

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

**Seventy-Fifth Session  
March 18, 2009**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Jerry D. Claborn at 1:41 p.m. on Wednesday, March 18, 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/](http://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](mailto: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 Harvey J. Munford  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Judith Coolbaugh, Committee Secretary  
Cheryl McClellan, Committee Assistant

**OTHERS PRESENT:**

Ramona Morrison, Vice Chairman, State Board of Agriculture, State Department of Agriculture; representing the Nevada Live Stock Association, Sparks, Nevada  
Tony Lesperance, Ph.D., Director, State Department of Agriculture  
Don Alt, representing the Nevada Live Stock Association, Sparks, Nevada  
Doug Busselman, representing the Nevada Farm Bureau Federation, Sparks, Nevada  
K. Neena Laxalt, representing the Nevada Cattlemen's Association, Elko, Nevada  
Joe Dahl, Private Citizen, Fallon, Nevada  
David Schumann, representing the Nevada Committee for Full Statehood, Carson City, and the Nevada Live Stock Association, Sparks, Nevada  
Ira Hansen, Private Citizen, Sparks, Nevada  
Willis Lamm, representing Least Resistance Training Concepts, Stagecoach, Nevada  
Betty Retzer, representing the Alliance of Wild Horse Advocates, Dayton, Nevada  
Mandy McNitt, Private Citizen, Carson City, Nevada  
Bonnie Matton, representing the Wild Horse Preservation League, Dayton, Nevada  
Betty Kelly, Private Citizen, Carson City, Nevada

**Assemblyman Jerry D. Claborn:**

[The Committee was called to order. Chairman Claborn reminded those present of the Committee rules and expectations of behavior.]

I will open the hearing on Assembly Bill 341.

**Assembly Bill 341:** Revises provisions governing brand inspections of animals.  
(BDR 50-1088)

**Assemblyman Don Gustavson, Assembly District No. 32:**

I am here to introduce A.B. 341. Ramona Morrison will begin to make the presentation.

**Ramona Morrison, Vice Chairman, State Board of Agriculture, State Department of Agriculture; representing the Nevada Live Stock Association, Sparks, Nevada:**

I will defer to Director Lesperance first, and testify after he is done.

**Tony Lesperance, Ph.D., Director, State Department of Agriculture:**

This is from our branch director, Christopher Collis ([Exhibit C](#)). He was unable to be here today. [Read from prepared testimony ([Exhibit C](#)).] I would like to read in my own statement as well. [Read from prepared testimony ([Exhibit D](#)).]

I am not condoning nor defending the rights of the individual involved here. I am simply concerned about the rights of the public in general and, in particular, our ranching community. I will also add that I have met with the State Director for the Bureau of Land Management (BLM) and his staff on this matter rather extensively. With me were the state brand inspector, Mr. Collis, and our deputy attorney general, Katie Armstrong. I have had good meetings with the State Director. We have agreed to try to work these things out. I have told him that I do not feel competent in dealing with what they consider to be their court of competent jurisdiction. He clearly understands my position. I thought we had things fairly well ironed out at the conclusion of our last meeting. Their solicitor was always there, who reminded me that federal law always takes precedence over state law. I am not here to argue that point.

I will tell you exactly what I told the BLM. I said, "I will work with you any way I can, but if you do not work with us and anything like this ever happens again, as long as I am the Director of the Department of Agriculture, it will be very difficult to obtain a brand certificate clearance for any livestock you impound if everything is not done correctly." With that, I offered to provide them a list of hay growers that sell alfalfa because, if I were to do this, they are going to have a lot of cattle in a feed lot for a long period of time.

This needs to be corrected. I realize it is controversial, but the impoundment situation that occurred in Winnemucca, and the consequences which affected many innocent people has never really been brought to light. However, I am here today to tell you we have the facts and documented proof that all of those things did happen.

**Assemblyman Segerblom:**

Are you saying that under the current law the BLM interpreted the federal district court as a court of competent jurisdiction, and you are trying to restrict it to a state court?

**Tony Lesperance:**

They have only used the magistrate so far.

**Assemblyman Segerblom:**

But you think that if we change our law they will have to go into state court?

**Tony Lesperance:**

I would hope that is the way it works out, yes.

**Assemblyman Hogan:**

This question is for the Chairman. I realize this very important difference of opinion goes back quite a long time. It involves serious issues of the authority of the federal government, the authority of the state, and the rights of local people. Are we going to, at some point, hear the point of view of the federal authorities before we have to make a decision on this? Will we hear from the BLM or its legal representative? I am asking about the procedure we will use to try and inform ourselves to make a good decision.

**Chairman Claborn:**

I am looking at our sheets of people who have signed in to testify, and I see no one from the BLM, and I see no one who is speaking against the bill. As far as I am concerned, we will let nature take its course, and go along with what we are here to do. We will put it in front of the Committee and we will do our duty.

**Assemblyman Grady:**

I think Mr. Segerblom brought up a very interesting dilemma. What would happen if the BLM did get the magistrate's order, and gathered the animals, and was ready to ship them? They cannot get a brand inspection. What will you do when they have a federal order and you have a state violation? Are you not in the middle of this more than you were originally?

**Tony Lesperance:**

I am in the middle of it pretty badly to begin with, and I am not going to change my position. I made it clear to the BLM that I will not be in any hurry to issue any brand certificate under those circumstances. If anyone moves those cattle, then I will bring every ounce of effort I have within me to enforce state law and prosecute whoever touched those animals for stealing livestock. We have very

good laws in the State of Nevada about this, which would take precedence, I believe, at that point in time.

**Ramona Morrison:**

[Read from prepared testimony ([Exhibit E](#)).]

The federal government cannot have it both ways. This was the original legislative intent when the bill was passed in 2005, and this will eliminate confusion going back and forth between federal district court and state court. Hopefully, it will cut down on costs and keep the state out of hot water, as well as keeping our Director from having to make legal decisions.

**Chairman Claborn:**

Are you confident that if we pass this legislation with the new language in this bill, it will cure the damage that has been done, or will this lead to more legal cases?

**Ramona Morrison:**

I do not think we can make any guarantees for the federal government. I am sure they will be back again. As a state we need to ensure that Nevada citizens' due process of law rights are protected. We cannot guarantee that they will not wind up in court. We cannot guarantee that the federal government will not attempt something. There is no way to guarantee it. We can simply tighten up the law to ensure that, at least from the state's point of view, we have not done anything to expose Nevadans to a violation of their constitutional rights.

**Chairman Claborn:**

Assembly Bill 341 might be the answer to get this ball rolling.

**Ramona Morrison:**

In fact, Assembly Bill No. 407 of the 73rd Session, the original bill, introduced by Assemblyman Carpenter, went very much in that direction. It did nine-tenths of the job.

**Assemblyman Aizley:**

I am not familiar with any of these cases. I think the *Dann* case (*United States v. Dann*, 470 U.S. 39 (1985)) was about grazing rights on federal lands. Is that generally the reason why they are taking the cattle?

**Ramona Morrison:**

Yes.

**Assemblyman Aizley:**

Is there any other reason?

**Ramona Morrison:**

No, it is usually a dispute, wherein the federal government has claimed trespass. The problem is that it is an allegation, not proven in a court of law before the property is seized.

**Don Alt, representing the Nevada Live Stock Association, Sparks, Nevada:**

I would like to testify in favor of A.B. 341 ([Exhibit F](#)). I do not think the federal government can come into state court with a writ of execution, but they do it continually. They do not like doing it, because they have to jump through too many hoops, but it is the way our founding fathers set things up with the separation of powers.

I went to watch this gathering by Winnemucca and I was there for two days. The first day, federal agents came onto one full section of a woman's private land and set up their corral. They gathered cattle from her corrals that were drinking water within just a few feet of her house. It was just absurd. If this would have been 100 years ago, they would have all been hanged for cattle theft. There was no due process. They broke into her house to look. I do not know what the federal agents were looking for; they just did it because I think they thought they could. These things have to stop. People have to have their due process first. It is a pretty good deal for the Feds to have someone else raise the cattle, and then the Feds come onto your land to take, to haul off, to sell the cattle, and to come back and send a bill for the hauling and sale. That sounds like Chicago mafia tactics to me.

**Doug Busselman, representing the Nevada Farm Bureau Federation, Sparks, Nevada:**

[Read from prepared testimony ([Exhibit G](#)).]

**Assemblyman Hogan:**

Is it the position of the American Farm Bureau Federation that state courts are always the appropriate court of jurisdiction in cases of this kind, or is that within the determination that your organization has made?

**Don Alt:**

It is the Nevada Farm Bureau policy, not the American Farm Bureau policy, which directs us. Our policy does call for local courts to be involved in the issuance of appropriate legal actions that would come ahead of the impound process.

**K. Neena Laxalt, representing the Nevada Cattlemen's Association, Elko, Nevada:**

I do not want to belabor this issue, but the Nevada Cattlemen's Association strongly supports this bill.

Coming from a sheep ranch background, I was thinking if anybody 100 years ago got caught doing this, they would probably be hanged for cattle rustling. Knowing my grandfather as I did, had the BLM people come onto his property it would not have been the rancher that they would have hanged.

With that, I end my testimony.

**Joe Dahl, Private Citizen, Fallon, Nevada:**

A bit of clarification may help. Ms. Laxalt represents the Nevada Cattlemen's Association, and Mr. Alt and Ms. Morrison are from the Nevada Livestock Association, so we have two livestock associations represented here today. I am members of both of them, but not representing either one of them. I am representing myself. I was involved two sessions ago when we addressed this issue with Mr. Carpenter's Assembly Bill No. 407 of the 73rd Session. I do not see any opposition to this bill, but there may be some as it proceeds on its way into law, which we hope it will become.

Allow me to paint for the members of the Committee a hypothetical situation to better articulate our position. Let us say that any one of the honorable members of this Committee happened to be a rancher, and I had the honor of being that Committee member's neighbor. Perhaps you had too many head of cattle to feed, and I had an excess of pasture. We might agree upon a sum to be paid per head and allow your cattle to graze on my pasture. This is a legally binding contract into which we have both willing entered and are thus bound by its stipulations.

Now let us say something absurd happens, and the honorable Committee member is somehow unable to pay me, as was agreed to in our contract. Something patently absurd, because he would have certainly otherwise fulfilled his obligations under contract as I have done. Though I have had his cattle in my possession for a number of months, on my land, grazing on my pastures, and though it is through my time, labor, and care by which these cattle have prospered and fattened; and though he has failed to fulfill his obligations under contract, his cattle feeding on my land are still not mine. I cannot sell them to cover the cost of their care because I have not taken legal ownership of his cattle.

Let us say that I was fairly certain the honorable Assemblyman would not be able to fulfill his contract. I would like to recoup my costs to care for his cattle. To do so, I would sell his cattle. In order to do that, I would have to take legal ownership of his cattle, which can only be obtained via due process. As a natural person, I am bound by the laws of the land which forbid me from arbitrarily taking ownership of his cattle to satisfy his debt to me.

The federal government does not follow this process. Rather, it follows the Code of Federal Regulation (CFR), which states that the federal government, contrary to the personal process, can, in fact, arbitrarily seize property through its own process. John Winnepenninkx, a retired Wild Horse Specialist from the Battle Mountain BLM office explained this to me. Because the federal government follows the CFR, it can seize the livestock first, and satisfy due process second. This is exactly opposite of what I was taught on how the justice system works, and is, what I believe, a fault against justice itself.

If the court of competent jurisdiction, which this bill describes, becomes the federal magistrate, or the federal district court which deals with rules and regulations, then the administration of the BLM can seize cattle arbitrarily because it is in their Code of Federal Regulations.

If this is the case, then the federal government has discovered for itself a way to marginalize the sovereignty of the State of Nevada. However, the Nevada Department of Agriculture is able, through our own brand office and A.B. 341, to compel the BLM to come before our state courts, whereby jurisdiction falls not under the CFR, but rather the *Nevada Revised Statutes*.

There have been several times where the BLM, through the United States Justice Department, has presented cases in state courts. In the past, attorneys representing the federal government put forth arguments before the courts claiming the federal government holds rights as a natural person in cases precisely of the nature we find in our hypothetical situation; therefore, to remain consistent, we insist their claim of natural personhood hold true in our situation as well. As a natural person, the federal government is beholden, just as the hypothetical Assemblyman and I are, to work through due process before seizure of the property.

**Chairman Claborn:**

You have just described the Internal Revenue Service (IRS). You have also described collateral that is not any good at all. That is my summation.



**David Schumann, representing the Nevada Committee for Full Statehood, Carson City, and the Nevada Live Stock Association, Sparks, Nevada:**

I am in support of A.B. 341, but I believe we are missing the point. A lot of people in this body believe that Nevada is a real state. No, frankly, we are not. We are an occupied territory. The recent cases of Wayne Hage and Mary and Carrie Dann prove that. Federal agents come along, steal cattle, and leave. Nobody touches them. Wayne Hage decided to take it to the United States Court of Claims, and he beat the BLM there and won a bunch of money for it, but he never got to see it because he died. This body could easily remedy this. The Nevada Policy Research Institute recently issued a study that pointed out that the federal government's only claim to this land lay in dubious history. Nevada was made a state in 1864, but the federal government held onto the property, the land, and the unappropriated land, to pay the debts of the Civil War. That debt, if it has not been paid, is now defunct. The state could send its Attorney General and governor and the heads of the Assembly and Senate to the federal government and say, "Get off of our land. If we see you here engaging in law enforcement, we will have our County Sheriffs arrest you and haul you away." The federal government has no more right to seize cattle here than they have to do in Pennsylvania. Pennsylvania is owned by the federal government by perhaps only two percent, which they bought through Article 1, section 8, clause 17 of the *United States Constitution*. The federal government came and said, "We would like to buy some land." and then negotiated a price. Please, gentlemen, step up and go to the federal government and kick them out.

**Ira Hansen, Private Citizen, Sparks, Nevada:**

I have nothing at all to do with livestock. I am a bona fide city slicker, but when I am listening to all of this, I noticed a huge issue that we have to address. It is very philosophical. We are talking about basic rights that have their roots in the Magna Carta. King John II had to go to the barons who required due process of law. Kings to bypass that set up what we today would call Administrative Courts. They bypassed the jury system by going through the Star Chamber. Legal people know the Star Chamber, to this day, is terminology for an unfair judicial process. The reason we have the *Constitution* is to protect ordinary citizens against abuses of government power. I heard earlier that federal law trumps state law. That is true, but we have to keep in mind that, when it comes to the ultimate decisions, they go back to the Bill of Rights and the district courts, and you are supposed to be judged by a jury of your peers selected from the courts.

What the Committee is really doing here is not coming up with something new; it is giving ordinary citizens an opportunity to stand up against the federal government.

I am not saying that grazing issues are right or wrong; what I am saying, though, is, philosophically, it is very important that we pass this. This is not just about Wayne Hage and the Pine Creek Ranch, or some lady in Winnemucca, it is about basic constitutional liberties for your citizens.

Why do we have sheriffs in the State of Nevada? Why do we elect our judges? Because we have rejected the Missouri system as a check against potential judicial abuse.

**Chairman Claborn:**

Seeing no more testimony either for, against, or as neutral on the bill, I will close the hearing on A.B. 341. We will now open Assembly Bill 427.

**Assembly Bill 427:** Provides for the assessment of certain real property used for grazing estray or feral horses as agricultural property. (BDR 32-1045)

**Assemblyman Tom Grady, Assembly District No. 38:**

[Read testimony from prepared text ([Exhibit H](#)).]

Section 1 is really what the bill is about. "Except for agriculture which is used as grazing land for estray or feral horses, in accordance with an agreement authorized by section 9 of this act." Section 3 gives the definition of estray horses. Section 4 gives the definition of feral horses. Section 6 gives a definition of agriculture real property. Section 9 states, "In carrying out the programs of the Department of Agriculture for the management and control of estrays and feral livestock, the Department may, except as otherwise provided in this section, enter into an agreement pursuant to this section with an owner of real property located in the Virginia Range, which provides for the primary use of property as grazing land for estray or feral horses." What we are trying to do there is simply put this section on a par with the other agriculture uses. If you have \$5,000 worth of income off a property, one has an agricultural deferment. This will be using wild horses or, as we refer to them, the estray and feral horses, and you will get a credit for them in order to get your \$5,000 income for an agricultural exemption. It states, under subparagraph (1), that the area is at least 640 acres, or as defined in subparagraph (2), says 40 acres where the horses can go from one part to the other. It goes on to address water and boundaries and that, the Department may, in addition to the requirements of subsection 1, include in an agreement authorized by this section such additional terms and conditions as the Department determines to be appropriate. If the Department has to terminate an agreement, it shall notify the county that this property is no longer subject to the exemption as listed. We have worked with those who have been trying to get this legislation and the

Department of Agriculture. We may need to tweak some things, but I think we are pretty much in agreement with what we have here. The bill will be referred to the Department of Taxation, should it leave this Committee.

**Willis Lamm, representing Least Resistance Training Concepts, Stagecoach, Nevada:**

My history is that I have been involved with wild and estray horse issues for about 17 years now. I am on the county Animal Control Board and the County Wildlife Board. I do not speak for those boards today, but that is the loop that I run in.

[Read from prepared testimony ([Exhibit I](#)), ([Exhibit J](#)).]

**Assemblyman Segerblom:**

Are you saying that the Department of Agriculture would enter into a contract with these land owners that identifies the value of that grazing right as \$5,000 or more?

**Willis Lamm:**

Yes, in a sense. This is one of the issues that may have to get tweaked. We quantify the number of horses that would minimally equate to the \$5,000 test. We are not trying to tamper with the \$5,000 test. We are just saying, if you donate it, you get the same recognition as if you collect it. I would assume it is only practical that it would be up to the Department to evaluate each and every application. The agreement should stipulate what needs to be done in order to meet that test and any conditions that need to be established so if land owner B does acquire these horses or encourages the horses to be there, he does not become a nuisance to his neighbors. We are trying to develop a more cohesive management plan and protect open space while not creating ancillary problems.

**Assemblyman Segerblom:**

There will be a formalized agreement. It will not be a handshake; there will be a process?

**Willis Lamm:**

Yes, it has to be a recognized document that the Director of Agriculture would approve. That is our intent.

**Assemblyman Aizley:**

What else is going on in the Virginia Range, east of Carson City? Is it just horses? Are there cattle ranges?

**Willis Lamm:**

There are some livestock operators out there. There is a lot of private property, and some public land. It is an area in transition. It is an area where this particular herd has traditionally ranged for years. One of the things that we are trying to establish is some sort of logical process whereby people that have parcels and want to preserve open space—either by excluding blocks of land from development, or other actions—can become part of a process where they can integrate everything into a master planning process, and management process for the horses. Horses are an indicator of a lot of other wildlife that is out there on the range. We do not want to be downtown Los Angeles out there. We want Nevada to have smart growth. The dialogue right now with some of the developers is that they are going to have their bubble maps and core development, but they are talking about developing open space plans ahead of time so that all this open space can be integrated. We will not have all these postage stamp developments and checkerboards where we are trying to maintain wildlife and horses. It does not work well that way.

**Chairman Claborn:**

This is not in regard to the horses by Virginia City where it would cost a number of dollars to build a fence, is it?

**Willis Lamm:**

We are talking about the same herd. You have to realize that it is a very diverse area. There are different attitudes within the different regions where they range. There are a lot of issues involved here. We are just trying to anchor some long-term space for this herd.

**Chairman Claborn:**

This would be a lot more inexpensive than building a fence up there for the county.

**Betty Retzer, representing the Alliance of Wild Horse Advocates, Dayton, Nevada:**

I am a member of several of the horse groups. They all fall under an umbrella horse group called the Alliance of Wild Horse Advocates. I represent that group. I am also on the Stagecoach Advisory board, and as a member of that board, I meet a lot of people who are working with a lot of acreage. A lot of those people come up after those Advisory Board meetings—and I am not here representing them, but the horse groups—and say, "We have acreage, what can we do to help the horses?" If this bill passes, it is the answer for them.

**Mandy McNitt, Private Citizen, Carson City, Nevada:**

I am also a wild horse advocate and a concerned taxpayer. I have been a wild horse advocate for about nine years now, and one of the primary concerns we have is with protecting these horses, whether they are called wild, estray, or feral, under all circumstances. Our traditional allies do not always agree with our positions, and I think this is one such situation.

[Read from prepared testimony ([Exhibit K](#)).]

**Chairman Claborn:**

You brought up a good point. They have a Samaritan that is doing the watering up there. What is going to take place, if this bill were to be enacted? I am concerned about where the water is going to come from. I would think you would have gotten heavily into that.

**Mandy McNitt:**

The way I read the bill, it does not say. It says the water would be provided, but it did not say anything by whom, or from where the funds would come about.

**Willis Lamm:**

On the topic of water, the requirements that are stated here are for the property owner who wishes to take horses on his property deems that his property is going to be the primary forage for that particular group of horses. The property owner needs to provide water as part of the condition. It does not matter how it gets there. I am the water boy of Lyon County now. I have been hauling water all summer. I am quite familiar with what is involved. Whether it is livestock or the horses, water has to be somewhere on the property, otherwise the horses have to leave once or twice a day and go somewhere else to get water. As far as battery fencing is concerned, we know we have a few problems. We have some problems in Reno. We have some problems with one of the areas in Lyon County. We have some areas where the horses can move any place that they want to move, but when they become a nuisance in a developed area, then we are dealing with, not just the fence outlaw, but also with developers that have gone bankrupt. There are big gaping holes in a string of houses that have been built, and there is nobody to prevent the horses from coming into city streets. Horses do not belong in downtown Reno, though. What we are trying to do here, when we talk about reasonable control of the horses, is this: if somebody does not step up to the plate and provide water and keep the horses out from where they should not be, then we try to keep the horses safer, keep the public safer, and we keep the tax bill down.

**Chairman Claborn:**

I agree with you, but we also have to protect the general public as well as the horses. My concern is that, right now, some Good Samaritans are hauling the water paid for by donations and paying for the vehicles to carry the water to each trough. Is that correct?

**Willis Lamm:**

Basically, yes. It is to provide water for the horses and wildlife, and for some cattle. The springs dried up last year and stranded a lot of animals. They would have been coming into town if they had not had the resources available out where they grazed.

**Chairman Claborn:**

I am not speaking against the bill, I am just trying to get to the bottom of things.

**Doug Busselman, representing the Nevada Farm Bureau Federation, Sparks, Nevada:**

[Read from prepared testimony ([Exhibit L](#)).]

**Chairman Claborn:**

In my six terms up here, I have seen so many horse plans, in regards to adoption plans and prisoner's adoption plans; I have not seen any of them work at all. I hope this one is something that has some heavy weight to it so that it would work. I am not against the bill, I am just trying to get out everything so the Committee can make a good decision. I hope that this would work, because nothing else has.

**Doug Busselman:**

We would agree that the solution lies on the ground, in going out to where the horses are, assessing what the actual conditions are, and then managing according to those resource conditions. All you can do, as legislators, is to provide the opportunity for those kinds of activities to take place.

**Chairman Claborn:**

I agree, but my concerns are like everybody else's. If they do not receive their water, then we have the same scenario. Like Mr. Lamm says, they are back in Reno. I hope that this is a plan that will work.

**Bonnie Matton, representing the Wild Horse Preservation League, Dayton, Nevada:**

I just came from the Nevada Tourism Summit, and I am pleased to say that there were over 100 people there all working on tourism for the State of Nevada to bring in funds. I am happy to have been able to make it here today.

[Read from prepared testimony ([Exhibit M](#)).]

I cannot tell you the reception that we have gotten when we have approached people with this wild horse booklet. In fact, a few months ago, we had an elder hostel group come out from the states of Alaska, New York, and Michigan. The one thing they really wanted to see was our wild horses. I know we are talking about estray horses, but to the tourists, they are wild horses. They made that the highlight of their trip, and they have already booked a trip back to see them again. There is an equine tourism agency in China, and when I was at the summit today, China is one of the main countries that want to see the "West." Wild horses are definitely part of that. We can bring money in through eco-tourism by using the sighting of these horses with guided tours. We can bring money to rural communities by the way of room tax, like Elko, Nevada, where they have a whole week of cowboy poetry. We have already talked to people working on the Virginia & Truckee Railroad.

There are horses in American Flats, and we are talking with the owners of that property to enlarge a water area there with the proper stones. It is running water all year, even in drought, and the people from the train will see wild horses there. If there is a good watering source, they will stay away around that area. I was on the train a few months ago, and the conductor said, "If you are lucky, you will see a wild horse." One of the people who was visiting from California said, "Oh, I think those are wild horses!" All of the people moved to that side of the train. It would be a win-win situation for the state and tourism if we can provide a good safe place for these wild horses. I think working with the ranchers is in the same vein; the increase in tourism will bring them some extra money in increased demand for bed and breakfast services so that tourists can see a real working ranch. There are all sorts of possibilities. Thank you very much.

**Chairman Claborn:**

Nevada is rather unique. Tourists want to see these wild horses, and for the Nevada ranchers, wild horses are the last thing they want to see. It is a unique situation.

**Bonnie Matton:**

It sounds like an oxymoron, but more and more ranchers that we have talked to in different parts of the state say they could use the extra money. For instance, in Elko, there is CowboyJohnTours.com. He is a perfect person. He has been taking out guided tours. He is licensed with the government to take out tours by vans or four-wheel drive vehicles. Also, during Cowboy Poetry Week, he takes groups out to the ranches, which benefit greatly from tourist visits, and shows them what real ranches are like. The public is very interested.

**Assemblyman Aizley:**

I have been hearing that the wild horses cannot sustain themselves. They need water. Water is located, in some instances, on private property. If the horse goes onto private property, it cannot go back to public property.

**Bonnie Matton:**

I cannot answer that. I just heard it for the first time here. We have never run into that difficulty before.

**Willis Lamm:**

I think that there is some confusion in terms from horses that are private property who go back to public property, and so forth. These are Virginia Range's estrays, or Virginia Range's feral horses, however you want to read the definitions. They do not fall under the Wild Free-Roaming Horses and Burros Act. The idea is not to create 640-acre compartments where horses are being held. The idea is to try and develop a mosaic and eventually some continuum of reserved open space where the horses and wildlife can migrate. We have the same problem with the mule deer and other animals, if they get checker-boarded out, they cannot migrate. The control issue is to prevent conflict with those areas where the horses clearly do not belong. I do not think that the Department of Agriculture is prepared to try to create horse jails. I think what they need to do is to assess the situation with their expertise and develop reasonable requirements for people that want to take advantage of this.

**Assemblyman Aizley:**

There are wild horses out there? Not the estrays, not the ferals, but wild horses?

**Willis Lamm:**

South of the Carson River is the Pinenut range, and Lake Lahontan, are Bureau of Land Management (BLM) horses. By legal definition, those are wild horses under public ordinance. The horses we are concerned about are the Virginia Range stray horses, though some people will argue that, at one time, they belonged to the BLM; nonetheless, they belong to the state now and the



Department of Agriculture is responsible for them. That is all we are trying to focus upon at this point, because they are in a defined boundary, and they are a defined expense for the State to fund.

**Chairman Claborn:**

Mr. Aizley, at one time, when it was decided what was a wild horse, what was a feral horse, and just a horse, federal agents flew high in the air with an airplane, and when they saw a bunch of horses, they circled them. They flew up again, took pictures of the horses, found another bunch and circled them as well. When they got back to the office, they decided which horses were wild, which horses were feral, and which were runaway and domestic horses. That is the way it is today. That is a true story.

**Willis Lamm:**

But that is not science.

**Bonnie Matton:**

Actually, what happened was, when the BLM forces came out and saw the sign that said, "Only estray horses," they stopped and turned around.

**Assemblyman Hogan:**

You mentioned the benefits in terms of tourism to the Virginia Range and elsewhere in the state. I have not heard of any estimates about the cost of the benefits extended to the property owners in the Virginia Range. I do not expect there is anything exact, but do we have a ballpark number?

**Willis Lamm:**

You cannot take somebody's property and flip it into agricultural property. It is not designed to be a tax dodge. If you have property that has been in agricultural use and in a transitional area, it is becoming difficult to sustain \$5,000 worth of agricultural use, especially if you are sharing it with horses. If so, that property owner has the opportunity to make that land available to the Department of Agriculture, at least the grazing portion of it, so that those horses can have an established area where they can graze.

**Assemblyman Hogan:**

I was wondering if anyone had taken a shot at estimating what the cost to the local tax assessor might be in the form of abatements or benefits. Is it too small to worry about, or is there no estimate around?

**Willis Lamm:**

I have talked to Storey County where the biggest portion of this ground is located. The Tahoe-Reno industrial area had about 67,000 acres that is now in

agricultural deferment. They are going to be taking out a portion of that. When they do, there will be well over, I believe, 37,000 acres still in agricultural deferment. Mr. Goicoechea could probably correct me on this. I believe, to get an agricultural deferment, you must go through the county. You cannot simply claim agricultural deferment; there is a process involving the county and the assessor. If the county does not care to give any more agricultural deferments, they are not obliged to do so. I will defer to Assemblyman Goicoechea.

**Assemblyman Goicoechea:**

You are mostly correct. The bottom line is, however, if you feel that you are entitled to an agricultural deferment and show the \$5,000 benefit on an annual basis, the assessor does not have any other choice but to give an agricultural deferment.

**Tony Lesperance, Ph.D., Director, State Department of Agriculture:**

Being charged with the responsibility of managing the Virginia Range stray horses is somewhat like my predicament of owning a ranch: I have a bunch of cattle, and nobody ever gave me any money with which to manage them. I have a problem on my own ranch as well as in the Virginia Range. I did note Mr. Lamm made a very profound statement to the Committee members. Some of you are members of Ways and Means, so I hope you will take Mr. Lamm's ideas into account. As he said, it is your responsibility to see that the Department is funded with enough money to carry out its statutory obligations with which it has been saddled. I compliment Mr. Lamm for sharing his voice, because, at this point in time, I have yet to see anything to show that his words were indeed heeded. I am sure that, under due consideration, it will happen.

Our legal counsel suggested I not talk about the tax situation in any capacity; I am neutral on that topic. Basically, I am in support of this bill. I have spoken extensively with Assemblyman Grady. I do not have a prepared statement for the amended version. I have indicated to Assemblyman Grady that there are a few things in here we ought to correct. They are of minor importance. If this bill goes to the Committee on Taxation, we will offer an amendment at that point in time.

There were concerns raised over who was in charge of the water. I can assure you that, if the Department of Agriculture is going to be responsible for cooperation or signing a cooperative agreement with anybody, I would refer to the bottom of page 5, paragraph (b), "the Department determines that: (1) a sufficient amount of water is naturally available or will be provided throughout the area to support the number of stray or feral horses...". I would take that rather seriously, and I would therefore assure you that the Department would

not shirk its duties at that point in time. By whatever means possible, we would make sure that we were not overcommitted. I would like to summarize the Department's position. I will not address the ongoing controversy regarding the optimum number of horses; instead, I will say, anything we can do to help the management of these animals will be of benefit. I have drawn your attention to two things, about which I am very concerned: one is the number of horses that wander close to Highway 50. We had 24 confirmed interactions between horses and cars in 2008 on Highway 50. I thank the good Lord that no one was killed. I do not know how many of you drive Highway 50, but people travel pretty fast on it. I myself have lost two personal friends from hitting a horse. Invariably, what happens is that the horse ends up inside the car with you after the impact, and that is a bit difficult to survive. So, we have been fortunate in that regard. It is of grave concern to me, because those horses are state property. We have a very firm legal decision on that. They are under the management of the Department of Agriculture, and I believe that places the state in a certain degree of jeopardy if we do not, somehow, do a better job of managing horses in the vicinity of Highway 50. Certainly, there are other highways involved, but that is the one where I think the greatest amount of interaction between horses and cattle occur.

My second concern is—and I want to be very clear on this, for I have been quoted and misquoted more times than I care to talk about—the vicinity of Virginia City. Virginia City is being encroached upon by pinon pine. Under which there is a healthy covering of cheatgrass. I remember 50 years ago, the University of Nevada, Reno initiated a project to try to burn pinon pine in eastern Nevada, and it failed miserably. Times have changed. In the last 15 years, we have burned thousands and thousands of acres of pinon pine. I will guarantee you, if we allow the cheatgrass in the vicinity of Virginia City to accumulate under those pine trees, there is a distinct chance of burning down the whole of Virginia City—lock, stock, and barrel—as well as the highlands, if there were a wildfire, where there are several hundred homes. It is of great concern of mine, as one who is charged with the management of the Virginia Range horses, that we keep enough horses in the vicinity of Virginia City to reduce the undergrowth under those pine trees, because it is the best possible fire tool we have.

I am enthused about the potential possibilities of increasing tourism. I have talked to the Virginia City folks a lot about this topic. I have spoken to some local commissioners about it as well. If we can manage those horses and find where and how they would fit in with the Virginia & Truckee train, it would help the tourism activity in Virginia City. Anything we can do to boost tourism is bound to help. Generally, I am in support of this bill, but it needs to be tweaked in a few places. I apologize for not having had the time to study this closely. I

have spoken with Assemblyman Grady about this, and we will come up with a few small amendments that will not change the intent of the general bill at all. I am in support of this.

**Chairman Claborn:**

I am sorry that we had to hear this bill in such an expedient manner due to cancellations.

**Assemblyman Bobzien:**

I am going through here and trying to figure out what exactly your Department is going to have to do in order to implement this. I am trying to pair up how agricultural assessments work, with how this is going to work for horses. Mr. Goicoechea laid out the various criteria in place for determination for whether or not something is in agricultural use and it strikes me that it is a fairly active or proactive use. There are several things going on there: commerce, effort, and so forth. This is, more or less, a passive use, because you are essentially saying, "All right, this land is now going to be used by wild horses." In determining whether or not something can qualify for this assessment is, more or less, passive. If the fencing is there, if the water is there, great; you can use it. Could you see a situation in which, maybe the Tahoe Regional Industrial Park or a developer could say, "I have phase 1 built, but I have not begun phase 2. It is sagebrush and cheatgrass. I will leave it alone, however it is fenced. I would like to have the wild horse assessment." Would that be a scenario that you could see approving?

**Tony Lesperance:**

Yes, I do. Again, that becomes a matter that would involve the county commission. If the county commission grants it, we will follow it up with the things that are listed here. That is not our decision as to whether that is granted or not. That is a decision for the County Board of Commissioners.

**Assemblyman Goicoechea:**

Something bothers me. I must have missed it in the bill, where the Board of County Commissioners is going to make that determination. I know I, as a County Commissioner in Storey County, would not want to make that call. I was under the impression that, with the bill, the agricultural deferment would be offered as long as it had the capability of providing forage for five head per section. Is that correct?

**Tony Lesperance:**

I do not think the Department of Agriculture is making that determination. I have only just briefly read this bill. I believe for obtaining the tax exemption for

agriculture—and I believe you have already defined it—you have to go to the County Commission to get that, do you not?

**Assemblyman Goicoechea:**

Actually, you go to the assessor.

**Tony Lesperance:**

You go to the assessor and work up through it, and it is granted. If that is granted, then we will work with them to make sure that their land complies, as is defined by this bill. I do not envision the Department of Agriculture making the determination.

**Assemblyman Bobzien:**

I think that is where the rub is. Section 9 talks about the Department's role in determining whether or not such land would qualify for this new type of assessment. I think that is where Mr. Goicoechea and I are concerned.

In section 9, I see that it is the Department that has to determine whether or not the criteria are met so that the land can qualify for the exemption. I see this as a completely different system for how the assessment is determined.

**Tony Lesperance:**

We can determine if it physically qualifies, but it is my understanding that they still have to go through the normal procedure to have the exemption granted. This involves going to the County Board of Commissioners.

**Assemblyman Grady:**

I think our intent, working with both groups, is that the Department will determine if the feed is out there, et cetera. But the county will still determine the agricultural exemption. Mr. Lesperance's Department would just go out there and say, "Hey, there is no feed out here. We cannot allow the horses out here." However, he himself does not enter into the agricultural exemption. That is still left with the county. If there is not enough food, or whatever the reason, it states that he will notify the county assessor that there will not be the animals out there, and therefore would not qualify for the exemption. It is the same process with cattle or anything else.

It is essentially a two-step process, where the Department certifies that, yes this is stray and feral horse land. Then, it goes back to the county, similar to how it is normally done for an agricultural deferment.

**Tony Lesperance:**

I think just the opposite. The county would have to say if they were going to give the agricultural deferment. Then the Department would say if there was enough resources out there to justify the agricultural deferment.

**Assemblyman Goicoechea:**

I think the real mechanics of it work just a little differently. The assessor in a county would typically have that land assessed as agricultural deferred. The only way it would qualify if it is in a higher use and moving back, which most of this land clearly is not. If it were in that scenario, then it would be up to the Department of Agriculture to notify the assessor of that particular county. Yes, this land did in fact qualify as agricultural deferred, as defined under this program. It would be maintained there until such time as the assessor was notified by the Department of Agriculture that the exemption was to be removed because they were no longer maintaining horses on the land.

**Assemblyman Grady:**

I agree. I think we have the legislative intent. If the Committee or anyone feels that there needs to be stronger language, please let us know. As it goes through the Taxation Committee, we will make the necessary changes. Mr. Lesperance has a few changes he wants to make. We can do them all at once.

**Chairman Claborn:**

We can refer this bill to the Committee on Taxation with the amendments, as long as the interested parties agree to work out your differences.

**Assemblyman Goicoechea:**

While you are offering amendments, on page 5 of the bill, line 31: "The real property consists of vacant range land." I think for the assessor and the mechanics of it, it probably should say fourth-class grazing.

**Tony Lesperance:**

That was one of the amendments I was looking into.

**Chairman Claborn:**

Anyone else to speak in favor of A.B. 427? Anyone here opposed? Any neutral?

**Betty Kelly, Private Citizen, Carson City, Nevada:**

I am neutral on A.B. 427. I have been a resident of Nevada since 1970. I have been a long-time wild horse advocate and rescuer. I know a lot of underhanded things that have been going on for a long time.

[Read from prepared testimony ([Exhibit N](#), [Exhibit O](#)).]

I have three photos I would like to share with the Committee. These photos show that these horses are wild horses and were under federal protection at one time ([Exhibit P](#), [Exhibit Q](#), [Exhibit R](#)). However, because of Nevada's legislation, they have been classified as estray.

This is a photo ([Exhibit Q](#)) which I took several years ago showing the Virginia Range wild horses down in the southern part of the Hidden Valley area. There is a BLM stake there. I have taken a broad photo of it, and then I took a close-up of the marker marked "Bureau of Land Management." So, these are BLM horses. The horses are under federal jurisdiction. Even though they may cross over into private lands, they can cross back over and they are still wild horses.

Regarding the Nevada Department of Agriculture's freeze branding program, I have a photo I took of a horse that has the old type of freeze branding that they did. It would be so easy to recognize to whom that horse belonged and where it came from. It has an "N," and three numbers, "005."

This last map is an old map that I have ([Exhibit P](#)). It shows a large herd area called Horse Springs 308 in the Storey County area. That was the one that was zeroed out by the BLM. It shows that these horses, Wild Horse Annie's horses, are the descendents of wild horses that were once protected under the federal program. I do not think we can call them feral or estray. That is a political term where the language was changed by the Legislature years ago.

I have a brief article that was written September 10, 2004 in the Los Angeles Times regarding the Nevada Department of Agriculture ([Exhibit O](#)). Had it been in California, it would have been found guilty or culpable of abetting and aiding cruelty to wild horses. I think this needs to be documented. I think I am against this bill. There are too many tweaks in it that will not benefit our wild horses.

**K. Neena Laxalt, representing the Nevada Cattlemen's Association, Elko, Nevada:**

The Nevada Cattlemen's Association is in full support of the concept of maintaining, managing, and protecting the welfare of these horses. We had some concerns about some of the language that is in here. I think all those concerns have been brought forward. We will be happy to work with the sponsor and whoever else is working with the language on this bill.

**Chairman Claborn:**

Are there any members of the public who want to speak against A.B. 427?  
Hearing none, any neutral?

**Don Alt, Private Citizen, Sparks, Nevada:**

I am not for or against A.B. 427. We have cattle in the area. We are moving our cattle to a different area. A friend of mine is buying quite a few square miles of land adjoining this, and he is not going to like the horses either. There are far too many horses there. If they can cut the numbers, then the feed would come back in there and the horses would stay over there. But about 12 or 13 miles of fence would really be nice.

I am often up there checking cattle. I have seen one woman up there. She might be called a tourist. She goes up and takes pictures regularly. We raise cattle there to sell for quite a bit of money. If they could fence off areas where people do not want the horses, it would be the greatest thing in the world.

**Chairman Claborn:**

Regarding your fence, I think that is out of the question in terms of our budget. I will close the hearing on A.B. 427.

**Assembly Aizley:**

I am interested in this statement made by Betty Kelly that the deoxyribonucleic acid (DNA) mitochondrial evidence proves that these are Native American horses. If that is actually true and verifiable, there are probably a dozen agencies in this country that would be here to support everything that is going on. Can we find out if that is true?

**Chairman Claborn:**

That would be another issue, but we could probably find that out. We can have our analyst look that up for you. With that, the hearing on A.B. 427 is closed.

There are three or four things we can do in this Committee. This bill has to be concurrently referred to the Committee on Taxation. We can do this, we can refer without recommendation to the Committee on Taxation, or do pass and refer, or amend and refer. This bill needs some work so we can either hold it or give it to Taxation.

**Assemblyman Goicoechea:**

I would make a motion that we do pass and refer to Taxation. They will have to amend it on that side, and there will be some clarification there.



ASSEMBLYMAN GOICOECHEA MADE A MOTION TO DO PASS  
ASSEMBLY BILL 427.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Assemblyman Grady:**

Anyone that has any amendments they want, please get them to me as soon as possible, because things are moving fast. We need to get them done so we can have them ready for Taxation.

**Assemblyman Gustavson:**

Did you want to take any action on Assembly Bill 341?

**Chairman Claborn:**

I want to hold that for a work session, because we are filling in with some of these things. If you do not mind, there are some other questions I want to ask. I want to talk to some of the Bureau of Land Management people. Any more questions? Hearing none, we are adjourned.

[Committee adjourned at 3:45 p.m.]

RESPECTFULLY SUBMITTED:

---

Judith Coolbaugh  
Committee Secretary

---

Robert Gonzalez  
Transcribing Secretary

APPROVED BY:

---

Assemblyman Jerry D. Claborn, Chair

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

## EXHIBITS

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

**Date:** March 18, 2009

**Time of Meeting:** 1:41 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance Roster.
<u>A.B. 341</u>	C	Chris Collis	Written testimony in support of <u>A.B. 341</u> .
<u>A.B. 341</u>	D	Tony Lesperance	Written testimony in support of <u>A.B. 341</u> .
<u>A.B. 341</u>	E	Ramona Morrison	Written testimony in support of <u>A.B. 341</u> .
<u>A.B. 341</u>	F	Don Alt	Written testimony in support of <u>A.B. 341</u> .
<u>A.B. 341</u>	G	Doug Busselman	Written testimony in support of <u>A.B. 341</u> .
<u>A.B. 427</u>	H	Assemblyman Tom Grady	Written testimony in support of <u>A.B. 427</u> .
<u>A.B. 427</u>	I	Willis Lamm	Written testimony in support of <u>A.B. 427</u> .
<u>A.B. 427</u>	J	Willis Lamm	Written testimony in support of <u>A.B. 427</u> .
<u>A.B. 427</u>	K	Mandy McNitt	Written testimony against <u>A.B. 427</u> .
<u>A.B. 427</u>	L	Doug Busselman	Written testimony in support of <u>A.B. 427</u> .
<u>A.B. 427</u>	M	Bonnie Matton	Written testimony in support of <u>A.B. 427</u> .
<u>A.B. 427</u>	N	Betty L. Kelly	Written testimony regarding <u>A.B. 427</u> .
<u>A.B. 427</u>	O	Betty L. Kelly	Photocopy of an article from the Los Angeles Times on September 10, 2004 regarding animal cruelty.
<u>A.B. 427</u>	P	Betty L. Kelly	Map detailing ranges of wild horses in Nevada.
<u>A.B. 427</u>	Q	Betty L. Kelly	Color photograph of a horse with the brand "N005."
<u>A.B.</u>	R	Betty L. Kelly	Photograph of wild horse

<u>427</u>			with BLM stake.
------------	--	--	-----------------