 2004, p. 5.

mobile source toxic pollutant, in urban areas show “on average, a 47 percent drop in benzene levels from 1994 to 2000.” www.epa.gov/airtrends/toxic.html.

EPA attributes the decline in toxic air pollutants to its stringent emissions standards for vehicles and improved controls on fuels. *Id.*; *see also* 66 Fed. Reg. 17230 (Mar. 29, 2001). EPA projects additional improvements in air toxics from programs such as reformulated gasoline, national low emission vehicle program, fuel standards for sulfur and fuel standards for diesel emissions. It estimates that by 2020, benzene emissions will be reduced by 73%, formaldehyde emissions by 76%, 1,3-butadiene emissions by 72% and acetaldehyde emissions by 67 % from 1990 levels. 66 Fed. Reg. at 17237. Even with this progress, research on air pollution, including MSATs, continues, as summarized by EPA. 66 Fed. Reg. 17230. The research will help in evaluating future policies but does not require stopping all progress. The US-95 project will help meet community needs, including providing cleaner air, and should not be stopped for additional studies concerning MSATs.

2. Project Level EIS’s Should Not Establish MSAT standards

As the lower court correctly concluded, *Sierra Club v. Environmental Protection Agency*, 310 F.Supp.2d 1168, 1201 (D.Nev. 2004), there is insufficient data and no accepted methodology for the kind of individual road project “comprehensive risk assessment” of MSATs suggested by Sierra Club. SC-Br. 16-

17; see USDOT-Br. 24-28; see also Second Declaration of Michael Savonis, dated October 17, 2003, submitted below in support of Federal Defendants' Reply Memorandum in Support of Motion for Summary Judgment (Savonis Declaration) and provided as Attachment 3 hereto. Nevada also supports the arguments of Amici Regional Transportation Commission of Southern Nevada et al. explaining the ongoing research on MSATs. RTC-Amici-Br. 10-16.

To conduct the microscale MSAT risk analysis Sierra Club advocates, NDOT or the Federal Highway Administration (FHWA) would have to select many numeric levels, such as ambient air pollution standards, pollutant-specific exposure levels, acceptable risk levels, and other figures (not yet established by EPA) to use in models (that are not appropriate for the task). This would, in essence, mean selecting the locally applicable air standard for the multiple pollutants constituting MSATs. If FHWA or state DOTs embarked on this unreasonable exercise, Nevada would expect a loud protest from environmental advocates and agencies. The endeavor would be criticized for using inappropriate assumptions and untested methodologies. No doubt the same groups would argue that ambient standards for MSAT pollutants should be set by EPA, not by transportation agencies.⁴

⁴ Nevada relies on U.S. DOT's thorough response to the specific attempt by Sierra Club (SC-BR. 11-14) to apply analyses from MATES-II to the Las Vegas area. USDOT-Br. 35-36. The assumptions used by Sierra Club's experts include

State-by-state establishment of MSAT standards offends the CAA provisions that command uniform national mobile source air pollution standards. Arguably, a project-by-project approach to MSATs would violate preemption provisions of 42 U.S.C. § 7543. *See Engine Manufacturers Ass'n v. South Coast Air Quality Management District*, 2004 WL 893964 (U.S. 2004) (prohibition against states adopting mobile source air pollution standards extends broadly). Even if not flatly preempted, such local standard setting – even for a hypothetical project-level risk analysis – is clearly contrary to the national approach to mobile source air quality mandated by the CAA.

3. MSATs Should be Addressed Under the Clean Air Act First

There is no question, as the lower court found, that EPA is in the earliest stages of considering controls for MSATs under the CAA. *Sierra Club*, 310 F. Supp.2d at 1201. See also USDOT-Br. 26-28; ER657-58 (FHWA's response to Sierra Club's first request for a Supplemental Environmental Impact Statement (SEIS)); ER 717-720 (FHWA's response to Sierra Club's second request for an

unsupported and inaccurate approaches to US-95 in Las Vegas, such as the absence of a comprehensive monitoring program for MSATs in Las Vegas, a lower percentage of pollution from on-road sources, lower concentrations of diesel exhaust and vastly different meteorological and topographic conditions. Nevada suggests that if it conducted such a facile and inaccurate analysis (guessing MSAT standards to input into uncertain models using inexact science), Sierra Club would roundly criticize the assumptions and results.

SEIS). Sierra Club's claims – that MSATs pose a public health risk – should be presented to EPA, rather than to FHWA or Nevada.

In fact, Sierra Club has been trying, without success, to persuade EPA to undertake faster or different regulation of MSATs for years. A partial chronology reflects the relationship of this lawsuit and other Sierra Club efforts.

- April 1993 - EPA issued "Motor Vehicle-Related Toxic Air Studies," subsequently updated in part in 1999. See 66 Fed. Reg. at 17234.
- 1995 - Sierra Club sues EPA concerning urban air toxics. A second suit, filed in 1996, is consolidated and both are settled (*Sierra Club v. Browner*, 95-1747 and 96-436, D.D.C.).
- September 14, 1998 – EPA publishes its Draft Integrated Urban Air Toxics Strategy. 63 Fed. Reg. 49240 (September 14, 1998).
- July 19, 1999 – EPA publishes its Final Urban Air Toxics Study. 64 Fed. Reg. 38706 (July 19, 1999).
- January 28, 2000 – FHWA signs the US-95 ROD. ER 497-521.
- March 17, 2000 – The MATES-II report is issued. ER 524-642.
- June 20, 2000 - Sierra Club first requests an SEIS based on MATES-II. ER 522-23.
- July 17, 2000 - FHWA denies Sierra Club's first request. ER 656-60.

- March 29, 2001 – EPA issues its final Mobile Air Toxics rule. 66 Fed. Reg. 17230.
- May 24, 2001 – Sierra Club sues EPA, claiming that the Mobile Air Toxics rule does not meet Clean Air Act requirements. *Sierra Club v. Environmental Protection Agency*, 325 F.3d 374 (D.C. Cir. 2003).
- January 7, 2002 - Sierra Club requests an SEIS a second time. ER 668-90.
- February 5, 2002 - FHWA denies Sierra Club's second request. ER 717-721.
- April 22, 2002 – Sierra Club files the Complaint challenging US-95. ER 1029.
- April 25, 2003 – EPA's 2001 Mobile Air Toxics rule upheld against Sierra Club's challenge, *Sierra Club*, 325 F.3d at 383.
- January 21, 2004 – Sierra Club sues EPA, alleging failure to meet a 2003 deadline for proposing certain mobile air toxic regulations. *Sierra Club v. Leavitt*, No. 1:04-cv-00094-RBW (D.D.C., filed Jan. 21, 2004) (case pending).

It is telling that EPA has responded to Sierra Club (and been upheld) by demonstrating that the necessary research for further regulatory standards for MSATs is incomplete and that MSATs will be reduced through ongoing EPA controls of vehicles and fuels. 66 Fed. Reg. at 17253. Sierra Club has not been able to obtain its desired results from EPA, the agency authorized to set public health standards. This Court should reject Sierra Club's attempts to obtain that same result indirectly, through expansive arguments under NEPA.

4. An SEIS to address MSATs is Neither Required Nor Wise

Sierra Club is wrong in unequivocally asserting that an SEIS is required when information “shows impacts that are either significant or uncertain.” SC-Br. 35. To the contrary, not all new information, and particularly not emerging, unproven or uncertain science, warrants stopping projects to conduct an SEIS. See USDOT-Br. 24-41. NEPA does not require federal agencies to await the latest study in each discipline before acting. *Jicarilla Apache Tribe v. Morton*, 471 F.2d 1275, 1280 (9th Cir. 1973); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373 (1989) (“An agency need not supplement an EIS every time new information comes to light after the EIS is finalized.”).

Despite the volume of the citations offered by Sierra Club and Amici Curiae Environmental Defense, et al. (ED), their information supports FHWA’s and EPA’s conclusions that the science concerning MSATs is still emerging at the academic level.

Many of the citations come from background documentation to EPA rulemakings. See, e.g., ED Amicus Brief (ED-Br.) 7, n. 2; 9, n. 4; 10, n. 6; 11, n. 7, 8; and 13, n. 16; SC-Br. 7-9. It is disingenuous to cite to such materials when EPA concluded, based on the same materials, that the science and methodology related to MSATs is still developing and does not support NEPA project-level analysis. See 66 Fed. Reg. at 17253.

The second category of information cited by ED illustrates why state DOTs should not try to determine project level MSAT standards. The scientific debate is arising, study by study, in highly specialized disciplines and publications such as the Am. J. Ind. Med. and books like *Molecular Aspects of Monooxygenases and Bioactivation of Toxic Compounds* (ED-Br. 13, n. 15). Many are ongoing studies or post-date the filing of this lawsuit. These citations do no more than confirm the conclusions of FHWA and EPA that the research is ongoing.

The third category of documents are citations to general information about the health impacts of certain substances/chemicals, unrelated to sources, exposure, doses or other critical factors. SC-Br. 6-7, 44-45; ED-Br. 10-15. Amici and Sierra Club commit a similar logical error, arguing that because a substance may pose a health risk (at some level of exposure and dose) and that substance is found in some motor vehicle emissions (such as diesel), site-specific evaluations of health risk from one project are feasible and required under NEPA.

This leap to demanding site-specific analysis is ill-founded. The record contains careful responses explaining the chasm between the studies cited by Sierra Club and viable methodologies to apply to US-95. See USDOT-Br. 24-29; Savonis Declaration ¶¶6-13, 23-24. Even ED recognizes that the science is still “growing” and that much remains unknown because of the widely varying composition of MSATs. ED-Br. 11. FHWA reached a reasonable conclusion – on

the state of the science in 2000 and 2001 – that a Supplemental EIS to assess MSAT risks at the project level was not appropriate. The documentation by Sierra Club and ED of the ongoing research in the field confirms the wisdom of FHWA’s conclusion.

C. FAHA 109(h) Does Not Elevate Air Pollution Over Other Factors In the Public Interest

Contrary to Sierra Club’s claim that Section 109(h) requires a rigid “three step test,” SC-Br. 30-31, the section neither establishes a test nor requires specific findings or “magic words” in FHWA decisions. See USDOT-Br. 17-23. Rather, the Secretary of Transportation must “promulgate guidelines” to assure “that the final decisions on the project are made in the best overall public interest,” considering many factors including “the need for fast, safe and efficient transportation, public services and the cost of eliminating or minimizing. . . pollution.” *Id.* The Secretary has promulgated guidelines satisfying the statute, and those standards were met for US-95.

Sierra Club’s construction of Section 109(h) erroneously elevates air pollution concerns above all others in determining “best overall public interest.” To the contrary, the transportation law reflects clear Congressional direction that environmental factors be balanced and considered among other factors. Congress commanded states and regions to balance environmental considerations with other

concerns in transportation planning. 23 U.S.C. § 134(f)⁵, 23 U.S.C. §§ 135(a), (c). For air pollution particularly, the Congestion Mitigation and Air Quality (CMAQ) improvement program provides federal financial support but not mandatory controls to help states attain air quality improvements. 23 U.S.C. § 149. Congress knew how to mandate compliance for air quality, and did so clearly in the conformity requirements. 23 U.S.C. § 134(g)(3). With the exception of conformity standards, Congress has always directed a balancing of environmental concerns with other public interest factors in meeting transportation needs. Sierra Club’s proffered construction of Section 109(h) is contrary to this balanced approach.

D. Open House Meetings Comply with Federal Law

The open-house meetings conducted for US-95 complied with 23 U.S.C. § 128. See USDOT-Br. 54-63. Nevada, like many states, finds that open house meetings provide superior communications with the public since more citizens participate, citizens need not sit through long meetings, and one-on-one

⁵ The provision requires projects and strategies are to balance the following seven goals:

- “(A) support. . . economic vitality. . . ;
- (B) increase the safety and security of the transportation system. . . ;
- (C) increase the accessibility and mobility options . . . ;
- (D) protect and enhance the environment, promote energy conservation, and improve quality of life;
- (E) enhance the integration and connectivity of the transportation system, across and between modes. . . ;
- (F) promote efficient system management and operation; and
- (G) emphasize the preservation of the existing transportation system.”

communications foster exchange of information. See Affidavit of Daryl James, ¶4, Attachment 2 hereto. Section 128 has been reasonably construed to allow states flexibility to provide the kinds of public hearings most suitable to their needs.

Moreover, Nevada state law requires that all meetings of public bodies be open to the public and properly noticed to the public in a timely and informative fashion. Nev. Rev. Stat. § 241.020 (2003). Under this law, the Las Vegas citizen review committee held the public meetings on US-95 during 1998,⁶ providing additional opportunity for public comment and a discussion of those comments. Nev. Rev. Stat. § 241.020(2)(c)(3). Each public body must also keep written minutes of its meetings, which include the substance of remarks made by any member of the general public, *id.* § 241.035(1)(d), and these minutes are public record, *id.* § 241.035(2). Nevada also has a separate public record law *Id.* §§ 239.010 - .030, which applied to the Las Vegas committee and also to NDOT and all of the documents accumulated during the MIS and the EIS. The public could obtain any transcripts or written submissions of any other member of the public, along with all NDOT project documents, throughout the process and have an

⁶ In addition to the state and federal process for US-95, a Las Vegas City Council citizen review committee also held at least 11 public meetings at which presentations were made or sites were toured through 1998. Additional public presentations were made at transportation fairs in 1997 and 1998, a project telephone hotline was maintained and three newsletters were sent out to adjacent property owners. See ER 289, referencing Administrative Record pages 31-14986-88 (FEIS Community Outreach Section).

opportunity to comment on those and make their views known to any other member of the public who obtained copies of the comments. This continuous process of information dissemination and gathering begins with information that was available at the first hearing, and everything received or produced in the interim, is available to members of the public before the last hearing. Thus, Nevada provides ample and open access to information sufficient to meet the goals of Section 128.

II. The US-95 Project Should be Allowed to Proceed

A. Laches Should Bar Sierra Club's Suit

Amici support the argument that Sierra Club's overbroad relief is barred by Laches. USDOT-Br. 64. The court below articulated the correct standards for laches ("To determine whether a suit is barred by laches, a court must consider two criteria: the diligence of the party against whom the defense is asserted and the prejudice to the party asserting the defense." *Sierra Club v. Environmental Protection Agency*, 245 F.Supp.2d 1109, 1114-15 (D. Nev. 2003)), but misapplied the standard here. The lower court gave insufficient consideration to the fact that FHWA promptly responded to Sierra Club's requests for an SEIS (within one month), but Sierra Club sat and watched while the project was constructed before suing or moving for an injunction.

Despite the oft-stated qualifier that laches is a disfavored doctrine in environmental cases, *Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 854 (9th Cir. 1982), this Court and others have applied laches in NEPA cases. *See Lathan v. Volpe*, 455 F.2d 1111, 1122 (9th Cir. 1971); *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1218-19 (11th Cir. 2002); *Citizens for the Scenic Severn River Bridge v. Skinner*, 802 F. Supp. 1325, 1342 (D. Md. 1991), *aff'd* 972 F.2d 338 (4th Cir. 1992); *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1338 (10th Cir. 1982).

The court below misapplied this Court's three-part laches "diligence" test: "(1) whether the party has made an attempt to make his position known to the agency before the filing of suit, (2) the agency response to the request, and (3) developments such as preparatory construction that tend to motivate citizens to investigate the legal bases for challenging agency action." *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 779 (9th Cir. 1980). While the test includes consideration of Sierra Club's persistence in bringing its views to the attention of FHWA, such as by participation in the record, sending letters or even commissioning studies (*Sierra Club*, 245 F.Supp.2d at 1116-17), heavy reliance on those factors alone can encourage and reward delay. Laches standards should not be applied to allow a plaintiff to wait to sue while the State commences construction to meet pressing travel demands.

Rather, the diligence test for laches should focus on whether Sierra Club was justified to wait while Nevada bought property, moved citizens and businesses, built bridges, cleared land, relocated schools and parks, spent money and largely completed the major parts of US-95 before filing a motion to enjoin the project. See Terry Aff., Exs. A-D. There is little question that the delay in filing and in seeking injunctive relief has caused extreme injury to the people of Las Vegas and Clark County. Terry Aff., ¶13e, Exs. C, E, F. Completion of substantial work on the project before the suit was brought is a key consideration for laches. *Concerned Citizens on I-190 v. Secretary of Transportation*, 641 F.2d 1 (1st Cir. 1981).

Threatening a lawsuit, and even the filing of this suit, does not constitute diligence by Sierra Club, where Sierra Club's goal is to stop the project. That Sierra Club did not move for an injunction to stop work on the project until after the district court ruled must weigh in the laches balance. Nevada should not be punished for going forward with the project in a good faith effort to meet pressing transportation needs. Sierra Club should not be rewarded for its delay.

B. There Was No Remaining Major Federal Action Requiring an SEIS

Nevada suggests that, by the time this suit was filed and certainly by the time the motion for injunction was filed, there was not a major federal action under NEPA. Like all NEPA duties, an SEIS is required only for a "major federal

action.” *Marsh*, 490 U.S. at 374 (“if there remains a major federal action” to occur, an SEIS may be required.) The corollary is equally true: “NEPA [is] inapplicable at some point in the life of a project” because of the weighing of the degree of completion in relation to the appropriate federal decision-making. *Id.* 490 U.S. at 371-72.

Two time periods are relevant for the application of NEPA in this case. If there was no longer a NEPA-governed federal action when Sierra Club sued in 2002, the suit should have been dismissed. It is also important to consider whether there was a NEPA-governed federal action when relief was entered, after Sierra Club moved for an injunction in 2004. A federal court always has authority to consider its jurisdiction. *Hajek v. Burlington Northern*, 186 F.3d 1105 (9th Cir. 1999). At these pertinent times, the real action attacked and enjoined on US-95 was state action. A body of caselaw addresses application of NEPA to non-federal action.

The federal involvement in a state road project diminishes along the continuum that begins with the initial project review and ends with the opening of the completed project and closing the books. Given the paramount role of the states in highway project implementation, see 23 U.S.C. § 145, there ceases to be a major federal highway action for purposes of NEPA at a point well before the final

audit of federal funding. This case offers an opportunity to clarify the difference between federal and state action under NEPA in transportation programs.

Soon after enactment of NEPA, this Court addressed this very question. In *Robbinswood Community Club v. Volpe*, 506 F.2d 1366 (9th Cir. 1974), this Court recognized the special federal-state relationship in transportation and held that there was no major federal action after federal approval of a state highway design. Despite remaining federal funding and certain construction oversight, this Court recognized the practical issues communities face and drew a line between federal and state actions:

Admittedly, the cutoff line could be drawn anywhere. . . . But governments, just as ordinary citizens, have a need for definitiveness in the conduct of their affairs. . . . Some rights will be saved but others will be lost when we apply an arbitrary standard to an ongoing series of events. Nevertheless, the standard must be applied and we believe the point of final [design] approval is the logical place.

Id. at 1370. This Court recognized the difference between approving a proposal (federal) and implementing it (state): “Each house that is moved, each mound of dirt that is excavated, each ribbon of concrete that is laid has an impact on the environment, but that impact is determined by the plan already adopted. . . . [Thus] [a]fter final design approval, nothing further occurs which (1) is major and (2) has

a significant effect on the environment other than what is contemplated by the approved design.” *Id.*⁷

Certainly, thirty years of NEPA cases have given rise to additional concepts that may cause this Court to question the approach of *Robbinswood*. Looking at how courts have distinguished between federal and non-federal action under NEPA reveals that *Robbinswood* still offers viable guidance.

To determine whether there remains a major federal action subject to NEPA, some decisions suggest looking at the percentage of money spent or work completed. *Marsh*, 490 U.S. at 371-72. Starting with the truism that federal funding alone does not subject a non-federal project to NEPA, these cases evaluate the degree of federal financial involvement at particular times. *Cobble Hill Association v. Adams*, 470 F.Supp.1077 (E.D. N.Y. 1979) (\$6.7 million roadway repair (90% federally funded) not major); *Julis v. Cedar Rapids*, 349 F.Supp. 88 (N.D. Iowa 1972); *Town of Ridley v. Blanchette*, 421 F.Supp. 435 (E.D. Penn. 1976).

This Court has weighed the remaining degree of federal involvement required under NEPA both in terms of money and degree of control. *Ka Makani'o v. Water Supply*, 295 F.3d 955 (9th Cir. 2002), affirmed that NEPA does not apply to state actions and stressed that “[t]here are no clear standards for defining the

⁷ The fact that *Robbinswood* involved early application of NEPA to projects commenced pre-NEPA does not impact the soundness of the reasoning.

point at which federal participation transforms a state or local project into a major federal action.” *Id.* at 960. Echoing *Robbinswood*, the Court stated that “[t]he matter is simply one of degree.” *Id.* In *Sierra Club v. Babbitt*, 65 F.3d 1502 (9th Cir. 1995), this Court stated that “[t]he touchstone of major federal action. . . is an agency’s authority to influence the significant nonfederal activity.” *Id.* at 1512.

The caselaw does not hold that there is NEPA-triggering federal involvement for the entire time that a non-federal actor could impact the physical environment. This Court’s “unitary” test to assess the duty to prepare an initial EIS may seem to indicate that there is a federal action as long as there are or could be significant environmental effects. *See e.g., City of Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975) (“major” federal actions are those with “significant effects on the environment.”). Respectfully, the “unitary” test cannot be applied to render meaningless the statutory mandate of NEPA requiring a federal action. Clearly, this Court has recognized that even significant effects on the environment caused by a non-federal actor may not trigger NEPA duties. The so-called “small federal handle” cases provide counsel on distinguishing between federal and non-federal action, and do not focus exclusively on the environmental impacts of the non-federal action. *See Wetlands Action Network v. Corps of Engineers*, 22 F.3d 1105, 1116 (9th Cir. 2000); *see also Sylvester v. Corps of Engineers*, 884 F.2d 394, 400-401 (9th Cir. 1989).

Without conceding agreement with the analysis or conclusions of such cases, Nevada acknowledges that some cases seem to hold that NEPA continues to apply even if there is no federal funding. *Ross v. Federal Highway Administration*, 162 F.3d 1046 (10th Cir. 1998); *Scottsdale Mall v. State of Indiana*, 549 F.2d 484 (7th Cir. 1977); *Highland Cooperative v. City of Lansing*, 492 F.Supp. 1372 (W.D. Mich. 1980). These cases address unique actions⁸ and cannot disturb the fundamental principle that there comes a time when there is no longer a federal action and an SEIS should not be required.

The analysis of the NEPA triggering federal action should focus on the fundamental principle that NEPA, including the SEIS duty, is intended to apply to proposed federal actions, early in the evaluation process. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502.3, 1508.23; see CEQ Forty Most Frequently Asked Questions, Number 32 (SEIS appropriate “if the proposal has not yet been implemented”), 46 Fed. Reg. 18026, 18036 (Mar 23, 1981). Focusing on the requirement of a federal proposal offers another way to evaluate whether the federal action, in relation to the non-federal action, has been completed. *See Marsh*, 490 U.S. at 374.

⁸ *Ross*, 162 F.3d at 1046 (“The relevant inquiry on appeal is whether [23 U.S.C.] § 145 authorized state and local officials, with FHWA approval, to ‘defederalize’ a segment of a ‘major federal action’ by foregoing federal funding in order to avoid compliance with NEPA. On the unique facts of this case, the answer is no.”); *Scottsdale Mall*, 549 F.2d at 488 (“We do not view 23 U.S.C. § 145 as granting to a state the prerogative to avoid compliance with NEPA.”); *Highland Cooperative*, 492 F.Supp. at 1378 (“While the City has withdrawn its request for further federal aid, they continue to remain eligible for such funding.”)

Since the clear line drawn in *Robbinswood*, NEPA cases reflect commitment to certain core principles but a wide range of results in application. The undisputed concepts include the following: (1) NEPA does not apply to state actions; (2) NEPA applies to proposals for major federal actions; and (3) At some point after a federal approval of non-federal actions, application of NEPA is not warranted. For federal action funding a state highway project, the distinction between the federal and non-federal action has been subject to varied standards derived from different lines of analysis.

The advanced status of the US-95 project in 2002 and 2004 is consistent with the cases that find no major federal action based on both the degree of spending and the degree of control. By 2002, NDOT was managing US-95 – buying property, executing contracts, and implementing the project – rather than FHWA. Since US-95 implementation was phased, FHWA approval of design (plans, specifications and estimates) was complete for most, but not all, phases of the project by 2004. Under the reasoning of *Robbinswood*, the fact that future physical impacts could occur is not the dispositive factor for application of NEPA. Nevada urges the Court to clarify the distinction between federal and non-federal action to avoid continued controversy when project opponents seek an SEIS long after the state is building the project.

C. The US-95 Project Should not Be Enjoined

Equity requires that US-95 not be enjoined. Entry of an injunction requires a case by case weighing of equities. *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987) (“In each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.”); *see also Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982); *Alaska Wilderness Recreation and Tourism Ass’n v. Morrison*, 67 F.3d 723, 731-32 (9th Cir. 1995).

Sound reasons counsel against enjoining this highway project, even if a NEPA violation is found. Where the highway project is at an advanced state of completion and an injunction would impose an “impermissibly heavy traffic burden” on defendants and the public, relief should be denied. *Conservation Soc’y of Southern Vermont v. Secretary of Transportation*, 508 F.2d 927, 936-37 (2d Cir. 1974), *vacated and remanded on other grounds*, 423 U.S. 809 (1975), articulated sound grounds for denying an injunction against a highway project:

Three grounds. . . provided the basis for the district court’s result.” * * *

* First, the district court found that the. . . highway project. . . w[as] at an advanced stage of completion. * * * Second, granting an injunction appeared unjustified where the outcome was virtually undisputed. * * * Third, [the district court] found that the heavy damage to the defendants militated against its issue. Delay and concomitant cost increases would not alone justify noncompliance with the Act. Here, however, [among other things,] the district court found that until the [project] was complete, the town bore an

‘impermissibly heavy traffic burden’ compromising the quality of life in the town and the safety of its inhabitants.

These same three factors exist here. First, US-95 is in an advanced stage of completion, with many segments finished and right-of-way acquired and cleared for the remaining sections. Second, in light of what Sierra Club seeks, the outcome is undisputed. An SEIS could do no more than FHWA has already done, identify the uncertainty of the existing science and the ongoing research related to MSATs. Finally, the local community would suffer heavy damage from an injunction, including congestion, decreased safety and a lower quality of life.

Sierra Club seeks a very broad injunction, to stop all work under existing contracts. SC-Br. 61. The result would be to freeze the US-95 corridor in an unsafe mode for a prolonged period. Terry Aff. ¶13a. Exhibit A to the Terry Affidavit provides an overview of the entire project, showing the high degree of completion, combined with pending, interrupted construction. Exhibit B illustrates completion in terms of cost and physical work. Exhibit C illustrates the completion of work graphically. Exhibit D illustrates the completed bridges at Torrey Pines Drive, Valley View and Decatur. Further, Exhibit D shows construction activities, short-term traffic control configurations and safety concerns in the vicinity of the bridges. Exhibit E is an aerial view of the project that illustrates traffic configurations at completion of the non-stayed phases of the project and identifies particular locations where safety concerns such as tight

curves and reduced shoulder widths exist. Exhibit F and paragraph 13e reveal that residential areas are now adjacent to vacant, blighted property awaiting completion of construction. The net result is a project where over \$238,000,000 has been spent, major portions are complete, and unfinished portions pose a threat to public safety.

In addition, project components linked to completing the road expansion will be prevented by an injunction. The planned improvements to the flood system will remain uncompleted and will not function until US-95 can be completed. Terry Affidavit, ¶13b. Of course, significant effort and expenditures are and will be lost if the injunction is continued. See Terry Affidavit ¶13 and Ex C. The US-95 financial package includes bonds which will have to be repaid, and other state funds at risk.

Nevada proceeded in good faith to build a much needed project to accommodate burgeoning growth in Las Vegas. It was reasonable for NDOT to do so, even though Sierra Club commented adversely on the project, because Sierra Club waited so long before filing its suit. Even then, NDOT was justified in continuing construction since Sierra Club waited two more years before filing a motion for injunction. Not every environmental violation warrants an injunction. *Weinberger*, 456 U.S. at 312. Nevada believes Sierra Club's claims are unfounded

but, should this Court disagree in whole or part, the equities compel that the US-95 project be allowed to go forward.

CONCLUSION

For the above stated reasons, Nevada respectfully requests that the decision of the lower court be affirmed.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE

Case No. 04-16155

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached brief is proportionately spaced, has a typeface of 14 points or more and the body of the argument contains 6992 words.

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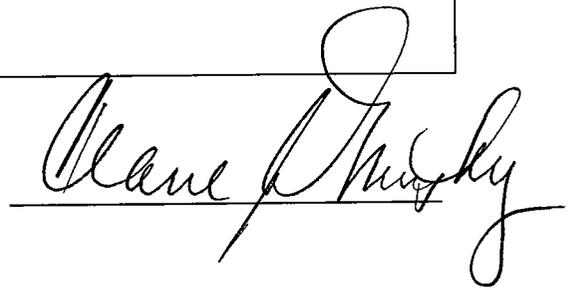
CERTIFICATION OF SERVICE

I hereby certify that two copies of the foregoing Brief Of The State Of Nevada As Amicus Curiae was served this 20th day of October, 2004, by overnight mail, postage prepaid, and e-mail of a PDF file on the following:

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Anne Murphy

ATTACHMENT 1

AFFIDAVIT OF JOHN TERRY

STATE OF NEVADA)
)
COUNTY OF CLARK) s.s.:

I, John M. Terry, P.E., being first duly sworn, depose and say, under penalty of perjury as follows:

1. I am the Nevada Department of Transportation (NDOT) Project Manager for the US 95 project located in Las Vegas metropolitan area. I have held this position since October 2002. I have Bachelor of Science degree in Civil Engineering from Union College and I have been a Registered Professional Engineer in Nevada since 1984. I have 25 years of experience in highway design, 11 of those years with the NDOT.
2. In my current position as Project Manager I am responsible for the design and administration of the entire US 95 project. I administer the consultant contracts for design and public involvement and I coordinate all aspects of the project with NDOT, local entities and the public.
3. This declaration is submitted to document the impacts to the project, the State of Nevada and the traveling public resulting from the stay and any further delay resulting from the ongoing litigation related to the US 95 project.
4. Upon completion of the US 95 Environmental Impact Statement (EIS) and issuance of a Record of Decision on January 28, 2000 NDOT immediately began the design and right-of-way acquisition for the project. A phased approach to the construction was utilized to complete segments of the overall project as quickly as possible after the needed right-of-way for each phase was acquired. This phased approach to the construction was developed and modified by the project team and was coordinated closely with citizens, local elected officials, and other stakeholders.

5. Below is a brief description of each phase of the US 95 project. Exhibit A provides aerial photos showing the progress on each phase as of August 2004. Exhibit B describes the status of each phase and the expenditures through July 2004. The numbers in Exhibit B are compiled costs from the NDOT accounting system. Exhibit C is a graphic portrayal of work status for each phase. Exhibit G is an overall timeline of pre-project and project planning process. As indicated in Exhibits A, B, C and G, this project was not stayed in the beginning of the project, but rather in the middle of a complex, phased, construction program. At this point, substantially all of the design is complete.

6. Phase 1A constructed US 95 from Rainbow Blvd. to Cheyenne Avenue, and Phase 1B constructed US 95 from Cheyenne Avenue to Craig Road. Both projects added a lane each direction on US 95 and constructed drainage facilities and soundwalls.

7. Phase 2 constructs the longer span bridges for roadways over US 95. Phase 2A constructed Torrey Pines Drive bridge over US 95. Phase 2B reconstructed the interchanges at Valley View Blvd. and Decatur Blvd., including construction of new bridges over US 95. Phase 2 C-D is currently constructing the new interchange at Summerlin Parkway/Rainbow Blvd. including two new bridges over US 95. Exhibit D shows the completed bridges at Valley View, Decatur and Torrey Pines and graphically illustrates the widened span for the future US 95 mainline roadway.

8. Phase 3 reconstructs US 95 from Martin Luther King Blvd. to west of Valley View Blvd. Phase 3A constructed drainage in Rancho Drive. Phase 3B is currently constructing drainage and soundwalls. Phase 3C will construct the full widening of US 95, including the new interchange at Rancho Drive.

9. Phase 4 reconstructs US 95 from west of Valley View Blvd. to west of Jones Blvd., including the new interchange at Jones Blvd. Phase 4A is currently constructing drainage from west of Valley View Blvd. to west of Jones Blvd. Phase 4B will construct the full widening of US 95 including the new interchange at Jones Blvd.

10. Phase 5 will reconstruct US 95 from west of Jones Blvd. to the Rainbow Blvd. Interchange.

11. At the time the stay was issued, all phases except Phases 3C, 4B, and 5 were constructed, or under construction. Right-of-way had been cleared for Phases 3C, 4B and 5. Phases 3C, 4B, and 5 will complete construction of the widened US 95 mainline to the final configuration established in the EIS. These phases have been placed on-hold until resolution of the litigation.

12. The development of the project phases was established for the earliest possible completion of the project. Although each phase was a separate contract, the contracts were set up for transition into the next phase or phases. Without the disruption caused by the stay, the US 95 corridor from Martin Luther King Blvd. to Rainbow Blvd. would have experienced continuous overlapping construction as each phase transitioned directly into the subsequent phase. Phases 2C-D, 3B, and 4A were intended to overlap with, and transition directly into, Phases 3C, 4B, and 5. Traffic control, erosion control, drainage, signing, etc. in Phases 2C-D, 3B, and 4A were designed as a phase in the overall construction program, not a long-term configuration.

13. The impacts of the stay on the project resulting from delayed construction of phases 3C, 4B, and 5 are as follows:

A. Temporary traffic control established in the 2C-D, 3B, and 4A will be in place much longer than anticipated. The traffic control was established to match the same number of lanes as the existing freeway and to meet the design standards for temporary traffic control, leaving the final subphase of this contract in-place as a transition into the next phase. Exhibit E provides an aerial view of the current traffic configuration. Without the follow-up phases, there are significant deficiencies in the freeway as a long-term facility, resulting in potentially increased accident rates, lower design speeds, and decreased capacity:

- (i) narrow lane and shoulder widths;
- (ii) Transition areas with reduced design speeds due to sharp curves;
- (iii) Temporary striping;
- (iv) Temporary signing; and
- (v) Temporary or no overhead lighting

B. The drainage system, a major part of the US 95 project, will be incomplete. The Las Vegas Valley has historically been subject to intense flooding. The drainage portion of the US 95 project was designed to help meet the 100-year flood standard and to help prevent localized flooding along the US 95 corridor. If the project remains unfinished, the mainline underground conveyance system will be complete for most of the alignment, but a critical section just West of Martin Luther King will remain an open-channel subject to overtopping. None of the large laterals or major collection systems will be in place from Martin Luther King Blvd. to Rainbow Blvd. Until the drainage portions of Projects 3C and 4B/5 are completed, the mainline drainage system will be operating at a capacity which is insufficient to handle the 100-year storm event. There will continue to be localized flooding problems on the freeway and in adjacent areas until that work is complete, with the existing freeway served by the old drainage system. In addition, the portions of existing drainage system still in service will require additional maintenance.

C. The existing facility will require increased maintenance. Maintenance activities were curtailed with the expectation of the reconstruction. With traffic traveling on large stretches of the old US 95 mainline pavement it will be necessary to maintain bridges and pavement to provide an adequate travel surface. Surface improvements on the existing pavement would be at a different location and elevation than the ultimate improvements. Therefore, any paving of the existing mainline or repair to the existing bridge decks would not apply to the ultimate improvement project. Temporary traffic control devices, temporary concrete rail and existing roadside appurtenances will require unanticipated maintenance activities to provide a safe facility for the traveling public.

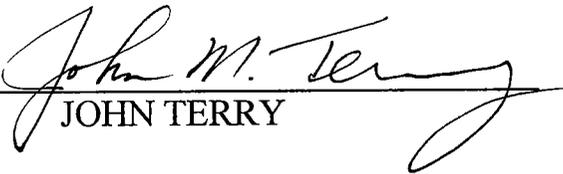
D. Soundwalls have been, or will be, constructed in areas where the wall can be constructed without moving traffic or constructing the future US 95 mainline embankment and retaining walls. The remaining soundwalls identified in the environmental process and committed to the local residents by NDOT are currently on hold. Soundwalls were to have been constructed as early as possible with each phase for the project. Many residents along the corridor will wait longer to get soundwalls in place and some residents may be

experience slightly higher noise levels [due to the wall across the freeway completed.]

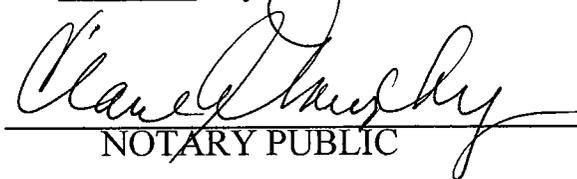
E. The timing of the right-of-way acquisition controlled the progression of the project. To the extent possible, construction quickly followed the acquisition, relocation, and demolition of large areas. As a part of the Project, 215 single-family residences, 6 condominiums, 6 commercial properties (including two apartment complexes with 224 units), 5 four-plex residences and 2 eight-plex residences have been purchased and relocated. Vacant parcels in the urban area are not a desirable situation due to issues such as vagrancy, vandalism, dust control and weed control. The areas of vacant properties result in blighted conditions in the vicinity of residential areas. See Exhibit F. With the construction of the freeway, and in particular the construction of soundwalls, retaining walls and permanent fencing, the blighted conditions would be cleaned up and isolated from the residential areas. The delay results in these areas remaining as vacant, cleared, and temporarily fenced. Exhibit F depicts some of the vacant areas that would remain until freeway construction resumes.

14. The US95 expansion adds one full service lane and one HOV lane in each direction on the most heavily traveled portion of US-95 between the Rainbow/Summerlin interchange and Martin Luther King Blvd.

Further Affiant Sayeth Naught.


JOHN TERRY

SUBSCRIBED AND SWORN to before me
this 19th day of October 2004.


NOTARY PUBLIC

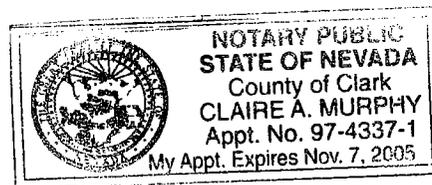


EXHIBIT A



**Photo of U.S. 95
Widening project
as of
August 19, 2004**



Photo of U.S. 95
Widening project
as of
August 19, 2004



Photo of U.S. 95
Widening project
as of
August 19, 2004

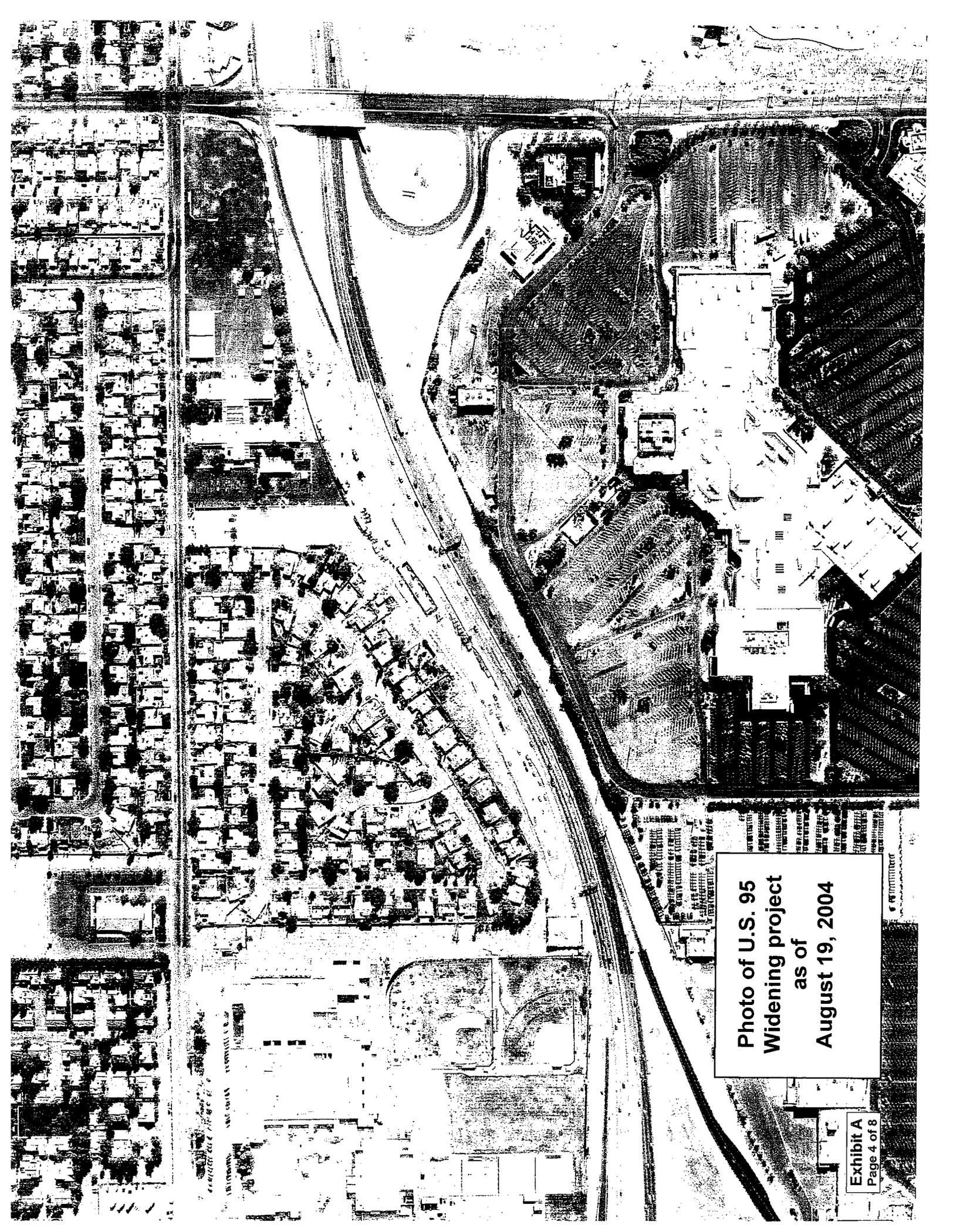


Photo of U.S. 95
Widening project
as of
August 19, 2004

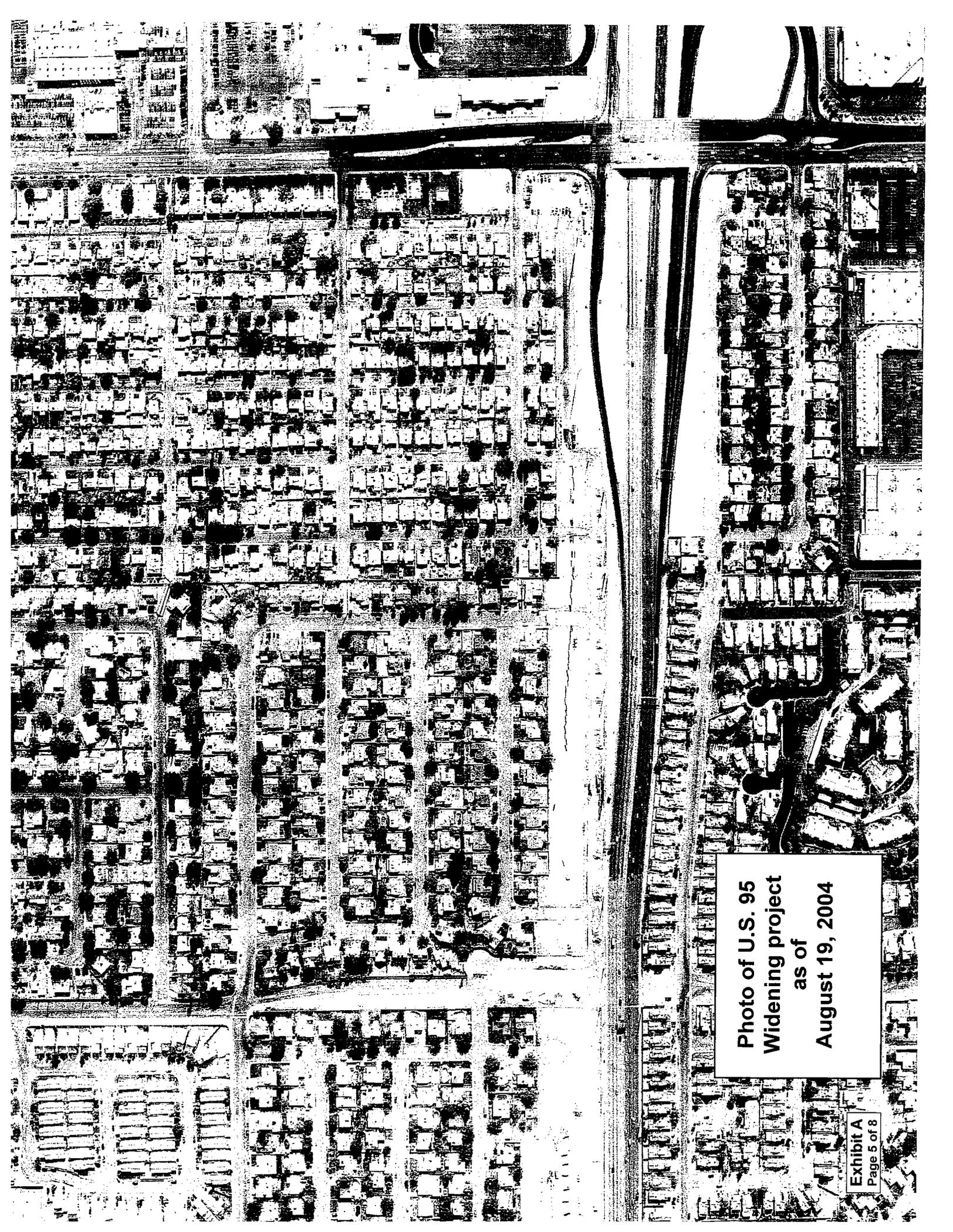


Photo of U.S. 95
Widening project
as of
August 19, 2004



Photo of U.S. 95
Widening project
as of
August 19, 2004



Photo of U.S. 95
Widening project
as of
August 19, 2004

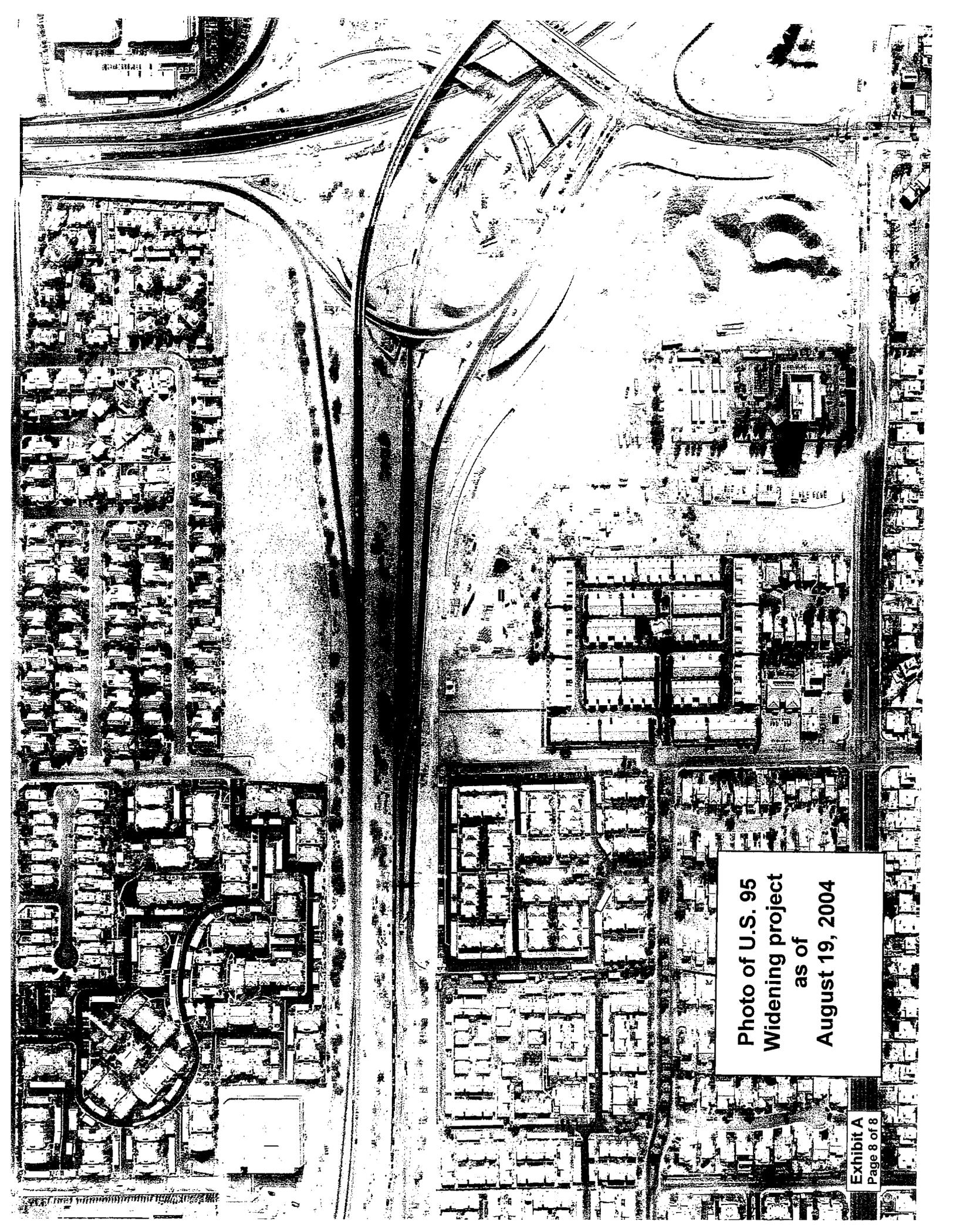


Photo of U.S. 95
Widening project
as of
August 19, 2004

EXHIBIT B

US 95 Project Components

Project component	Cost		Date of Completion	
	Estimated	Actual	Targeted	Actual
Right-of way acquisition and Utility relocation	\$103,000,000	\$125,254,192		Right of entry to all ROW completed by July 2004
Design	\$26,332,908	\$24,840,418		
1A (US 95 widening from Rainbow Blvd. to Cheyenne Avenue)	\$13,900,000	\$15,122,393		September 2001
1B (US 95 widening from Cheyenne Avenue to Craig Road)	\$9,200,000	\$9,572,491		June 2002
2A (Torrey Pines Drive Bridge over US 95)	\$3,600,000	\$4,241,403		April 2002
2B (reconstruction of interchanges at Valley View and Decatur, including construction of new bridges over US 95)	\$20,400,000	\$23,604,572		November 2003
2C, 2D (construction of new interchange at Summerlin/Rainbow including two new bridges over US 95)	\$42,000,000	\$21,894,321	April 2005	52% complete
3A (construction of drainage in Rancho Drive)	\$5,800,000	\$6,212,397		May 2004
3B (constructing drainage and soundwalls from MLK to Valley View)	\$16,200,000	\$8,211,399	September 2004	51% complete
3C (widening of US 95 from MLK to Valley View, including new interchange at Rancho Drive)	\$54,000,000	\$3,753	December 2006	Enjoined at initialization
4A (construction of drainage and sound walls from Valley View to Jones Blvd; new interchange at Jones Blvd)	\$20,000,000	\$3,891	October 2005	10% complete
4B, 5 (reconstruction and widening of US 95; new interchange at Jones Blvd.)	\$84,000,000	\$0	November 2006	Enjoined before begun
Landscaping	\$10,000,000	\$0		
Total	\$408,432,908	\$238,961,230		

EXHIBIT B

EXHIBIT C

IIS95

U.S. 95 WIDENING

Widening Project Spaghetti Bowl (I-15) to Craig Road

Phase 1 (Completed)
Widen US 95 to 6 Lanes

1A
Rainbow to Cheyenne

1B
Cheyenne to Craig

CONSTRUCTION

OVERALL PROJECT PROGRESS

DESIGN

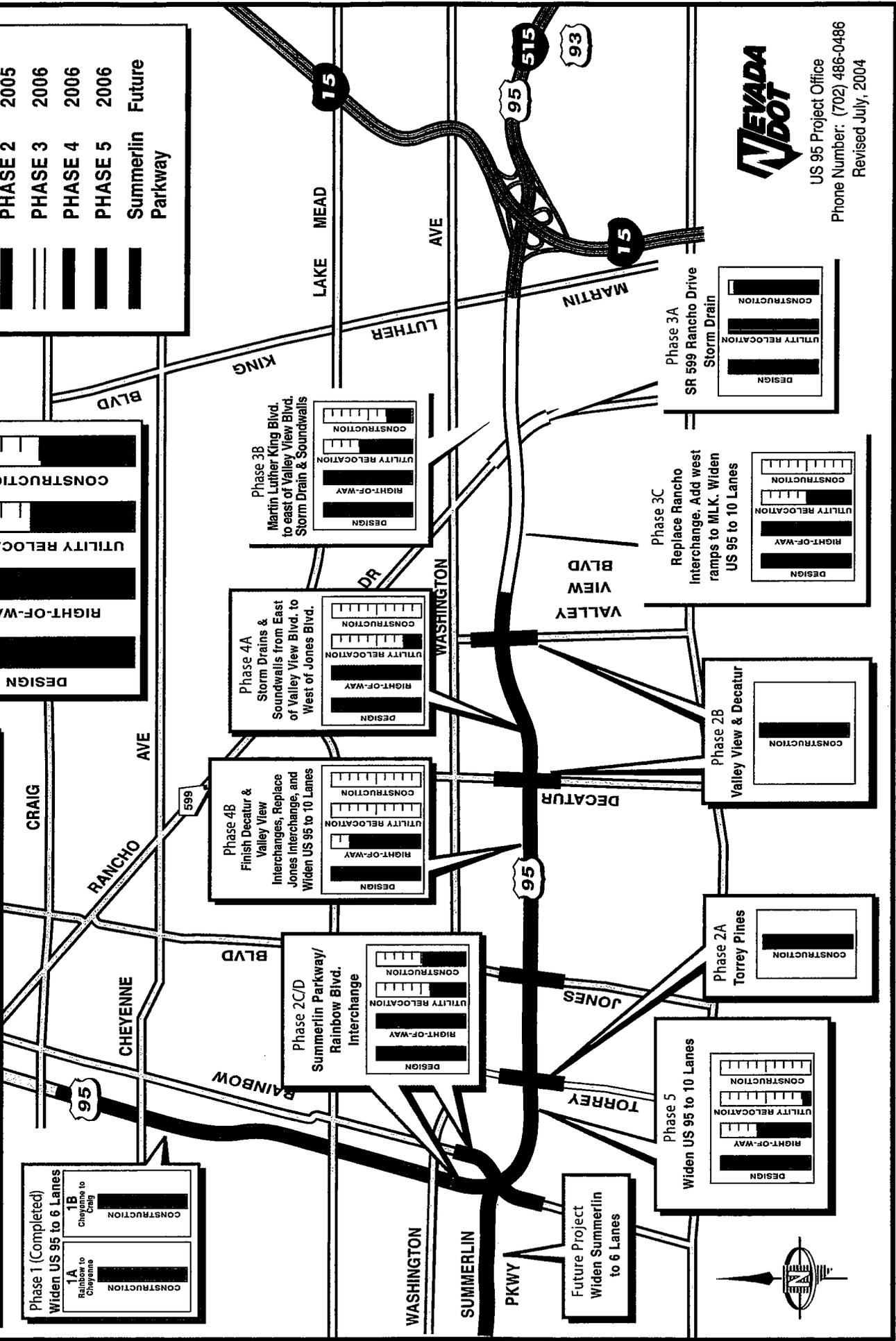
RIGHT-OF-WAY

UTILITY RELOCATION

CONSTRUCTION

LEGEND

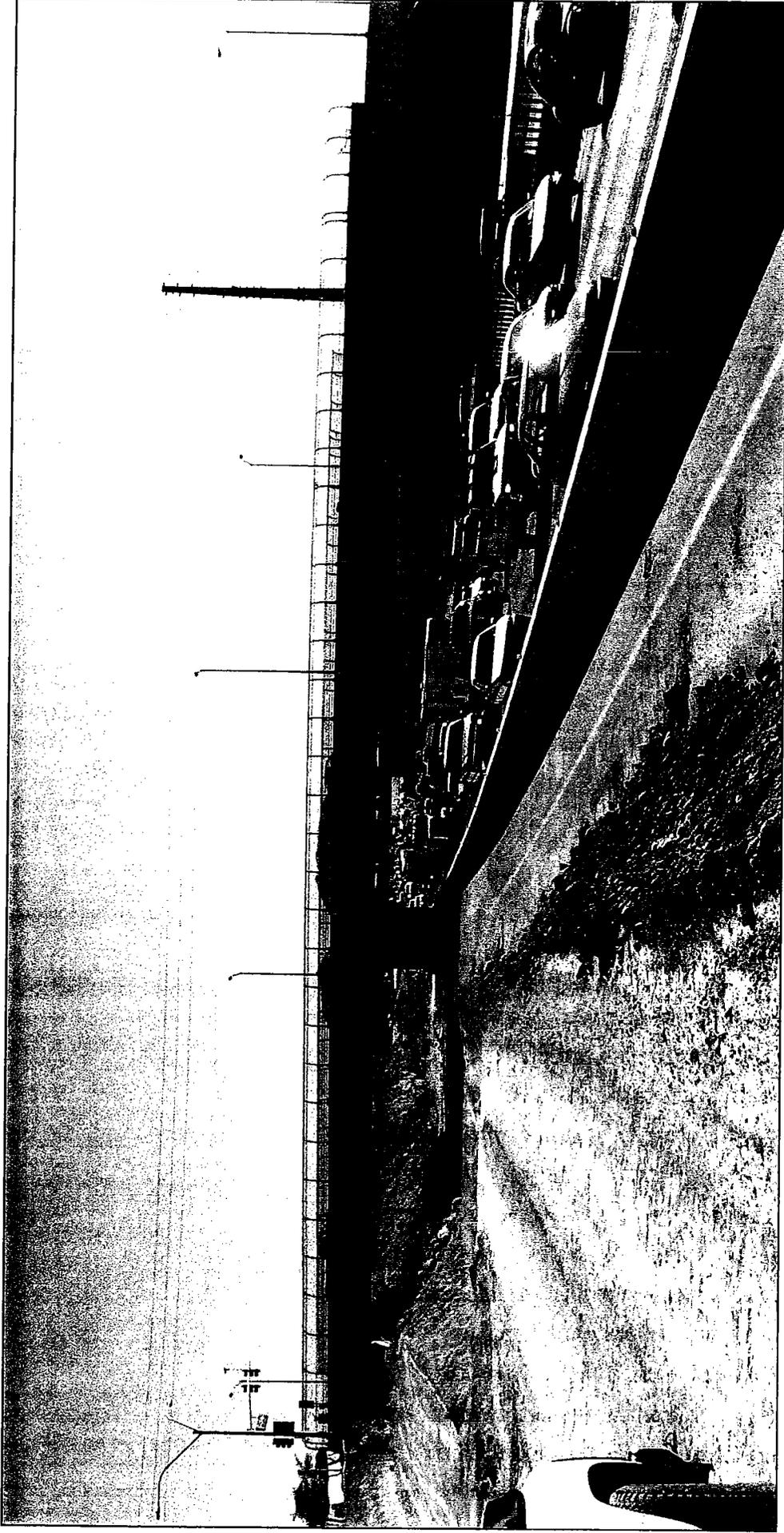
Completion Goal	Phase
Completed	PHASE 1
2005	PHASE 2
2006	PHASE 3
2006	PHASE 4
2006	PHASE 5
Future	Summerlin Parkway



US 95 Project Office
Phone Number: (702) 486-0486
Revised July, 2004



EXHIBIT D

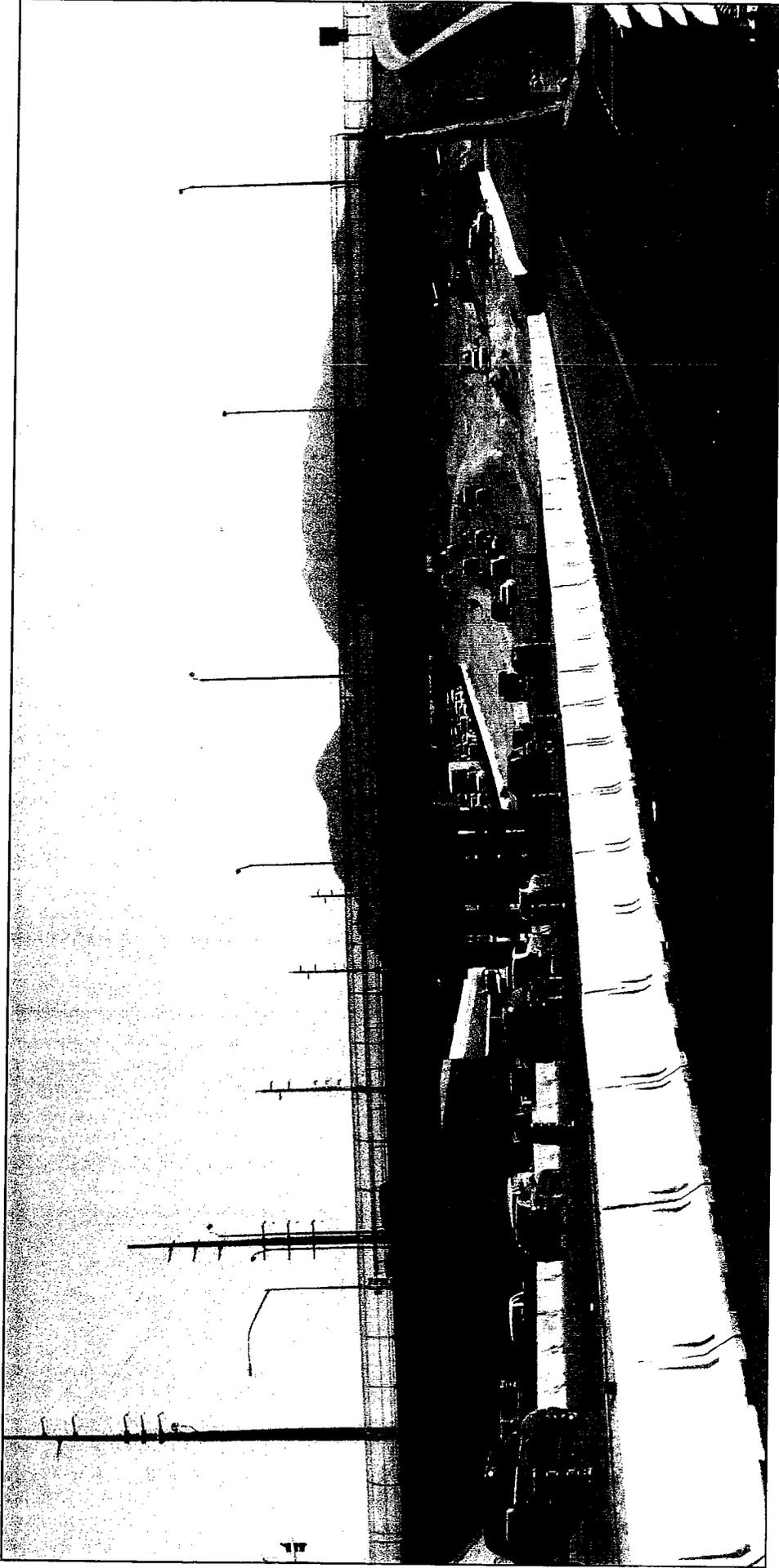


**Valley View Boulevard Bridge
Phase 2B**



Exhibit D



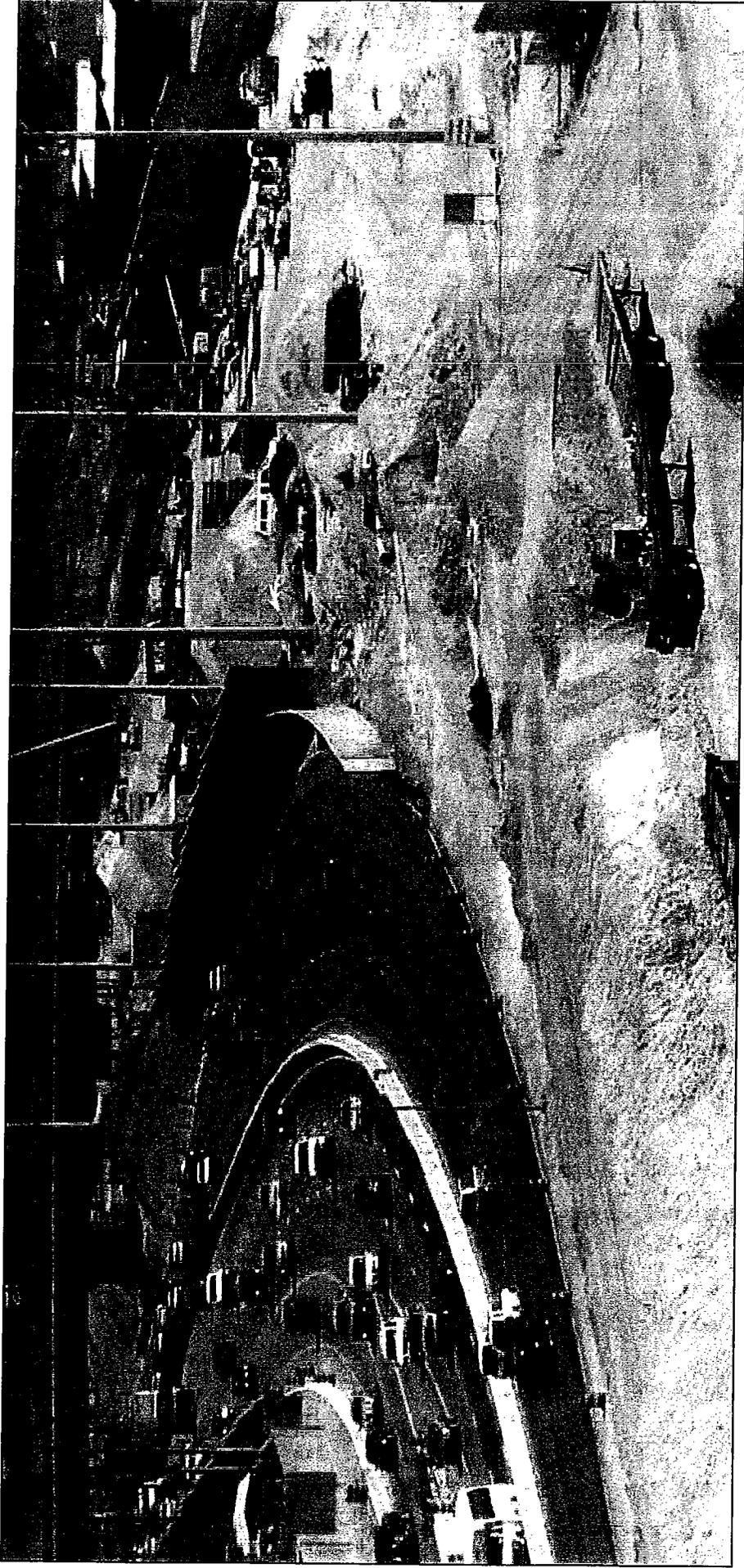


**Decatur Boulevard Bridge
Phase 2B**



Exhibit D

ISSOFS
Widening Project



**Torrey Pines Drive Bridge
Phase 2A**



Exhibit D

US95
Widening Project

EXHIBIT E

Exhibit E
Page 1 of 8

- LEGEND**
- NEW PAVEMENT
 - SOUNDWALL
 - FUTURE SOUNDWALL
 - EXISTING RIGHT-OF-WAY
 - FUTURE RIGHT-OF-WAY

Traffic on
existing
U.S. 95

MARTIN LUTHER KING BLVD





Exhibit E

Page 2 of 8

- LEGEND -
- NEW PAVEMENT
- SOUNDWALL
- FUTURE SOUNDWALL
- EXISTING RIGHT-OF-WAY
- FUTURE RIGHT-OF-WAY

Tight curves and reduced shoulder widths on U.S. 95 upon completion of Project 3B

Exhibit E
Page 3 of 8

- LEGEND -
- NEW PAVEMENT
- SOUNDWALL
- FUTURE SOUNDWALL
- EXISTING RIGHT-OF-WAY
- FUTURE RIGHT-OF-WAY



Traffic
configuration
upon completion
of Project 3B

**Tight curves and reduced
shoulder widths on U.S. 95**



Tight curves and reduced shoulder widths on U.S. 95
upon completion of Project 4A

Exhibit E
Page 5 of 8

- LEGEND -
- NEW PAVEMENT
- SOUNDWALL
- FUTURE SOUNDWALL
- EXISTING RIGHT-OF-WAY
- FUTURE RIGHT-OF-WAY

Exhibit E
Page 6 of 8

- LEGEND -
- NEW PAVEMENT
- SOUNDWALL
- FUTURE SOUNDWALL
- EXISTING RIGHT-OF-WAY
- FUTURE RIGHT-OF-WAY

Traffic on
existing
U.S. 95



Traffic configuration upon completion of Project 2C-D

Two lanes in each direction with narrow lanes & shoulders on U.S. 95

Exhibit E
Page 7 of 8

- LEGEND**
- NEW PAVEMENT
 - SOUNDWALL
 - FUTURE SOUNDWALL
 - EXISTING RIGHT-OF-WAY
 - FUTURE RIGHT-OF-WAY



Exhibit E
Page 8 of 8

LEGEND

- NEW PAVEMENT
- SOUNDWALL
- FUTURE SOUNDWALL
- EXISTING RIGHT-OF-WAY
- FUTURE RIGHT-OF-WAY

Traffic configuration upon completion of Project 2C-D

WASHINGTON PIKWAY

WEST 11TH AVE

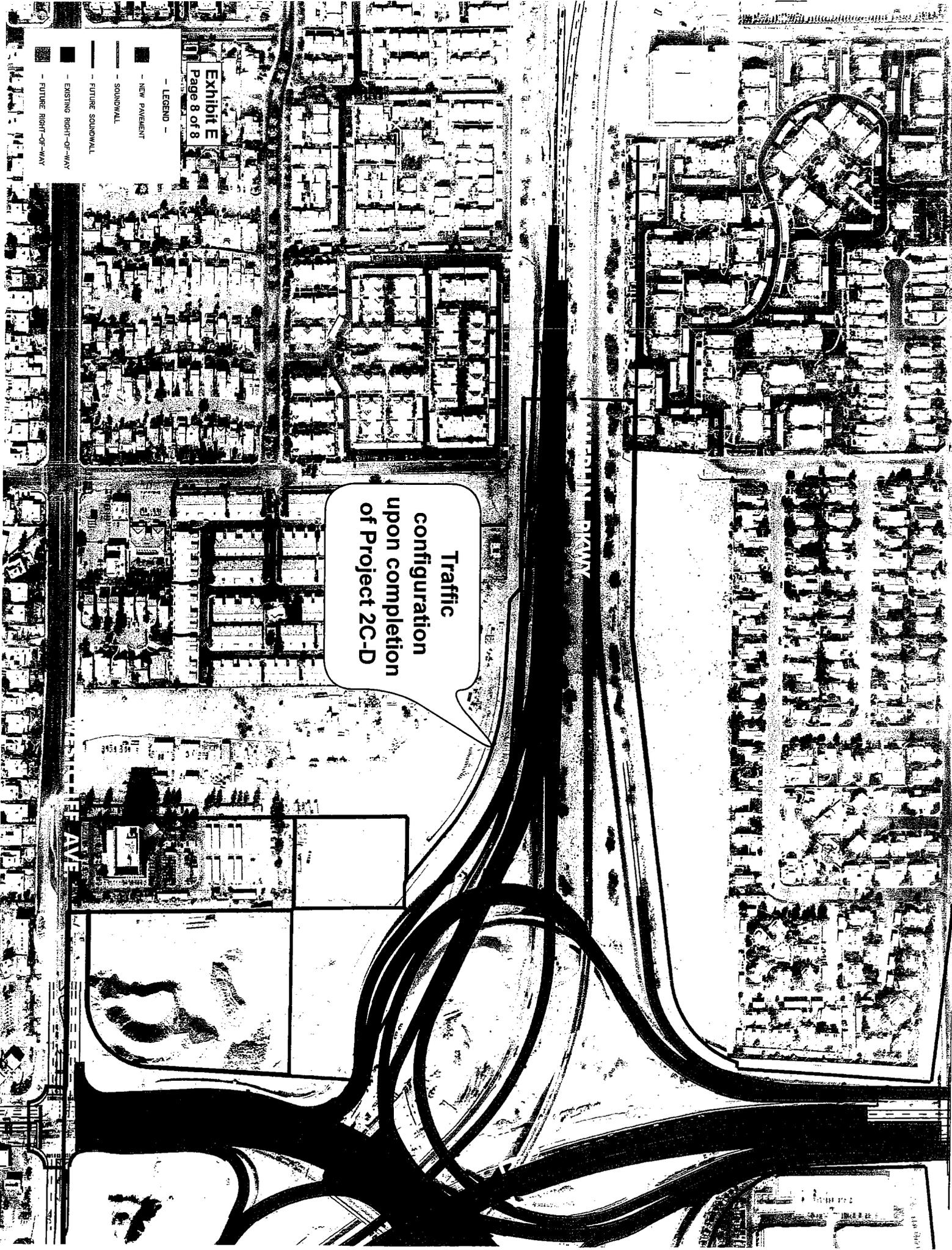
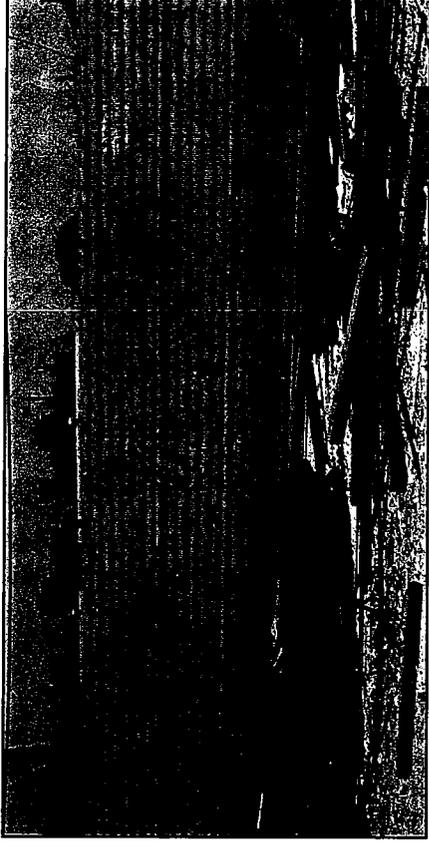
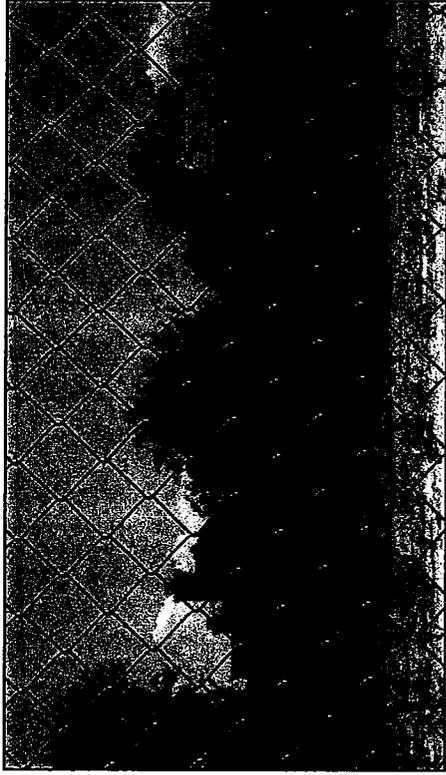
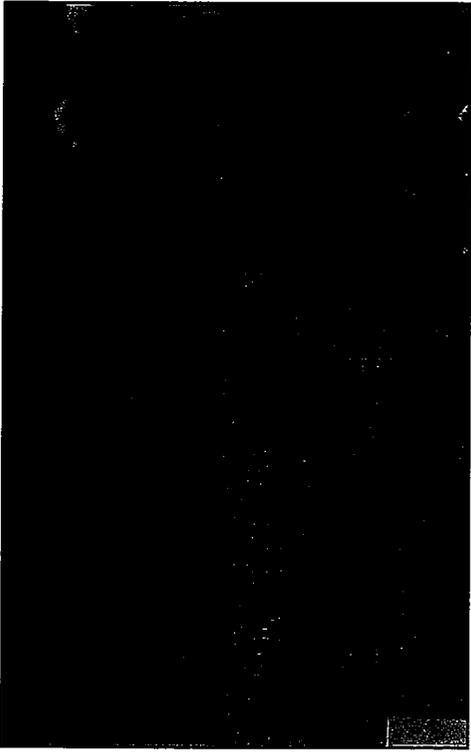


EXHIBIT F



Photos of areas along U.S. 95 that are in an urban blight condition until the completion of the U.S. 95 Widening Project



Exhibit F



EXHIBIT G

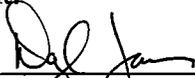
US 95 Project Timeline

November 1995	A contractor is hired to complete the MIS
March 1997	MIS is completed
April 1997	Scoping begins for EIS process
May 1997	Public Scoping meeting held
May 5, 1999	DEIS released
June 9 & 10, 1999	Public Hearings held on DEIS
November 18, 1999	FEIS approved by FHWA
December 3, 1999	Notice of availability of FEIS appears in Federal Register
January 28, 2000	FHWA issues a ROD selecting the preferred alternative
February 1, 2000	Preliminary Engineering begins Right of Way Acquisition begins
June 20, 2000	Sierra Club requests an SEIS based on MATES-II
July 2000	First Phase of project (Phase 1A) is completed
July 17, 2000	FHWA denies Sierra Club's request
October 2000	Construction begins
January 7, 2002	Sierra Club requests an SEIS for the second time
February 5, 2002	FHWA denies Sierra Club's second request
April 2002	\$3.6 million Phase 2A of project completed
April 22, 2002	Sierra Club files the Complaint
June 2002	\$9.2 million Phase 1B of project completed
June 12, 2003	\$45.1 million contract for Phases 2C and 2D awarded
August 2003	Completion of demolition of approximately 215 single-family homes acquired for project
November 2003	\$20.4 million Phase 2B of project completed
March 11, 2004	District enters Summary Judgment against Sierra Club
May 2004	\$5.8 million Phase 3A completed
May 27, 2004	Sierra Club files a notice of appeal of the District Court's decision Sierra Club first moves for an injunction to stop the project (in District Court)
June 2, 2004	\$20 million contract for phase 4A awarded
July 2, 2004	District Court Denies Sierra Club's motion for injunction
July 12, 2004	Sierra Club moves the Appellate Court for an injunction to stop construction

ATTACHMENT 2

- d. In an Open House, NDOT personnel often approach attendees to direct them to the information they need and encourage these attendees to make comments.

Further Your Affiant Sayeth Naught



DARYL JAMES

SUBSCRIBED AND SWORN to before me
this 18th day of October 2004.



NOTARY PUBLIC



ATTACHMENT 3

Declaration

of

Michael J. Savonis

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DAVID G. ORTEZ
Assistant Chief Counsel
Federal Highway Administration

Attorneys for the Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

SIERRA CLUB, INC.,)
)
Plaintiff,) CV-S-02-0578-PMP-RJJ
)
v.)
)

UNITED STATES DEPARTMENT OF TRANSPORTATION;)
Secretary of Transportation NORMAN MINETA; FEDERAL)
HIGHWAY ADMINISTRATION (FHWA); Administrator of) SECOND DECLARATION
the FHWA MARY PETERS, Division Administrator of FHWA) OF MICHAEL J. SAVONIS
Nevada Division JOHN PRICE,)
)
Defendants.)
)

I, MICHAEL J. SAVONIS, declare as follows:

1. I am the Team Leader for Air Quality in the Office of Natural Environment,
Federal Highway Administration (FHWA), Washington, D.C. I have held this position since

1 October 1996, and have been employed by FHWA since March 22, 1992. I hold a Master's
2 Degree in Regional Planning from Cornell University (1985) and a Bachelor of Science degree
3 in Chemistry from the State University of New York at Buffalo (1977). I have almost 20 years
4 of experience in transportation, 11 of which are directly associated with air quality issues and
5 concerns.

6 2. In my capacity as FHWA's Team Leader for Air Quality, I oversee and
7 administer FHWA's transportation/air quality research program of approximately 4 million
8 annually, oversee policy development and implementation of the \$8 billion Congestion
9 Mitigation and Air Quality Improvement (CMAQ) Program, and oversee a \$4 million public
10 education program, "It All Adds Up to Cleaner Air."

11 3. Since 1999 I have been a member of the Air Quality Committee of the
12 Transportation Research Board and, since January 2000, head of the Subcommittee on
13 Transportation Control Measures. In this capacity, it is my duty, in part, to review research
14 papers submitted for the annual meetings and for publication.

15 4. During my employment with FHWA, I have authored or co-authored several
16 papers and reports on transportation/air quality and related topics, including:

- 17 - "Toward a Strategic Plan for Transportation Air Quality Research, 2000-2010",
18 Transportation Research Record, 1738, pp 68-73.
19 - "The CMAQ Program: Realizing ISTEA's Promise," *Public Roads*, Spring 1995.
20 - "Clean Air Through Transportation: Challenges in Meeting the National Ambient
21 Air Quality Standards", report to Congress by the U.S. Department of
22 Transportation and the U.S. Environmental Protection Agency, 1993.
23 - "Annual Report of the Congestion Mitigation and Air Quality Improvement
24 Program," 1992, 1993, 1994, and 1995.

25 5. I have also overseen the issuance of other reports and publications for FHWA,
including:

- 1 - "Transportation Air Quality: Selected Facts and Figures," Federal Highway
Administration, 1996 (publication number FHWA-PD-96-006), 1999 (FHWA-
2 PD-99-015), and 2002 (FHWA-EP-02-006).
- 3 - "A Sampling of Emissions Analysis Techniques for Transportation Control
Measures," Federal Highway Administration, 2001 (FHWA-EP-01-017).
- 4 - "The Congestion Mitigation and Air Quality Improvement Program," Federal
Highway Administration, 2000 (FHWA-EP-00-020).
- 5 - "Transportation and Global Climate Change: A Review and Analysis of the
Literature," U.S. Department of Transportation, 1997 (DOT-T-97-03).

6 6. In my capacity as FHWA's Team Leader for Air Quality, I reviewed the two new
7 reports by Sierra Club's consultants, RSG and EHE, filed with Plaintiff Sierra Club's Second
8 Motion to Supplement the Administrative Record on October, 10, 2003. For the reasons set forth
9 below, it is my opinion that: a) the Plaintiffs' approach for the analysis of MSATs under the
10 National Environmental Policy Act is not viable; b) Plaintiffs' assertions that the report FHWA
11 commissioned from Sonoma Technologies, Incorporated (STI) substantively agrees with their
12 consultants are incorrect; and c) the science associated with understanding transportation's
13 contribution to emissions, to concentration levels, to human exposures, and finally to health
14 impacts is still too nascent to inform FHWA about the type and level of analysis that should be
15 conducted for MSATs in the US 95 project in Nevada.

16 7. Sierra Club's new consultant reports inappropriately apply regional level concerns
17 to the project level. For example, the MATES-II Study was conducted at a geographic scale
18 inappropriate for project level or "hot-spot" assessment. The modeling grid employed for the
19 study divided the region into squares four kilometers in area, resembling a checkerboard overlay
20 of Southern California. The full study area occupied a region 210 kilometers by 120 kilometers.
21 The modeling effort supporting the study applied average concentrations estimated for each of
22 these squares. Generating average concentrations that rely on modeled information over two-
23 kilometer grid squares, however, does not satisfy the data-intensive needs of a project-level
24 analysis. To analyze emissions concentrations and the ensuing health impacts at the project
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1 level, the scale of the assessment must be at a fine-grained level of detail. Intense scrutiny of
2 available emissions modeling projections validated by on the ground monitoring should be well
3 within the range of approximately 100 meters.

4 8. Sierra Club's new consultant reports fail to acknowledge differences between
5 long-term exposures at a regional level and short-term exposures at the project level. Citing the
6 study by Zhu *et al.*, Sierra Club's new consultant reports contend that higher concentrations of
7 emissions may be found within close proximity to roadways. *See* RSG at 3; EHE at 5. The EHE
8 report fails to note that while somewhat higher concentration levels can probably be expected for
9 a short period of time, concentrations are related to the amount of traffic flow and will dissipate
10 to background levels as traffic subsides during off-peak hours and weekends. As the Zhu paper
11 notes, "concentration is directly related to traffic density and decreases significantly during a
12 traffic slowdown." *See* Zhu at 1041 (The Zhu paper is attached as Exhibit A to RSG's
13 Supplement Report). Ignoring this fact, the EHE report bases its health impacts analysis on the
14 assumption that concentration levels near roadways are constant and lead to health effects
15 consistent with long-term exposures. The assumption is problematic, because, as noted in EPA's
16 "Health Assessment Document for Diesel Exhaust Emissions" ("HAD"), the short-term and
17 long-term exposures have distinct health impacts. *See* Attachment A to EHE Supplemental
18 Report (August 27, 2003). The HAD notes that short-term exposure to diesel particulate matter
19 can cause irritation and inflammation, but that these are transient impacts that are "highly
20 variable" among different people. It is the longer-term exposure that is associated with greater
21 health implications.

22 a. In relying on the Zhu paper for the proposition that higher concentrations
23 of emissions may be found within close proximity to roadways, the Sierra Club's consultants fail
24 to mention that Zhu focuses on ultrafine particles. These are particles of less than 0.1 micron

1 that are far smaller than the majority of the mass associated with diesel particulate matter
2 (“DPM”). DPM is typically in the range of 10 microns and below. As such, the majority of the
3 DPM mass is 100 times larger than the particles measured by Zhu. Hence the distances
4 identified by Zhu may have less direct relevance to DPM.

5 b. Moreover, the Zhu paper does not represent scientific consensus.
6 Additional work conducted by the Desert Research Institute in 2000 found a decline in coarse
7 PM concentrations of approximately 90 percent within 50 meters of an unpaved road. Zhu
8 found only a 50 percent decline in concentrations at the much greater distance of 90 – 150
9 meters. Furthermore, the institute concluded that about 75 percent of suspended dust still
10 remaining airborne at under two meters above ground, fell back onto nearby surfaces within a
11 few minutes of initial suspension. Watson J. G., Chow J.C., “Reconciling urban fugitive dust
12 emissions inventory and ambient source contribution estimates: Summary of current knowledge
13 and needed research,” DRI Document No 6110.4F, Desert Research Institute (2000).

14 9. The new report from Sierra Club’s consultant, EHE, despite acknowledging the
15 lack of a established unit risk factor for diesel exhaust, contends that EPA’s May 2002 Health
16 Assessment Document for Diesel Engine Exhaust (“HAD”) outlines an “approach [that] can be
17 applied to calculate a cancer risk estimate for the general population using estimates of airborne
18 concentrations of [diesel emissions].” *See* EHE Report (8/27/03) at 3. Yet the HAD contradicts
19 this directly. It states that its findings are only “general indicators” and “should not be used to
20 estimate an exposure-specific population impact.” *See* HAD at 8-17 (included as Attachment A
21 to the EHE Report (8/2703)). It goes on to say, “the development of risk estimates does not
22 constitute endorsement of their validity as surrogates for cancer unit risk or their suitability for
23 estimating numbers of cancer cases.” *Id.* at 8-16.

1 Moreover, the EHE's determination of diesel cancer risk is based on exposure estimates
2 from occupational sources, cited in the health literature. The Health Effects Institute ("HEI")
3 raises additional concerns in its "Request for Application: Winter 2003 Research Agenda,"
4 noting that the level of exposure for occupationally exposed populations can be "hundreds of
5 times higher than that of the general population," and further research is required. Even the HAD
6 document cautions that the approach "does not produce confident estimates of cancer unit risk."
7 See HAD at 8-11. Although the risk assessment technique espoused by EHE might be of interest
8 to the research community, it appears to me that it is unsuitable as an analysis technique under
9 NEPA.

10 10. Plaintiffs' EHE consultant report again cites the Zhu paper as evidence that lends
11 "weight to the argument that populations in close proximity to an expanded US 95 would be at
12 increased risk for cancer development due to potential exposures to elevated concentrations of
13 DE." (see EHE, p. 5) The statement incorrectly implies that all of EHE's estimated, and
14 considerably elevated risk, is caused by the expansion of the roadway. The correct basis for
15 comparison however is not the total risk, even as inappropriately calculated by EHE using the
16 HAD method, but rather the comparison of the "build" versus "no build" alternatives. Even
17 under EHE's proposed approach, it should be the incremental risk that is estimated rather than
18 the total risk.

19 11. The health impacts estimated by the new consultant reports do not account for the
20 decline in emissions and concentrations predicted nationally by EPA. The fact that health
21 impacts are generally based on a 70 year exposure points to the importance of declining
22 emissions over time due to its vehicle and fuel emission standards. EPA in its MSAT Final Rule
23 predicts a 67 percent to 90 percent reduction in MSAT concentrations between 1990 and 2020.
24 "Control of Emissions of Hazardous Air Pollutants From Mobile Sources; Final Rule," 66 Fed.

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1 Reg. 17230 (March 29, 2001). As emissions decline so will concentration levels, exposure
2 levels, and health risks. It should be very clearly noted that EPA predicts these national trends in
3 lower emissions even after robust increases in VMT are taken into account. While local trends
4 may be different, and in some cases very different from national trends, any accurate evaluation
5 of project level impacts would have to acknowledge that cleaner engines and fuels will likely
6 lower MSAT concentrations.

7 12. Sierra Club's consultants both contend the result of the MATES-II study are
8 transferable to Las Vegas. It appears this conclusion is based in part on inappropriate time
9 comparisons for traffic data. RSG notes that the mean level of traffic along several Los Angeles
10 freeways is currently at average annual daily traffic volumes (AADT) of 215,000, and notes that
11 traffic on relevant sections of US 95 is predicted to increase from a mean of 161,000 AADT in
12 the year 2000 to a mean of 221,000 in the future after construction and growth in the corridor.
13 RSG, 12/21/2001 at 3-4. Plaintiffs assert that traffic levels on the US 95 corridor will only reach
14 those of major Los Angeles freeways by 2020. See Plaintiff's Response, p. 6. However,
15 comparing current traffic levels in one area to future levels in another is problematic because,
16 other things being equal, vehicles in 2020 will have better pollution control equipment and thus
17 lower emissions rates. In calculating emissions, comparing similar traffic levels must account
18 for the model year and age of the vehicles to accurately gauge the effect of technological
19 improvements.

20 13. There are several inconsistencies related to plaintiff's comparison of truck traffic
21 between Las Vegas and LA. Plaintiff claims that there is 50% more truck traffic on Las Vegas
22 interstates than on LA's major freeways and interstates (See Plaintiff's response, p.6 and RSG
23 12/21/2001, p. 4). First, Plaintiff incorrectly cites Las Vegas truck traffic levels; the report cited
24 by RSG (p.4 , note 2) gives a percentage for statewide urban interstates which is not specific to
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1 Las Vegas alone. Second, it is inappropriate to compare statewide data for one state with
2 metropolitan data for another state. Third, and perhaps most importantly, it is inappropriate to
3 compare region wide averages to specific corridors, as regional averages can mask significant
4 swings in the data across multiple corridors in that region.

5 14. Sierra Club's consultants suggest that FHWA should use EPA's MOBILE 6.2
6 model to determine project-level MSAT emissions. *See, e.g.,* RSG at 8. However, the EPA has
7 not approved use of the Draft MOBILE6.2 model for regulatory applications, nor has guidance
8 been issued for using the Draft MOBILE6.2 model for project-level analysis generally or in the
9 specific context of NEPA. Moreover, there appear to be deficiencies in the Draft MOBILE 6.2
10 model. First, the diesel exhaust emission factors calculated by the Draft MOBILE6.2 model are
11 not sensitive to important changes in vehicle activity such as speed and cold starts. Second,
12 emissions testing was performed on an extremely small number of vehicles — 25 to 30 — far
13 fewer than a fleet of more than 200 million demands to achieve statistical significance in
14 characterizing MSAT emissions. Finally, the vehicle-testing program and the empirical
15 relationships between MSAT emissions and total organic gases that the model employs were
16 based on a 1990 fleet, which is significantly outdated and does not reflect how the relationships
17 were likely to change under the latest emissions control technology and new fuels. For example,
18 the Tier I standards and fuel reformulations that took hold in the 1990s are not reflected in the
19 tested fleet.

20 15. Sierra Club also suggests that instead of MOBILE 6.2, the FHWA could have
21 used an EPA model called MOBTOX. MOBTOX was the forerunner of the Draft MOBILE6.2
22 model. It cannot predict emission factors for diesel exhaust, and it was never officially released
23 by the EPA for use in regulatory applications. Moreover, the National Academy of Sciences has
24 noted concerns with the use of MOBTOX, including the fact that the emission factors for

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1 MOBTOX need to be updated, that there are data gaps in the model, and that the model needs
2 new test data. See "Modeling Mobile Source Emissions" by the National Research Council of
3 the National Academy of Sciences, 2000, at 12.

4 16. Sierra Club's consultant, RSG, suggests that highway related MSAT exposures
5 can be modeled using a model known as CAL3QHC. However, four of the six primary MSATs
6 identified by EPA are reactive gases and CAL3QHC was specifically designed by the EPA to
7 predict concentrations of non-reactive air pollutants, such as carbon monoxide. See "User's
8 Guide to CAL3QHC Version 2.0: A Modeling Methodology for Predicting Pollutant
9 Concentrations Near Roadway Intersections," EPA-454/R-92-006, September 1995. In EPA's
10 "Guideline on Air Quality Models," Appendix W to 40 CFR 51, the CAL3QHC model is only
11 recommended for analysis of carbon monoxide near highways. It has not been established that
12 DPM and the other MSAT emissions will disperse in the atmosphere in ways comparable to
13 carbon monoxide.

14 17. Plaintiffs are incorrect when they imply that an increase in emissions will
15 necessarily lead to an increase in risk. On page 4 of the (RSG) report, the statement is made
16 "That quantitative assessment confirms that emission rates for three of the gaseous MSAT
17 pollutants (1,3 butadiene, acetaldehyde, and formaldehyde) range from 23% to 72% higher in
18 vehicles meeting the US emissions standard compared with vehicles meeting the California
19 emissions standards." The implication is that there would be an equally high increase in
20 predicted risks. But since pollutants other than diesel particulate mater (DPM) account for a
21 relatively small portion of the predicted risk in the MATES-II assessment, the reported effect of
22 higher emissions is far less significant than implied. Additionally, it cannot be assumed that
23 higher concentration levels will result from higher emissions without assessing 1) the dispersion

1 characteristics of the emissions; 2) meteorological conditions; and, 3) differences in topography.

2 Further, exposures and associated risk levels would also have to be individually assessed.

3 18. Sierra Club's new consultant reports treat gross emissions over a region as
4 synonymous with human health affects, ignoring the complex series of analyses that must occur
5 between a transportation activity and an impact on human health. Linking transportation projects
6 and human health impacts requires at least five stages of analysis: activity-emissions-
7 concentrations-exposure-health impacts. Each stage depends on many different factors. Some
8 factors are known with some degree of certainty, such as the vehicle age distribution and type.
9 Others, such as the length of time human are exposed to harmful concentrations, are far more
10 speculative and the subject of further research. And some are not known at all, such as the unit
11 risk factor for diesel particulate matter. It cannot be implied that increases in transportation
12 activity or gross regional emissions will necessarily equate to a concomitant increase in risk.

13 Furthermore, each stage carries its own amount of error, and because the analysis is
14 conducted in series, errors made in one stage become cumulative as the assessment progresses,
15 yielding larger and larger errors. When the scientific relationships are known and sufficiently
16 robust, some confidence can be placed in the estimates for decision-making purposes. When
17 they are not, it is very difficult if not impossible to determine the results of any such analysis. It
18 is critical that the methodology at each stage be accurate. For the reasons cited above, I do not
19 believe that the Plaintiffs approach to assess air toxic emissions is viable.

20 19. The Sierra Club suggests that that FHWA, in employing Sonoma Technologies,
21 Inc. (STI) to evaluate the MATES-II study, "instructed its contractor to exclude crucial
22 information from its evaluation" of air toxics and PM2.5 analyses submitted by the Sierra Club
23 "to demonstrate that the public health consequences of emissions of toxic air pollutants from on-
24 road vehicles are significant." Second Motion to Supplement at 3. The allegation that FHWA

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1 attempted to influence the outcome of the STI Study by directing STI not to consider certain
2 information is unfounded. The scope of the analysis for the STI Study was designed so that the
3 study could be completed in a timely manner to furnish information useful to understanding
4 MATES-II's relevance to Las Vegas. A full review of the health implications of MSAT, as
5 suggested by the plaintiffs, could not have been completed in time to inform the environmental
6 analysis on this project. As explained in FHWA's February 5, 2002 letter to Sierra Club, short-
7 term research, of which the STI Study is a part, is a component of a comprehensive strategy to
8 address MSAT. Beginning in fiscal year 2004, FHWA is undertaking a complete review of the
9 health implications of MSAT, which is expected to take about 2 years to complete. In addition,
10 FHWA also has several other research efforts underway, including:

- 11 • a seven-city study to correlate traffic by vehicle type and speed with particulate matter
and air toxic emissions;
- 12 • an effort to examine in detail the relationship between monitored air toxic concentrations
and modeled estimates;
- 13 • a Phase I study of MATES-II to examine in detail the relevance of the transportation,
emissions, modeling and monitoring data to project level assessments;
- 14 • a Phase II study of MATES-II (planned for FY '04) to examine in detail the relevance of
the exposure modeling and health impacts estimates;
- 15 • an evaluation (with the National Cooperative Highway Research Program of the
Transportation Research Board) of EPA's Mobile6.2 model; and
- 16 • development of a Strategic Workplan for Transportation-Air Toxics Research.

17 20. The Sierra Club's new consultant reports contend that the STI Study supports
18 Sierra Club's conclusions. The suggested agreements are based in part on a misinterpretation of
19 the STI Study as it relates to potential health impacts. The EHE report states that 89% of the
20 cancer risk is due to mobile sources, citing agreement with the STI report. See EHE at 6.
21 However, EHE fails to mention that the STI report goes on to say that nearly three-quarters of
22 that risk is due to non-road mobile sources (such as construction and lawn/garden equipment)
23 that have no relevance to the US-95 project. The California Air Resources Board (CARB)
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1 "estimates that 72% of the total [diesel particulate emissions] are emitted from non-road
2 sources." STI Study at ES-2.

3 21. The EHE report also contends that the STI Study agreed that "MATES-II under
4 predicted concentrations within 100 m of roads, . . . and hence under predicted the corresponding
5 health risk." EHE at 7. While STI found MATES-II under predicted concentrations within 100
6 meters of roads, STI did not draw the conclusion that MATES-II also under predicted the
7 corresponding health risk. Rather, STI concluded that the MATES-II results cannot be used to
8 describe address project specific impacts.

9 22. The EHE report overstates the importance of both the MATES-II study to the US
10 95 project and STI agreement about the study's conclusions on cancer risks. The EHE report
11 quotes the STI report as stating, "[the] MATES-II conclusion that diesel particulate matter . . . is
12 responsible for excess cancer risks greater than 1 in 10,000...is not sensitive to scientific
13 uncertainty." First, the EHE report misreads the STI comment which is not specific to DPM but
14 rather to all MSAT estimated by MATES-II. Second, the MATES-II study estimates region
15 wide risk that is not applicable to a specific project in another State. Third, and most
16 importantly, the EHE report quotes STI out of context. In its following sentence, STI notes the
17 relatively large background concentrations that according to EPA exist everywhere in the US:
18 "Even in remote areas of the United States, the EPA has estimated that risks from background
19 levels of air pollution are 10^{-5} " (or 1 in 100,000) (see p. 7). The point that STI makes is that the
20 much of the problem is national in scope since background concentrations are elevated even in
21 remote parts of the US. STI also quotes EPA's Health Assessment Document (see STI p. 3-4)
22 that also attempted to determine national risk levels, "... an exploratory risk analysis shows the
23 environmental cancer risks possibly range from 10^{-5} to nearly 10^{-3} while a consideration of
24 numerous uncertainties and assumptions also indicates that lower risk is possible and zero risk

1 cannot be ruled out.” But STI never states that such a finding is an important consideration for
2 the US 95 case. In fact, STI cites the opposite, i.e. that the conclusions of the MATES-II study
3 are not transferable to the US 95 project.

4 23. It is important to note that, regardless of the transferability of MATES-II to Las
5 Vegas, the findings and results of the MATES-II Study are not definitive. MATES-II is only one
6 study, and is the first of its kind. It has not yet been adopted by the South Coast Air Quality
7 Management District Board. It was only released in March 2000 as a final draft for public
8 comment and review. As such, it requires not only completion, but validation by the scientific
9 community, and evaluation from a transportation and emissions modeling perspective. In
10 contrast to reliance on a single study, EPA typically relies on the full weight of scientific
11 evidence regarding health impacts when setting National Ambient Air Quality Standards
12 (“NAAQS”) for air pollution under the Clean Air Act. No less scientific rigor can be accepted
13 before reaching conclusions regarding health implications for MSAT emissions.

14 a. For example, EPA reviewed thousands of studies when setting the 1997
15 air quality standards for ozone and fine particulate matter. According to then EPA Administrator
16 Carol Browner:

17 “In conducting these reviews, EPA analyzed thousands of peer-reviewed
18 scientific studies that had been published in well-respected scientific journals.
19 These studies were then synthesized, and along with a recommendation on
20 whether the existing standards were adequately protective, presented to CASAC.
21 After three-and-a-half years of work, including 11 meetings totaling more than
22 125 hours of public discussion, and based on 250 of the most relevant studies, the
23 CASAC panel concluded that EPA's air quality standards for ozone and
24 particulate matter should be revised.” (Testimony of Carol M. Browner,
25 Administrator of the U.S. EPA, before the U.S. House of Representatives
Committee on Resources. September 30, 1997)

23 b. The MATES-II study itself notes several areas where the authors have
24 reservations about the study's findings. For example, the study notes that there is no firmly
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1 established approach for modeling air toxic compounds, and that the models can vary by as much
2 as an order of magnitude [for modeling volatile organic compounds (VOCs)]. MATES-II at 5-2.
3 The study also notes, "No attempt is made at this time to test the sensitivity of the model
4 simulation." MATES-II at 5-2.

5 c. As noted above, FHWA has initiated a rigorous two phase review of the
6 transportation and emissions modeling and monitoring used in the MATES-II study. The study's
7 purpose is to, "gain a better understanding of how the MATES-II study was conducted and
8 evaluate the approaches employed within the context of standard practice." The first phase is
9 focused solely on the transportation, emissions, concentration and monitoring elements of
10 MATES-II. It will be followed by a second phase assessment of the exposure and health
11 analyses.

12 24. For the reasons noted above, and after review of the existing data and
13 methodology, it is my opinion that the relationship between transportation activities and health
14 implications from MSAT emissions is nascent and still in the realm of basic research. This
15 conclusion is not unique to FHWA, but I believe is evidenced by the ongoing research efforts of
16 other entities.

17 a. For example, the EPA recognizes the need for significant further research.
18 In its MSAT rulemaking, EPA states, "[i]t is important to note that inclusion on the [MSAT] list
19 is not itself a determination by EPA that emissions of the compound in fact present a risk to
20 public health or welfare." 66 Fed. Reg. 17229, 17234 (March 29, 2001). Recognizing the need
21 for further research, the EPA established a Technical Analysis Plan, "to obtain needed data in
22 critical areas including improving EPA's ability to better estimate exposures in
23 microenvironments." Among other things, the Technical Analysis Plan recognizes the need for
24 much better information at the local level: "To improve our ability to characterize [MSAT]
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1 exposures to highly exposed subpopulations requires better information regarding ambient
2 concentrations of [MSAT] in hot spot areas.” *Id.* EPA also notes it “is developing local scale
3 emissions and dispersion models . . . to better inform the Agency and the public about potential
4 hot spots.” *Id.* At 17259. EPA committed to conduct a future rulemaking to be completed by
5 July 1, 2004 in which it will evaluate and reassess the need and level of controls for mobile air
6 toxics. *Id.* at 17257.

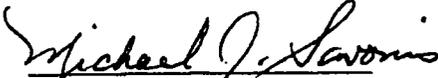
7 b. In addition to the EPA, unbiased evidence regarding the state of the
8 science is available from the Health Effects Institute (“HEI”). HEI is an independent, nonprofit
9 corporation chartered in 1980 to provide high-quality, impartial, and relevant science on the
10 health effects of pollutants from motor vehicles and from other sources in the environment. HEI
11 is supported jointly by the EPA and industry. HEI’s 2003 Winter Research Agenda including
12 making \$3.5 million available for up to 6 studies to reduce what HEI describes as the “large data
13 gaps in understanding exposures to air toxics,” with the ultimate goal “to characterize the
14 putative link between exposure to air toxics associated with hotspot areas and adverse health
15 effects.” Health Effects Institute, January 2003, “Request for Applications: Winter 2003
16 Research Agenda.” Available at <http://www.healtheffects.org/RFA/RFA2003.htm> .

17 In requesting these studies, HEI notes that despite limited monitoring efforts, “there is
18 still significant uncertainty regarding exposure to air toxics,” and that the EPA’s National Air
19 Toxics Assessment (NATA) estimates “are severely limited by an inadequate amount of actual
20 monitoring data for ambient levels of most of these pollutants. *Id.* HEI further notes that,
21 “Estimates of health risks for exposure to air toxics face significant uncertainties in modeled
22 exposures and in assumptions made in estimating the safe level of a pollutant or its toxic potency
23 over time.” *Id.*

24 I declare under penalty of perjury that the foregoing is true and correct.

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DATED: October 17, 2003, at Washington, D.C.


MICHAEL J. SAVONIS

NDOJ

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FOR IMMEDIATE RELEASE
DATE: October 18, 2004

MEDI ADVISORY:
PRESS CONFERENCE TO UNVEIL NEW APPROACH TO
METHAMPHETAMINE PRODUCTION AND USE
also new legislation to address collateral damage

Carson City—Attorney General Brian Sandoval today announced that John Walters, Director of National Drug Control Policy, will visit Reno on Wednesday, October 20th. Nevada Chief Deputy Attorney General Gerald Gardner and Director Walters will discuss the State's new, comprehensive approach to reducing methamphetamine production and use in Nevada. Gardner will also describe new legislation drafted and sponsored by the Nevada Department of Justice to toughen penalties for meth-related crimes against children and first responders.

Director Walters will also announce the award of \$725,000 to 8 community anti-drug coalitions throughout the State to help fight the region's meth problem.

The following event is open to credentialed media only:

Wednesday, October 20th
10:00 AM (media pre-set by 9:45)

**Regional Law Enforcement Training Center,
Public Safety Training Complex
5190 Spectrum Boulevard, Reno**

Director Walters will be available for one-on-one interviews. Please contact Jennifer de Vallance at 202-368-8422 to schedule an interview time.

Chief Deputy Gardner will be available as well following the conference. Please contact Tom Sargent at 775-684-1114 to reserve a time.

###

DFC/Synthetic Strategy Press Conference Agenda

Regional Law Enforcement Training Center

Public Safety Training Complex

5190 Spectrum Boulevard

Reno, Nevada

October 20, 2004

10:00 a.m.

- 9:45 - 10:00 Pre-press conference briefing
- 10:05 - 10:10 Christy McGill, Healthy Communities Coalition of Lyon and Storey Counties**
-Welcome
-Introductions
-Work against meth at local level
- 10:10 - 10:11 Christy McGill introduces Gerald Gardner
- 10:11 - 10:16 Nevada Deputy Attorney General Gerald Gardner**
-Legislation re: higher penalties for meth-endangered kids, injured first responders
- 10:16- 10:17 Christy McGill introduces Congressman Gibbons (tentative)
- 10:17 - 10:22 Congressman Jim Gibbons (tentative)**
- 10:22 - 10:23 Christy McGill introduces Senator Ensign (tentative)
- 10:23 – 10:28 Senator John Ensign (tentative)**
- 10:28 - 10:29 Christy McGill introduces Director Walters
- 10:29 – 10:39 Director Walters**
-National trends, efforts
-Importance of collaborative strategy against meth
-DFC grant awards in Nevada
- 10:39 - 11:00 Q & A



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, DC 20503

FOR IMMEDIATE RELEASE:
Monday, September 27, 2004
395-5744

Contact: Sam Whitfield
(202)

**WHITE HOUSE DRUG CZAR AWARDS \$70 MILLION
FOR COMMUNITY ANTI-DRUG COALITION GRANTS**
Program Expands to Provide \$21.9 Million in New Grants for 227 Communities

(Washington, D.C.) - John Walters, Director of National Drug Control Policy (ONDCP), today awarded \$21.9 million in new Drug-Free Communities matching grants to 227 communities in 46 states. An additional \$41 million will support the continuation of grant awards to 487 existing community coalition projects operating in all 50 states, the District of Columbia, and the U.S. Virgin Islands. All 714 local coalitions, comprised of a diverse cross-section of parents, youth, teachers, religious and fraternal organizations, health care and business professionals, law enforcement, the media, and community leaders, work to prevent and reduce drug, alcohol, and tobacco abuse among youth.

Noting the importance Drug-Free Communities grants make to rural communities and urban communities Director Walters stated, "The Drug-Free Communities Program will provide critical resources to expand community prevention programs across America where it is needed most. From small towns and rural areas to inner cities and suburbia, illegal drug use and abuse affect us all. Preventing drug use before it starts spares families and communities across America the anguish of watching their children slip into the grasp of addiction. If we can prevent young people from using drugs through the age of 18, the chance of their using drugs as adults is very small. The Drug-Free Communities Program, and other drug prevention efforts, are the most cost-effective approach to the drug problem, sparing society the burden of treatment, rehabilitation, lost productivity, and other social problems."

The Drug-Free Communities Program provides grants of up to \$100,000 to community organizations that serve as catalysts for citizen participation in local drug prevention efforts. A competitive peer review process selected this year's awardees from 512 applicants. To qualify for matching grants, all awardees must have at least a six-month history of working together on substance abuse reduction initiatives, develop a long-term plan to reduce substance abuse, and participate in a national evaluation of the Drug-Free Communities Program.

Created under the Drug-Free Communities Act of 1997, the Drug-Free Communities Program has earned strong bipartisan support from Congress and is one of President Bush's top funding priorities. In December of 2001, Congress passed and the President signed into law a five-year extension of the Drug-Free Communities Act authorizing \$399 million in funds through FY 2007.

Since 1997, five competitions have awarded \$250 million in grants to more than 942 community anti-drug coalitions. ONDCP administers the community anti-drug program in conjunction with the Substance Abuse and Mental Health Services Administration.

More information about the Drug-Free Communities Program is available at:

www.whitehousedrugpolicy.gov and <http://drugfreecommunities.samhsa.gov/>

**Healthy Communities Coalition of Lyon and Storey,
Award Amount: \$100,000**

Healthy Communities Coalition serves the rural communities of Lyon, and Storey Counties and the Paiute Walker River Reservation with a total population of 45,843 spread out over an area twice as large as Rhode Island. Our main demographic categories consist of White, Hispanic, and Native American. The goals of this program are to 1) Reduce substance abuse among youth and over time among families and adults by decreasing community, family, school, and individual risk factors that contribute to substance abuse, and by increasing protective factors and/or assets that contribute to resiliency. 2) Strengthen Healthy Communities Coalition and Walker River Coalition's capacity to work together to reduce substance abuse in youth throughout Lyon and Storey Counties and Walker River Tribal Lands.

To achieve these goals, the coalition plans to expand its prevention strategies to include: 1) information dissemination throughout our seven small communities, 2) expand model prevention education programs to three more communities for a total of seven, 3) support alternate activities through service learning and building assets, 4) enhance our community based processes by deepening understanding and collaboration between county communities and our tribal community, 5) expand the capacity for all of our communities to implement environmental strategies, and 6) strengthen capacity for proper referral when youth and families are in need of services.

**Join Together Northern Nevada,
Award Amount: \$100,000**

Join Together Northern Nevada (JTNN) is a community substance abuse coalition whose mission is to reduce the impact of substance abuse on the community, particularly in youth, through improving access to prevention, intervention, and treatment services. Through a community based process, JTNN builds capacity to meet substance abuse prevention needs.

JTNN serves the community of Washoe County, population 373,000, in northwestern Nevada. JTNN's proposal addresses the goals of reducing substance use and abuse among youth in Washoe County, Nevada, as well as establishing and strengthening collaboration efforts among those who have a long-term commitment to prevention programs for youth.

To achieve these goals, JTNN will implement a multi-sector, multi-strategy approach to preventing alcohol and drug abuse in Washoe County. This plan includes the following strategies: revise and implement the local Comprehensive Community Prevention Plan (CCPP), identify and fund evidence based prevention programs, develop environmental strategies to address underage drinking, substance abuse by university students, and marijuana use, develop a methamphetamine study group, develop a comprehensive prevention plan for the Washoe County School District (WCSD), implement brief screening for substance abuse in the WCSD, develop a long term sustainability plan, expand the JTNN Coalition by forming neighborhood task forces, and develop prevention program evaluation capacity in the community.

**Community Council on Youth,
Award Amount: \$100,000**

The Community Council on Youth ("CCOY") serves youth and families in Carson City, Nevada's capital. Carson City's population is 54,844, of which 14.2% is Hispanic and 2.5% is Native American. The goals of the program are to: 1) reduce substance abuse among Carson City's youth ages 8-18 and, over time, Carson City's adults, by decreasing the impact of CCOY's prioritized risk factors and increasing the impact of protective factors and 2) strengthen

collaboration among Carson City's private non-profit agencies, faith-based organizations, business community, and tribal governments to support coalition efforts.

To achieve these goals, CCOY will expand coalition activities to implement multiple strategies across multiple sectors as follows: 1) partner with faith-based organizations to bring model programs to parishioners; 2) increase faith-based sector engagement through successful launch of model programs; 3) implement environmental strategies through existing youth clubs to combat alcohol, tobacco and other drug use; 4) implement Search Institute's Healthy Communities ♦ Healthy Youth Initiative to build assets among local youth; 5) partner with the Hispanic Advisory Board and the University of Nevada Reno's Diversity Coordinator to assure that needs of all populations in Carson City are being met; and 6) conduct Board Development and Training to enable CCOY to reach its mission through improving its planning process based on comprehensive evaluation results.

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FOR IMMEDIATE RELEASE
DATE: October 8, 2004

NEVADA LEGAL POSITION ON YUCCA RADIATION STANDARD CONFIRMED BY USDOJ DECISION NOT TO APPEAL

Carson City—Attorney General Brian Sandoval today announced that the United States Department of Justice, Solicitor General's Office, has determined that it will not pursue an appeal to the U.S. Supreme Court over the radiation standard at Yucca Mountain.

"The decision by the USDOJ is a resonant indicator of the strength of Nevada's legal position on Yucca Mountain," said Sandoval. "Our position has always been that the Yucca plan violates federal and state law, and we have opposed it on that basis. The D.C. Circuit left little upon which to base an appeal, and this proves it."

Previously on September 23rd, Justice Department Attorneys filed a document in federal court stating that the U.S. Solicitor General "has final say over Supreme Court actions" and that the office "had not made any decision" regarding Supreme Court review in the case. Today, attorneys in the Environmental Defense section of the USDOJ filed a response that clarified that the federal government would not pursue the matter, though at present the Nuclear Energy Institute, a private lobbying organization for the nuclear energy industry, continues to pursue an appeal.

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FOR IMMEDIATE RELEASE
DATE: October 6, 2004

NDOJ PREPARES FOR IMPEACHMENT PROCEEDING

Carson City—Attorney General Brian Sandoval today announced that criminal charges will not be pursued against State Controller Kathy Augustine.

“The Governor has indicated that he will call a special session of the legislature for the second week of November to commence the process of impeachment of Controller Augustine,” said Sandoval. “Simply put, this is the most appropriate forum for justice in this matter: it’s the most expedient, it’s the most powerful, and, because this is an elected position and her violations occurred within the sphere of her office, an impeachment proceeding will serve the ends of justice and the people of Nevada. We are therefore directing our attention instead to preparations for impeachment.”

Gerald Gardner, Chief of the Attorney General’s Criminal Justice Division, stated: “We evaluate each criminal case on its own merits, and having conducted the original investigation, having filed the original ethics complaint, and after reviewing the recently released transcript of the closed hearing at the Ethics Commission, we have determined that the impeachment process is the best means to achieve justice for the people of Nevada.”

Sandoval emphasized also that an impeachment proceeding was developed for exactly these type of circumstances. “Ms. Augustine will have the opportunity for due process before the State Assembly and perhaps the State Senate. It is there that she will have her opportunity to present her case and be heard by the newly elected legislators of the state.”

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FOR IMMEDIATE RELEASE
DATE: November 23, 2004

MAXIMUM PRISON SENTENCE FOR INSURANCE FRAUD

Reno—Attorney General Brian Sandoval announced that Alex John Elias, age 40, of Reno was sentenced today after pleading guilty to felony insurance fraud before Judge Kosach in the Second Judicial District Courthouse. Judge Kosach sentenced Elias to 48 months in prison, the maximum for the offense, with no probation and ordered him to pay \$2,642.36 in restitution.

Alex John Elias was represented by Jack Alian of the Public Defenders Office. Elias was arrested on July 23, 2004 after he and four other people staged an accident in order to fraudulently get money from Sentry/Dairyland Insurance Company. Elias lured four younger people into the scheme including his own son, who is a juvenile. He convinced them to go with him to Six Mile Canyon Road in Storey County and run his vehicle off the road and into an obstacle. All involved lied to police and the insurance company reporting that a white van had run them off the road. Elias pretended to be injured hoping to obtain a large compensation from the insurance company. Elias planned the scheme and promised the other perpetrators that he would pay them money for their participation. One of the perpetrators, Matthew Weaver came forward and told the insurance company and investigators with the NDOJ's Insurance Fraud Unit what really happened and who was involved. Elias has a substantial criminal record including convictions for DUI, trespassing and arrests for arson and narcotics possession. Elias will begin serving this latest sentence after he completes his term for a DUI charge.

If you have any information regarding insurance fraud, please call the Nevada Attorney General's Insurance Fraud Hotline at 1-800-266-8688. For more information about Nevada's Insurance Fraud Unit, please visit the Nevada Department of Justice website at www.ag.state.nv.us.

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FOR IMMEDIATE RELEASE
DATE: November 4, 2004

ASSISTED LIVING FACILITY OFFICE WORKER PLEADS GUILTY TO THEFT FROM THE ELDERLY

Carson City—Attorney General Brian Sandoval announced today that Monica L. Calloway, age 48, entered a plea yesterday of no contest to one (1) count of Felony Theft Against a Person Age 65 or Older. Washoe County District Court Judge Steven R. Kosach accepted the plea and adjudicated her guilty. The matter is now scheduled for sentencing on January 19, 2005. As part of her plea Ms. Calloway has agreed to pay more than \$8,100.00 in restitution and to serve two consecutive prison terms of 12 to 32 months each. The offense carries a maximum potential of two five year terms and up to \$20,000.00 in penalties.

Investigation into the matter originated with the Division of Aging Services and the Sparks Police Department. The Attorney General's Medicaid Fraud Control Unit (MFCU) assisted the Sparks' police, and the MFCU prosecuted Ms. Calloway.

According to MFCU Director Tim Terry, the investigation focused on Calloway's employment at a local assisted living facility Washoe Progressive Care. As an office worker she collected checks from four elderly female residents. Calloway failed to process the checks into the residents' accounts and instead deposited the money into her own bank account. Facility management cooperated fully during the investigation of this matter.

"Exploitation of the elderly, in the very place where they and their loved ones believe them to be safe from harm, is why the penalties for such crimes carry additional penalties," said Mark Kemberling, Senior Deputy Attorney General. "Our experience has been that, once facility management becomes aware of possible crimes, they assist us in every way possible. It's rare that we don't get full cooperation, which speaks well for the elder care industry in Nevada."

The Medicaid Fraud Control Unit investigates and prosecutes instances of patient abuse or neglect, exploitation and isolation. The unit also investigates and prosecutes financial fraud by those providing medical services and goods to Medicaid patients. Anyone wishing to report suspicions regarding any of these concerns may contact the Medicaid Fraud Control Unit in Carson City (775) 684-1191 or in Las Vegas (702) 486-3187. Medicaid fraud information can also be found on the Attorney General's web site: <http://ag.state.nv.us>

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FOR IMMEDIATE RELEASE
DATE: December 22, 2004

ATTORNEY GENERAL APPOINTS NEW CONSUMER ADVOCATE, SOLICITOR GENERAL AND CHIEF OF TRANSPORTATION

Carson City—Attorney General Brian Sandoval today announced a number of appointments with the Nevada Department of Justice including the selection of Adriana Escobar Chanos as the Nevada Consumer Advocate, Liesl Freedman as the Solicitor General and Joseph Ward as the incoming Chief of the Transportation Division.

“Ms. Escobar Chanos has served Nevada with distinction as a Public Utilities Commissioner and a member of the Transportation Services Authority and will serve the state well as its Consumer Advocate. She is a well respected attorney that has a wealth of consumer, utility and telecommunication law experience, including experience as a prosecutor for the San Diego, California City Attorney’s Office,” Sandoval said.

Ms. Escobar Chanos will be the first woman and Latina to serve as the state’s Consumer Advocate. Commissioner Escobar Chanos received her undergraduate degree from the University of Nevada-Las Vegas and her juris doctorate from the California Western School of Law. She also participated in an Advanced Studies Program in Negotiation from Harvard University.

“I am very pleased that someone of Ms. Escobar Chanos’ caliber has enthusiastically accepted this appointment. She will continue to serve the people of Nevada with distinction as their Consumer Advocate,” Sandoval said.

Liesl Freedman will serve as the Solicitor General, the Office of Attorney General’s chief litigation position that oversees all civil litigation for the State of Nevada. “Ms. Freedman’s vast experience as a litigator for the Nevada Department of Transportation is crucial to representing the state as its Solicitor General,” Sandoval said.

Joe Ward, currently a Senior Deputy in the Transportation Division of the Attorney General’s Office, will become the Chief of the Division upon the retirement of Brian Hutchins,

the current Chief. “Mr. Ward, a long-time deputy attorney general and an experienced litigator, will bring a wealth of courtroom experience to his new position,” Sandoval said.

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FOR IMMEDIATE RELEASE
DATE: November 30, 2004

NINTH CIRCUIT UPHOLDS CONVICTION IN LV MURDER

Las Vegas—The Nevada Department of Justice announced today that the Ninth Circuit Court of Appeals in San Francisco entered an Order on November 22 affirming an earlier decision by the Federal District Court in Las Vegas denying a petition for writ of habeas corpus to Donald O'Dell Towne, an inmate in the custody of the Nevada Department of Corrections.

In 1992 Donald Towne, along with four other defendants, was charged with murder in the death of fifteen year-old Rory Sharp. On October 23, 1992, Towne and his co-defendants lured the victim out into the desert on the pretext of going dirt bike riding, and then shot the victim and bludgeoned him to death with a tire iron. The co-defendants had planned the crime by selecting the site of the crime and the weapons to be used, and they set up the scene by driving two of the co-defendants to the remote desert location before the arrival of the victim so that they could ambush the victim when he arrived. After killing Sharp the defendants dragged his body to a wash and buried him in a shallow makeshift grave in the desert.

"They ambushed young Rory Sharp in the desert near Nellis Air Force Base," said Victor Schulze, Capital Case Coordinator for NDOJ. "It was a senseless, brutal act exacted with premeditation that devastated a family. We're pleased that the Las Vegas Federal District Court decision was upheld."

The Clark County District Attorney originally charged the defendants with capital murder. In 1994, Towne entered into a negotiated plea where he agreed to admit to the killing of Rory Sharp, and to accept a sentence of life in prison without possibility of parole. In an attachment to the pre-sentence investigation report, Towne stated: "I hit Rory in the head between four and seven times with a tire iron." In exchange, the State agreed to withdraw its intent to seek the death penalty. District Court Judge Donald Mosley sentenced Towne to life in prison without the possibility of parole.

Less than a year after the sentencing, Towne filed a legal challenge to his guilty plea in the State district court, claiming that his plea was not voluntary because his attorneys had coerced him into pleading guilty. He further asserted that his attorneys had not properly investigated possible defenses in the case, in spite of the fact that Towne had told the same district court before he was sentenced that he had discussed the defense of the case with his attorneys, that he had not been coerced, and that he was satisfied with the performance of his attorneys. The district court denied the claims, and the Nevada Supreme Court agreed, affirming the conviction.

When Towne sought to challenge his guilty plea and conviction in federal court in 2000, he again raised similar claims, and he further argued that his attorneys had failed to tell the court that he was a functional alcoholic, and that this lessened his culpability. The federal court denied Towne's challenge to his conviction in 2003. Today's ruling by the Ninth Circuit Court of Appeals affirms the earlier finding that Towne's guilty plea was voluntary and knowing.

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