

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND  
MINING**

**Seventy-Third Session  
April 6, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:35 p.m., on Wednesday, April 6, 2005. Chairman Jerry D. Claborn presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Jerry D. Claborn, Chairman  
Mr. Kelvin Atkinson, Vice Chairman  
Mr. John C. Carpenter  
Mr. Mo Denis  
Mr. Pete Goicoechea  
Mr. Tom Grady  
Mr. Joseph M. Hogan  
Mrs. Marilyn Kirkpatrick  
Mr. John Marvel  
Ms. Genie Ohrenschall  
Mrs. Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst  
Mary Garcia, Committee Attaché  
Matthew Mowbray, Committee Assistant

**OTHERS PRESENT:**

Raymond Yowell, Private Citizen and Rancher, Lee, Elko County, Nevada  
Doug Busselman, Executive Vice President, Nevada Farm Bureau  
O. Q. Chris Johnson, Chairman, Nevada Committee for Full Statehood,  
Elko County, Nevada  
Steve Boies, President, Nevada Cattlemen's Association, Wells, Nevada  
Jim Connelley, Administrator, Division of Livestock Identification, Nevada  
Department of Agriculture  
Thomas Jefferson, Member, Nevada Live Stock Association; and  
Executive Member At-Large, Independent American Party of  
Nevada  
David Schumann, Vice Chairman, Nevada Committee for Full Statehood  
Ramona Morrison, Director, Nevada Live Stock Association  
Cliven D. Bundy, Private Citizen and Rancher, Mesquite, Nevada  
Don Alt, Private Citizen and Rancher, Silver Springs, Nevada  
David Holmgren, Vice Chairman, Nevada Live Stock Association  
Ben Colvin, Private Citizen and Rancher, Goldfield, Nevada; and Member,  
Nevada Live Stock Association  
Jackie Holmgren, Private Citizen and Rancher, Mineral County, Nevada;  
and Member, Nevada Live Stock Association  
Ray Williams, Member, Lander County Public Lands Advisory Commission  
Helen Chenoweth-Hage, Chairman, Nevada Live Stock Association  
Janine Hansen, President, Nevada Eagle Forum  
Wayne Hage, Private Citizen and Rancher, Nye County, Nevada

**Chairman Claborn:**

[Meeting called to order. Roll called.] For those of you in Las Vegas wanting to give testimony on A.B. 453, we will not be hearing that bill today. We're going to open the hearing on our first bill today, A.B. 407. The sponsor of this bill is Assemblyman Carpenter.

**Assembly Bill 407:** Establishes judicial procedure for determination of ownership of livestock seized by certain governmental entities. (BDR 50-685)

**Assemblyman John C. Carpenter, Assembly District No. 33, Elko and Humboldt Counties:**

[Assemblyman Carpenter read from prepared statement, Exhibit B, which is incorporated herein.]

**Assemblyman Hogan:**

Raymond Yowell's particular situation also involves relationships with the Native American people, tribal lands, et cetera. Is this a special situation because of that, as distinguished from some of the other ranchers we may hear from, or is this essentially the very same issue?

**Assemblyman Carpenter:**

We hope it's not a situation where he was singled out because of his deep feelings about the Ruby Valley Treaty and things like that. I have handed out the proclamation ([Exhibit C](#)), and I hope you'll be able to study that proclamation. It says the lands that were purchased for the Indian reservation out at Lee, which is about 20 miles south of Elko, are hereby proclaimed to be an Indian Reservation for the use and benefit of the Te-Moak band of Western Shoshone Indians.

The proclamation gives a description of the land and then goes on to say, "Together with all water, water rights, dams, and ditches, now or heretofore used upon or in connection with the above described premises." Then it says, "Together with all range, ranges, and range watering rights of every name, nature, kind, and description used in connection with the above described premises." In my humble cowboy opinion, when they say range and ranges, they're talking about the range that was attached to those properties that were purchased for the Indian reservation.

[Assemblyman Carpenter submitted amendments to [A.B. 407](#), [Exhibit D](#).]

**Raymond Yowell, Private Citizen and Rancher, Lee, Elko County, Nevada:**

[Mr. Yowell read prepared testimony from [Exhibit E](#), page 1, which is incorporated herein.]

**Assemblyman Grady:**

Mr. Yowell, does your tribal government have any kind of agreement with the state of Nevada, since you are a sovereign nation, where the State Brand Inspector can come in and even do any kind of a brand inspection?

**Raymond Yowell:**

We do not have an agreement, per se. However, the practice has been, in the past, that the State Brand Inspector does come in and inspect our cattle when we are selling cattle.

**Assemblyman Marvel:**

Raymond, do your cattle just run on the reservation?

**Raymond Yowell:**

They ran on the ranges that Assemblyman Carpenter referred to, and some reservation ground is contained in those allotments.

**Assemblyman Marvel:**

But there is BLM [U.S. Bureau of Land Management] land in that allotment?

**Raymond Yowell:**

It is considered a BLM allotment, yes.

**Assemblyman Goicoechea:**

I agree with the proclamation, and surely those lands should be considered part of the reservation. Has there been any movement since the time they confiscated your cattle as far as resolving this issue of whether it is, in fact, part of the reservation or BLM?

**Raymond Yowell:**

There has been no movement toward that. The BLM still maintains that they have the jurisdiction over those lands and that the reservation does not.

**Assemblyman Goicoechea:**

Yet it is my understanding, in looking at the documents, that it clearly was established as those allotments, and the Taylor Grazing Act of 1934 [43 U.S.C. §§ 315-316o], in fact, went into effect in 1935 in Elko County, so those were established allotments at the time the reservation was purchased. The documentation clearly shows that those allotments or ranges are incorporated in the reservation.

**Raymond Yowell:**

Yes, we agree. That is exactly our opinion, and that's why we were out there. You have to understand that when the reservation was created, it was all an open range. There were no allotments at that time. The allotments came sometime in the 1950s.

**Assemblyman Goicoechea:**

But at that point in time, I believe the Taylor Grazing Act was in effect in Elko County; is that not correct? Maybe I should address that to Mr. Carpenter.

**Assemblyman Carpenter:**

The BLM, I believe, came into existence in the Elko district in 1930 or 1931. After the BLM come into existence, the range was adjudicated. Each ranch was given so many animal unit months (AUMs). A little later on, if they didn't have an allotment after they were adjudicated AUMs, then an allotment was

established for the ranchers. Sometimes there might be only one rancher in there; sometimes it might be two or three.

[Assemblyman Carpenter, continued.] My reading of this is that when the allotment was made, the ranches were there. The Bureau of Indian Affairs purchased them for this reservation; these AUMs were already attached to the lands that they purchased. There is no question that those AUMs that were purchased by the government then became the AUMs that the ranchers would use for the running of their livestock. Then when the allotment was made, this proclamation turned over all of this land and made it a reservation. That's what it says. It says "all ranges," so when these people were allocated their AUMs and an allotment was established, the BLM should have been out, because most of that land that the tribe has up there is land that was private before the government purchased it for the tribe. There is a small end of that allotment that Raymond's cattle were seized on, and the rest of it is all Indian reservation.

Granted, it is a complicated process, but Raymond and the tribe were never able to get to court to try to argue what the proclamation actually meant. They were put into what we call an administrative proceeding, which can go on for years and take thousands and thousands of dollars to actually get settled. You have to go through that before you can get into a court.

**Chairman Claborn:**

Mr. Carpenter, could you explain AUM to the Committee, please?

**Assemblyman Carpenter:**

An AUM is an "animal unit month." That is the amount of feed it takes to feed a cow for one month.

As I said before, A.B. 407 is patterned after the statutes in Arizona. As those have actually been on the books in Arizona for a number of years, that gives this legislation some recognition.

Assembly Bill 407 did not come out of bill drafting exactly as we requested, so we have proposed amendments to A.B. 407 ([Exhibit D](#)). A number of the changes are just cleanup language. For instance, instead of "cited," they had to use "provided with a notice."

Another thing I wanted to have in A.B. 407 is that this act does not apply to any wild horses or burros that are subject to the jurisdiction of the federal government pursuant to the Wild Free-Roaming Horse and Burro Act of 1971 [16 U.S.C. § 1331]. We don't want to shut down the gathering of wild horses. Also, we know the Nevada Department of Agriculture is gathering wild

or feral horses, mainly in the Virginia Range where they're managing the horses. We know those horses are then taken to the prison facilities to be gentled. The gathering of horses by the Department of Agriculture is another area that A.B. 407 would not affect.

[Assemblyman Carpenter, continued.] The way the original bill is written, it says that if you have to go to court but you prove the cattle are yours, then you are going to have to pay for their feed and trucking and all. I don't believe that's right, so, on the second page of my exhibit (Exhibit D), there is an amendment to delete lines 21 and 22 of Section 8, which makes it clear that if you are able to prove that your cattle shouldn't have been seized, then you get them back. However, if the government is able to prove the cattle belong to them, then they would have to take care of the expenses for feed and care.

A lot of people I know are concerned about the way the bill is written, where it says that one of these entities that seizes the livestock notifies the Department within two hours of seizing the livestock. We have added a new section, Section 8.5, that says if you are going to seize someone's livestock, you can go and get a judicial confirmation of that seizure before it is actually done.

Those are the amendments I have. There may be some more from other people. I want to say this was very difficult for the Legislative Counsel Bureau (LCB) to write, because some may feel that this is unconstitutional. However, the way it is written, I believe it is not unconstitutional, and it is going to give our ranchers and livestock people the best protection we can give them at this time.

**Assemblyman Goicoechea:**

Is Section 8.5 (Exhibit D) enabling language to allow a government agency to obtain judicial confirmation? Is it correct that it doesn't require it?

**Assemblyman Carpenter:**

That is right. I would have liked it to have been a lot stronger, but this is the best the LCB felt they could do at the present time.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau:**

[Mr. Busselman read from prepared testimony, Exhibit F, which is incorporated herein.]

**Assemblyman Goicoechea:**

In Section 6, do you have those amendments drafted at this time?

**Doug Busselman:**

No, we don't. We were looking at it from a conceptual standpoint. When we were working on our testimony for the bill, all of the ideas being discussed about amendments were more concepts than black and white. We were going to wait until there was some type of work session or other opportunity to get more involved in a conversation on that.

**O. Q. Chris Johnson, Chairman, Nevada Committee for Full Statehood:**

I'm here to testify in favor of A.B. 407. I agree that it could stand a little more work, but I think cool heads will prevail, and we'll see a good bill come out of this session. I'd like to give my reasons why I think this bill needs to be passed and implemented.

[Mr. Johnson read from prepared testimony, pages 1 through 7 of [Exhibit G](#), which is incorporated herein.]

As I stated before, I'm in favor of getting this bill out. We'll see how it works over the next couple of years, and then we'll be back in here to make changes as necessary.

**Steve Boies, Past President, Nevada Cattlemen's Association, Wells, Nevada:**

I'm a fifth-generation rancher in northeastern Nevada, and I've been in the business for quite a while. I sit in support of A.B. 407 with the amendments that have been discussed here today. I would like to read our resolution, which explains the Cattlemen's Association's position and our policy:

Whereas the Nevada Cattlemen's Association and Nevada Wool Growers Association oppose grazing practices that lead to rangeland degradation and, furthermore, do not support those few who refuse to pay their grazing fees; and whereas the seizing and selling of a person's livestock against their will constitutes a taking of their livelihood, which violates the takings clause of the Fifth Amendment to the *United States Constitution* and Article I, Section 8, subsection 6, of the *Nevada Constitution*; and whereas the Bureau of Land Management is impounding and selling trespass livestock without any judicial review to determine whether the BLM is in compliance with State brand inspection laws; therefore be it resolved that the Nevada Cattlemen's Association, in union with the Nevada Wool Growers Association, urge the BLM, the Nevada Department of Agriculture, or the effective permittee to seek a district court order upon proper proof authorizing a brand inspection before any livestock impoundment or seizure.

[Steve Boies, continued.] We of the Cattlemen's Association are concerned that due process is followed. It is extremely important that this court order happens before the impoundment.

**Jim Connelley, Administrator, Division of Livestock Identification, Nevada Department of Agriculture; State Brand Inspector, State of Nevada:**

[Submitted proposed amendments, [Exhibit H](#).] The Department takes a neutral stance on A.B. 407. However, I commend Mr. Carpenter for addressing this issue and bringing forth this very important issue for our ranching industry. I wish to express some concerns that, perhaps, were not considered in this bill, although Mr. Carpenter did just alleviate a lot of those with his proposed amendments.

The positive effects of the amendments are that the bill will require a court action, which should take place before any impound or seizure action actually happens. I want to stress the "before." On the negative side, there are some portions of this bill, specifically those that address NRS 569, our estray and feral livestock laws, which make it unnecessarily burdensome and expensive for us, as a fee-based division for livestock identification, to address.

On the positive side, addressing this before a court or judicial body would alleviate an awkward situation. In the past, the direction given the Department on how to address each seizure or impound action has been subject to the interpretation of the sitting Attorney General.

The estray and feral livestock portions of this bill do nothing to add any protection for the Nevada livestock producer. The Department has been in discussions with the BLM on this issue for over two years now. Currently, the BLM has stated it will go through a federal magistrate with charges of criminal trespass should it seek to obtain a ruling, before any seizure takes place.

In Section 3, we believe there should be an exemption, as Mr. Carpenter has already addressed, for estray and/or feral livestock and wild horses and burros as defined under the act of 1971. Estray or feral livestock are, by definition in the statute, unbranded, unmarked, owner-unknown, and are already the property of the State under NRS 569.010. We feel it would be time-consuming and counterproductive for the State to have to comply with the provisions of Sections 6 through 10 of this bill for processing estray or feral livestock. All other livestock legitimately grazing on the open ranges are required to be branded per NRS 564.025 and the brand recorded with the Department.

Section 6, subsection 1(a), states the requirement for notice within 2 hours after seizure. I believe Mr. Carpenter has already mentioned we believe this



should happen before the seizure for purposes of consistency with NAC [*Nevada Administrative Code*] 565.230 and the currently-in-place memorandum of understanding with the BLM. I feel that a requirement of at least 24 hours' notice before seizure would be appropriate. It is our policy to have a brand inspector on site during any impound or seizure operation to protect the legitimate grazer. In order to provide this protection, we must be notified in advance of any impending action.

[Jim Connelley, continued.] Following Section 6, subsection 1(b), we suggest an additional subsection 7, which would require, in the notice of seized livestock outlined in the bill, a specific place or location where the seized livestock could be viewed by any person who may wish to claim ownership or may be concerned that his livestock may have been inadvertently seized.

Section 12 seeks to amend NRS 569.020, the estray law. As provided in NRS 569.010, estray livestock are the property of the State. Again, by definition, they are unbranded, unmarked, and running at large. However, from time to time—and this happened a couple of times last year—county, city, town, or township officers and/or animal control officers are called upon to remove estray or feral livestock from their jurisdictions for the safety of their citizens. The original language of NRS 569.020 is pertinent and necessary for the protection of the public and the protection of any livestock owner whose livestock may be impounded by these officials as stray or estray.

Sections 13 and 14 attempt to amend NRS 569.070 and NRS 569.120, which address the method of processing and disposal of estray livestock, by requiring that Sections 6 through 10, inclusive, of this bill be complied with. This is unnecessarily burdensome on the Department and not required for the intent of this bill, since the NRS being suggested for amendment again addresses estray or feral livestock, which are already the property of the State by virtue of the definition in NRS 569.010.

Those are our concerns with the bill. We are in support of the thrust of this bill, and we commend Mr. Carpenter for addressing this issue.

**Assemblyman Goicoechea:**

Regarding the 24-hour notice to a district attorney or clerk of the court, just exactly what do you anticipate that will bring?

**Jim Connelley:**

The first thing that would happen would be follow-up to make sure the Division of Livestock Identification was aware and would have an officer on site when the impound occurred. This is for the protection of legitimate grazers. Many of

these ranges are grazed in common, and we would not want a person who is legitimately out there to have his livestock impounded and shipped off. I think the court needs to address that before it happens, and we need to know about it.

**Assemblyman Goicoechea:**

I wanted to make sure that Section 1 was not being confused with Assemblyman Carpenter's proposed Section 8.5. There's a big difference. Section 1 says the federal agency will notify the district attorney and the clerk of the court, while Section 8.5 actually allows for obtaining judicial confirmation ahead of the seizure. We'd love to have that language in there, but I believe Assemblyman Carpenter and the Legal Division don't think we can. There's no way we can roll Section 8.5 into Section 6, is there, Assemblyman Carpenter?

**Assemblyman Carpenter:**

What we need to do is have the amendments Jim is suggesting and see what the Legislative Counsel Bureau can do with them. Jim, if you can leave your amendments ([Exhibit H](#)), we'll work with them as far as we can to make sure that what we're doing here does not disrupt any of your current practices.

**Jim Connelley:**

I have left some amendments with the clerk and would be happy to work with you in a work session. We believe that all of what is in your bill, as far as the judicial activities and confirmation, should happen before any seizure takes place. Then, should a seizure be authorized by a court, the Division of Livestock Identification would be given at least 24 hours' notice so we can have people onsite when that seizure takes place.

**Thomas Jefferson, Member, Nevada Live Stock Association; and Executive Member At-Large, Independent American Party of Nevada:**

I put myself down as neutral because I had not yet seen A.B. 407. The bill needs some amending, especially in providing for judicial oversight. That's the thing that concerns me most of all. I'm very interested in protecting the historical land use rights of legitimate businesses in this state. I would like to see judicial oversight become a real part of your bill.

**David Schumann, Vice Chairman, Nevada Committee for Full Statehood:**

I am here to object to A.B. 407. I've given you some handouts ([Exhibit I](#)). I don't think it's commonly known that Congress passed a law called the Federal Land Policy and Management Act (FLPMA) of 1976 [43 U.S.C. §§ 1701-1782]. That's the law federal agencies are operating under out here.

[David Schumann, continued.] In the middle of [page 5 of [Exhibit I](#)], it says, "(c) Contracts for enforcement of federal laws and regulations by local law enforcement officials; procedure applicable; contract requirements and implementation. When the Secretary determines that assistance is necessary in enforcing federal laws and regulations"—and certainly seizing somebody's property is a law enforcement operation—"relating to the public lands or their resources, he shall"—it doesn't say he can; it says he "shall"—"offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view"—the view is the point of this whole thing—"of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations."

They've been doing this for so many years that finally, a few Nevada ranchers got fed up. One rancher went to the United States Court of Federal Claims. Judge Loren Smith, in January 2003, ruled that:

Even looking past the factual disputes that exist surrounding the cancellation of the grazing permits, the court is not of the opinion that the lack of a grazing permit that permits access to federal lands can eliminate plaintiff's vested water rights and ditch rights that predate the creation of the permit system.

Judge Smith came here in May 2004 and took a month's testimony on the value of that taking. Summations were held in October, and he has retired to write his decision. It will be millions of dollars. The judge indicated he was not pleased that these federal agencies were running this little empire of theirs outside of the laws of the United States.

Remember, the Code of Federal Regulations (CFR) does not trump the laws of Nevada. They are the rules that the executive departments and agencies of the federal government write to enforce the statute. This [beginning on page 3 of [Exhibit I](#)] is a copy of the statute; this is what Congress wrote. The Code of Federal Regulations is very different.

On a personal note, I went to protest at the Immigration and Naturalization Service (INS) about immigration. Several men came up and said they would arrest me if I didn't leave. I said, "Go ahead and make me a rich man, and you'd better call the local federal attorney here because I have a right, under the *Constitution*, to appeal to my government for redress of grievances." One man hauled out his CFRs, and there it said that I may not go to my government and ask for redress of grievances. He talked to some people, and I kept marching in front of the INS. The CFRs these guys have been conning these cattlemen with

for years are blatantly... Get a copy from them and compare them to this ([Exhibit I](#)).

[David Schumann, continued.] The Federal Land Policy and Management Act will tell you, and in *Fort Leavenworth Railroad Company v. Lowe* [114 U.S. 525 (1885)] and *Pollard v. Hagen* [44 U.S. 212 (1845)] and on numerous other occasions, the Supreme Court has said, "The United States has no municipal authority within the boundaries of a state." Municipal authority means police power. These federal agents with their badges and guns think they are a law unto themselves. Here is a picture ([Exhibit J](#)) of C. J. Ross pointing a gun at one of our members, who was doing nothing. Mr. Ross has now fled the state because we filed charges against him in Washoe County.

You gentlemen can rein them in. If you simply put, in Section 6 of the bill at the top of page 4, "a federal, state, or local government agency that desires to seize any livestock shall, before such seizure," go through all these steps, "and that a hearing shall be held, at which the owner of the cattle shall be heard by the judge before he makes his decision," the federal government can't do a thing to stop that, because you can't find anything in the *Constitution* that gives them that power. In fact, this law says that the local governments have full control over local land uses and zoning and such. Please do amend that.

**Ramona Morrison, Director, Nevada Live Stock Association:**

[Ms. Morrison read prepared testimony, [Exhibit J](#), which is incorporated herein.]

I want to reiterate that this is not a game for those of us who are testifying here today. These are people's lives and livelihoods. We are very concerned with this legislation as it is currently written. I know this Committee has our best interests in mind, and I appreciate all your efforts—especially Mr. Carpenter's—but I want to urge your care in this legislation, specifically that we do not give the federal government a wish list and an open door to confiscate more cattle in this state.

**Assemblyman Goicoechea:**

Could you pick one or two lines in the bill that you really disagree with? I'm hearing your testimony, but we need to fix the bill.

**Ramona Morrison:**

The point of my long testimony is that it is unfortunate when somebody's cattle are stolen first, and then they have to go to court later to deal with it. We have 14 years of experience in that. That is a terrible thing to do to people. That needs to be fixed. I think this bill should be one line that states that everyone is treated equally and that they must produce a court order in order to confiscate

cattle. It is no different for a bank or for the General Motors Acceptance Corporation (GMAC) to go red-tag a car.

**Cliven D. Bundy, Private Citizen and Rancher, Mesquite, Nevada:**

[Submitted prepared testimony, [Exhibit K](#) and editorial, [Exhibit L](#).] I don't like any of [A.B. 407](#). I don't think the state of Nevada needs anything like this. I think we have some good laws; let's stick with them.

**Don Alt, Private Citizen and Rancher, Silver Springs, Nevada:**

I'm a rancher in Lyon County. At this time, I'm in federal court with the Bureau of Land Management for leasing my cattle to another man who put them on the range. They're telling me that I can't contract anymore, which is completely against all of my rights as a citizen of this country. They're trying to enforce laws against him through me.

This bill should either be thrown out, or if it is passed, it has to be clear that a court of the proper jurisdiction, a state court, is the only one that can rule over property, and cattle are property. If that isn't in the bill, then it's completely against all rules of law. It makes the state liable, also.

I'm 66 years old. If they take my cattle, it's all over for me. I'll defend them with my life. It's boiling down to that. It's a shame that we have to go through the process we're going through now, but before they take my cattle, I have to be able to go to court and have a jury tell me I'm wrong. Then they can take the cattle, because the cattle were breaking the law. However, the way it has been going is completely wrong.

**Chairman Claborn:**

What we're trying to do here today is get testimony just like yours, where your cattle have been confiscated and what we might do about it. That's what Mr. Carpenter needs to know. All of you state that you will work with Mr. Carpenter to make this a better bill, and he is willing to work with you.

**David Holmgren, Vice Chairman, Nevada Live Stock Association:**

[Submitted prepared statement and supporting documents, [Exhibit M](#).] I'd like to give my regards to Mr. Carpenter for bringing this issue up and taking on this bill. I've been involved in this impoundment situation for five or six years and have firsthand knowledge. I also had an opportunity that I don't think anyone else in the state of Nevada had or ever will have. Mr. Bob Abbey had his lawyer with him telling him, "Don't talk to these people. I do the talking." Subject matter jurisdiction is very interesting, and that's what [A.B. 407](#) is all about. I told that lawyer that the federal government cannot seek subject matter jurisdiction of those cattle, impound them, haul them away, and ask a brand

inspector to come forth and sign his name on the documents. I said that they could not be doing this. The next day, everything was all set up for another day's gather, but the federal government left in a cloud of dust. Something must have happened.

[David Holmgren, continued.] I commend Mr. Carpenter for bringing the bill forward. We just saw the draft a few days ago, and I agree with Ramona Morrison that the draft is very dangerous. It doesn't address the issue of protecting the property owner. It's trying to address the agency's ability to make this whole thing happen through the hoops. I am against the LCB's draft. The first time I saw Mr. Carpenter's amendments was when we walked in today.

I am hoping, Mr. Carpenter, that if the Committee wants to move this bill forward in any form, the Nevada Live Stock Association is included in the discussion about what's going to happen with this. Many of us have been there, firsthand, right in front of the roaring tiger. This is wrong. You have to have a state district court order to take the livestock and move them to sale. My handout ([Exhibit M](#)) gives a rundown. There is one important point in this whole thing, and that is what constitutes lawful possession and what constitutes legal possession. What is legal possession? Even a bank, which has a perfected mortgage and lien on cattle from the owner, with his signature, never takes lawful possession of the property because it creates a multiplicity of suits. It's taken them 100 years to figure it out, but Americans have learned that if the bank comes in, moves the goods, and damages them in any way, the owner of the goods has any and all recourse of law to come against even the bank, whom he has perfected a mortgage with, and sue that bank for damaging the goods before they can be sold properly at their highest and best quality, and then pay the lien or mortgage. So how can the federal government believe they can ever take legal possession of cattle and then take lawful possession, which is never given to anyone except by the owner's signature, because he is the brand owner? He has the only key to the lock. The brand is a lock. It is property itself. It's like any property you can own. It came before brand law.

**Chairman Claborn:**

Mr. Holmgren, is that not being addressed here today?

**David Holmgren:**

I don't believe so. The LCB has turned this thing upside down, making it look like everybody's getting due process.

**Chairman Claborn:**

Let's talk about the bill.

**David Holmgren:**

The bill is what I'm talking about. Just read the bill, and you will begin to see where the lock is unlocked without due process for the owner of the brand and the cattle. You will see it clearly. Only one man can unlock that lock, and that is the brand owner himself, even if there is a perfected mortgage and lien that he has signed.

**Assemblyman Atkinson:**

You keep mentioning the LCB. What do you mean by that?

**David Holmgren:**

The way they have written the bill turns the whole concept of the protection of brands, and the cattle that are branded with them, upside down. You see, if the brand is prima facie evidence, I present the brand to the brand inspector. If he sees it anywhere, no matter where it is in the state of Nevada, he's bound to me because I'm the guy with the recorded brand. It was property of mine before I recorded it. I created the property. I drew it, submitted it to the office, and after they verified that nobody else had that brand, they accepted it. When the brand is presented to the brand inspector, he is bound by that lock. He has to go find the owner with the key.

If I present my neighbor's cow to the brand inspector, it doesn't have my brand. If I say, "Gee, it has the bug on it," the inspector says, "No, David, it doesn't have the bug; it's got the 40 Bar. What are you doing presenting me with a 40 Bar cow?" The brand inspector calls up the owner of the 40 Bar brand and says, "I have a 40 Bar cow up here." It is lock and key. It can't be unlocked without the owner's signature, so that brand inspector can't take that 40 Bar cow, sign the brand certificate, and then let me sign it, and then I haul it away. However, this is what's been happening with the BLM. They signed the certificate, the brand inspector signed it, and the BLM hauled the cattle away.

**Assemblyman Atkinson:**

I get your point. I just didn't want you to keep blaming the LCB. The LCB writes bills based on what the legislators give them. If the bill comes back and the legislator does not like it, it is that legislator's responsibility to notify LCB.

**Assemblywoman Kirkpatrick:**

So, Section 3 is really where you have your main problem with the bill? I think you guys are all on the same page; it's just a matter of how we get there.

**David Holmgren:**

If you look at Section 3, lines 22 and 23, it says, "claiming lawful possession of and applying for inspection of the animals until the right to legal possession of the livestock has been determined."

**Assemblywoman Kirkpatrick:**

You're suggesting we need to put something in there identifying the brands that would identify it to the inspector?

**David Holmgren:**

You have to make sure that the State agencies, including brand inspectors and everyone else, understand what lawful possession means and what legal possession means. In the example of the bank, if that bank shows it has a right to legal possession, the rancher can never lawfully possess the cattle.

**Assemblywoman Kirkpatrick:**

So in my opinion, that section of the bill has been addressed. Is there any other section of the bill that, with Mr. Carpenter's amendments, really bothers you?

**David Holmgren:**

I'm still not sure that the problem between lawful and legal possession is addressed on those two lines, because the BLM will then move to take the cattle, move them themselves, and sell them. This is where the problem starts. Can I come back and sue the BLM if my cow doesn't bring \$1,000 if I believe she's worth that much?

**Assemblywoman Kirkpatrick:**

I'm trying to help you, but we can't change the way it's written right this second. I'm trying to figure out which parts of the bill you actually have true problems with so we can address them. If Section 3 is your only real concern in the entire bill, then I will take that into consideration as we move further. We can't change the way it's written today, but if that's your concern, then we can move forward.

**Chairman Claborn:**

Mr. Holmgren, why don't you submit an amendment to this bill?

**David Holmgren:**

I have a problem with the word "seizure," with the term "judicial confirmation," and with the two words "court order." The court order needs to come from state district court. If the federal government wants to believe they have standing to do all these things in state district court, that's really a problem.



**Chairman Claborn:**

We would like to have that amendment from you.

**David Holmgren:**

I'll bring one forward.

**Ben Colvin, Private Citizen and Rancher, Goldfield, Nevada; and Member, Nevada Live Stock Association:**

I admire the work that has been put into this, but I don't like any part of A.B. 407. The main reason is that any government agency has to get a court order as due process before it makes a move. They have to get the court order, and then they can move on. That's what the whole problem has been. I can cite other things in here in the Division of Livestock Identification that were completely illegal, but I didn't get a chance to explain it.

**Jackie Holmgren, Private Citizen and Rancher, Mineral County, Nevada; and Member, Nevada Live Stock Association:**

[Submitted document packet, [Exhibit N](#) and NLSA newsletter, [Exhibit O](#).] I'm representing my family here today. I appreciate the amendments from Mr. Carpenter. You have a letter from the Mineral County Sheriff ([Exhibit N](#)), and this was the only reason our property was not taken.

As to the bill, we just got the amendments. We have actually already submitted some amendments to Mr. Carpenter, but we, the Nevada Live Stock Association (NLSA), would like to submit some more amendments. However, I would like everyone here to know that we already have due process laws in the state of Nevada. It seems we have to bring forward a bill to bring out due process. I don't exactly understand why that is. If that is the only method, we would like to be a party to that. However, why can't we use our due process statutes under the *Nevada Constitution* that are already available to us?

I would like to mention one thing in the bill. The beginning of Section 3 mentions NRS Chapter 565, which addresses the inspection of brands. It has to be the owner or the owner's agent who signs any certificate. That has a big effect on the rest of the language in there and on the amendments.

The second part of that handout ([Exhibit N](#)) is the BLM's challenge to Nevada jurisdiction, which is just a bit more on why we do have the ability to get a court order in the state of Nevada. My main issue with this bill is that everything needs to be implemented before, not after, seizure. Also, we have to have due process in the form of a court order from a state court, because this property is the personal property of the citizens of Nevada.

**Assemblyman Grady:**

Can you tell us the makeup of the Nevada Live Stock Association? Is this a 501(c)(3) corporation?

**Jackie Holmgren:**

No, the Nevada Live Stock Association is just a group of individuals who donate their time, effort, and energy to protecting the livestock industry in Nevada. In fact, one of the reasons we formed was this very concern, the seizure of livestock. The BLM announced it was going to seize 3,000 more head of cattle in Nevada, and there was nothing anybody was going to be able to do about it. At that time, our Division of Livestock Identification and others, through the MOU [memorandum of understanding], were complacent.

We had many discussions with the Division of Livestock Identification on this. We had to act. We formed, we acted, and we said they were not going to take one more cow from Nevada soil under these kinds of procedures. That's how the Nevada Live Stock Association formed, and we have had great success so far with our membership.

**Chairman Claborn:**

I've been on the Committee on Natural Resources, Agriculture, and Mining for the last four sessions, and I've heard about this for those four sessions. Maybe this time we can put a handle on this.

**Ray Williams, Member, Lander County Public Lands Advisory Commission:**

Our board met last night and talked about this very bill for quite some time. Many of the members had already received calls and have been in communication with a lot of the ranching community. I'm not going to go into a lot of detail, because I think everybody's covered just about everything I wanted to say. Our legal people looked at NRS 108.540 and 565.090, which are already laws on the books that can be used in the seizure of cattle. To review A.B. 407, when we first looked at Section 3, it looked like a really good bill. But when you look at Sections 6 through 10, it goes downhill. I agree with the Farm Bureau and the Department of Agriculture's comments that this needs to go to court first. The agencies need to come in and present their damages, because there is always a large dollar amount associated with these cases. The judge needs to look at that and say, "Yes, this is a valid case," and then they can go out and take the cattle. If not, the guy can take his cattle and go home, and he's not out anything other than maybe his attorney fee.

A lot of people think a bad bill is better than no bill at all. I believe that if you have a bad bill, you throw it in the garbage, come back next session, and try something different. I don't believe you can pass a bill and say, "Let's try it for

a couple years," and then come back and say, "Let's fix it." I think you need to fix the bill in these next couple of meetings. We hadn't seen the amendments before we came today, and I think they're a great step forward. However, if you can't get the backing to say, "Let's go to court before we go seize the cattle," scrap the bill.

**Chairman Claborn:**

You might get lucky this time, because we've heard some really good testimony today.

**Helen Chenoweth-Hage, Chairman, Nevada Live Stock Association:**

This is a very emotional issue because many people sitting here have been involved in some very desperate situations. I first want to say how much I appreciate Assemblyman Carpenter. I've known him since the early 1970s, and my admiration for him is great. I never thought I would be in a position to even vaguely oppose anything he would present. However, I find myself in that unfortunate situation for this reason, and I think this is why you are hearing the comments about the Legislative Counsel Bureau. Having been chairman of a committee in the U.S. Congress, I can understand that you are very protective of your staff, but the fact is, we all know Mr. Carpenter and we know what he wants. We also know that what came out in the form of a bill at the eleventh hour has stirred the pot in a way he didn't anticipate and didn't want. That's why you're hearing these comments, and the comment that this bill was patterned after a statute from Arizona.

**Chairman Claborn:**

Mr. Carpenter is the only one who knows; let's put it that way.

**Helen Chenoweth-Hage:**

That's right, but I've been there, sir. I've had bills presented to me at the eleventh hour that weren't what I wanted. I didn't like it. I just wanted to set the record straight. I'm sure the people who testified don't want to pick on anybody, but Mr. Carpenter has always been there for us.

The fact is that the Arizona statute on cattle seizures is very similar to what has come out in these bills. I have clients in Arizona, and you don't want what Arizona has. We don't want to adulterate the well-known Nevada water law and Nevada property law with what has happened in Arizona, because it has been very bad.

Let me be very specific about what we can do to help here. When we look at Section 3, line 15, we see that livestock can be seized by any federal, state, or local government. The word "federal" in there is a tacit implication that this

Body is giving authority to the federal government to seize cattle, which they do not have right now.

[Helen Chenoweth-Hage, continued.] When I was in Congress, I held three hearings on whether the federal government had any law enforcement ability to do this. Every one of those three hearings showed that the federal government does not have law enforcement authority. In fact, FLPMA clearly states that all police powers have been retained to the states, even on the National Resource Lands. It was so hard for members of this Body and for me to understand that an agency of the federal government would move beyond their statutory authority, but that has happened.

You're hearing these stories because they're awful. It has happened far more in Nevada than in Arizona. In Arizona, there has only been one major seizure, and that was of cattle owned by a man who was in jail, Mr. Luther W. Klump. Arizona's statute has never been challenged as to whether it lacked due process.

I agree with the testimony from the Farm Bureau and Mr. Connelley. They are absolutely right. You also heard it from Ben Colvin. I could cite you *Nevada Revised Statutes* where due process is already in place here in the state of Nevada. We just need to have it work, and to have our local and state governments realize that we have a rogue federal government. Only you and our sheriffs can protect us against the tyranny that has gone on. Two little Indian women had a command and control center, but federal agents took their valuable horses—breeding stock that came all the way from the Will James stock and that sell for tens of thousands of dollars in Texas and California—and look what they did with them.

We have heard that this law has to comply with federal law. The fact is that state law must comply with federal law only in the delegated powers. The supremacy clause [*United States Constitution*, Article VI, Paragraph 2] only applies in the case of those powers that were delegated to the federal government in the *Constitution*. Law enforcement is not one of those powers. In fact, twice in the 1990s, the United States Supreme Court dealt with this issue. Rarely does the Court take up the same subject twice in one decade, but they did because of these things that are happening. We have a federal government who believes they are law enforcement agents. Just because they go to a school in Georgia, does not make them state law enforcement agents.

I would like you to check in FLPMA 1701(g)(6), because clearly, they do not have the authority to seize cattle. That is why, in Section 3, line 15, we're very concerned with the word "federal." Now, with the words "state or local

government," it means any agency of state or local government could come out, seize our cattle, and then involve themselves in a court procedure. The local library district could come and seize our cattle under this law. It is overreaching and overly broad.

[Helen Chenoweth-Hage, continued.] I would like to also say that what the federal government is now doing is ticketing and trying to get us before a federal magistrate. The problem is that under this procedure, if the federal government seizes cattle, then the federal government becomes an indispensable party and people will be brought into federal district court, where federal district court cannot hear a case on property for more than \$10,000. The only thing the federal district court would hear was whether the rules and regulations of federal government were properly carried out. We always lose. The statistic from the federal district is that the federal government wins 94 percent of the time. That's not where we want to be, and that's why we need to be in state court. States define tax and protect property.

There has been some question about the issue of seizure. If you look it up, a seizure may not occur by any agency unless it is by a lawful officer after due process, after a court hearing. That's why we're so upset, and that's why we came so far to offer this testimony.

**Janine Hansen, President, Nevada Eagle Forum:**

I'll be very brief, but this property issue is one that is very important. I've been involved not only at the state level, but also at the national level with our national Eagle Forum. I just have one statement I'd like to read from former U.S. Supreme Court Justice George Sutherland:

It is not the right of property which is protected, but the right to property. Property, per se, has no rights, but the individual, the man, has three great rights, equally sacred: the right to his life, the right to his liberty, and the right to his property. The three rights are so bound together as to be essentially one right. To give a man his life but deny him his liberty is to take from him all that makes life worth living. To give him liberty but to take from him the property, which is the fruit and badge of his liberty, is to still leave him as a slave.

These issues are as fundamental as any you will ever deal with. The right to property is one of our inalienable rights, which you are charged, not only in the *U.S. Constitution*, but in our own *Nevada Constitution*, with protecting. We encourage you to do that in the best manner possible.

**Wayne Hage, Private Citizen and Rancher, Nye County, Nevada:**

[Submitted notes for testimony, [Exhibit P](#).] I'm the litigant in *Hage v. United States* [35 Cl. Ct 147 (1996)]. We never lost a round in that case. I've written most of the paper, most of the pleadings in that case, or at least edited it. I also wrote the book it was based on. I won't bother you with that.

I've listened to this testimony today. I read the first copy of this bill. I was absolutely shocked. The problem we're dealing with was not created by the lack of new legislation. The problem was created by the long-standing policy of this state to allow the federal government to usurp the state's lawful jurisdiction. That's always been the problem. None of these cattle seizures would have taken place if the state had exercised its jurisdiction—that's the right to exercise civil and criminal process.

Here's what I would suggest relative to A.B. 407. If A.B. 407 is going to say anything, A.B. 407 should say just this: no property shall be seized by any person or individual until all the requirements of procedural due process are fully satisfied. That's all A.B. 407 needs to say, and I think that sums up everything that has been said in this room here today.

**Chairman Claborn:**

Thank you. That sounds pretty good to me.

**Assemblyman Marvel:**

I recall many years ago we had a hearing downstairs when your case first came up, and the State abdicated this and its power to interfere. They just refused to step in and help you out. Is that right?

**Wayne Hage:**

You're absolutely right, because there would have been no seizure. There would have been no problem. There would have been no *Hage v. United States*. Now, *Hage v. U.S.* has been one of the greatest things to ever happen to the West, but that never would have occurred if this state had exercised its lawful jurisdiction, because the federal government does not have the authority they usurped in practice there.

[Chairman Claborn submitted a letter ([Exhibit Q](#)) that he had received from Robert Abbey, Nevada State Director of the U.S. Bureau of Land Management regarding A.B. 407. This exhibit was never addressed during the meeting.]

**Chairman Claborn:**

With that, I'm going to close the hearing on A.B. 407. Next, we're going to begin the work session. I would like to hear the report from the Subcommittee on A.B. 65. Mr. Hogan was the Chairman of that Subcommittee.

**Assembly Bill 65: Requires State Environmental Commission to adopt regulations prohibiting disposal of electronic waste in landfills and establishing program for recycling of such waste. (BDR 40-489)**

**Assemblyman Hogan:**

Your Subcommittee on A.B. 65 met on March 30, April 4, and April 5. We have come up with a final report for the full Committee, with one change of a word. I believe you have copies of our report ([Exhibit R](#)) and our proposed amendment. With the final change at our last meeting yesterday, we recommend do pass A.B. 65 as amended.

**Chairman Claborn:**

Is there any discussion on the amendments?

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO  
PASS ASSEMBLY BILL 65.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Ohrenschall and Mrs. Smith were not present for the vote.)

**Chairman Claborn:**

Now we're going to go into a work session on A.B. 379, Mr. Atkinson's bill. I think this amendment [on page 9 of the Work Session Document, [Exhibit S](#)] answers the concerns of everyone on the Committee and all involved. Mr. [Chuck] Arkell and Ms. [Patty] Wagner jointly worked to put the amendment together. I have to commend them for a very nice job. This bill is needed.

**Assembly Bill 379: Provides for regulation of persons who submit certain applications to Department of Wildlife on behalf of another for consideration. (BDR 45-1006)**

**Amber Joiner, Committee Policy Analyst:**

In front of you are the arguments in favor and in opposition, as was heard on April 4 ([Exhibit S](#)). Mr. Atkinson provided me with this amendment (page 9 of [Exhibit S](#)) yesterday. There were some provisions added since the last meeting. The main additions are:

- Under page 3, 1(a), you'll see that the power of attorney needs to be for the sole purpose of authorizing someone to apply for a permit for a specific season.
- Under 1(b), you'll see that would expire on February 28.
- Under number 2, every power of attorney or other instrument in writing containing the power to apply for a license, tag, or permit for specific seasons, pursuant to this Chapter, as an agent or attorney for another shall be acknowledged and include a jurat as defined in NRS 240. That is, basically, just a notary. It says, "...a declaration by a notarial officer that the signer of the document signed it in the presence of that officer and swore it to be true." It says you need a notarized power of attorney.
- Number 3 says that any license, tag, or permit which is obtained by the use of a power of attorney or other instrument in writing which does not comply with this statute is void.

Those amendments address some of the concerns in testimony.

**Assemblyman Hogan:**

I don't want to see us put into statute a word that virtually no one knows. Is there a way to replace the word "jurat" with something like "has been notarized"? There might be something that "jurat" extends to that "notary" doesn't, but it is such a problem. None of us have any idea what that means.

**Assemblywoman Ohrenschall:**

Sure we do. It's defined.

**Assemblyman Hogan:**

I think if there's any way of avoiding it, that would be good.

**Chairman Claborn:**

I don't have a problem with it.

**Amber Joiner:**

I will definitely relay that to the Legal Division, and they can choose the best language for that.



**Assemblywoman Ohrenschall:**

I would be opposed to changing it. "Jurat" has a definite, fixed meaning. It is defined, and has been known to notaries for generations and generations, as well as to the entire English common law. I don't see any reason to change it.

**Assemblyman Atkinson:**

It is my bill, and I would have to agree with Ms. Ohrenschall. If we go through every bill in this building and change words to put them in layman's terms, we'd be here forever. When I don't know a term, I go to the dictionary.

I would just like to make a statement on the bill. I agree with Chairman Claborn. The Nevada Department of Wildlife went over the bill in detail with Mr. Arkell, who just had a minor issue, and that has been worked out. We asked the Chairman to bring it back today for work session. There are no other problems with the bill.

ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 379.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Smith was not present for the vote.)

**Chairman Claborn:**

Everyone has one of these ([Exhibit T](#)). You need to read this so you'll understand what I've been trying to do in here. With that, we are adjourned [at 3:53 p.m.].

RESPECTFULLY SUBMITTED:

---

Mary Garcia  
Committee Attaché

APPROVED BY:

---

Assemblyman Jerry D. Claborn, Chairman

DATE: \_\_\_\_\_

## EXHIBITS

**Committee Name:** Committee on Natural Resources, Agriculture, and Mining

**Date:** April 6, 2005

**Time of Meeting:** 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
AB 407	B	Assemblyman John Carpenter	Prepared statement
AB 407	C	Assemblyman John Carpenter	Proclamation
AB 407	D	Assemblyman John Carpenter	Proposed amendment
AB 407	E	Raymond Yowell / Private Citizen and Rancher	Prepared testimony and information packet
AB 407	F	Doug Busselman / Nevada Farm Bureau	Prepared testimony
AB 407	G	O. Q. Chris Johnson / NCFS	Prepared testimony and letters
AB 407	H	Jim Connelley / NV Div. of Livestock Identification	Proposed amendment
AB 407	I	David Schumann / NCFS	Legal information
AB 407	J	Ramona Morrison / NLSA	Prepared testimony
AB 407	K	Cliven Bundy / Private Citizen and Rancher	Prepared testimony
AB 407	L	Cliven Bundy / Private Citizen and Rancher	Editorial
AB 407	M	David Holmgren / NLSA	Prepared testimony and information packet
AB 407	N	Jackie Holmgren / NLSA	Prepared testimony and information packet
AB 407	O	Jackie Holmgren / NLSA	NLSA newsletter
AB 407	P	Wayne Hage / Private Citizen and Rancher	Notes for testimony
AB 407	Q	Assemblyman Jerry Claborn	Letter from Bob Abbey, BLM
AB 65	R	Assemblyman Joseph Hogan	Subcommittee Report
	S	Amber Joiner / LCB	Work Session Document
	T	Assemblyman Jerry Claborn	News article