

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

**Seventy-Fifth Session
April 27, 2009**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Jerry D. Claborn at 1:32 p.m. on Monday, April 27, 2009, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jerry D. Claborn, Chair
Assemblyman Joseph M. Hogan, Vice Chair
Assemblyman Paul Aizley
Assemblyman David P. Bobzien
Assemblyman John C. Carpenter
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Don Gustavson
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblyman Harvey J. Munford (excused)

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Rural Nevada Senatorial District

STAFF MEMBERS PRESENT:

J. Randall Stephenson, Committee Counsel
Jennifer Ruedy, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Ali Chaney, Conservation Chair, Lahontan Audubon Society, Reno, Nevada
Tim Crowley, President, Nevada Mining Association, Reno, Nevada
Kyle Davis, representing the Nevada Conservation League, Las Vegas, Nevada
Doug Driesner, Director, Mining Services, Division of Minerals, Commission on Mineral Resources
Laura Richards, Chief, Division of Wildlife Diversity, Department of Wildlife
Michael Pagni, representing the Steamboat Canal and Irrigation Company and the Last Chance Irrigation Company, Reno, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada
Frank Godecke, Private Citizen, Minden, Nevada

Chair Claborn:

[Roll was called.] I am opening the hearing on Senate Bill 108 (1st Reprint). Senator Rhoads will present the bill.

Senate Bill 108 (1st Reprint): Revises provisions governing the placement of markers on lode mining claims. (BDR 46-498)

Senator Dean A. Rhoads, Rural Nevada Senatorial District:

This bill concerns mine markers on lode mining claims. Most of the original markers have been replaced with durable hollow plastic pipe. [Read from prepared testimony submitted in writing ([Exhibit C](#)).] The claim holders have been given until November 2011 to replace the mine markers.

Chair Claborn:

Are there any questions?

Assemblyman Segerblom:

Are these federal mining claims?

Senator Rhoads:

Yes, they are.

Assemblyman Segerblom:

Can the state regulate the corner markers on these mining claims?

Senator Rhoads:

Yes, it can. The Lahontan Audubon Society does have a point and has recognized the problem. Insects and little birds crawl in through the holes where they become entrapped and die.

Assemblyman Goicoechea:

To further answer Mr. Segerblom's question, those mining claims are recorded in each county.

Chair Claborn:

We have heard about this problem many times before. Originally most of the mine markers were wooden stakes which have eventually deteriorated. The claim holders were requested to replace those stakes with durable perforated plastic pipe, but the new stakes have resulted in many animals and birds being killed. It is a worthwhile bill.

Senator Rhoads:

The Nevada Mining Association needs to be thanked for cooperating with the Audubon Society and for working on this legislation.

Chair Claborn:

Are there other witnesses in support of this bill who wish to testify?

Ali Chaney, Conservation Chair, Lahontan Audubon Society, Reno, Nevada:

[Read from prepared testimony submitted in writing ([Exhibit D](#)), and submitted a packet of information on the history and the number of bird mortalities caused by the hollow plastic claim markers ([Exhibit E](#)).]

Chair Claborn:

The pipe caps deteriorate and fall off giving the animals and birds entrance to the hollow interior. How do you plan on closing off this ingress? Are you suggesting the hollow pipes should be filled with concrete, or wooden stakes should be used in their place?

Ali Chaney:

This bill will require the knocking down of all of the hollow plastic pipes currently serving as mine markers. Those people holding active mining claims will have to replace the plastic pipe markers with a wooden stake, or a metal post that is securely capped. The caps stay on the metal posts.

Chair Claborn:

I noticed there is no penalty for nonremoval.

Ali Chaney:

That is correct. There is no penalty included in the bill.

Chair Claborn:

Could this create problems for claim holders going back to their mining claims to do assessment work? They may not be able to find their own claims.

Ali Chaney:

After discussing this with the Nevada Mining Association and getting their feedback, they suggested we leave the knocked-down posts on site near the location where they were pulled. This will maintain the historical location on the ground. The Audubon Society plans on doing that. If the mine owners need to repinpoint the location of the mining claims in the future, surveys may be necessary. Does that answer your question?

Chair Claborn:

Yes, it does. I am concerned that it may cost the mine claim holders a lot of money to resurvey for the claim location. Something needs to be driven into the ground where the hollow plastic pipes were. Then, mine claim holders will know the location of their property so they can do their annual assessment work.

Ali Chaney:

The bill has a two-year period for replacement of the plastic mine stakes with ones that are wooden or metal. After that time, if any of the plastic pipe mine markers remain, the Audubon Society will be able to knock them over. The Nevada Mining Association members and some of the larger mining companies need a couple of years to appropriately budget for the cost of the new claim markers.

Chair Claborn:

Is it possible to notify every claim holder that they have two years to replace the existing claim markers? A lot of people who have mining claims here do not live in this state.

Ali Chaney:

During our talks with the Nevada Mining Association, we agreed the Audubon Society needs to provide a method to notify claimants of the change. One of the options considered is to place notices in county recorders' offices. We want to make sure that we get the word out as soon as possible to prevent more birds from dying.

Chair Claborn:

As long as the claimants are notified in advance, failure to correct the problem in a timely manner is their responsibility. We just need to make sure that everyone is on the same page, so two years from now we will not have the request for another bill to sue the mining companies for requesting this bill.

Ali Chaney:

The Audubon Society wants to make this change a very transparent process. We also took into consideration that there is a large amount of abandoned mining claims that people do not take care of. We need to communicate this change to the relatively smaller number of active mining claim holders.

Chair Claborn:

Are there any questions?

Assemblyman Carpenter:

It seems to me the Audubon Society needs to do something other than just knocking down the mining claim stakes. Many of them are on smaller claims belonging to ordinary citizens, not to the large mining companies. We need to mark the claims in some way, so the claim boundaries are still identifiable.

Assemblyman Segerblom:

Is there something in the law that says unless a claim is marked, the claim itself is relinquished?

Assemblyman Goicoechea:

A claim holder is allowed to have posts missing as long as the claim has been filed and recorded. The stakes may have fallen down on their own, so placing the knocked down stake by the spot where it was pulled down will still provide a marker for the mining claim. As long as that claim is filed and recorded, the claim holder has a valid mining claim.

Chair Claborn:

If the corner posts are removed it would be difficult for a mine claim owner to distinguish the mining claim parameters.

Assemblyman Gustavson:

I agree with you and Mr. Carpenter. If the posts are knocked down and not replaced, someone may come along who is unaware of the law and remove them. Is there some way we can amend the bill to say the posts are not to be knocked down until a replacement post has been provided? That would eliminate the need to resurvey the claim, and also the problem some claim holders might have in locating their mining claim.

Tim Crowley, President, Nevada Mining Association, Reno, Nevada:

We wholeheartedly support this bill. The Audubon Society put this bill together. They came to us and said the historical mining claim markers are killing birds, and we wanted to help correct the problem. There was no hesitation on our part to be supportive of the bill. The hollow plastic mine posts will be replaced in the next two years. We do not want to be back here bearing the responsibility for killing nesting birds. The mine claim holder has an obligation to change to whatever type of marker currently required. We ask that the Audubon Society tip the old marker over rather than pull it from the ground. This means the historical value of the marker will be preserved, and it can still serve to mark the mining claim.

Chair Claborn:

I suggest the mine claim holders could fill the hollow pipe with dirt to the top. Just pulling the stakes out could create a lot of potential problems.

Assemblyman Goicoechea:

The polyvinyl chloride (PVC) posts have been illegal for about the last 15 years.

Tim Crowley:

That is correct.

Assemblyman Goicoechea:

Thousands of those posts are in Nevada, and many of them are on claims that are no longer valid. Most companies have already changed to 2 x 2 wooden posts. The PVC posts that are out there were mining claim corner markers on claims established 15 to 20 years ago. I think giving the mine holders a couple of years to change them out is adequate. I would prefer you just take them home with you, rather than tip them over because they are out there blowing around my livestock.

Ali Chaney:

I would like to give some perspective on filling the posts up with dirt. This issue has been discussed, for probably the last eight years, by state and federal agencies and the mining industry. A lot of options have been on the table. A wide range of claim marker posts now exist on the range. Some are perforated PVC; some are hollow with no perforations. Filling them up with dirt would not be a practical across-the-board solution to the problem. Filling them up with rocks or spray foam has also been suggested. After getting good feedback from the mining industry, the Audubon Society believes our proposed posts will be the most permanent solution to the problem.

Chair Claborn:

I certainly go along with your bill.

Assemblyman Aizley:

This is a very large project for the Audubon Society. Do you plan on covering the entire state and all the abandoned mines that are out there?

Ali Chaney:

Over the last couple of years, there have been some localized efforts through the Department of Wildlife (DOW) in conjunction with the Bureau of Land Management (BLM) to go to certain areas in the state and verify abandoned claims. Those existing claim markers have been pulled. Getting the legislation changed is the first step in the process which will make it legal for members of the Audubon Society to tip the markers over. We do plan on making more concerted efforts to remove the posts possibly through volunteer events. We hope to enlist sportsmen and state agencies who are already in the field to help pull these stakes. We will be advertising, after the date the bill becomes effective, to educate and solicit help from different organizations.

Chair Claborn:

Does that answer your question, Mr. Aizley?

Assemblyman Aizley:

Yes, it does.

Chair Claborn:

Are there any more questions? [There were none.]

Kyle Davis, representing the Nevada Conservation League, Las Vegas, Nevada:

I want to offer our support for this bill. We recognize the impact the plastic markers have on wildlife, and we would like to rectify the situation. There are a significant number of abandoned and neglected mining claims throughout the

state. With the two-year window period stipulated in the bill, enough time is allotted to notify owners and to permit them to change the markers. After that period, the Audubon Society can tip the markers over and leave them in place. I think that is a reasonable compromise. If someone has an active mining claim and he has money invested in it, it would be in his best interests to change to the new markers within the two-year period.

Chair Claborn:

We have some other witnesses giving testimony.

Doug Driesner, Director, Mining Services, Division of Minerals, Commission on Mineral Resources:

The Division of Minerals supports this bill wholeheartedly. Additionally, the Nevada Miners and Prospectors Association (NMPA) members have already replaced all of their PVC marker stakes with wooden ones. There are not many PVC posts still in use. This bill mainly addresses the mining claims long abandoned before 1993. I do not believe this bill will negatively impact any current active claims.

Chair Claborn:

Are there any questions?

Assemblyman Carpenter:

Do you have a letter or a motion from the NMPA indicating their support of this bill?

Doug Driesner:

No, I do not have anything in writing.

Assemblyman Carpenter:

Can you get one?

Doug Driesner:

How soon would you need it? They only meet every other month.

Assemblyman Carpenter:

Then, when did the NMPA discuss it?

Doug Driesner:

We discussed the bill at our last meeting in March 2009.

Assemblyman Carpenter:

Can you get a letter from the President of the NMPA saying the bill was discussed and there was no opposition? Those are the people that I am worried about. We need to look out for the "little guy."

Doug Driesner:

I will see what I can do. [Mr. Driesner submitted the requested letter ([Exhibit F](#)) to Ms. Ruedy on April 29, 2009, and it was distributed to the Committee at our hearing that day.]

Chair Claborn:

Are there any questions? [There were none.]

Laura Richards, Chief, Division of Wildlife Diversity, Department of Wildlife:

The Department of Wildlife supports this bill. We commend the Lahontan Audubon Society, the Red Rock Audubon Society, the NMPA, and the Legislative Committee on Public Lands for this leadership in bringing this important bill forward.

Chair Claborn:

Are there any questions? [There were none.] Is there anyone wishing to speak against the bill? [There were none.] Is there anyone who wishes to speak from a neutral position? [There were none.] I will entertain a motion.

ASSEMBLYMAN BOBZIEN MOVED TO DO PASS SENATE BILL 108
(1ST REPRINT).

ASSEMBLYMAN AIZLEY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN MUNFORD AND
OHRENSCHALL WERE ABSENT FOR THE VOTE.)

Mr. Bobzien will take the Floor assignment. I am opening the hearing on Senate Bill 170 (1st Reprint).

Senate Bill 170 (1st Reprint): Revises provisions governing payment for work performed for the operation and maintenance of ditches. (BDR 48-1059)

Michael Pagni, representing the Steamboat Canal and Irrigation Company and the Last Chance Irrigation Company, Reno, Nevada:

I worked with Senator Amodei, the bill's sponsor, on this bill, so I am happy to present it to you today. This is a technical "clean-up" bill. The bill you are looking at dates back to 1866 and 1913, and the last time these statutes were amended was in 1919. The statutes recognize that ditch owners have certain ownership rights and privileges, so they can be reimbursed for costs associated with the maintenance and operation of irrigation ditches from the people who receive the water. Those statutes were written at a time when most ditches were owned by individuals. The bill's language does refer to ditches owned by two or more persons.

However, with the passage of time, ditch owners have incorporated, and the corporations function like cooperatives. The people who receive the water owe the corporation for maintenance and operational costs. This bill clarifies that those rights and privileges apply equally whether the ditches are owned by an individual or a corporation. There were a few other technical changes requested by some other ditch companies when the bill was heard on the Senate side. Those changes provided clarification on the types of expenses, and they established the ability to collect those expenses from the property owners who receive the water.

Chair Claborn:

Are there any questions?

Assemblyman Goicoechea:

How extensive can the ditch improvements be? If a company or entity owns a ditch that crosses private property and the corporation decides to cement the ditch or pipe the water, the property owner would have to pay for the cement ditch or the pipeline. I believe that is the way the language in the bill reads. Is that correct?

Michael Pagni:

The bill recognizes that the same rights individual ditch owners have in the existing law would be extended to a corporation. I cannot speak to each individual ditch because each one is unique. However, for the ditches of the companies I represent, the company has easements. It can do certain types of work within the boundaries of that easement. This bill does not grant ditch companies any more rights to do improvement work than what they already have. Whether or not a ditch can be cemented, depends on that ditch itself, on how it is run, and on what the stated bylaws and property rights are for that ditch. In regards to a ditch crossing private property, a ditch company cannot construct nor do improvements on property it does not own without having the

property owner's consent. The ditches of the companies I represent have easements, which are a property right, and they can do work within their easement.

Assemblyman Goicoechea:

I am agreeing with you. I am not questioning easement rights. However, a property owner that uses a small amount of water could conceivably receive a huge bill for ditch improvements if it crosses a lengthy area of his property.

Michael Pagni:

The existing law recognizes that the ditch owners have the right to construct the works that are reasonable, necessary, and appropriate to operate the ditch.

Assemblyman Goicoechea:

The ditch owner may say the work is reasonable, but the property owner may not think it is. The property owner should be able to agree or disagree with the project. I do not see that covered in this bill.

Michael Pagni:

I cannot speak for all ditch owners, but for ditches owned by corporations, the property owner is a shareholder. He would have the right to vote on the directors, and he would have input on proposed projects at the annual meetings. The bill also states that the costs of completed work will be shared on a pro rata basis.

Assemblyman Goicoechea:

You are referring to your particular corporation. I am talking about all ditch owners.

Michael Pagni:

The existing law recognizes that the cost for work and improvements is shared proportionately. Nothing in this bill changes those conditions.

Assemblyman Goicoechea:

I would like to see some language in the bill that gives the property owner notice and the right to agree or disagree with ditch projects. You are talking about ditches that service a number of property owners. Is that correct?

Michael Pagni:

Yes, that is correct.

Assemblyman Goicoechea:

It is conceivable that the property owner at the end of the ditch may think he is not getting enough water, and he decides to rebuild the ditch. Under this statute, he or a group can make the improvements—for example, cement the ditch—and the bill would be paid by all the property owners of that ditch. Is that correct?

Michael Pagni:

That right would exist with or without this bill.

Assemblyman Goicoechea:

Would a property owner have to pay for upgraded improvements on a ditch or for projects that enhance the existing ditch?

Michael Pagni:

You are referring to the internal governance for the ditch which is a question of corporate law. It depends on how the company is set up; what rights of voting does it give its shareholders; and how it governs other internal issues.

Assemblyman Goicoechea:

As I read the law, in section 1 it says: "...a ditch is owned by two or more persons...." It does not mention a corporation.

Michael Pagni:

That is correct. That is why we are asking for the technical clean-up language, so corporations will be a recognized entity in the bill.

Assemblyman Grady:

I think you are concentrating on your ditch in your area. However, throughout Nevada there are many other ditches under various types of ownership. There is no definition of a ditch in the bill's language. In my District, we have drainage ditches that extend for miles. This bill is narrowly written to reflect your area, and it does not take into consideration the rest of the state. In my District, a ditch may go for miles, but there are property owners along it who are not irrigating with water from that ditch. This language needs to be "tightened up."

Michael Pagni:

The intention of the bill's language was to have it apply equally to every property owner in the state. The only change is to clarify that a company which owns a ditch has the same rights and privileges as an individual. Section 2 of the bill defines who pays for the costs. It is a person receiving water through a ditch. That individual pays for the benefit of water delivery through

the maintenance work that is being performed on the ditch. The work is necessary for the ordinary care and proper maintenance of the ditch.

Assemblyman Grady:

That is my problem with the bill. The ditch could be going through someone's property, but he does not use the water. That person would be subject to a share of the pro rata costs. Nothing in this bill's language indicates pricing levels for improvements. This bill is too broad.

Michael Pagni:

You make an excellent point. This bill only applies to people who receive the water. A person who does not receive any water would not be billed for the cost of maintaining the ditch that delivers the water. It only grants the rights to bill those people who benefit from the ditch and receive the water the ditch delivers.

Assemblyman Bobzien:

I have a similar concern. If you have shareholders in a company, I can understand them being billed appropriately for whatever improvements are made to the ditch. I think that definition may be too broad. Does it exclude ditches being used by municipal or industrial entities? Does it exclude people who are not using the water for irrigating?

Michael Pagni:

If the ditch is to deliver water for irrigation or any other purpose, those people are the ones who have to share in a proportionate cost for maintaining the ditch. I do not see where it gives any rights to a property owner who does not receive any water.

Assemblyman Bobzien:

You could have a situation where people are using the water for municipal or industrial purposes. They will be billed for any improvements regardless of whether or not they have any shareholder rights in the company. That possibility would be covered in this law. Is that correct?

Michael Pagni:

Yes, anyone who derives benefit from the delivery of water would be responsible for a pro rata share of the costs of operation.

Assemblyman Gustavson:

If repair is needed along one person's section of the ditch, is that property owner responsible for paying for the costs of ditch operation, or is everyone in the company responsible?

Michael Pagni:

Right now under the existing law, the responsibility to pay costs for ditch maintenance and operation is on all property owners who receive water from the ditch. It is the cost of the ditch itself, and it is divided amongst all the ditch users. If a ditch just happens to cross your land, and you derive no benefit from it, you would never be charged by the ditch company.

Assemblyman Gustavson:

I understand that part.

Assemblyman Segerblom:

Currently ditches are owned by corporations, and you are concerned that may not be legal. Is that correct?

Michael Pagni:

Yes, ditches are owned by corporations, and the ownership is perfectly legal. My concern is this statute, as it was written in the 1860s, could create a question of whether or not the language applies to a corporate entity. I brought this new language forward as a technical "clean-up." It will clarify a ditch corporation has the right to collect costs for maintenance and operation from the water users.

Assemblyman Segerblom:

Currently, if a ditch springs a leak and major damage occurs, the corporation that owns the ditch would be responsible and liable for the repairs. Is that correct?

Michael Pagni:

Yes, that is correct, and we have contractual arrangements with all our water users that state they will pay a proportionate amount of the costs. In the companies I represent, the proportion of the costs a water user would pay is based on the amount of water he uses. It is a legal arrangement, and the requested changes in the bill's language are to ensure that the statute will also apply to corporate entities.

Assemblyman Segerblom:

What would these changes allow a corporation to do that it currently cannot do under the existing law?

Michael Pagni:

We could do the same things that we do today. It would clarify what are proper maintenance and operational expenses, and it would clarify the corporation's ability to collect those costs from the property owners who received the water.

Assemblyman Segerblom:

Is that not part of the corporation?

Michael Pagni:

It just clarifies our ability to collect from the property owner.

Assemblyman Segerblom:

Right now, if a corporation owns a ditch all the water users may not be owners of the corporation. Is that correct?

Michael Pagni:

In our circumstance, the people who receive the water are company shareholders, but some nonshareholders have been added over time. However, all owners participate in the meetings.

Assemblyman Segerblom:

Therefore, you are saying under this law, the individuals who are not part of the corporation can still be billed by the corporation for work on the ditch to deliver the water to them. Is that correct?

Michael Pagni:

Yes, that is correct. It would codify the contractual relationship that already exists.

Chair Claborn:

Are there any more questions?

Assemblyman Carpenter:

On page 3, lines 7 and 8 the language states: "...whether for use by the person or entity or for delivery to others...." Why was the phrase "for delivery to others" included, and why is it necessary?

Michael Pagni:

The ditch company, itself, does not use the water. It just delivers it to other people to use. The phrase was added for clarification. If we are delivering water to a farmer, the company has the right on the farmer's behalf to operate the ditch to deliver the water to him. The ditch company, itself, is not putting the water to beneficial use, but the party receiving the delivered water is. Ergo, they will be the ones sharing in the ditch's maintenance and operational costs.

Chair Claborn:

Are there any more questions? [There were none.]

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

We are in support of this bill. During your earlier conversation, I went online and looked up the current language of *Nevada Revised Statutes* (NRS) 536.040. If you refer to that, I think a lot of the questions you have would be clarified. The current law already provides for owners of a ditch to share in the expense of the ditch maintenance. This additional language that is being proposed brings into the context a corporate entity, and it gives the corporation the same status and standing that individuals have in the law. We support the idea that all users of the ditch water be required to maintain their share of the ditch. Because of urban encroachment, we have had situations where someone, not engaged in the agricultural industry, moves to a property that is serviced by a ditch. They have never been on a ditch before, and they do not realize they do have responsibilities for participation in the ditch maintenance. We believe it is important that all individuals who jointly own an irrigation ditch are held accountable for their ownership and for their responsibilities that go with it. I encourage you to take a look at NRS 536.040 to clarify how the requested change in the bill's language fits into the total picture.

Chair Claborn:

Are there any questions?

Assemblyman Goicoechea:

The only thing that concerns me is we have some large ditch and dam companies in eastern Nevada, such as the Metropolis Water Irrigation District. Individual water users may find themselves on the hook for a lot more money than what they ever intended, or what they can afford. It would depend on who ends up in control of that particular ditch, and it may be a corporate "entity."

Doug Busselman:

I appreciate that, and we would be happy to work with you to try to resolve those concerns.

Assemblyman Goicoechea:

Do you share those concerns? A farmer at the end of the ditch could get priced out with someone else in control of the ditch.

Doug Busselman:

I believe there could be a potential for that. A water user needs to look at how he is involved with the ditch company. In the agreements between the parties, the responsibilities of the ditch company to you, the landowner, would be spelled out. Often those problems are resolved by the easement documents and other contractual arrangements between the parties which are signed when a landowner becomes part of the organization.

Assemblyman Goicoechea:

I agree with that, but we dealt with the old NRS Chapter 539 with the irrigation districts awhile back. When you start talking assessments at 5 cents an acre, and updating old Chapters of the NRS, I always get a little nervous.

Chair Claborn:

Are there any questions?

Assemblyman Aizley:

I have some general questions about ditch ownership. It started out in what seems to be a friendly partnership among the landowners, and now we are talking about corporations owning the ditches but not using any of the water. Is this arrangement the general trend whereby corporations now own the ditches, not the landowners?

Doug Busselman:

When you look back over the history of how the water delivery systems evolved, you will see, in the beginning, there were farmers and others who came together, and probably worked together to dig the ditch. The organizations evolved, and it was to their advantage as mutual owners to have the arrangement formalized into a corporate or partnership structure. I do not believe it is a situation where corporations came in and bought out ditch agreements. It is the members who have been working together in the past who are now establishing corporations for business purposes.

Assemblyman Aizley:

If that is the case, the users are essentially the owners.

Doug Busselman:

Once you have created the organization for the delivery of the water, the corporation is not in the "using" business, but in the "delivery" business.

Assemblyman Aizley:

Therefore, farmers are outsourcing like everyone else.

Doug Busselman:

Somewhat.

Chair Claborn:

Are there any questions?

Assemblyman Carpenter:

What happens in a situation where, for example, you have ten people using a ditch, and six decide to line the ditch in concrete, and the other four do not want to? That situation is not the same as doing actual repair or maintenance on the ditch. I think that is the big question.

Doug Busselman:

I cannot answer that question. Whatever kind of arrangements the landowners have spelled out concerning their operations would govern the direction they would follow. I do not think there is one answer. Each case and its details must be considered separately.

Assemblyman Grady:

There are two irrigation districts in my area. The Walker River Irrigation District in Yerington operates all the drainage ditches. In Fallon, the Truckee-Carson Irrigation District (TCID) owns all the ditches. I believe you are getting into another problem because the landowners do not own the ditches, even though the ditches go through their property. The landowners have the water rights to use the water. If the TCID decided to pipe all the water, I think the landowners would be very upset. This bill is written with parameters that are too broad for what the bill's sponsors were hoping to accomplish.

Chair Claborn:

Are there any questions? [There were none.]

Frank Godecke, Private Citizen, Minden, Nevada:

I am the Vice President of the Allerman Upper Virginia Ditch Company which operates in Douglas County. We currently have 110 shareholders. Some of them have holdings as small as five shares which is the minimum amount anyone can own. We also have owners that have several thousand shares. We formed our nonprofit organization in the 1980s. We tried to get a corporation together to secure the easements of existing ditches that were delivering water for irrigation. The biggest problem we had happened when the ditch company was first formed. The owner of the ditch, the Dangberg Company, had been sold and the property was split into two. The person who used the ditch system for irrigation did not own the property where the ditches were located. We deliver water to approximately 9,000 acres, and we are in support of the amended language.

Prior to these changes, our attorney, who represents the ditch company, said as a corporation we would not be able to file a lien against property owners who failed to pay their proportionate part of our assessment fee. We have an annual assessment fee which is based upon our ditch maintenance and administrative costs. The original statute only addresses the maintenance and operation of the ditch. Our attorney said the words, "operation of the ditch," were not specific enough to include charging for the administrative costs that the corporation incurs. The language in section 2, lines 20-23 was suggested by our attorney, so we can legally recover the costs from our shareholders who fail to pay their assessment fee. Currently, we have three or four shareholders who do not pay their assessments fee and have not done so for the last five to ten years. We support the amended language in this bill.

Chair Claborn:

Are there any questions?

Assemblyman Segerblom:

The landowners who are not paying their assessment fees are using the defense that a corporation cannot bill them for their water delivery. Is that correct?

Frank Godecke:

I do not know what their motivation is for not paying their assessment fees. They do receive water through the ditch system. It is difficult for us to shut their water off by denying them delivery. Their property may be located in the middle of the system, and the water has to flow through their property to other users downstream. Therefore, there is no viable way to prevent them from taking the water.

Assemblyman Segerblom:

Can a lien be put on their property for what they owe?

Frank Godecke:

Some of our costs are administrative expenses, and a portion of the assessment fees go to pay those expenses. Another portion is used for the actual maintenance and operation of the ditch itself. Therefore, since the language in the existing bill does not mention administrative expenses, we are unable to go to court and file a lien against the property owner. The new language will permit us to take these nonpaying landowners to court to file a lien on their property.

Assemblyman Segerblom:

The new language in this bill says, "...his proportionate share of the reasonable expense of the work." Is the "share" based on the amount of water that person uses, or is it on the distance the water travels in the ditch? How do you define "proportionate share?"

Frank Godecke:

Within our corporation, the proportionate share is based on the number of shares that each person owns. Those shares are calculated on the number of irrigated acres. The more shares a property owner has, the higher his assessment fee.

Assemblyman Goicoechea:

Those circumstances would be covered in the new bill. Is the Dangberg Ranch one of the companies not paying its assessment fee?

Frank Godecke:

The property that existed along those ditches has all been developed now. Houses set on 10 to 20 acres have been built along the ditches. The people who are not paying do have water rights to use water from that delivery system. They are the ones who have not been paying.

Assemblyman Goicoechea:

Are they paying for the maintenance and operational work but not for the administrative expenses?

Frank Godecke:

Neither.

Chair Claborn:

Are there any more questions? [There were none.] Is there anyone who would like to make a public comment? [There were none.] Are there any opposition witnesses to this bill? [There were none.] Is there anyone who would like to testify from a neutral position? [There was none.] I am closing the hearing on S.B. 170 (R1). The language in this bill needs some work, so I am placing this bill into a Subcommittee. Mr. Bobzien will Chair the Subcommittee, and Mr. Goicoechea and Mr. Segerblom will also serve. I would like those witnesses who testified today to help develop suitable language for this bill. We would like some results as soon as possible.

This meeting is adjourned [at 2:45 p.m.].

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman Jerry D. Claborn, Chair

DATE: _____

EXHIBITS

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

Date: April 27, 2009

Time of Meeting: 1:32 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 108 (R1)	C	Senator Dean A. Rhoads	Testimony
S.B. 108 (R1)	D	Ali Chaney	Testimony
S.B. 108 (R1)	E	Ali Chaney	Information on Bird Mortalities
S.B. 108 (R1)	F	Doug Driesner	Letter of Support from the Nevada Miners and Prospectors Association