

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

**Seventy-Fifth Session
March 25, 2009**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Jerry D. Claborn at 1:45 p.m. on Wednesday, March 25, 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

COMMITTEE MEMBERS ABSENT:

Assemblyman Harvey J. Munford (excused)
Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Ron Wenker, State Director, Bureau of Land Management, United States
Department of the Interior, Reno, Nevada
Terri Marceron, Forest Supervisor, Lake Tahoe Basin Management Unit,
United States Forest Service, United States Department of
Agriculture, South Lake Tahoe, California
Edward C. Monnig, Forest Supervisor, Humboldt-Toiyabe National Forest,
United States Forest Service, United States Department of
Agriculture, Sparks, Nevada
Don Alt, representing the Nevada Live Stock Association, Sparks, Nevada

Chair Claborn:

[Roll was called.] Today, we will have presentations from the Bureau of Land Management (BLM) and the Forest Service to be followed by a work session.

**Ron Wenker, State Director, Bureau of Land Management, United States
Department of the Interior, Reno, Nevada:**

[Read from prepared testimony submitted in writing ([Exhibit C](#)).]

Chair Claborn:

Mr. Wenker, I need to interrupt your presentation for a question.

Assemblyman Carpenter:

Recently, a judge ruled against the Western Watersheds Project, and a number of their appeals in regard to their allotment management plans. If the BLM can finish a lot of those plans without having them appealed, I think it would help us with our situation. What are your thoughts on that subject?

Ron Wenker:

The Western Watersheds Project does occasionally lose cases. You are correct as a recent case was lost. I am hopeful that the BLM can continue to evaluate the expiring permits, and do the appropriate amount of review to avoid litigation. My goal is to work in cooperation with all parties. I would hope there will be fewer future appeals.

Chair Claborn:

Please continue with your presentation.

Ron Wenker:

[Continued to read from prepared testimony submitted in writing ([Exhibit C](#)).]

Chair Claborn:

Mr. Wenker, I need to interrupt your presentation for questions.

Assemblyman Hogan:

In your visit with Mr. Ken Salazar, Interior Secretary, did you get the impression that he recognizes the need to support your operation with enough people and resources to process and approve these projects? We are anxious to get a lot of them started because they hold economic promise for the state. I understand that some of the permits require a lengthy process to obtain approval. Is Interior Secretary Salazar aware of that problem, and did he have any thoughts on how to speed up the approval process?

Ron Wenker:

The short answer is "yes." Each of the different activities has a different authorization process. The geothermal projects, which I was just referring to, come under a recent law which allows some of the revenues generated to revert to the BLM to hire staff. This plan has worked well in the Carson City and Winnemucca Districts. For solar and wind projects, the authorization for permits comes from rights-of-way within the counties' planning divisions. Interior Secretary Salazar does recognize that the BLM needs additional assistance to process these applications. He is trying to provide funding through the stimulus package, and other means available to him. Solar powered energy projects have developed so quickly that we have not had the ability to "staff up" fast enough to handle the increased workload.

Assemblyman Carpenter:

Does the state or the counties receive any money generated from the solar energy projects?

Ron Wenker:

I cannot speak for the state on whether or not any revenues come back to it. I would have to defer the question. The BLM authorizes solar and wind projects under rights-of-way. It is the same authorization process used for power lines, roads, and other similar activities, and those revenues go directly to the federal treasury. No portion of those funds is reverted to the state. However, there may be revenue opportunities available that I am unaware of.

Assemblyman Aizley:

Are there any plans to deliver power from these alternative energy sources over existing power lines? Or is the federal government planning on handling the delivery?

Ron Wenker:

We have bi-weekly meetings with NV Energy to talk about getting the needed power transmission lines in place. There are two corridors for the lines. One running along the eastern side of the state is called the Southwest Intertie Project. The lines will run from the Idaho border through Ely to Las Vegas. Discussions are currently being held to establish a similar power transmission corridor on the western side of the state.

Chair Claborn:

Please continue with your presentation.

Ron Wenker:

[Continued to read from prepared testimony submitted in writing ([Exhibit C](#)).]

Chair Claborn:

Are there any questions?

Assemblyman Hogan:

About a year ago, a number of federal agencies expressed concern about the Southern Nevada Water Authority's (SNWA) exportation project, and then they abruptly withdrew their objections on the day before a hearing was scheduled on it. Has the new administration given any consideration to revisiting the merits of such a project, and/or reexamining possible environmental conflicts?

Ron Wenker:

I have not received any specific information from Interior Secretary Salazar on the SNWA's project. The BLM is still working with the SNWA on the water model to estimate environmental impact, and we are still planning on coming out with an Environmental Impact Statement (EIS) this fall. The BLM will be authorizing permits for the pipeline and the pumping stations that will be used to transport the water. I have not heard of any new policy position on the project from this administration.

Assemblyman Carpenter:

Where is the Blue Mountain Geothermal Power Plant located?

Ron Wenker:

Its general location is the Winnemucca area. More specifically, it is in the Blue Wing Mountain Range, which is off by itself between the Eugene Mountains and Winnemucca Mountain. The power plant would be on the south end towards Interstate 80.

Assemblyman Ohrenschall:

What do you see happening with the Red Rock Canyon and Mt. Charleston areas in the future? Development in the Las Vegas Valley is already nearly touching Red Rock Canyon, and it is creeping closer to Mt. Charleston. Do you envision these areas as urban parks, or will they be administered the same way as they are now?

Ron Wenker:

The BLM's northern disposal boundary runs on the north end of the Valley next to the Las Vegas Paiute Indian Reservation, and across the bottom of the Desert National Wildlife Refuge. The southern boundary is near Henderson. The BLM lands have a well-defined boundary. It is hard for me to project if new legislation will expand the boundary to the north, or if it will go down the Interstate 15 corridor south towards Ivanpah. I believe the economy will "drive" any changes. We do work with the cities and the counties for authorizing parks under the Recreation and Public Purposes Act. Currently, we are looking at the Las Vegas Wash area, and the sensitive resources that are there to determine how much of that region should be protected and not developed. It is difficult for me to estimate exact changes.

Assemblyman Ohrenschall:

Do you ever envision nearing the point where a lottery will be used, or a limitation placed on the number of public visitors entering these BLM lands?

Ron Wenker:

The BLM manages Red Rock Canyon, and occasionally—like this last Thanksgiving—there were so many visitors coming in and out of the Canyon that the BLM had to hold people back from entering it. I hope we do not get to the point where we have to institute a lottery system for entrance. I will say those days—like the one I just mentioned where a flush of people are trying to look at the Canyon at the same time—require entrance to be limited or stopped.

Chair Claborn:

You spoke about two power plants that are coming online soon. Could you tell us how many megawatts (MW) of power those plants will produce?

Ron Wenker:

If the White Pine Energy Station is constructed, it will generate 1,590 MW of power. The Toquop Power Station is a 750 MW proposal. Its final EIS will be coming out in the late spring or early summer. The new Ely Energy Center, proposed by NV Energy, will be a 1,500 MW plant.

Chair Claborn:

What about the geothermal power plants that will be coming online?

Ron Wenker:

I do not have the Blue Mountain and Salt Wells figures with me. I apologize. I did mention that current production is 290 MW of power out of the ten plants in operation. I can get those other figures for you. [After the hearing, Ms. Jennifer Ruedy, Committee Policy Analyst, submitted a letter from Mr. Ron Wenker to be put on the record. It gives more detailed information, including the Blue Mountain and Salt Wells Geothermal Power Plants power generating figures ([Exhibit D](#)).]

Assemblyman Goicoechea:

In the last sixty days, we have continued to have some conflicts between the BLM and Forest Service rangers regarding their enforceable police powers. Under the *Code of Federal Regulations* (CFR), the federal agencies have the right to enforce laws on public lands. However, some speeding citations have been issued along state highways that traversed the BLM or other federal lands. We need to have clarification on their areas of jurisdiction. Can you comment on this situation?

Ron Wenker:

I, personally, do want to know when any of our law enforcement officers do anything beyond their authority. Whenever significant actions are taken, I receive a report from law enforcement. I was unaware of our officers issuing speeding tickets outside of Red Rock Canyon. It is a very narrow road, and the speed limit is 25 miles per hour. We have had motorcycles attempting to use the road as a race course. In those instances, if we can catch them, a ticket will be issued. Out on the highway, the only time any of my officers would be issuing citations would be upon request for assistance by the sheriff or the highway patrol.

Assemblyman Goicoechea:

I was looking for clarification on the BLM's position on issuing tickets. The particular circumstance I was referring to involved a Forest Service agent.

Chair Claborn:

Are there any questions? [There were none.] The Committee has received three letters. The first is a letter from the BLM expressing their concerns of Assembly Bill 341 ([Exhibit E](#)). The second letter is a statement from Ms. Laxalt that she requested to be read into the record. There is also an email from Ms. Morrison that will be placed in the record later in this hearing. Ms. Ruedy, will you read Ms. Laxalt's statement?

Jennifer Ruedy, Committee Policy Analyst:

[Ms. Ruedy read Ms. Laxalt's statement into the record ([Exhibit F](#)).]

Chair Claborn:

Next, we will hear a presentation from the United States Forest Service.

Terri Marceron, Forest Supervisor, Lake Tahoe Basin Management Unit, United States Forest Service, United States Department of Agriculture, South Lake Tahoe, California:

[Read from prepared testimony submitted in writing ([Exhibit G](#)). A supplemental PowerPoint exhibit briefly referred to, which contained a Lake Tahoe Basin map showing public lands, and photographs of before and after forest fuel reduction treatments, was also submitted for the record ([Exhibit H](#)).]

Chair Claborn:

Does California receive any of our Nevada money? I believe \$300 million was authorized under the Southern Nevada Public Land Management Act for the Lake Tahoe Basin.

Terri Marceron:

Yes, they do. The funds are distributed through a federal advisory committee that is composed of both California and Nevada interests. They work together on projects to cover all of the Lake Tahoe Basin.

Chair Claborn:

Does California contribute any funding?

Terri Marceron:

Their funds come from appropriated dollars, or from matching funds that are specified under the Lake Tahoe Restoration Act.

Assemblyman Goicoechea:

How did the Forest Service acquire the 1,500 urban lots? Were they purchased?

Terri Marceron:

They were purchased under the Santini-Burton Act. Both California and Nevada have acquired urban lots in environmentally sensitive areas.

Assemblyman Goicoechea:

They were purchased under the Santini-Burton Act?

Terri Marceron:

Yes, they were.

Assemblyman Aizley:

What do you do with the delivered biomass? Is it just burned?

Terri Marceron:

No, it is not burned. It is actually the wood material from the cut trees. The biomass has product value, and contractors purchase the material from us and haul it off to buyers.

Assemblyman Aizley:

Is it mulch?

Terri Marceron:

It varies. It depends on what they need at the biomass facilities. Sometimes they chip the material and deliver it as a chipped product, and in some cases, they just break it up into smaller diameter pieces of wood. Both the California facilities and the Nevada Correctional Centers continue to refine their operations, so they can use more of the material in a variety of different ways. They use whole trees, parts of trees, and chipped material.

Assemblyman Aizley:

Is it sold to them?

Terri Marceron:

Actually the biomass plant buys it from the contractor who purchased it from the Forest Service. The Forest Service pays the contractors to have the area treated for fuel reduction. The contractors choose how they wish to sell it. Sometimes, they sell it as soft timber, garden products (mulch), or for biomass to the correctional facilities, and in those cases their delivery charge is included.

Chair Claborn:

Some good forest products come from the fuel reduction projects. For example, in Ely, they grind up the biomass, add a glue compound, and make

wood-burning pellets for the schools. Next, we will hear a presentation from the United States Forest Services.

Edward C. Monnig, Forest Supervisor, Humboldt-Toiyabe National Forest, United States Forest Services, United States Department of Agriculture, Sparks, Nevada:

Mr. Michael Hampton is with me today to show the PowerPoint portion of our presentation. [Read from prepared testimony submitted in writing ([Exhibit I](#)), and showed PowerPoint slides that corresponded to the testimony being presented ([Exhibit J](#)).]

Chair Claborn:

Mr. Monnig, I need to interrupt your presentation for a question. My understanding is the Jerritt Canyon Mine was closed for awhile, and now it has started back up. Is that correct?

Edward Monnig:

Their operations are still down, but they are working with the state's Bureau of Air Quality to reactivate the mine. They have two basic operations. One is the mining operation which is primarily underground. The other operation is milling, and most of it is located on private land. The mine operators are working closely with the Bureau of Air Quality to renegotiate their permit, and restart the operations.

Chair Claborn:

I hope so because people are out of work up there.

Edward Monnig:

Yes, a lot of people have been impacted.

Chair Claborn:

Please continue with your presentation.

Edward Monnig:

[Continued to read from prepared testimony submitted in writing ([Exhibit I](#)).]
I would like to say that I have worked with these committees in other states, and it has been an excellent opportunity to bridge some gaps between diverse interest groups. There is nothing like a little money to bring people to a table to start negotiating, and to start them talking with each other in ways different from previous discussions. One of Mr. Hampton's major jobs for this year is to work with the local communities and counties to develop resource advisory committees. [Continued to read from prepared testimony submitted in writing ([Exhibit I](#)).]

Chair Claborn:

Welcome aboard, Mr. Hampton. I see one of our old friends, Mr. Baker from the Forest Service, sitting in the audience.

Edward Monnig:

He continues to work closely with us on many of the fuel reduction and biomass projects.

Chair Claborn:

Are there any questions?

Assemblyman Aizley:

What do they mine at the Jerriitt Canyon open-pit mine?

Edward Monnig:

They are mining a little bit of a lot of different minerals. It is mostly a gold mine, but a lot of other metals turn up when you mine for gold.

Assemblyman Goicoechea:

I am going to ask you the same question that I asked Mr. Ron Wenker from the BLM. We have had some reports of Forest Service rangers stopping and ticketing drivers on U.S. Highway 50. Would you care to address that issue?

Edward Monnig:

I do have direct communication in the form of a letter from Mr. Eldridge about that incident. I would be happy to share the response with you.

Assemblyman Goicoechea:

I also talked to Sheriff Dan Watts from White Pine County who indicated that an understanding had been reached. However, I would like to have your position on record.

Edward Monnig:

Technically, within the boundaries of a national forest, if something is amiss a ranger can take action. After thoroughly discussing the traffic ticket incident, we have a good understanding with our law enforcement officers that they will only be reacting to the most serious infractions on highways traversing national forest lands. One of their primary jobs is education which means letting people know the rules and the regulations. In terms of enforcing speeding and driving under the influence (DUI) regulations, their commitment is they will only go after the most serious violators. Routine traffic patrol and other law enforcement activities outside of the national forest boundaries is not part of their job.

Assemblyman Goicoechea:

I have a spreadsheet that shows what "shovel-ready" projects the United States Forest Service is proposing across eastern Nevada. I know the first part of the stimulus funds went to Lincoln County. Do you have a "ballpark" figure of how much more will become available to the Forest Service, especially with the biomass treatments within the pinion and juniper tree areas?

Edward Monnig:

We are doing that work with a variety of sources. White Pine County, in particular, now has access to some of that funding through the Southern Nevada Public Land Management Act. The Lowry Creek project is slated to cover 3,000 to 5,000 acres of mechanical and some burning treatments. A lot of our stimulus program projects are directed towards infrastructure, such as roads and bridges. The program in Lincoln County is going through the Nevada Division of Forestry. I do not know exactly how much of the funding will go for fuel reduction treatments. We are aggressively pursuing a variety of funding sources to complete that work.

Chair Claborn:

Are there any questions? [There were none.] I am opening the work session, and the hearing on Senate Bill 38.

Senate Bill 38: Revises the period of validity of certificates to apply restricted-use pesticides. (BDR 49-355)

Jennifer Ruedy, Committee Policy Analyst:

I have distributed to the Committee the work session document for S.B. 38 (Exhibit K). This bill was first heard by the Committee on Monday, March 23, 2009. It "changes the expiration date of certificates authorizing the application of or supervision of the application of restricted-use pesticides from the end of the fourth calendar year after issuance to four years after the date of issuance." There is a special note on your work session document from the State Department of Agriculture that states:

This is a housekeeping bill and it is intended to give applicants a full four years with each certification. The current statute has an expiration date of December 31; therefore, applicants who renew in the middle of a calendar year do not receive four full years of certification.

Mr. Stephenson, Committee Counsel, is here to clarify a point about inserting the word "after" in the bill's language.

J. Randall Stephenson, Committee Counsel:

Assemblyman Aizley had a question about the four years after the date of issuance. That language is fairly standard when there is a request to change a license or certification date from a certain date or from the end of a year to a "floating" date beginning on the date of issuance. I am not sure what type of wording we can insert to correct the problem.

Assemblyman Aizley:

The problem is if I said ten is a number, and asked you to give me four numbers after it. What numbers would you give me?

J. Randall Stephenson:

I can see what you are getting at. You would say four years within the ten years after issuance.

Assemblyman Aizley:

I think you should say "from the date of issuance."

J. Randall Stephenson:

Yes, but the statute language used is the word "after," and that means "from."

Assemblyman Aizley:

The word "after" means "from." Is that correct?

J. Randall Stephenson:

Yes, the word "after" means "from." It reads "after the date of issuance," or "from the date of issuance," and the meaning is the same.

Assemblyman Aizley:

I will let it go if that is the interpretation of the legal language. However, I believe the wording is wrong, and it does not express what is meant.

J. Randall Stephenson:

It is a good point. We consider these issues all the time when we are drafting bills especially with federal government required licenses. They are not easy provisions. I think the intent of the statute is the expiration date will be four years after the date of issuance. Your point is valid, but normally we just use bill language that uses the word "after."

Chair Claborn:

If we pass this bill today, then four years from this date the bill would expire. Is that correct?

J. Randall Stephenson:

The intent of the language is to mean four years beginning on the date of issuance. This language is quite often used in the *Nevada Revised Statutes* (NRS). It is a valid concern.

Chair Claborn:

Mr. Aizley, are you satisfied with that explanation and word usage? Or do you wish to amend the bill?

Assemblyman Aizley:

I will let it go.

Assemblyman Hogan:

To me, you are giving the certificate holder an extra day. The day he gets the certificate, he is legal; he has got it. Four years later plus a day he still has it. I believe it is the native generosity of Nevadans. We say if you pay for four years, you deserve an extra day. I am okay with the language with that understanding of it.

Chair Claborn:

I will entertain a motion.

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS
SENATE BILL 38.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BOBZIEN, MUNFORD,
AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

Assemblyman Aizley will do the Floor assignment. I am opening the hearing on Senate Bill 109. Ms. Ruedy will walk us through the bill.

Senate Bill 109: Deletes the provisions that place each State Grazing Board within the State Department of Agriculture. (BDR 50-495)

Jennifer Ruedy:

I have distributed to the Committee the work session documents for S.B. 109 (Exhibit L). This bill will delete "the provisions that place each state grazing board with the State Department of Agriculture." The Committee members asked some questions at the hearing on the bill. One of the questions was: "Why were the state grazing boards moved within the State Department of Agriculture in 1999?" In your work session documents I provided some

background research on the reason for the change. Prior to 1999 when the Division of Agriculture became the State Department of Agriculture, the state grazing boards were autonomous entities within the state system. I reviewed the legislative history for Assembly Bill No. 103 of the 70th Session to determine the impetus for moving the state grazing boards within the State Department of Agriculture. [Ms. Ruedy then read from prepared text submitted in writing in ([Exhibit L](#)).]

The second question on the bill was: "Would the proposed legislation jeopardize the state grazing boards' ability to continue to participate in the BLM and United States Forest Service planning processes as cooperating agencies?" I have attached a letter from Ms. Katie S. Armstrong, Deputy Attorney General for the State Department of Agriculture regarding this issue ([Exhibit M](#)).

Chair Claborn:

Are there any questions?

Assemblyman Goicoechea:

The letter clearly states that the state grazing boards are autonomous agencies, and they do have their own Chapter in the NRS. Therefore, it is clear they are considered state agencies since the state created them [in NRS 568.040].

Chair Claborn:

Are there any more questions or summations on the letter?

J. Randall Stephenson:

For clarity, taking the state grazing boards out of the purview of the State Department of Agriculture does not endanger their status since they were created by statute. It will simply take them back to their status prior to 1999. Our opinion is they are still a state agency. The only difference would be they would now be directly accountable to the Governor as opposed to the State Department of Agriculture.

Chair Claborn:

I will accept a motion.

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS
SENATE BILL 109.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BOBZIEN, MUNFORD,
AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

Assemblyman Carpenter will do the Floor assignment. I am opening the hearing on Assembly Bill 194. I want to thank everyone on the Committee who worked to refine this bill's language. There may be a few changes today, but I believe the bill is viable. Ms. Ruedy will walk us through the bill.

Assembly Bill 194: Makes various changes to provisions governing master guides and subguides. (BDR 45-258)

Jennifer Ruedy:

I have distributed to the Committee a copy of the work session documents for this bill ([Exhibit N](#)). This bill makes various changes to provisions that govern master guides and subguides. As introduced, A.B. 194 increases the penalty for acting as a master guide or subguide without having a license issued by the Department of Wildlife, from a gross misdemeanor to a category E felony. [Ms. Ruedy then read from prepared text submitted in writing in ([Exhibit N](#)).] A mock-up amendment prepared by the Research Division is included ([Exhibit O](#)). The changes suggested were provided by various members of an informal working group. There were four fiscal notes to this bill. Three of them had zero impact. The only one that had any value was submitted by the Department of Wildlife. A copy of that fiscal note is included ([Exhibit P](#)). I will summarize the changes appearing in the mock-up amendment. [Ms. Ruedy then read from prepared text submitted in writing in ([Exhibit N](#)).] An additional change was requested in the mock-up amendment in section 7, subsection 1 (a), and in section 8, subsection 1 (a) under the definition of compensation. The word "commercial" should be deleted from both sections. [Ms. Ruedy continued to read from prepared text submitted in writing in ([Exhibit N](#)).] Another change in the mock-up amendment is that the words, "for compensation" need to be added to section 8, subsection 1 (b). The words were added to section 7, subsection 1 (b), but the words were inadvertently omitted in section 8, subsection 1 (b), and they need to be inserted there.

Chair Claborn:

So far, we have two changes to the original bill's language. Is that correct?

Jennifer Ruedy:

Yes, that is correct. [Ms. Ruedy continued to read from prepared text submitted in writing in ([Exhibit N](#)).] The words, "transporting a person by motor vehicle to or from a public facility for transportation, including, without limitation, a public airport" from the persons required to hold a subguide license, were added in the mock-up amendment.

Chair Claborn:

What section are you referring to?

Jennifer Ruedy:

I am referring to section 8, subsection 3 (a).

Chair Claborn:

This change in the original bill's language will be amended in the new bill. Is that correct?

Jennifer Ruedy:

Yes, some of the members were concerned if they sent their wives to the airport to pick up a hunter and transport him to the hunt site, they would be required to have a subguide license. The only other change to the mock-up amendment is in section 9, subsection 2 where the words, "gross misdemeanor," were deleted, and only the word "felony" remains from the original language in the bill. The mock-up amendment proposes a gross misdemeanor as the penalty for a first offense, and a felony for the second and subsequent offenses. The language would then read "gross misdemeanor or felony." We were going to delete the words "gross misdemeanor," but it was suggested those words should be retained along with the word "felony." The new language will be in section 9, subsection 1 (a) and 1 (b).

Assemblyman Goicoechea:

This bill was requested by the Nevada Outfitters and Guides, but I do want to thank everyone in this room and throughout the state who worked on the bill.

Chair Claborn:

I also want to thank all the people who worked on refining this bill's language and purpose. Are there any questions on the mock-up amendment? [There were none.] I will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 194.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN BOBZIEN, MUNFORD,
AND SEGERBLOM WERE ABSENT FOR THE VOTE.)

Assemblyman Goicoechea will do the Floor assignment. I am opening the hearing on Assembly Bill 341. Ms. Ruedy will walk us through the bill.

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

Jennifer Ruedy:

I have distributed to the Committee the work session documents for this bill ([Exhibit Q](#)). This bill "requires a governmental entity to obtain approval for the seizure of privately owned animals subject to brand inspection from the district court of the county in which the animals are seized." Currently, the language in statute states: "court of competent jurisdiction."

Chair Claborn:

Is there any discussion on this matter?

Assemblyman Carpenter:

I have been doing some research on this. I think placing a federal agency under the jurisdiction of a state district court is an action that could be declared unconstitutional. Case law states that the federal government cannot be subject to a state law. I am afraid if we pass this bill we will lose the entire law. The protection we have under the current statute which uses the terminology "the court of competent jurisdiction" will be gone. The federal agency will take the case to court, and the entire statute can be declared unconstitutional. Then, whether you like it or not, the BLM or the United States Forest Service will just seize the cattle. Currently, they have to go to the federal court to have the case heard before seizure is authorized. The federal court rules on whether or not the cattle can be gathered.

In some of the literature that has been handed out it states that a grazing permit is a property right. That is not so. Even in the *Hage v. United States* case, the judge ruled that a grazing permit does not give you a property right. It is a privilege. With that, I do not think we should pass this bill because it was very hard to get "the court of competent jurisdiction" terminology initially placed in statute. I do not want to lose that protection. If that protection is lost, there will be no reason at all for a federal agency to even go to a federal court for a decision on whether or not the seizure of the cattle in question is legal.

Chair Claborn:

Are there any more questions?

Assemblyman Hogan:

I agree with Mr. Carpenter on the possible legal ramifications. The position taken by the Nevada Cattlemen's Association showed considerable wisdom by recognizing the fact that they are currently enjoying a good working relationship with the BLM. The BLM has indicated several areas where they would be willing to accommodate some of the concerns. It could be to our advantage to leave well enough alone for the time being.

Assemblyman Ohrenschall:

How does this situation with the BLM differ from the federal government having to go to the State Engineer to seek water rights?

Assemblyman Carpenter:

The water is owned by the state, and the state controls all water rights. With the grazing permits, it is the federal government that owns the land. There are a number of us, and I am one of them, that hope someday the United States Supreme Court will rule that the public lands within this state belong to the state. Until they do that, we are subject to the authority of the federal government on these lands.

Assemblyman Goicoechea:

I, too, am concerned about passing A.B. 341. Given the position taken by the federal agencies, there is a threat of a lawsuit. If you are a permittee that is adjacent to an impoundment of livestock, some of your livestock may also be erroneously impounded. I would prefer that the cattle brands be inspected at the impoundment site. The state will end up in a lawsuit because the cattle could be impounded and transported to a BLM facility, or to a public auction site, without a brand inspection. If that occurs, the rancher must pay to go to the facility, pay the impoundment fee on their own livestock, plus other impoundment fees the federal government chooses to charge. It is not right, but that is what will happen.

If we do pass this bill, I want to make sure the state agencies have the ability to do a brand inspection at the impoundment site. The Director of the State Department of Agriculture knew beforehand the federal government's position. I am concerned about that. It does not matter what the Director says because the State of Nevada can ill afford a lawsuit to test the legality of livestock seizure. I know the State Department of Agriculture does not have the funding to fight the issue in court.

Assemblyman Gustavson:

I understand each of your concerns on this bill. Some of the ranchers have already incurred considerable costs just defending their rights to their own confiscated cattle. This bill will prevent this type of action from happening again. In my opinion, I would like to see a lawsuit between the State of Nevada and the federal government to settle this issue. It is up to the Committee to decide if we let the BLM continue going on as they have been, or whether we challenge them.

Assemblyman Goicoechea:

I would like you to pick that fight with them on grounds other than my cattle.

Chair Claborn:

Are there any more questions? [There were none.] I will entertain a motion.

ASSEMBLYMAN CARPENTER MOVED TO INDEFINITELY
POSTPONE ASSEMBLY BILL 341.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN GUSTAVSON VOTED
NO. ASSEMBLYMAN MUNFORD AND SEGERBLOM WERE
ABSENT FOR THE VOTE.)

Is there any public comment?

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

The federal court has to provide a writ of execution for any federal agency to be heard in a state court. However, the federal judges will not issue the writs of execution because they have to swear they have jurisdiction over the subject matter, which they do not.

Chair Claborn:

I have a letter from Ms. Ramona Morrison that she has requested to have entered into the record of this hearing ([Exhibit R](#)).

This meeting is adjourned [at 3:52 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: March 25, 2009

Time of Meeting: 1:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Ron Wenker	Testimony
	D	Jennifer Ruedy	Letter from Mr. Ron Wenker on Geothermal Power Plants
A.B. 341	E	Assemblyman Jerry D. Claborn	Letter from Mr. Ron Wenker
A.B. 341	F	Assemblyman Jerry D. Claborn	Letter from Ms. Neena Laxalt
	G	Terri Marceron	Testimony
	H	Terri Marceron	PowerPoint Presentation
	I	Edward C. Monnig	Testimony
	J	Edward C. Monnig	PowerPoint Presentation
S.B. 38	K	Jennifer Ruedy	Work Session Documents
S.B. 109	L	Jennifer Ruedy	Work Session Documents
S.B. 109	M	Jennifer Ruedy	Letter from Ms. Katie S. Armstrong, Deputy Attorney General
A.B. 194	N	Jennifer Ruedy	Work Session Documents
A.B. 194	O	Jennifer Ruedy	Mock-up Amendment
A.B. 194	P	Jennifer Ruedy	Fiscal Note
A.B. 341	Q	Jennifer Ruedy	Work Session Documents
A.B. 341	R	Assemblyman Jerry D. Claborn	Letter from Ms. Ramona Morrison