

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-fifth Session
February 19, 2009**

The Senate Committee on Natural Resources was called to order by Chair David R. Parks at 3:37 p.m. on Thursday, February 19, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Allison Copening, Vice Chair
Senator Bob Coffin
Senator Bernice Mathews
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Dennis Nolan

STAFF MEMBERS PRESENT:

Randy Stephenson, Committee Counsel
Michelle Van Geel, Committee Policy Analyst
Shirley Parks, Committee Secretary

OTHERS PRESENT:

Allen Biaggi, Director, State Department of Conservation and Natural Resources
Pete Anderson, State Forester Firewarden, Division of Forestry, State Department of Conservation and Natural Resources
David K. Morrow, Administrator, Division of State Parks, State Department of Conservation and Natural Resources
Leo M. Drozdoff, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Jason King, P.E., Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources

James R. Lawrence, Administrator, Division of Conservation Districts;
Administrator and State Lands Registrar, Division of State Lands, State
Department of Conservation and Natural Resources.
Jennifer Newmark, Administrator, Nevada Natural Heritage Program, State
Department of Conservation and Natural Resources
Catherine Barcomb, Administrator, Commission for the Preservation of Wild
Horses, State Department of Conservation and Natural Resources
Norman Frey, Board of Commissioners, Churchill County
Stuart MacKie
Esther Moore
Donna Jerman
Sharon Boone
Holly Bute
Lorraine Griffin
Rich Wideman
Don Mello, former Senator
David Mathewson
Tom Clark, Bango Oil

CHAIR PARKS:

I will open today's meeting and begin with a work session on Senate Concurrent Resolution (S.C.R.) 3. Following the work session, we will receive a PowerPoint presentation from the State Department of Conservation and Natural Resources. We will then have the hearing on Senate Bill (S.B.) 37.

SENATE CONCURRENT RESOLUTION 3: Expresses disapproval of certain civil actions brought and maintained against the livestock industry and the Bureau of Land Management in Nevada. (BDR R-496)

MICHELLE VAN GEEL (Committee Policy Analyst):

This measure was heard originally on February 12, 2009, and an amendment was offered by K. Neena Laxalt and Ron Cerri, representing the Nevada Cattlemen's Association. The amendment would remove language referring to the Hubbard Vineyard Allotment located near Elko, Nevada, making the resolution more general in regard to cooperative efforts between the Bureau of Land Management and various local ranchers as outlined ([Exhibit C](#)).

CHAIR PARKS:

There is no opposition to the amendment.

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SENATOR RHOADS:

As I did in a previous meeting, I will declare a conflict of interest with S.C.R. 3. I will abstain and not vote on this measure.

SENATOR AMODEI MOVED TO AMEND AND ADOPT AS AMENDED S.C.R. 3.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS ABSTAINED FROM THE VOTE.)

* * * * *

ALLEN BIAGGI (Director, State Department of Conservation and Natural Resources):

The State Department of Conservation and Natural Resources presentation is an overview of our Department. This PowerPoint presentation is also a handout prepared for the Senate Committee on Natural Resources ([Exhibit D](#), original is on file in the Research library).

I will ask each of the division administrators to present their particular agency's overview. I will preface the presentations by stating that we are in very difficult times economically. There are fiscal challenges not only in the State, but within this Department. We will continue to take our mission seriously to protect the natural resources for the benefit of our citizens. I am very proud of all the staff of the State Department of Conservation and Natural Resources. There is a good deal of uncertainty with regard to jobs right now. Our staff and employees continue to do their jobs in a professional manner and with a high degree of quality.

When the economic indicators began to take a downturn, we looked at the Department in a holistic manner, not from a department-to-department or division-to-division basis. As a result, we brought all our administrators together, along with Deputy Director, Kay Scherer, and I and reviewed the budget. There was a lot of give and take with our division administrators. The entire time we focused on what is best for the citizens and the visitors to Nevada and what would be best for our employees. As a result, the decisions that were made and the budget we came up with allow us to meet all the statutory mandates of our

programs and to continue on with the good work the Department does for the State, the citizens and the visitors of Nevada.

You will hear from eight divisions, including the Division of Conservation Districts, the Division of Environmental Protection, Division of Forestry, Nevada Natural Heritage Program, the Commission for the Preservation of Wild Horses, and the Divisions of Water Resources, State Parks and State Lands. We have nine statutory boards and commissions that operate within this Department that advise and provide service. Our mission is to conserve, protect, serve, manage and enhance the State's natural resources for Nevada's citizens and visitors. We take this mission very seriously.

PETE ANDERSON (State Forester Firewarden, Division of Forestry, State Department of Conservation and Natural Resources):

You may follow my testimony on the PowerPoint presentation or the handout, [Exhibit D](#). The main state office for the Nevada Division of Forestry (NDF) is located in Carson City. It is a state-of-the-art facility. The forestry facilities include 3 regional offices, 2 dispatch centers, 2 nurseries, 3 career fire stations, 24 volunteer fire stations, an air operation center and 8 conservation camps.

CHAIR PARKS:

Can you explain the picture on the lower right of the page titled: "Conservation Camp Program" in your handout?

MR. ANDERSON:

That is actually reclamation activities on the Waterfall Fire west of Carson City in 2004. The items in the picture are called straw wattles and they help control erosion. After the fire swept through, they seeded the area and placed these straw wattles so they would help minimize erosion.

Our budget is recommended by the Governor. There are proposed staff cuts in fiscal year 2010-2011. Seasonal staff positions will be cut. The budget increase you see in the report for fiscal year 2010-2011 is reflective of the expansion of Three Lakes Camp.

Our resource programs are diverse and include forest stewardship, urban and community forestry, conservation education, nursery and seedbank, biomass and Fuels for Schools, forest health and legacy. Statutory authority is the *Nevada Revised Statutes* (NRS) chapters 472, 527 and 528.

The Conservation Camp Program coordinates and supervises forestry, conservation and other work projects performed by inmates from the Department of Corrections who reside in camps located around the State. The camp program provides manpower for labor-intensive projects, wildland fire suppression activities, community projects and other emergency responses. There are currently 76 12-person crews in 9 conservation camps.

The fire-management program protects the citizens, visitors and natural resources of Nevada from human-caused and natural catastrophes through public education, natural resource enhancement and emergency service delivery as authorized by NRS chapter 473 "Fire Protection Districts Receiving Federal Aid." Carson City, Storey, Elko and Eureka Counties, and the small district in Cow Canyon in Clark County make up our working 473 Fire Districts at this time. We are working closely with Lander and Eureka Counties to assist them with similar services. We have agreements with the Nevada National Guard; in times of heavy wildfire-response needs, we can turn to them. They have trained pilots and provide aircraft to assist us in that mission. We are working on an agreement with the Division of Emergency Management, Department of Public Safety, to become their operational support for many of the all-risk type of emergency incidents, such as floods and earthquakes.

The *Executive Budget* contains no one-shot appropriations for NDF. We do have a couple of state public works budgeted for identified health, life and safety deferred maintenance projects and Occupational Safety and Health Administration (OSHA) mandates as outlined in [Exhibit D](#) under "Fiscal Year 2010-2011 Key Budget Points." Another Key Budget Point is the supplemental appropriation in fiscal year 2010 of \$38,763 for the Tonapah Camp closure terminal-leave payout. With the budget account (BA) 101-4195 (Forestry), we will lose three positions. It eliminates the Southern Regional Forester, reduces funding for Volunteer Fire Department Physicals, eliminates the Elko mechanic, eliminates the Statewide Mutual Aid Coordinator and reduces the vehicle fleet by 69 vehicles. Budget Account 101-4198 (Forestry Conservation Camps) closes the Tonopah Conservation Camp resulting in 7 employee layoffs and reduces the conservation camp vehicle fleet by 20 vehicles.

SENATOR NOLAN:

When you say you are reducing your fleet, are you mothballing the vehicles or are you eliminating them? Exactly what do you mean?

MR. ANDERSON:

Over the years, this agency has acquired an excess of federal property. There are some state vehicles available as well and the majority of them have mileage of over 200,000 to 300,000 miles. They have been on the books and located in various areas around the state. It has been a housekeeping effort to clean up this existing situation.

There are issues with the Tonopah closure. It will reduce emergency-response capacity and slow initial wildfire attack and it will eliminate critical conservation, fuels reduction and state maintenance projects; also local government, community and county support projects. The closure increases suppression costs on State jurisdictional lands. The big item in our program is the Department of Corrections Conservation Camp expansion at Three Lakes Valley (formerly Indian Springs). There will be 94 new inmates beginning April 2010, and slowly building to 210 inmates by August 2010. The NDF will correspondingly hire 16 new crew supervisors and 1 new camp supervisor. The conservation camp program revenue targets will increase.

The NDF has program issues with the nursery program. Critical land rehabilitation is experiencing revenue shortfalls due to the economy. Climate change and continued drought have a negative impact on the health of Nevada's forests and rangelands thereby increasing the potential for large, catastrophic wildfires. Legislation proposals for 2009 are Assembly Bill (A.B.) 75 requiring the State Forester to submit annual reports about forest health and fire prevention in the Lake Tahoe Basin; A.B. 78 places provisions creating the NDF camp program in statute and S.B. 94 provides for uniform defensible-space guidelines in the Lake Tahoe Basin.

ASSEMBLY BILL 75: Requires the State Forester Firewarden to submit annual reports concerning fire prevention and forest health in the Nevada portion of the Lake Tahoe Basin to certain persons and entities. (BDR 47-439)

ASSEMBLY BILL 78: Requires the State Forester Firewarden to establish and carry out a program for operating conservation camps. (BDR 16-358)

SENATE BILL 94: Imposes various requirements relating to fire protection in the areas of the Lake Tahoe Basin and the Lake Mead Basin that are located in this State. (BDR 42-444)

SENATOR AMODEI:

You have a nursery in Las Vegas. Do you still have one in the north?

MR. ANDERSON:

That is correct. It is on Eastlake Boulevard in Washoe Valley.

SENATOR AMODEI:

Are the nursery revenues similar to the honor camp revenues? Do these funds go to the General Fund?

MR. ANDERSON:

Actually, we roll the revenue over each year because it is an enterprising account. For example, the seedbank is a part of the nursery program, and we are able to retain those funds for future years.

SENATOR AMODEI:

So the better you do in the nursery program with sales to landowners, then this will provide the seed money for the following year.

MR. ANDERSON:

Exactly, we live on what we sell, basically.

SENATOR AMODEI:

The whole program, or do you send any to the General Fund?

MR. ANDERSON:

The personnel program is all on an enterprising basis. We do use a camp crew daily to help with the labor side of the program.

SENATOR AMODEI:

So is that General Fund affiliated?

MR. ANDERSON:

To a degree; we do pay the inmates a stipend for their service.

SENATOR AMODEI:

How supportive are the fuels-management people? Do you get support from the nursery program in terms of introducing new or native species as opposed to the invasive weeds?

MR. ANDERSON:

Yes, we are optimistic about the future, particularly with the stimulus package funding that is going to be available. The language has broadened and it is not just for fuels reduction, but also for mitigation and prevention. We see an opportunity to go into the areas that are dominated by cheatgrass and try to change the vegetation and restore a native vegetation or at least adapted species that are more fire-resistant and try to break the cycle.

The last slide in my presentation is a chart of the "Number of Wildland Fires & Acres Burned" in the last ten years, [Exhibit D](#). Drought is taking a significant toll on Nevada's vegetation. The Sierra Front for the first time is dryer than it has been in ten years. We are concerned both as an agency and an interagency with our federal partners about the coming fire season. There is enough moisture to carry and provide a fine fuel crop of cheatgrass and other forms and this fine fuel is what carries fire between shrubs. We will all be working very closely together this summer to address this. We hope to do a mini-joint prevention message to the public.

CHAIR PARKS:

In regard to the conservation camps, is your division treating the proposed closure of these facilities as a fait accompli? For example, concerning Tonopah Conservation Camp, is this the way your budget was presented to the Senate Committee on Finance and the Assembly Committee on Ways and Means?

MR. ANDERSON:

Yes, it is a budget reduction in the Governor's Budget.

CHAIR PARKS:

There are a number of individuals who see the value of conservation camps and would hope closures are not sustained. I have a hard time with the terminology of Three Lakes Valley. Indian Springs residents who live eight miles away from that correction facility would prefer their name not be given to the facility.

MR. BIAGGI:

I want to recognize Kay Scherer, Deputy Director, State Department of Conservation and Natural Resources, for all her excellent work in our Department. We will now hear from Dave Morrow.

DAVID K. MORROW (Administrator, Division of State Parks, State Department of Conservation and Natural Resources):

I am giving an overview from our PowerPoint presentation. You have a handout and may follow as I read my testimony, [Exhibit D](#). The Division of State Parks, State Department of Conservation and Natural Resources, contributes to the State in many ways. Economically and socially, the benefits are valuable. Our mission is to develop and maintain a system of parks and recreation areas for the use and enjoyment of residents and visitors. The Division also preserves areas of scenic, historic and scientific significance in Nevada. We operate under the authority of NRS 232.135 and chapter 407.

The impact of State parks on state and local economies is significant. Every recreation dollar expended changes hands several times before leaving the local communities in which it is spent. State parks' operating expenditures and park visitor expenditures contribute a significant amount to State and local economies.

Socially, other benefits of State parks can provide a less expensive "staycation" which means those visitors who live near the metropolitan areas and other Nevada visitors can experience affordable family recreational opportunities.

The graphic, "State Parks," that you find in the handout, [Exhibit D](#), is a diagram of the Nevada State Park system. The next two diagrams indicate the park system for fiscal year 2008-2009 and fiscal year 2010-2011. There are 25 State parks and nearly 400 structures, many are historical. Eliminating 13 permanent positions and lower funding expectations will have an impact on our program.

Our plan is to reduce 4 regions to 2. The north regional office in Fallon will administer 13 state parks and the south regional office in Las Vegas will administer 11 state parks. We spent some time trying to determine how we can be more effective with park administration. Splitting the state in half gives us almost an equal amount of parks. The budgets are almost identical, right around \$3 million for each region. Fees collected in the two regions are also very close, as is their visitation numbers in both regions. There is a great deal of logic in the decision to reduce the administrative costs and combine these areas. We will operate more effectively.

SENATOR MATHEWS:

Is Bowers Mansion a State Park? Is Davis Creek a State Park?

MR. MORROW:

They are not. They are both Washoe County Parks.

The budget before you, as shown in [Exhibit D](#), will eliminate 13 permanent positions and funding for 22 seasonal months will have an impact on various park services and programs. We have tried to focus on positions that we thought we could cover in other ways and by other means. Even with a reduction that large, we have designed into it a way for us to continue to operate and meet our mission. We are also proposing that 11 parks would be operating on a seasonal basis. They would close basically 3 to 4 months during the winter when visitation is slow. As you can see, the budget reflects the program impacts and major issues facing this division.

We are facing the loss of the seasonal invasive weed program in the Panaca Region which is in the budget and will have an impact on the division. We are reorganizing ourselves and will administer the weed program from the northern and southern region that we have proposed. It will increase travel and the amount of acreage that needs to be treated by the two remaining crews. We will meet the mandate of the program.

A budget amount of \$107,274 will replace a small amount of health- and safety-related equipment and a law enforcement vehicle and radio equipment. We have a huge problem at Wild Horse State Recreation Area with snow removal. We do not have adequate snow-removal equipment. We have had occasions when our staff and visitors have been trapped by the snow and then we have to seek assistance from the state to clear the road. Snow removal equipment is in this proposal. Rescue boards and rescue equipment for Sand Harbor is proposed as well.

The final slide of our presentation is titled, "Major Issues" facing the division, [Exhibit D](#). There is uncertainty of continued funding from the Land and Water Conservation Fund. This is a federal program that has existed since 1965 and has funded over 40,000 projects in the State. We do not know if any government stimulus money will be available for this fund. The age and condition of the majority of State parks' equipment is making it difficult, and in

a number of cases unsafe, to continue to maintain park facilities and protect park visitors.

Many key division employees are eligible to retire within five years. There are 20 employees and 3 very important positions we will lose before the next fiscal year. The departure of seasoned employees has a significant impact on the agency. We do not have adequate funding and personnel to maintain the State parks' technical equipment, 191 computers Statewide. This equipment is scattered all over the State and it is difficult to keep software updated and maintained. This is another big issue.

SENATOR MATHEWS:

Do you have a student program in the State Parks? Will you still have a budget to do this?

MR. MORROW:

We do have a program, but it will be reduced by 22 seasonal months. We will lose some, but we still will have a budget to hire seasonal employees.

CHAIR PARKS:

You mentioned the employee numbers going from 110 to 98 positions. Are these full-time employees?

MR. MORROW:

These are permanent positions and would be a loss of 13 positions and a reduction of 22 seasonal months.

CHAIR PARKS:

We will get a presentation a little later on the bond Question 1 of the 2002 ballot. It may be time to propose a Question 2 bond.

MR. BIAGGI:

I will address your question about the bond. Question 2 has been talked about because Question 1 has been so successful and a wonderful asset to Nevada. We met about a year and a half ago with many of the nongovernmental agencies that helped develop Question 1. We are still thinking about potential legislation and voter approval of additional bonds. We decided the economy is not as strong as it could be and we have not expended all of our Question 1

dollars. So we will not pursue this now, but perhaps later, if the economy picks up, we will bring something before the 2011 Legislature.

I want to touch briefly on something that came up with the forestry presentation. The stimulus package will provide some forest help money. It is likely to come to the State through the federal government's stimulus package. This funding is on a competitive basis. The funding will be filtered through the NDF into the local communities for forest-health projects. The NDF has provided an application for a national project, for a demonstration and this will hopefully get those dollars on the ground for forest-health projects.

LEO M. DROZDOFF, P.E. (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

You will find the DEP PowerPoint presentation and my testimony in [Exhibit D](#). Our mission statement is to preserve and enhance the environment of the State, to protect public health, sustain healthy ecosystems and contribute to a vibrant economy. What is nice about our mission is that it essentially is a paraphrase from the statutes that created the DEP. The point is that our primary job is to protect the environment and public health. We do so with an eye towards economics and economic vitality. Our approach involves three directives that would use traditional regulatory standards for air, water and mining, issue permits, conduct inspections and take enforcement action when necessary. In addition, we do offer other assistance programs both technical and financial. We do voluntary and outreach programs as well.

We set regulatory standards. The DEP is affiliated with three boards and commissions. The major board is the State Environmental Commission, State Department of Conservation and Natural Resources. This is the board that adopts regulations, holds contested case hearings and ratifies certain administrative penalties. The other two boards are the Board to review Claims, and the Board for Financing Water Projects. We monitor water statewide. I will talk about this a little later. A tease on that is many people in the Legislature know the programs we run from this board are known as the "A.B. 198 program," (A.B. No. 198 of the 66th Session) which is the money to allow for improvements of small rural drinking systems. The water resources' mission statement is to conserve, protect, manage and enhance Nevada's citizens through the appropriation and reallocation of public waters. With regard to the "Staffing and Budget" page of [Exhibit D](#), there is a pie chart that gives a clear picture of our resources. The good news for the DEP is that we are about

1-percent General Fund. In this economy, that has provided us an opportunity to work with other divisions in the Department. We are essentially funded by fees and federal grants. We are asking for one new full-time position based on the fee program and mining, solely based on caseload growth. We have 22 budget accounts with 9 executive and 13 nonexecutive positions.

The DEP is structured by environmental programs or bureaus. I will not read them all. There are ten bureaus. As outlined on the page "Environmental Programs," [Exhibit D](#), the DEP has proposed legislation. One bill is S.B. 37 which streamlines the flow of grants to recipients by establishing authority to award subgrants in Drinking Water Revolving Fund, Wellhead Protection and Clean Water Act Nonpoint Source programs. The second bill, S.B. 105, basically revises some of the provisions of the program supporting A.B. No. 198 of the 66th Session. This was approved and passed in the Senate Committee on Government Affairs this week.

SENATE BILL 105: Revises the provisions governing the matching funds required for grants made by the Board for Financing Water Projects. (BDR 30-502)

In both of our major programs, air and water, we break these programs down into a planning section and a control section, [Exhibit D](#). In the case of air-quality planning, we set standards and then with pollution control we do permitting and enforcement. The air program is a priority in terms of the legislative activity. Currently, we are working with Senator Schneider to address some of his interests on alternative fuels. Last Legislative Session we worked on climate changes with Senator Dina Titus, on S.B. No. 422, of the 74th Session. That bill was basically a two-part bill. One was to implement a mandatory registry for energy producers. That regulation is complete as of November 2008. The second part of the bill was to update an emissions inventory. This is completed and provided to the Legislative Counsel Bureau (LCB) and is on our Website. In regard to mercury controls, last Session we had two mercury bills, A.B. No. 67 of the 74th Session which is an agency bill and all the work is complete. Similarly we worked with Assemblywoman Sheila Leslie on A.B. No. 115 of the 74th Session which provided enhancements to our mercury control program in mining facilities.

SENATOR MATHEWS:

Do you have any programs to track the mercury control of our water? I know you monitor the mercury levels for the Carson River.

MR. DROZDOFF:

Regulatory standards are set by the DEP for all water bodies in Nevada.

SENATOR MATHEWS:

Do you monitor Pyramid Lake, because it is a Native-American body of water?

MR. DROZDOFF:

That is correct. We do sample the Truckee River which flows into it.

SENATOR MATHEWS:

What about Schurz? It is another Native-American body of water.

MR. DROZDOFF:

Generally speaking, we are not monitoring Native-American bodies of water unless they request it.

Last Session, we worked with Senator Titus on S.B. No. 118 of the 74th Session. This legislation brought mercury into our chemical accident-prevention (CAP) program. This is essential to us as we work with the federal government in their plans to bring mercury storage to a Hawthorne facility. The CAP program is in place. We have spent the last three years developing standards and monitoring, inspection, treatment, disposal and recycling that are vital for hazardous waste management that would not have been available.

Air-pollution control is a priority issue. The Bureau of Air Pollution Control sets standards for monitoring air quality. This is our main permitting and enforcement arm. We have 633 permitted sources. Pure water-quality planning is just like air pollution; this is the Bureau that will set standards and will do the monitoring. In addition to this, we do offer some grant programs and some nonpoint source pollution control programs. We do outreach and we certify 104 laboratories in the State and nationwide.

SENATOR MATHEWS:

Is the base in Hawthorne a government facility or a private facility?

MR. DROZDOFF:

It is the federal government's facility.

SENATOR MATHEWS:

Do you set regulations for the mercury at this facility?

MR. DROZDOFF:

Yes, we set regulations based on mercury quantities. Those quantities were exceeded or proposed to be exceeded at Hawthorne. They fell under our CAP program.

The Bureau of Water Pollution Control, [Exhibit D](#), is the group that inspects and issues permits and in some cases takes enforcement action pertaining to water. The key is that we have seen a significant drop in some development activity in subdivision and storm water. We have taken some internal steps to keep positions vacant until this trend changes.

The Bureau of Safe Drinking Water is the Bureau that makes sure the water you drink from a public supply is safe. The largest challenge we are facing is the arsenic standard. In 2001, the federal and state arsenic standard changed from 50 parts per billion to 10 parts per billion. Essentially, we have 105 out of 346 public water system facilities out of compliance. Over that time, we have worked to require treatment and we are going to continue to do this.

The Bureau of Administrative Services provides financial funding to water and sewer systems, [Exhibit D](#). This is the Bureau that will oversee the DEP's role in the government's stimulus package. I have some breakdowns of this based on discussions with the Environmental Protection Agency, if you are interested.

The Bureau of Mining Regulation and Reclamation, [Exhibit D](#), is seeing financial increases. We hold about \$1.1 billion in sureties throughout the state. We jointly hold this with federal land managers. We are proposing one new position for this bureau based on caseload.

The Bureau of Waste Management makes sure we are in compliance with hazardous waste management, [Exhibit D](#). We have the recycling program with this Bureau. We have completed our recycling report and provided it to the LCB electronically and it is on our Website.

The Bureau of Corrective Actions deals with remediation of all kinds, whether leaking underground storage tanks or other remedial programs, [Exhibit D](#). An exciting part of this bureau is brownfields' restoration which allows the DEP to work with local governments to take blighted lands and clean them up so they can be used for community development and become an active member of the tax roll.

The Bureau of Federal Facilities is based out of Las Vegas and oversees regulation and monitoring at the Nevada Test Site, [Exhibit D](#). I just want to make the point that we have no real involvement at Yucca Mountain. We are to clean them up to a certain level for community development so they can be an active member of the tax roll.

SENATOR COFFIN:

Do we have knowledge of migration of radiation from the Test Site? We have surface migration of radioactive materials exist on the surface. Strong winds blow. Although we out of the period of time for aboveground testing, there is still radiation out there. Have you paid attention to the migration of the radiation on the surface and whether or not it is approaching the boundary of the Test Site? Do you know where it would be? Are we working with Desert Research Institute (DRI) on this subject and are we doing our own due diligence with the migration?

MR. DROZDOFF:

Most of our activities in terms of monitoring radioactive materials at the Test Site are based on the flow of groundwater. As far as surface monitoring, there is another government agency, the Bureau of Health Protection Services involved with testing as well. Yes, we do monitor the Test Site. We have an agreement with the Department of Energy (DOE) that does modeling results and based on this data we then require and continually refine monitoring at the Test Site to be sure there is no offsite migration.

SENATOR COFFIN:

I am concerned because if we rely only on the Department of Energy, I do not think we will get the straight story. This is why you are there, to protect us. You do not have to take at face value what the DOE says. The modeling is assimilation. There are wells out there and I would like to know the intensity of radiation at the wells on and off the Test Site. I would not, all of a sudden, want to see the radiation go beyond the Test Site. Suddenly we are faced with

this alarming result. We need to know where it is internally in the Test Site at what speed has it been advancing for the last 58 years? The material is heavy so the wind has a hard time lifting it. Particles are on the surface.

MR. DROZDOFF:

I want to assure you that we do not take what DOE provides at face value. Basically, the way we work with DOE or any permittee is to send out a set of requirements and they will submit what they think complies with that set of requirements. We then evaluate and come to an agreement. Further requirements are added where needed. The Test Site is basically a very conservative modeling result. Even at the slightest hint of those modeling results potentially show migration off the site, we then require monitoring to occur. That is not a static, once and we are done approach. This is part of an agreement with DOE. We update throughout the process. This is going on today and will continue to go on. We have no results to show in our groundwater monitoring that radiation is moving off-site. We know where the hotter spots are and our staff of 18 people are working on the concerns you have raised.

SENATOR COFFIN:

Do we have a document that has been written that speaks to this or a succession of documents that shows the progression of this issue? The DRI has data and you said the Health Division has data on this. Do we have coordination of this data or is it stovepiped.

MR. DROZDOFF:

Yes, there is information available, whether through the citizens advisory board or through our agreement with DOE. I would like to have it put into a presentable form, but yes, it is available.

SENATOR COFFIN:

To close, as a child, I was dusted with fallout six or seven times and we were told that nothing was happening. In the 1980s we had new information about the Test Site.

MR. BIAGGI:

We hear your concerns, and I think there is a good deal of information about the existing conditions and modeling for future conditions. There is ongoing sampling to determine if migration is occurring in an off-site direction. There is a citizen's board that vets much of the information and provides it to the public.

There were other shots that were not on the Nevada Test Site. One was in the vicinity of Fallon and another in central Nevada. Those units are also monitored by DOE, DRI and others. This is public information and available in our office.

SENATOR AMODEI:

I am curious as to where we stand on eastern Nevada air-quality control, especially in regard to coal plants. I know NV Energy withdrew their application. Is there an update on the proposals for class I air sheds around the Great Basin? I have received many questions on this subject. It would be good to have a better understanding of these issues.

MR. DROZDOFF:

There are three proposed coal-fired power plants in eastern Nevada; two in White Pine County, outside Ely, and another outside Mesquite. We have agreements with all three coal-fired power plants that they will install carbon sequestration when that becomes commercially viable. NV Energy has put their work on hold near Ely. We have not given permits to these plants as of yet. They are not closed or abandoned. We are evaluating and in conversation with these potential facilities. The more recent developments with climate change and the issue of coal-fired power plants is ever-changing. We have placed them on hold. Due to the Environmental Appeals Board involvement on the Deseret Power Case in Utah, the Division is taking public comment now strictly on the issue of whether CO₂ is a regulated pollutant under the federal Clean Air Act. Public comment is scheduled to close in Ely on March 25, 2009, after the public hearing. Class I and class II plants have different impacts to an area. Nevada has one class I site and that is Jarbidge. The facility outside Ely is a class II source. There have been discussions about what it would mean for the area if it were a class I source. Many of these questions were vetted through the Legislature's Natural Treasures committee. The record there gives the potential benefits and impacts of a class I designation on rural Nevada.

SENATOR AMODEI:

When you indicated some impacts, would that be impacts on existing surrounding areas? The concern has to do with operations already in place. Is this one of the possible impact issues?

MR. DROZDOFF:

Yes, operations in place are definitely plants that would be involved.

CHAIR PARKS:

I have a question. Could you give us a quick definition of what class I, class II and class III plants mean?

MR. DROZDOFF:

There is no real quick way to define this terminology. I can provide information for you at a later date that would be more helpful.

CHAIR PARKS:

I was referring to [Exhibit D](#) on air-pollution control and class I, class II and class III permitting.

MR. DROZDOFF:

As far as air-pollution control, the class I sources are the largest in the State. Those would be power plants and mining operations. Class II and class III are the smaller facilities, such as sand and gravel operations.

CHAIR PARKS:

My second question deals with recycling, in particular, electronic waste (e-waste) which is becoming a real problem. Would I presume that education could be a useful tool for understanding recycling?

MR. DROZDOFF:

Yes, this is correct. Most of the work we do with electronic-waste is in the form of education and community outreach. Sometimes we work with groups and facilities to schedule an e-waste day. We will come to a designated facility and collect e-waste from the public who have dropped off unwanted or outdated electronic items. There are no federal or state regulatory e-waste programs.

CHAIR PARKS:

I know that some years ago we had a problem with leaking underground tanks. The gasoline additive, methyl tertiary-butyl ether (MTBE) began to show up in the water system. Is that something of the past?

MR. DROZDOFF:

The MTBE additive has been eliminated from gasoline as an oxygenate because of the impact to groundwater. We have not seen any new sources. Monitoring the groundwater system is essential. It is becoming more a thing of the past as we continue to clean up the areas of contamination.

An agenda item for this meeting calls for public comments. I see many citizens of Churchill County here today. It would be helpful to the discussion for me to give an overview of what we have been doing with regard to the Bango Oil Plant.

CHAIR PARKS:

If you would like to do it now, that would be acceptable. This would allow the people who are interested time to prepare for public comment.

MR. BIAGGI:

It makes sense to give this report now.

MR. DROZDOFF:

I will outline a few points. There is some frustration with this issue for everyone. Based on an e-mail received by all Legislators in January, we did prepare a memorandum on January 21, 2009, and distributed it to all members of the Legislature. It provides information on oversights and errors of omission that will set the record straight. The memorandum is available to all who may be interested. We provided a public hearing in late January regarding the Bango Oil Plant expansion. The agency has spent more time on this site than any site of record, as far as evaluating complaints. We have spent thousands of man-hours, day and night. We have taken a number of enforcement actions and stop orders with this facility. Our job is to bring facilities back into compliance, not close down the plant. Based on the enforcement action and stop orders we have issued, the facility has been in compliance. We have taken nontraditional steps in lieu of accepting penalties on one of these enforcement actions. We actually work with the company to identify even potential sources of odors. As a supplemental environmental project, we basically worked with the company, so that instead of paying a penalty, they provide those projects at the site. We did issue a revised permit last Friday. I know the permit has some incentives for the facility as well. It incorporates the scheduled compliance items for the water treatment system that I refer to as a supplemental project. They are installing a newer, more refined filtration system. They will be dealing with a finer product. This would mean another potential source of odor will be gone. Despite all these efforts, we are still getting complaints.

Churchill County decided to work on their own. We worked with Churchill County to identify a proper testing venue. They did 1,740 samples at 20 locations. This work resulted in no discernable odors. Western states have

developed odor standards. There are odor thresholds and enforcement provisions. Most states have no odor statute, including Arizona and California. The enforcement is accomplished at the local level. Montana and Minnesota used to have odor regulations and in 2001 they removed them. Montana noted the reason they are removing their regulations is because of the difficulty of enforcement, subjectivity and the burden on staff. We have taken this matter seriously for years. The amount of resources we spent in the area improving the process with the company, as well as trying to be as responsive as we can to the citizens, is unparalleled. I continue to see misstatements in the press and this is why I needed to make this report today. We have a dedicated staff and we will continue to test and inspect the site and try to find the best solutions for this site.

SENATOR COFFIN:

I have received the letters and I have responded. It is not my district, but my family used to own an oil plant like this. The technology has changed in 40 years. We were involved in the actual re-refining of motor oil which is a very obscure type of plant and done in very few places. The oil is exactly as good as virgin oil. There are always odors from a process like this, and I think a mistake was made in the first place for allowing the plant to be built there. I do not know who made the decision without knowing that oil refineries have an odor. Local appeal for jobs would be my guess for allowing the facility.

MR. DROZDOFF:

The DEP will not get involved in land-use planning activities. These decisions are made at the local level. Churchill County granted the special use permit. Our function is to make sure the facility complies with all regulations and statutes. This is what we are doing.

JASON KING, P.E. (Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

I will provide you with a brief overview of our agency. I will go through the handout of my prepared PowerPoint presentation, [Exhibit D](#). The water resources mission is to conserve, protect, manage and enhance the State's water resources for Nevada's citizens through the appropriation and reallocation of public waters. We have four offices. The main office is in Carson City. The duties of our division are the appropriation of water and adjudication of those waters. There is an administration process that is used to quantify a pre-statutory right to water and it establishes a priority of this right. Other

duties of our division include distribution and regulation of water, dam safety covering both inspection and review of dam designs, water planning, flood planning management and signatory authority over all subdivision approval.

The charts on budget, water resources total revenues and water resources total expenditures are next in the presentation, [Exhibit D](#). We rely almost completely on General Funds. The Governor recommends the budget. There are budget reductions for the fiscal year 2010-2011. It has been proposed that 11.4 Full-Time Equivalents (FTE) be eliminated. This will be a 15.5 reduction of staff. It eliminates the Water Planning Section Staff of our Division. It reduces the number of staff working on water-right ownership by 40 percent. This reduction in staff will directly impact the division's ability to issue water-right permits in a timely fashion.

As directed in S.B. No. 274 of the 74th Session, The Division of Water Resources adopted statutory regulations providing for fines and penalties for violations of Nevada's water law. We held 13 workshops during 2008 to accomplish this. Coupled with the proposed staff reductions, enforcement of the regulations will be difficult. During the last five years, strides have been made to reduce the backlog of applications and title work; with proposed reductions, the backlog will likely increase. The Division of Water Resources is conducting more and more hearings to resolve protested water-right applications. We are pleased with the Website. Much of our information has been placed there.

JAMES R. LAWRENCE (Administrator, Division of Conservation Districts; Administrator and State Lands Registrar, Division of State Lands, State Department of Conservation and Natural Resources):

The Division of State Lands (DSL), State Department of Conservation and Natural Resources, have given the Senate Committee on Natural Resources a handout of our agency's overview. I will read from the prepared presentation, [Exhibit D](#). The Division's mission is to uphold the conservation and land resource values of Nevadans through responsible land-use planning, resource programs that protect and enhance the natural environment and land stewardship worthy of the lands entrusted to us.

Our budget is recommended by the Governor and this year will take a 16-percent budget reduction from fiscal year 2009. I will point out that about 63 percent of our budget is General Fund and 80 percent is water resources and

personnel costs. The proposed recommendation is to reduce the staff by 2 FTE, one land-agent position and the land-use planner position. The budget also recommends transferring the General Funding of our seasonal forester position to be paid through Tahoe Bond Interest.

The DSL is responsible for all State land. Our staff is part of federal land-use planning and sits on the State Land Use Planning Advisory Council. We serve as the State's "real estate agency" for all the lands held by Nevada except the Legislative lands, university system and the lands held by the Nevada Department of Transportation. The DSL acquires land and water rights needed by the State and disposes of excess land and water rights. The DSL holds title to land used by most agencies. Last year, we had about 200 land-use authorizations go through our office. The DSL has maintained the historical State land records since statehood. They are protected in a climate-controlled vault. In addition to the land, we are responsible for those waters that were deemed navigable upon statehood. There are seven bodies of water. I will not read them all. You can see them on your handout, [Exhibit D](#). Primarily, the workload in those areas are for piers and buoy permits at Lake Tahoe and also restoration activities along the navigable water systems.

We are responsible for school trust lands. There are not many remaining. These are lands that came to the State for the benefit of the schools. We have about 2,500 acres left in State ownership. We are responsible to see that any use of these lands is compensated at market value. The funds go into the permanent school fund.

We have a State Land Use Planning Agency staffed by one planner. We provide two services in two primary areas. One is to provide technical planning assistance to local governments. These are rural governments that have no planning staff of their own. We provide this service for them so that whatever ordinances and plans they develop will be consistent with State laws. We are working on plans for Lincoln, Eureka and Lander Counties. We are responsible to make sure we have state input on federal land-use planning decisions. We give the counties assistance with this. We help them develop public land policies as well. We recently completed our work with Elko. We are working with Mineral and Esmeralda Counties at this time.

The DSL serves as staff to the State Land Use Planning Advisory Council. This is the only Governor-appointed council that includes a member from each of

Nevada's 17 counties. They give us advice on state land-use planning. This advisory council provides a forum for exchanges of planning information with each other.

Nevada Tahoe Resource Team is an interagency effort to protect Lake Tahoe. About 10 years ago, the DSL was responsible for coordinating the State's efforts at Lake Tahoe in regard to the environmental improvement program (EIP). That program is near the initial 10-year, \$82-million commitment. I would point out that [A.B. 18](#) provides continued EIP commitment and requests authorization for \$100 million in bond funds over the next 10 years of ongoing restoration. The scientific community is for the first time on record stating that decline and clarity is actually slowing down and leveling off. We are making progress with the EIP.

[ASSEMBLY BILL 18](#): Authorizes the issuance of bonds for environmental improvement projects for Lake Tahoe. (BDR S-375)

The update on the Lake Tahoe EIP is that we are making steady progress on all 126 projects that we have earmarked to be completed. We have 73 completed and 33 in the construction or planning stages. There are 20 projects to be initiated in the future. The highest priority is in the area of water quality. We have restored more than 2,000 acres of erosion control and storm water treatment. Forest health and fire prevention are of critical importance, especially after the recent Angora fire.

You have been given a handout that is a larger overview of the Question 1 program. Within DSL, we are responsible for \$65.5 million of the \$200 million that was approved in 2002. These are grant dollars that go to local governments, nonprofit groups and state agencies for recreational trails, acquisition of important environmentally sensitive areas and planning for habitat areas. We have awarded nearly \$54 million in grants already from the \$65.5 million we are responsible for. It covers 110 projects. We intend to give grants to the counties so there will be statewide projects. We have awarded grants to 15 of the 17 counties in Nevada.

You may read along with me, [Exhibit D](#). The Division's Conservation District mission statement is to serve the State Conservation Commission in assisting, guiding and regulating Nevada's 28 locally elected conservation districts to meet the goals of Nevada landowners and land users in conserving renewable natural

resources. The history of conservation districts goes back to the Dust Bowl era when conservation district laws were enacted to avoid the dust bowl conditions. Conservation programs have expanded to include erosion control, water conservation, watershed protection, noxious weeds and education and resource planning.

We focus on assisting the districts and getting resource programs implemented on the ground. In fiscal year 2008, state grants of \$5,000 for each district were leveraged by matching dollars exceeding \$17 for every state dollar, a total of about \$2.5 million. It was successful in leveraging dollars and getting resource programs completed. This is a small agency. There are three individual staff members. It has been recommended that in fiscal year 2010, the staff will be 2.5 members. This will be a reduction of the administrative assistant position from full-time to half-time. The budget that you see in the handout, [Exhibit D](#), represents a 16-percent reduction.

We serve the State Conservation Commission which is the regulatory body appointed by the Governor. Conservation District Board supervisors are elected and appointed officials who serve without pay under NRS and *Nevada Administrative Code* chapter 548. Our job is to facilitate resource protection programs. Some project examples of our assistance include secured grant funding for watershed restoration in Paradise Valley. We assisted in securing funding for Mason Valley and Smith Valley Conservation Districts to implement stream restoration, invasive weed abatement and fish and wildlife habitat. We assisted Starr Valley conservation district in securing funding for the watershed and wildlife habitat assessments on the North Fork River.

JENNIFER NEWMARK (Administrator, Nevada Natural Heritage Program, State Department of Conservation and Natural Resources):

The Nevada Natural Heritage Program's (NNHP) presentation is in the handout, [Exhibit D](#). Our mission is to maintain comprehensive information on the locations, biology and conservation status of all endangered, threatened, sensitive and at-risk species in Nevada. We are a non-regulatory program located in Carson City with statewide responsibilities. We are a relatively small agency with nine full-time positions. The Heritage program is a contributing member of "Nature Serve," a network of similar heritage program operations in all 50 states and the Canadian provinces.

The NNHP sets conservation program priority for the plants, insects and other animals of the State. We do this by ranking species on a scale of 1 to 5 with 1 being the rarest and 5 being the most common. Generally speaking, species with a rank of three or lower become conservation priorities. The ranking system is applied not only at the state level but at the global level. This is important as it allows us to put conservation needs of species in Nevada in perspective of regional national and even global scales. Species that are conservation priorities are put on a track or a watch list and become the conservation priorities. The NNHP is currently tracking 593 species: 289 plants, 170 invertebrates, 120 vertebrates, and 14 mosses and lichens. An additional 178 species are on the NNHP watch list. Species on this list are typically those species that are not a high priority currently but may be declining and put on the tracking list in the future.

The program maintains biological information, including locations and conditions of individuals or populations in a dynamic Geographic Information System (GIS) driven Oracle database. This system is used by the entire network of heritage programs which allows our state data to be rolled up into data sets of regional or national interests. The system also gives us the ability to track species through time, documenting distributional changes and other data that would be of management concern. Data comes from a variety of sources, such as museums' specimens, university studies, field surveys or other agencies. You will see the map of the distribution of our rare and at-risk species, [Exhibit D](#). There are currently over 8,800 observations in our database. A significant component of our program is to serve as a database clearing house. To that end, we provide custom data searches to other states and federal agencies and to private consultants or individuals. Data provided range from being a simple list of species known to occur within a project area, to sophisticated GIS maps and shape files. Data searches are most frequently requested from the Nevada Department of Transportation and private development consultants.

In addition to our rare species work, the program is involved in three special projects. Two years ago, in partnership with the State Department of Agriculture, we began to maintain the Nevada weed map, compiling and mapping infestations of noxious weeds throughout our State. Approximately 5,000 observations have been added to our database. Our springs' conservation plan is in its second year with completion planned for June 2010. In partnership with the Nature Conservancy and the DRI, almost 300 springs throughout the State are being surveyed on both private and public lands to assess conditions

and map vegetation in communities. Based on these surveys, a comprehensive plan will be written. Finally, a new initiative for the Heritage Program that is set to begin this month is in partnership with the Department of Wildlife and others. We are funded by Question 1 bond dollars and we will be developing a species climate index and updating biological information to produce a new chapter in the state's wildlife action plan on climate change. For being a relatively small agency, we do have a complex funding map as indicated in [Exhibit D](#). Approximately one-half of our funding comes from the Nevada Department of Transportation. The Heritage Program provides accurate, timely and up-to-date information on threatened, endangered and other species of concern. This assists transportation staff in completing their environmental and biological assessment for projects that are mandated by provisions of the national Environmental Protection Act and the Endangered Species Act. Other sources of revenue for our program include federal and state grants, the General Fund and database fees.

CATHERINE BARCOMB (Administrator, Commission for the Preservation of Wild Horses, State Department of Conservation and Natural Resources):

My presentation is outlined in [Exhibit D](#). The Commission for the Preservation of Wild Horses was created by the 1985 Legislature with the proceeds from the Heil Trust Fund that was given to our State to preserve and protect wild horses. There are no new programs or significant modifications within this budget account for the first year of the biennium. Our annual operating budget is approximately \$115,000; however, the Heil Trust Fund that made the program possible will expire on June 30, 2010, and the wild horse program in Nevada will sunset at that time. Due to terminal-leave payouts, my final day as administrator operating this program will be approximately three to four months prior to June 30, 2010. I would like to give you a brief overview of the program, our successful use of the Heil Trust Fund during our 24 years of representing Nevada. Our management of the original bequest, \$470,000, enabled us to generate an interest income of \$2,070,000. In addition to keeping the agency operating for 25 years, we have funded grants out of that trust of \$675,000 and outside grants that we were able to facilitate for others totaled \$880,000.

There are historic successes with land-use planning document-review programs of approximately 250 environmental planning documents a year covering the whole State as our territory. We respond to public and media inquiries as a liaison for Nevada on wild horses. We receive about 4,000 phone calls a year.

The prison adoption program is another success in training and adopting Nevada horses and providing training and jobs for our inmates. The creation of the Mustang Heritage Foundation was created from a grant and matching funds which will carry on our mission and enhance the adoption program. Last year, 1,000 Nevada wild horses were adopted nationwide.

CHAIR PARKS:

Wild horses are a big issue across the Country. Do we have many that are penned up?

MS. BARCOMB:

The Bureau of Land Management has large sanctuaries for the horses in South Dakota and Oklahoma.

SENATOR COFFIN:

The number of wild horses in captivity is staggering. We need to do more about birth-control measures with horses. It is a sad thing that we have them all there and we cannot do anything with them and they are not adoptable. They will be in captivity the rest of their lives. Restrictions at the federal level are difficult. They cannot be sold as food. I proposed 20 years ago that these horses be exported to countries where they could be used as dray horses or to help the poor farmers in their work. There was no agreement to this at that time.

CHAIR PARKS:

To follow up on the Heil Trust Fund expiration, do you foresee any other sources of revenue?

MS. BARCOMB:

We have been able to facilitate grants for other programs that directly impact the horse program, such as the prison program and rescue. We have found the public will not give money to a government program. They will fund a direct impact for rescue or other programs.

SENATOR NOLAN:

Are you still receiving some funding from the special license plate funding?

MS. BARCOMB:

Actually, Senator Nolan, this fund has never been received by a government agency. It is received by a private, nonprofit organization that applied for it.

CHAIR PARKS:

Have you ever contemplated doing a program in southern Nevada? There are horses in the Coal Creek Canyon area just above the southern desert.

MS. BARCOMB:

Are you referring to a prison program? I was part of a committee that did look into that a few years ago. The costs were prohibitive because of the heat in the summer months and adding another trainer and a facility would also be too costly.

MR. BIAGGI:

As a final comment with regard to the wild horse program, I would like to join with the Committee's sentiment and to thank Ms. Barcomb for running a very successful program for the betterment of wild horses in Nevada for so many years. If there are no other questions or comments, our overview of the State Department of Conservation and Natural Resources is complete.

CHAIR PARKS:

At this time I would like to allow individuals who have come such a long way the opportunity to speak under the agenda item public comments.

NORMAN FREY (Board of Commissioners, Churchill County):

Thank you for giving the people of Churchill County the opportunity to speak on this important issue. I want to thank the people at Bango Oil for all the work they are doing. Bango Oil is a used-oil and recycled-fuel oil re-refining facility. They are making a considerable effort to correct a problem regarding a strong and disturbing odor in the area near their plant in Churchill County. The DEP has spent a great deal of time trying to resolve the issue. We still have the problem with an odor. It has been detected in the morning and evening. The strongest smell is in the early morning. Sometimes the odor is ongoing all day.

Churchill County was part of the Bango Oil Plant permitting process. We had assurances from the owner, Phil Selarno, that there would not be a problem for the residential areas. With this testimony statement, we are compelled to work with these types of businesses. We encourage business because the jobs are important to the county. We issued a special-use permit contingent upon obtaining an air-pollution control permit from DEP. Churchill County has no authority over air-quality control. We have to rely on the State for those functions. It would be difficult to deny a permit to a company that has no

problems. We have investigated his operations in Oregon. The Bango Oil Plant in Oregon on the Columbia River was investigated as part of the process for permitting. There are no problems with the company Mr. Selarno has given as a referral. However, this is a clean company with no complaints against it. What I see here is an inherent problem where one or two agencies will issue a permit and then there is not an adequate follow-up to monitor the permit or there is an inability to do so. We are very proud of our geothermal activity in Churchill County. You have to contact the Division of Water Resources to request the permits to drill a well for geothermal use. You have to contact the Division of Minerals to receive a permit to extract the heat. Then next is the drilling of the 4,000-foot well to pull up all the water in the well. Then it is run through a system and re-injected into the well at the 800-foot level. There is no monitoring of the groundwater for possible pollution. We are finding these issues come to the county as did air pollution. We have to spend our time and county money to look at these issues and protect our county residents. We need more follow through and, with the proposed budget cuts, it will be difficult. How will we begin to address these citizens and give them relief?

The homeowners of Churchill County need to know there is a solution to the odor problem. Bango Oil applied for a revised air-quality operating permit with DEP in July 2008, to expand its facility. This has been approved and will double the company's production. The DEP reaffirmed its commitment to work with the county to resolve concerns about odors in western Churchill County.

SENATOR COFFIN:

An odor is a nuisance. Counties can control nuisances. You have authority to control, abate or mediate in some way to force compliance with this company.

MR. FREY:

Churchill County has authority along those lines. It takes specialized equipment to do this monitoring. After all the hours spent with the investigation, we still cannot identify whether the odor is from that plant or another plant in nearby Silver Springs or a hot plant across the way. There is no tangible evidence to revoke a special use permit. Who do we blame for the odor?

SENATOR COFFIN:

It is not that tough to detect an odor. I have been around industry all my life and there is a different odor for each one. There is still a possibility, given time, for coexistence between homeowners and Bango Oil. You cannot pull this plant up

and move it. Modifications can be made. It is amazing to me that a plant could be placed there, where the best odor should be sagebrush. Our family plant was in a railroad yard, a mile away from the nearest residence.

MR. FREY:

This is the problem. These residences are miles away. The plant is on the extreme western edge of Churchill County. The odor seems to be the worst in the very early morning. It has been verified with the state worker who drives nearby on her way to work.

SENATOR COFFIN:

These are inversion layers that occur in the early morning. Mr. Chair, I just want to say, I am willing to work with these folks on this problem.

MR. FREY:

I work within a few miles of where the odor occurs. I have had calls from these people and I might be near the plant, as I am a farmer in the area. I will immediately run over there and I cannot detect the odor. It is that transient. When the odor hits, it hits hard. The residents fear for the health of their children, grandchildren and themselves.

SENATOR COFFIN:

People are hypersensitive in the area anyway, because of the unexplainable leukemia clusters and so many other things we are aware of.

MR. FREY:

They have pictures of the Bango Oil Plant start-up. It has visible smoke. I would like this Committee to hear some of the stories from the people of western Churchill County.

CHAIR PARKS:

We have approximately a dozen people signed up to speak. I do not know if there is one person who was going to speak for the majority of the individuals, but I will start calling names as they have signed in. When you follow another speaker, do not repeat what they have said. You may put your name on the record with an agreement of support or nonsupport.

STUART MACKIE:

I have been recording the Bango Oil Plant meetings. I sent an e-mail to the Senate Committee on Natural Resources and others. My e-mail is valid. The records are theirs. I recorded a meeting where they admit they are the cause of the smell and the problem in our area. I believe the DEP needs to be in charge. We need an actual agency doing something. It could be months before they investigate any site. I will give out any information in regard to the e-mail. It is specifically from the DEP meetings themselves. I also will give a copy of the meeting where Bango Oil apologizes to a lady for causing her all these problems. What they have done is horrible. Notice that DEP did not mention how much they are helping Bango Oil. They fined them \$100,000 and then gave the money back to them so they could fix their problem. They had already fixed the problem without justification of their permit. They already built and did not care if the State or county were involved. So part of the plant out there is setting on uninspected rebar and concrete. How can we trust people like this? I am a peach farmer just a few miles away from the plant. I have 1,000 trees. This is 400,000 pieces of fruit each year. The fruit will be tested. Who will be liable for bad fruit? Who will I be looking for? Will it be the State, county or Bango Oil? You will need to find this out.

ESTHER MOORE:

I am a longtime resident of Churchill County, and I live within a mile of the Bango Oil Plant. I have lived in this valley since 1965. I will soon be 66 years old. I have ridden my horses all over the valley. I have never smelled anything so horrible. It is in my house. I sleep with this smell almost every night. I have been to the doctor many times. He sees red in my nose and my eye matter. My neighbor has taken a photo of me and I gave it to the DEP. My skin is red all around my eyes and my face. The doctor suggested I wear a mask at night when I sleep. The smell begins early in the morning and sometimes in the evening at 9 p.m. I have documented the time of day when the odors are most noticeable. The smell is throughout my home. I can actually taste it. A special dinner will be ruined because of the smell.

My horses have been sick and one has been put down. I am not sure if it is the grass or the air that is full of the oil. The veterinarian asked what has happened to my horses. He noticed they are having trouble breathing. The veterinarian gives them shots. I have also noticed when they come in from the pasture they are struggling to get air. I keep them in the barn for a while, but when I let them back out to pasture, again they come back in struggling for air. I did take the

mare and put her in a different part of the valley and she was fine all summer long on that pasture. When I brought her back home to her pasture, she became sick again. This is harming our animals. My home is four years old. I paid extra money to have it specially built. I have double-pane windows and this smell comes in anyway. I cannot have company over for barbeques because the smell is horrible. We need help.

DONNA JERMAN:

I want to tell you about this problem. I have a horse that is coughing intermittently. I do not get the smell too often, but Esther Moore gets it all the time. She is in the pathway of the prevailing winds. My one mare does too. She has this cough which we cannot explain. I sent her away last summer and she cleared up and we brought her back. Now she has this same cough. I am in my house and I purchased a medical air purifier. I did not want to stay in my house all day, but it keeps the air in the house clean. Summer is the worst. We cannot run our swamp cooler. This is no way to live. If we do not get some help, I will be putting my house on the market to sell. I will be out of Fallon. I cannot live like this. It seems there should be someone who can help us. I have talked with a lawyer and was told basically we are dealing with big oil. It will take years out of my life to fight this in the courts. I will stay here with my neighbors as long as I can and keep telling everyone what is happening here. It is not right. Someone in our area is always breathing this horrible smell.

CHAIR PARKS:

I would like to know where each of you live in conjunction to the Bango Oil Plant. Do most of you live east of the plant?

SHARON BOONE:

I live east of the Bango Oil Plant. I have prepared, in cooperation with Holly Bute, a handout for your information ([Exhibit E](#), original is on file in the Research Library). We will highlight several issues. I will present my concerns, and Holly will follow with her presentation.

First, I would like to address something that Norman Frey spoke about. He talked about Phil Salerno's plant in Portland, Oregon. He calls this plant Consolidated Oil Recyclers. It sits on a piece of property with two other businesses. His is in the back. It is permitted under Energy Material Recovery Inc. This is why you find nothing referring to his plant. The violations are

written against the permitted name. It does not mean his plant is not having odors. I have done research on this plant in Portland, Oregon.

I will read my testimony, [Exhibit E](#). On October 30, 2008, DEP inspectors investigated an unpermitted spill/release complaint. The inspectors found that the facility has improperly directed cooling tower "blow-down" onto the soil at the edge of the concrete pad for a period of up to two years, according to the workers at the plant. This practice apparently started with the removal of the pond. The DEP ordered them to sample the contaminated area and to have the reports to them within 45 days. Bango Oil did their own topsoil sampling. The sample should have been a core sample due to the two years of saturation. This is dry arid desert and the sand is like a sponge. From the review of the well-diggers logs, we find that the groundwater table can be as high as 15 feet, depending on the season. The homes in this area are all on wells. The reason given for doing this was, "our combustor was down for repairs and the water-holding tanks were full." The correct thing to do was to truck the water out. This action alone is a blatant disregard for our desert.

In late 2008, the DEP took enforcement action against Bango Oil for constructing unpermitted processing equipment. This company has demonstrated time after time that they do whatever they want with no regard for the authority of even the DEP. They were fined \$100,000 and Bango Oil may be allowed to opt to do a Supplemental Environmental Project. This project will allocate the money for the fine to additional equipment that would result in the treated wastewater being capable of being used for surface application. This is money they were going to spend anyway. So their fine will buy the new equipment they need plus they will be able to amortize it on their taxes. So where is the penalty they should incur for violating the *Nevada Administrative Code*?

HOLLY BUTE:

I represent myself. My testimony is on the back four pages of [Exhibit E](#). I will read and highlight the prepared text. I am in favor of this bill. It will provide the State Department of Conservation and Natural Resources additional funding. I believe more funding is needed for oversight and to provide monetary support for environmental studies, legislation and additional protections for residents and the ecosystem. This was brought to my attention due to the State and county allowing an oil re-refinery plant to come into our area.

Despite our concerns, this refinery was just granted permission to expand. Included in the stop-order from DEP in December 2008, it states that the construction of this expansion was unpermitted at the time. The records state the concrete pads had been in place as of September 2008. Since DEP stated in their rebuttal letter that they had not visited the plant from May 28, 2008, until October 30, 2008, I have concern that the concrete foundation may not have been properly permitted or inspected. This could be a huge liability for the taxpayers. We obviously need more funding and legislation directed at compliance and enforcement and perhaps better oversight. Who is going to protect us?

I am an advocate for groundwater protection, and I am very concerned about this present situation, due to the lack of environmental studies being performed and the fact that we are all totally dependent on domestic wells and surface water in our area which makes it doubly important. There is no way to get us any water if our water becomes contaminated. We are 14 miles from any other water source. It would cost a fortune.

Why was there not an environmental study performed before allowing this plant to come into an area in close proximity to surface waters and residents who depend entirely on domestic wells as their only source of water? Statutes need more teeth in them for enforcement and compliance. As our State grows, do we really need to become a toxic-waste dump for the entire country? And if so, do we need better controls in place to ensure the long-term safety of the environment? I would ask that the funding provided be directed specifically towards these goals and that accountability be in place to ensure that it is impartial. I would also like to see more specific legislation to protect the citizens of Nevada from living in what could become a toxic wasteland. "We do not inherit the earth from our ancestors—we borrow it from our children."

I ask that you consider the companies that pollute be required by law to put forth a bonding instrument commensurate with their potential to cause environmental damage, such as is required by the state of Utah. This could provide funds for mitigation. This would ensure an already financially strapped state and local government is not saddled with a cleanup, should the company not perform as expected, shut down or close down for any reason.

MS. BOONE:

In conclusion, we are average Americans. Some of us have lived here longer than others, but we all love the area, the land, the location, and all we want is our clean air back. We do not need air pollutants from an oil re-refinery. We need the assurance that the annual emissions will not collectively, over time, harm our ecosystem. We have to consider the river corridor and Lake Lahontan. Fallon, "The Oasis of Nevada," could very easily become the armpit of Nevada.

CHAIR PARKS:

Just for clarification, this is not a hearing on the issue. This is simply public comment. We cannot take any action as a committee relative to this public comment. We can, however, schedule something specific at a later time. We will definitely take it under consideration.

LORRAINE GRIFFIN:

My husband and I farm 134 acres of alfalfa on the Carson River 1 1/2 miles from the Bango Oil re-refinery plant. Water- and air-quality issues are important to all of us, especially to those of us who farm. I have handwritten testimony and a handout that gives particular statutes from the NRS to remind us of the regulations governing permits ([Exhibit F](#)). I will read my testimony to you.

I am deeply concerned about DEP's recent decision to permit Bango Oil to increase the amount of waste oil that they bring into our county. Last year, Bango Oil processed 29 percent of what is designated hazardous waste from California. Yet, DEP tells us that a Resource and Conservation Recovery Act permit is not required as it was in 2002, because Bango Oil will not store any oil. They put it in 12,000 to 25,000 gallon tanks, up to 300,000 gallons or a 30-day supply, but that is not considered storage because the tanks are heated. I have been told this has to do with Bango Oil's "Letter of Intent." Where is this magic "Letter of Intent?" We have repeatedly asked for this documentation as well as the 2006 written determination. So far, DEP has not produced these documents for our review. They have ignored our deputy district attorney's request to make their decision contingent upon the county issuance of an amended special use permit (SUP). Currently the SUP allows for only 22,000 gallons per day of re-refined oil.

What right has the DEP to overrule the county's jurisdiction in allowing the expansion of this plant? In so doing, DEP is in violation of the citizens of Churchill County's right to public review and appeal. The NRS 459.520

addresses this issue. We were told by DEP this statute will not apply to Bango Oil. What's going on here? The appearance is one of facilitation for Bango Oil and bureaucratic indifference for the citizens of Churchill County.

SENATOR NOLAN:

It is interesting how citizens, when confronted with situations like this, go from a normal, matter-of-fact life to becoming experts on a subject they never thought they would have to encounter. This is true when we confront quality-of-life issues. If you have a family member who becomes sick, then everyone in the family becomes doctors and nurses taking care of them and they learn about issues they never thought they would have to learn about. I am impressed with these testimonies. I received the memorandum from DEP. This is the first time I have served on the Senate Committee on Natural Resources. I do know a little bit about environmental issues. I am an occupational health and safety technologist, certified safety professional and hazardous material technician. I have responded to many environmental emergencies. All this testimony sounds very familiar with some of the things I do know about.

Here was a plant that had been a very good neighbor for quite awhile. Suddenly, these foul odors started appearing. Local government was contacted, and they contacted state government, state government performed 15 site inspections, issued 9 enforcement actions and the smell is still happening. You are concerned because the odor is not only creating quality-of-life issues but because you do not know what the odor is, there is worry about your health, water and animals. This Committee would not respond to these types of issues until they become a problem and the state agencies cannot give any answers. We have had these types of issues before where legislative panels have convened for the outbreak of leukemia and OSHA issues in southern Nevada. I will offer my assistance to be part of a subcommittee or whatever type committee may be appointed, to work on this issue.

SENATOR COFFIN:

I would like to ask the Committee Counsel if the county has lost its authority over the situation. Is DEP controlling the issue? Does the county still have a role to play in this situation?

RANDY STEPHENSON (Committee Counsel):

Yes, we would need to do some research but there are statutes that could help the county. There is a procedure for appeal to the local board of county commissioners. The county and DEP are overlapping in their authority. There are environmental laws as set forth by Congress which must be carried out by this State through DEP and this gives them exclusive jurisdiction concerning permitting of sources of air contamination. There is an area for the county in that they take care of their citizens by looking into these sorts of issues as well. They can precede the federal authority by years.

SENATOR COFFIN:

This still could be contained at the local level. Litigation may be coming if the county commissioners try to stop the operation. The company relies on the permit to build. I do not think the commissioners did "due diligence" in their investigation as to whether your way of life would be harmed or changed. They are at fault. They want jobs. There are complaints from all the counties in western Nevada. They need jobs, so we pass legislation to give incentives to the counties so they get tax breaks for employers who move in. The company relies on this and they build their plants. There is a chance to solve this before it goes to the courts. If I were king, I would say that we give the company a chance to control their odors. I was told at a recent meeting that they are still improving and tightening the process and this is why they were cited because of mistakes in the process. It is a green business. They take a dirty product and make it clean. It is a waste product when it comes in. It becomes a wonderful finished product. There are only a few of these companies in our Country. This Committee could look into the issue further. We do not have executive authority, but we do have the bully pulpit and moral suasion to ask for commitment from the Churchill County Board of Commissioners involvement. They can protect you but they have to be careful to not go so far as to shut down the company. This could bring on a lawsuit that would break the county. I would encourage you to work with them and I will help. Others have volunteered. I suspect we can find a technological solution to the problem.

Ms. BOONE:

What we feel is fair is to not allow phase two to double their company output until we know the new equipment is working and that they have their process under control. This is what we are asking.

CHAIR PARKS:

I want to continue hearing public testimony. We will continue to record public comment. We will reschedule the hearing on S.B. 37 to a later date.

SENATE BILL 37: Authorizes the award of subgrants for certain purposes relating to the control of water pollution. (BDR 40-360)

It is possible we could form a voluntary working group to discuss this issue and map out our next steps.

RICH WIDEMAN:

I live two miles southeast of the Bango Oil Plant. Senator Coffin made a tongue-in-cheek comment about liking the smell of the oil. I wonder if his wife would like to wake up with the smell in the night or would his children or grandchildren. Additionally, I am sure he would not like to be embarrassed in his home when he has guests or relatives over. I live on a beautiful cottonwood-treed, peaceful, quiet area. Having friends over now is an embarrassment. My home value and my quality of life are severely impacted. Many retired, elderly people live in my neighborhood. They do not have a lot of money. They cannot relocate. Trying to sell a home in this market with this smell is nearly impossible. Legally, the smell must be disclosed to the prospective buyer. I chose to live along the river because I was planning to retire here.

Bango Oil has numerous violations of their permits with DEP and the county use permit. There have been no fines. They were allowed to purchase a piece of equipment that would improve their production and it was called a fine. Bango Oil has no credibility. There are thousands of residential complaints recorded with the State and the county. Apparently, the way the State reads this thing, if the company meets these EPA standards which are basically particulate standards, they are acceptable. I understand from a health standpoint that there are certain acceptable criteria. The thousands of complaints have not been addressed. If all the State can do is read a standard that was set actually by the federal government and measure the output of a stack for a period of time, and then make a judgment that the company is in compliance with their permit, we cannot do anything. Do you need managers for this? Do you need administrators for this? Do you need directors or chairpersons for this; or can you do this with an engineer and a technician like we do in private industry?

I would suggest, since you have a budget problem, that you consolidate all these managers and administrative heads of these departments. They are not doing their jobs. They are not identifying or solving the problems. There are independent agencies that can measure particulates. Maybe we could have some kind of binding arbitration where the residents would have a voice and some control over what is going on with this company. Testing would be accurate. Our State agency is not doing their job.

DON MELLO (former Senator):

My home is two miles from the Bango Oil Plant. This is one of those situations where you either cry or get so mad you do not know what to do. This all started in January 2007. They have not been a good neighbor from day one. The odor began in April 2007, after the plant was built. The odor is traceable right to the site. Combustion equipment burns the water and the stack process produces smoke and refined oil, and they have a process area where they unload. There is another area with clay filters. We cannot speak their language so we cannot pin them down as to what they are doing. They have their combustor running now and it burns sludge and old oil and water. We are not asking the company to close down. We just want them to work with us. My wife has become ill with respiratory problems and will be on oxygen the rest of her life. Whether we can blame this thing, 100 percent, on the company, we do not know. The main thing I can tell you is the symptoms we have experienced, such as a burning throat, nose, eyes, stomach aches and headaches. They are not good neighbors.

We tried to work with Bango Oil. They met with us twice. They had some good ideas. They wanted to put in new equipment. They wanted to stay at the 19,000 gallons. They wanted to keep the same emissions. They wanted us to partner with them. They wanted us to sign this agreement. If we had signed it, we would have lost any appeal rights in the future and there are no guarantees the EPA would not have approved the 54,000-gallon capacity anyhow. We would have been out in the cold. If we could get the EPA to say the 19,000 gallons is a good idea, we would not be here today. The problem is they applied for 54,000 gallons. EPA has rules. They cannot reverse their decision and go back and approve the 19,000 gallons of oil production for 6 months. We would have liked EPA to work with us as well. We are completely out in left field. We wanted to partner together with the county, residence owners, State and EPA. We read in the *Reno Gazette-Journal* newspaper that the director has

already decided that he is going to approve this application from Bango Oil, as is.

We cannot get around this. We have been reporting our complaints to the State. The EPA gave us a number to call. We received a letter from the State saying they are done. They will not spend any more time, labor or money on this issue. Why should we continue to call them? If we could sell our property today, we would have to disclose the smell. This expansion will make it even worse. How large a radius from Bango Oil will we need to be protected from the smell? I can walk down by the river under the willows and I can smell and feel the oil on the leaves. We are frightened of the 54,000 gallons of additional oil production. If they run 24 hours a day, 7 days a week, it will take them 27 days to get rid of the sludge that they have in storage. We know this is where it is coming from. The State is worried about Yucca Mountain and we have Yucca Mountain in our backyard right now. Within 2 to 3 miles of this site, there are wild horses. Within three miles of this site there is a State park. The State park has thousands of visitors, and is a good source of revenue. When the wind blows, the smell will cover the park. There are bald eagles in the area. No one took into account these nature issues.

SENATOR COPENING:

How many homes are impacted?

SENATOR MELLO:

We have filed an administrative petition for an administrative procedure against Bango Oil. Approximately 60 people whose homes are impacted by the odor signed the petition. Some people would not sign the petition because they do not want to make waves. I do not have an exact number, but about 50 homes are impacted. There are others who will not sign the petition because their homes are not up to code. We were not informed about the Bango Oil Plant expansion. The county sent out 400 letters in a 3-or 4-mile radius of the company. Only 5 or 6 of those people actually live there. The others are owners of property that surround the area. When the plant was first started, it was filed in the Reno, Carson City and Las Vegas newspapers. We have a newspaper in Fallon. They did not file in Fallon.

Phil Salerno said there would not be a smell. He told the EPA and Churchill County there will be no smell. He was asked the question, "Is there going to be a smell?" The answer was, "No". The company references could

have been checked more thoroughly had we known all the varied names this company uses. They have had hundreds of complaints filed with the Oregon EPA. This is not an honest company by any means.

SENATOR COPENING:

I understand this is a difficult situation. I want to go back to my original question. Are you saying about 60 people or actual residences?

SENATOR MELLO:

I would say about 50 residences.

SENATOR COPENING:

Not that the number matters, because this is a problem, but you did say 50 residences.

SENATOR MELLO:

Yes, 50 residences. There are some singles there. When people say they have not had the smell, maybe those who could make a difference have not looked for it. There have been thousands of complaints in the last 18 months, that is several every day. It depends if the company is cooking. When they are cooking, someone is getting the smell every day.

Recently, the county changed the ordinance. Now, when someone files for a new special-use permit, there is a requirement that we get four professors from the University of Nevada who are experts in the field of the permit application. They will raise questions that will be appropriate to the permitting process.

SENATOR COPELAND:

Be assured, we will take this issue further.

DAVID MATHEWSON:

My wife and I are concerned citizens. I have 10 acres of land about 2 miles southeast of the Bango Oil Company in Churchill County. One day, my wife and I went out to the plant just to look it over and see what was going on. We were overwhelmed and overpowered with the smell. It was an abusive odor.

My issue has to do primarily with S.B. 37. I have real concern with respect to the way it is written. I live in Fernley. As I read and understand S.B. 37, the federal government may provide grants to the State. These grants may be used

or allocated to projects of the State's determination. I had a recent conversation with a staff member in Senator Ensign's office regarding these grants. He assured me that federal grants require environmental assessments (EA) or environmental impact assessments if it is a serious level. Certainly environmental information documents are always done. So I was told any grant would require EAs. I see no provision in this bill for an EA or maintaining that kind of federal compliance standard for the Nevada subgrant money. In fact, I see a scheme to circumvent the federal EA standards. This is unacceptable to the citizens of Nevada who depend on DEP to protect them as I pointed out in my written testimony ([Exhibit G](#)). A good case in point is the Fernley Water Treatment Plant. The DEP did not conduct an environmental study. They did not look into the legal aspects of the location of the facility or the design. As a result, Fernley went ahead with construction of the plant on the site the city selected. These residents living near the plant are exposed to high levels of hazardous chemicals. This was never evaluated or studied. Now, here we have citizens living very close to this facility, endangered by the facility.

My wife is a real estate agent and brought this to my attention. I did not bring handouts for everyone, but I did want to make a point that is included in my written testimony, [Exhibit G](#). Our property values will drop significantly. We will find it difficult to sell under the Federal Housing Administration and the Veterans Administration because of the disclosure issues related to the air-quality requirements. Financing will not be accessible because of this. We are in a real bind.

I would suggest that you look very hard at the proposed S.B. 37 and consider an EA as a necessary part of it. This should be a requirement for any grant money given or used by the State for any purpose, just as they would be required if the grant was from the federal government. Give this strong consideration.

CHAIR PARKS:

Thank you for the recommendation. We will consider this when we have the hearing on the bill.

MR. MATHEWSON:

I would like to be informed of the hearings coming up as a result of further examination of S.B. 37.

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CHAIR PARKS:

I will provide an opportunity for comment from representatives of Bango Oil as well as DEP, if they wish to make a comment.

TOM CLARK (Bango Oil):

I represent Bango Oil. I have heard that there may be a working group in your committee that is being put together. If that is your preference, I will save my comments for the time of a hearing.

Chair Parks:

We will take this under consideration and we will either create a subcommittee or volunteer working group of the Committee. The concerns expressed here today are new to most of us. We will keep you posted on the developments that we take. There being no other business to come before the Senate Committee on Natural Resources, we stand adjourned at 7:10 p.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____