

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

**Seventy-Sixth Session
May 24, 2011**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Maggie Carlton at 1:41 p.m. on Tuesday, May 24, 2011, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Maggie Carlton, Chair
Assemblyman Joseph M. Hogan, Vice Chair
Assemblyman Paul Aizley
Assemblyman Elliot T. Anderson
Assemblyman David P. Bobzien
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

Assemblywoman Irene Bustamante Adams (excused)

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Rural Nevada Senatorial District
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Amelie Welden, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Judith Coolbaugh, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Tom Fransway, Member, Board of Commissioners, Humboldt County
Wes Henderson, representing the Nevada Association of Counties
Kyle Davis, representing the Nevada Conservation League
Harry Mortenson, Private Citizen, Las Vegas, Nevada
Colleen Cripps, Ph.D., Acting Administrator, Division of Environmental
Protection, State Department of Conservation and
Natural Resources
Joseph C. Strolin, Acting Director, Agency for Nuclear Projects, Office of
the Governor
Marta Adams, Chief Deputy Attorney General, Government and Natural
Resources Division, Bureau of Government Affairs, Office of the
Attorney General

Chair Carlton:

[There was no roll call.] This will be our last meeting since we have no other bills on our schedule. The hearing on Senate Concurrent Resolution 1 is now open.

Senate Concurrent Resolution 1: Expresses support for the Pine Forest
Wilderness Study Area Working Group. (BDR R-213)

Chair Carlton:

Senator Rhoads will present the resolution.

Senator Dean A. Rhoads, Rural Nevada Senatorial District:

[Senator Rhoads read from prepared testimony ([Exhibit C](#)).]

Chair Carlton:

Are there any questions?

Assemblyman Ellison:

About four years ago, a group of us went back to Washington, D.C. to try to change some of the wilderness study areas (WSA) designations in Elko County. Our goal was to have the listings removed or have them designated as wilderness areas. We were unsuccessful so I am glad you are moving forward on this bill. Most of the areas we worked on were in the Ruby Mountains.

Senator Rhoads:

Tom Fransway is here, and he can elaborate on the topic. The Legislative Committee on Public Lands had a lot of input when we formed the Great Basin National Park. We recommended it, and it passed overwhelmingly. The way to get things together is to get all the interested parties involved: environmentalists, ranchers, miners, sportsmen, and the public.

Chair Carlton:

Any other questions? [There were none.]

Tom Fransway, Member, Board of Commissioners, Humboldt County:

[Mr. Fransway read from prepared testimony ([Exhibit D](#)).]

Chair Carlton:

I always like hearing a long list of people involved and working together. They do not always agree, but they are working together on this issue.

Tom Fransway:

They were, and they are working well together.

Chair Carlton:

Is there anyone else who would like to give testimony in support of this resolution?

Wes Henderson, representing the Nevada Association of Counties:

We thank Senator Rhoads and the Legislative Committee on Public Lands for their work throughout the state for many years. I would also like to congratulate the working group and the leadership of Humboldt County for bringing together the various stakeholders to develop a plan to protect true wilderness areas. We also commend them for their efforts to seek release of WSAs that do not warrant that designation. This issue is important to all of Nevada's counties and to all of the western states. Hopefully, the actions of this working group will serve as a model to continue to spur stakeholders to work together on the development of plans. Also, it is hoped their efforts will spur Congressional action to release WSAs that do not warrant wilderness designation. We ask for your support.

Chair Carlton:

Are there any questions? [There were none.]

Kyle Davis, representing the Nevada Conservation League:

We are in support of this resolution. The working group is a great model to show people can work together to protect sensitive wilderness areas while still focusing on the concept of maintaining multiple uses on our public lands. The model can also be used to preserve areas that need wilderness protection.

Chair Carlton:

Any questions? [There were none.] Is there anyone else who would like to give testimony in favor or neutral? [There was no one.] Is there anyone in opposition? [There was no one.] I am closing the hearing on S.C.R. 1.

Assemblyman Ellison:

Since we are running out of time and there is no opposition to the resolution, I would like to know . . .

Chair Carlton:

We will do something after we hear the next resolution.

Assemblyman Ellison:

You want to do them both at the same time.

Chair Carlton:

Yes. I am opening the hearing on Senate Concurrent Resolution 2.

Senate Concurrent Resolution 2: Directs certain state agencies to investigate whether the State could potentially receive compensation from the Federal Government for environmental contamination in Nevada as a result of certain military exercises, nuclear weapons testing and other activities conducted by the Federal Government in Nevada. (BDR R-247)

Chair Carlton:

Mr. Mortenson, a former colleague in southern Nevada, will present the resolution.

Harry Mortenson, Private Citizen, Las Vegas, Nevada:

This resolution was passed unanimously by the Committee on High-Level Radioactive Waste. I chaired the Committee during many legislative sessions. I would like to draw the Committee's attention to several provisions in S.C.R. 2.

First of all, this resolution has no fiscal note. It will not cost the state any money if it is adopted. It specifically states if the three agencies involved do not have the staff or resources available to investigate and prepare the report requested in the resolution, their investigation will be to the extent that they will not cost these agencies any money.

I will be reading from the resolution and adding appropriate commentary. On page 1, lines 1 and 2, the resolution says, "WHEREAS, the Federal Government has conducted numerous activities and military exercises in Nevada" The words "in Nevada" are important because it does not refer to just the Nevada Test Site. [The Nevada Test Site has been renamed the Nevada National Security Site (NNSS).] It includes other places in the state that are geographically separated from the Nevada Test Site. The resolution states, starting on page 1, line 3 and continuing through page 2, line 3:

. . . the contamination of the environment of this State with radioactive and other hazardous contaminants; and

WHEREAS, The Armed Forces of the United States have conducted military exercises in multiple geographic regions of Nevada using ammunition, weaponry and other military equipment that were composed, in part, of depleted uranium, a high-density, radioactive material . . . much of which remains as radioactive debris in the Nevada landscape . . .

Depleted uranium is principally uranium-238 (U-238). I have talked to many people who said U-238 is not a very dangerous material. However, U-238 has a half-life of 4.5 billion years, and it emits a very energetic alpha ray. If you ingest this or inhale this, it raises havoc with the human body and frequently results in death from cancer.

From 1951 to 1992, the federal government conducted 1,021 detonations of nuclear devices. The nuclear fallout from these devices consisted of hundreds of different radioactive isotopes. The testing left behind vast quantities of radioactive materials, waste, and debris, including millions of curies of uranium, thorium, iodine, cobalt, tritium, plutonium, and other radionuclides. I compliment the Legal Division of the Legislative Counsel Bureau for writing this resolution with the precision of a nuclear physicist. The resolution contains an enormous history of what happened at the Nevada Test Site.

Chair Carlton:

Mr. Mortenson, I wonder where they obtained the model for the resolution's wording. They had a good teacher.

Harry Mortenson:

On page 2, lines 24 through 27, the resolution states, ". . . WHEREAS, Approximately one-third of the underground nuclear tests at the Nevada Test Site were conducted directly in aquifers, and many other underground tests were conducted above the water table"

Further, the United States Department of Energy has estimated that nuclear testing at the Nevada Test Site left behind more than 300 million curies of radionuclides, which makes it one of the most radioactively contaminated places in the nation. One curie is an enormous amount of radioactivity. It consists of 30 trillion disintegrations per second. If you multiply that figure by 300 million, it means there is a lot of radioactivity on the Nevada Test Site.

In previous testimony in the Senate hearing, the three agencies involved stated they could not comply with this resolution. They said the investigations were too extensive; they would cost too much money; and the necessary resources were not available. I was pleasantly surprised when the Office of the Attorney General, the State Department of Conservation and Natural Resources through their Division of Environmental Protection (DEP), and Nevada's Agency for Nuclear Projects testified they were already doing a lot of the work this resolution requests. I try to keep up with nuclear project activities within the state, but their work was unknown to me.

I do not want to contradict the three individuals who testified in the Senate hearing because I have very high respect for them. However, on page 3, lines 12 through 14 of this resolution, it states, ". . . to the extent that conducting such an investigation will not cost the agencies any additional money or resources"

Why is this resolution necessary? If they cannot do the research the resolution requests, at least the resolution will help improve the communication between the Executive and Legislative Branches of our government. The activities of the agencies are laudable. Since the Legislative Branch is the policy-making branch of government, it cannot do its work unless it knows what is happening in the Executive Branch. We currently have poor communications. To enhance communication, this resolution states on page 3, lines 15 through 17, ". . . the Office of the Attorney General report the results of the investigation to the members of the 77th Session of the Nevada Legislature" This report will be very helpful and worthwhile. It does not take enormous resources to prepare a summary of the activities they have conducted in this area of looking into the possibility of receiving remuneration from the federal government for the contamination of our state. I will answer any questions.

Chair Carlton:

Are there any questions?

Harry Mortenson:

I would like an opportunity to comment following the upcoming testimony.

Chair Carlton:

We always permit colleagues and former colleagues' rebuttal time. That is not a problem, and you will have that opportunity. We have a few people here marked in as neutral and wanting to speak.

Colleen Cripps, Ph.D, Acting Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

The Department and the Division are neutral on this resolution. We appreciate Mr. Mortenson's recognition of our resource constraints. As he indicated, we have spent the last year working with the Office of the Attorney General and the Agency for Nuclear Projects to investigate whether or not the state can receive compensation from the federal government for environmental contamination of the NNSS.

Settlements with the federal government are most commonly done through litigation as part of a Natural Resource Damage claim. Marta Adams will discuss a number of significant legal hurdles that we have identified. To date, we have not been able to come up with a feasible mechanism to obtain any sort of compensation. As Mr. Mortenson indicated, this resolution is broad in scope, and it will include many U.S. Department of Defense (DOD) issues as well.

In addition to the activities I talked about when we made our original presentation to this Committee about the work we were doing at the NNSS, I wanted to make it clear that the DEP does regulate DOD facilities. We also have the authority to require and oversee cleanup activities at those facilities as needed. I will answer any questions.

Chair Carlton:

Are there any questions?

Assemblyman Hogan:

Have you had occasion to request or demand action by the federal government to clean up some of the more egregious situations that exist in our state?

Colleen Cripps:

I am not sure what you mean by "the most egregious." We have required cleanups at a number of the facilities. We work closely with the

Hawthorne Army Depot. We are also working with the Agency for Nuclear Projects office on the characterization of the groundwater contamination which was the result of nuclear testing. We have cleaned up 1,800 of 1,900 industrial sites that were used in direct support of nuclear testing. We are also in the process of doing a characterization and management study of surface and shallow subsurface soils, which were contaminated as a result of nuclear testing.

Assemblyman Hansen:

Are all the cleanups you mentioned paid by state dollars? Or are we already getting federal compensation for those activities?

Colleen Cripps:

Federal dollars pay for all the cleanup projects. There are no state dollars involved. The feds fund our participation in the work.

Joseph C. Strolin, Acting Director, Agency for Nuclear Projects, Office of the Governor:

We commend Mr. Mortenson and the Committee on High-Level Radioactive Waste for raising this issue. It is an important issue for the state, and it has been difficult for us to get our arms around it because of federal law constraints and the Natural Resource Damage Assessment superfund legislation. Legally, it is problematical and difficult to address contamination issues. We support the concept and the intent of this resolution. We have already looked extensively into what it would take to identify, assess, and seek compensation for the contamination of the NNSS. I do not know the extent of work completed in regard to the entire universe of contamination from federal, military, and other activities in the state.

From the preliminary work we have completed over the last year and a half, we have determined assessment costs will be in the millions of dollars, and it will just get us to the point where we could file a Natural Resource Damage Assessment. These costs are associated with just determining the monetary value of the contamination.

Then, there is another set of problems in determining how you would go after federal compensation under the framework of federal laws and regulations. They constrain what the state or a trustee can do with respect to claiming natural resource damages. We are not opposed to the concept in this resolution, but we need to realize what our expectations are. The report would be more on what exists; what is currently being done; and what it would take to do something more ambitious. I will answer any questions.

Assemblyman Ellison:

Can the NNSS be cleaned up?

Joseph Strolin:

Ms. Cripps could probably respond to your question better than I. In general, the NNSS is considered to be an area where they are not planning to clean up the contamination. At the NNSS, we would be dealing with the identification of lost natural resources such as water and land. Then, we would need to identify a method to make those resources whole again. There are no plans to clean up the NNSS and return it to public use.

Assemblyman Ellison:

Is this resolution like the payments in lieu of taxes program, but this one would be set up under federal guidelines?

Joseph Strolin:

The project would be to identify the lost resources. For example, there is a considerable amount of water in the ground below the NNSS. There is a value to that water if it were used for urban development or urban uses. The issue is whether or not we can make the link between the water there, which has been removed from use by the state, and the value of water, which has been lost to the state. We would need to determine the estimated value of the lost water resource and the amount of compensation for that loss. Legally, the real constraint is making that jump within the framework of federal law.

Chair Carlton:

Any other questions? [There were none.]

Marta Adams, Chief Deputy Attorney General, Government and Natural Resources Division, Bureau of Government Affairs, Office of the Attorney General:

We also commend Mr. Mortenson for bringing this resolution forward. I would echo some of the concerns expressed by my colleagues. With respect to Mr. Hansen's question about compensation: compensation is different than the government funding clean-up efforts. Compensation would be essentially monetary damages, as such. As Mr. Strolin explained, there are significant legal hurdles to cross to get to that point. However, there are two ongoing efforts on the NNSS. The projects include preparing a site-wide environmental impact statement (EIP) of the NNSS, which our respective agencies have supported. The EIP will be produced in draft form by the end of this summer. Another study the DEP is undertaking will evaluate groundwater resources underneath the NNSS.

Those two projects on the NNSS will significantly enhance our understanding of what is actually out there, and they will provide us with meaningful data. When we have that information, we will be able to provide the report to the 77th Session of the Legislature.

To fulfill the broadly stated requests of this resolution, even given the caveat of nonsignificant financial costs, is a huge undertaking. It will be difficult to look at all the sites in the state which have been affected by various nuclear testing and military activity. We will proceed as directed by the Legislature.

Chair Carlton:

Are there any questions?

Assemblyman Goedhart:

One of the geneses of this resolution is to bring forth awareness of the natural resource damage and contamination created by the nuclear testing. We want to keep pressure on the federal government. We cannot sit back and say it is difficult to go after the federal government because it has so many rules and regulations in place. We are the same state which has been successfully fighting Yucca Mountain; we have put up a good fight. However, it is not enough to just fight Yucca Mountain; we need justice. When we see the federal government requiring British Petroleum to establish a \$20 billion escrow account for damages in the Gulf of Mexico, then we need to hold the federal government to the same standard for our losses. I applaud any legislation which brings this issue to the forefront. We need to build public support and opinion for what will be a difficult and lengthy battle ahead.

Chair Carlton:

Any other questions? [There were none.] Mr. Mortenson, would you like to comment?

Harry Mortenson:

At this point, there is a large class action suit being brought by many states for various areas of contamination that occurred through the efforts of the U.S. Department of Energy (DOE). Perhaps it is a class action for the purpose of minimizing the costs to the various states. My intent for this resolution was to try to get some investigation done. If it is an impossible task because everyone is "up to their neck" in work, and there is no time for additional investigation, at least this resolution will ask that people keep an eye on suits that are ongoing from other states. Many different entities are suing the federal government for problems with radiation and so on, including Native Americans and the states of Washington and South Carolina. This resolution essentially requests tracking of these suits, and reporting back on what is happening.

Perhaps, this state should also engage in these suits. Most important of all is the report back to the Legislature so that we may know what is going on. The Legislature cannot make policy if it does not know what is going on. This resolution directs the Office of the Attorney General to summarize the information collected from the various agencies, and to report the results to the Legislature. I urge you to adopt this resolution.

Chair Carlton:

Any final questions? [There were none.] I am closing the hearing on S.C.R. 2. Senator Parks, did you wish to make a comment?

Senator David R. Parks, Clark County Senatorial District No. 7:

I am here to speak on S.C.R. 2. I served on the Committee on High-Level Radioactive Waste, and I supported the request for S.C.R. 2. I consider this resolution to be another tool in our tool bag. Going forward, if the state has an opportunity to receive compensation from the federal government to mitigate damages caused by radioactive waste, this legislation will help us.

Chair Carlton:

Are there any questions? [There were none.] I am opening a work session on S.C.R. 1. Are there any questions or comments? [There were none.] I will entertain a motion.

ASSEMBLYMAN ELLISON MOVED TO ADOPT
SENATE CONCURRENT RESOLUTION 1.

ASSEMBLYMAN LIVERMORE SECONDED THE MOTION.

Is there any discussion?

Assemblyman Bobzien:

This is an excellent resolution and a perfect use of resolutions in the Legislature. The whole point is that once the working group has gone through the process and prepared their recommendations, then it becomes up to an act of Congress to put those recommendations in place. It is important to have the Legislature weigh in on the subject. I have heard good comments from all the various constituencies involved in this process. I hope I have the opportunity to go out into the field with them and see what they are doing. I congratulate Commissioner Fransway on his efforts. He is always a leading voice on public land issues. It was a pleasure to work with him on the Legislative Committee on Public Lands. It is gratifying to know this Committee can lend its support to this effort.

Assemblyman Ellison:

I totally agree. The passage of this resolution will create a model. It will help all of rural Nevada address some of these issues, and it is a first step in resolving them. The problem has been there for years.

Chair Carlton:

I hope as this resolution moves forward, the entities involved will reach out to the Committee members who are interested in this issue. With term limits, the makeup of the Legislature can change every two years. We need to ensure we educate the legislators coming up. I would not have the perspective I do today without Senator Rhoads and Senator Jacobsen taking me out and showing me what the rural counties were all about. It has helped me look at bills from a statewide perspective. We will take the vote.

THE MOTION WAS ADOPTED. (ASSEMBLYWOMAN
BUSTAMANTE ADAMS WAS ABSENT FOR THE VOTE.)

I am opening the work session on S.C.R 2. Is there any discussion? I have a motion.

ASSEMBLYWOMAN PIERCE MOVED TO ADOPT
SENATE CONCURRENT RESOLUTION 2.

ASSEMBLYMAN AIZLEY SECONDED THE MOTION.

Are there any comments or suggestions?

Assemblyman Ellison:

Is the money going to be strictly used for a study to find out about aquifer contamination and some of the other issues, if they do get this money? These areas were polluted by the nuclear activities in the 1950s. The sacrifice Nevada made has kept this nation free for many years. Can someone answer my question?

Chair Carlton:

We just had the Committee hearing on the resolution, and the question would have been better asked then. If the state believes we should have remuneration, and if it can get it, we want the agencies to be aware of what is going on. We would like them to come back to the Legislature with a report on the situation. Mr. Goedhart, what are your thoughts? [Mr. Goedhart said, off the microphone, it is good.] Are there any other comments or questions? [There were none.] I will take the vote.

THE MOTION WAS ADOPTED. (ASSEMBLYWOMAN
BUSTAMANTE ADAMS WAS ABSENT FOR THE VOTE.)

Thank you for all of your hard work. If we need to meet again, I will let you know. Keep tracking your bills, and let me know if there is anything the Committee needs to do on any of them returning from the Senate.

This meeting is adjourned [at 2:26 p.m.].

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblywoman Maggie Carlton, Chair

DATE: _____

EXHIBITS

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

Date: May 24, 2011

Time of Meeting: 1:41 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|-------------------------|--------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| S.C.R. 1 | C | Senator Dean Rhoads | Testimony |
| S.C.R. 1 | D | Tom Fransway | Testimony |