

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

**Seventy-sixth Session
May 11, 2011**

The Senate Committee on Natural Resources was called to order by Chair Mark A. Manendo at 3:50 p.m. on Wednesday, May 11, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, 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 Mark A. Manendo, Chair
Senator David R. Parks, Vice Chair
Senator John J. Lee
Senator Dean A. Rhoads
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman David Bobzien, Assembly District No. 24
Assemblyman Ed Goedhart, Assembly District No. 36
Assemblyman Ira D. Hansen, Assembly District No. 32
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Michelle Van Geel, Policy Analyst
Charity Fowler, Counsel
Linda Fehr, Committee Secretary

OTHERS PRESENT:

Darrell Lacy, Department Director, Nye County Nuclear Waste Repository
Project Office
Gary Hollis, Chair, Board of Commissioners, Nye County
Kyle Davis, Policy Director, Nevada Conservation League
Patrick T. Sanderson, Laborers Local 872

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George (Tommy) T. Rowe, Chair, Board of Commissioners, Lincoln County
Jeremy Drew, Engineering Intern/Resource Specialist, Resource Concepts, Inc.;
N-4 Grazing Board
Wes Henderson, Deputy Director, Nevada Association of Counties
Larry Johnson, President, Coalition for Nevada's Wildlife
Shawn Espinosa, Upland Game Staff Specialist, Department of Wildlife
John Hiatt
Tim Carlson, President, CEO, Powered by Renewables
Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades
Council of Northern Nevada, AFL-CIO
Danny Thompson, Executive Secretary and Treasurer, Nevada State AFL-CIO
Dale Erquiaga, Senior Advisor, Office of the Governor
Gilbert A. Yanuck, Advisory Board to Manage Wildlife, Carson City
Tina Nappe
Clint Bentley
Tom Smith, Coalition for Nevada's Wildlife
Steve Robinson, State Government Affairs Director, R&R Partners
Beverlee McGrath, The American Society for the Prevention of Cruelty to
Animals; Best Friends Animal Society; Nevada Humane Society
Scott Raine, Chair, Board of Wildlife Commissioners, Department of Wildlife
Daryl Capurro, Board of Wildlife Commissioners, Department of Wildlife
Gerald A. Lent, O.D., Board of Wildlife Commissioners, Department of Wildlife
Charles Howell, Board of Wildlife Commissioners, Department of Wildlife
Walt Gardner
Hank Vogler, Rangeland Resources Commission, State Department of
Agriculture
Hal Shrum, Board of Wildlife Commissioners, Department of Wildlife
Cliff Gardner

CHAIR MANENDO:

We will open the hearing on Assembly Joint Resolution (A.J.R.) 5.

ASSEMBLY JOINT RESOLUTION 5 (1st Reprint): Urges the Federal Government to engage in discussions regarding the mitigation and containment of water contamination in Nevada which resulted from certain nuclear activities that were conducted in this State by the Federal Government. (BDR R-895)

ASSEMBLYMAN ED GOEDHART (ASSEMBLY District No. 36):

I am here to urge your support of A.J.R. 5. This is a joint resolution urging the federal government to engage in discussions with the State of Nevada and Nye County regarding the mitigation of water contamination in Nevada. This contamination resulted from nuclear activities that were conducted in the former Nevada Test Site. This area is now called the Nevada National Security Site (NNSS). The NNSS is wholly contained within Nye County's borders. From 1951 to 1992, the federal government detonated 921 nuclear warheads underground at the NNSS. Each explosion deposited a toxic load of radioactivity into the ground and in some cases directly into the aquifer. Multiple aquifers are underneath the NNSS. The groundwater system is deep, and the subsurface contains more than 300 million curies of radioactive contamination. The underground contamination underneath the NNSS is the most significant contamination in the entire Country. Although total radioactivity levels are falling, there are more than 93,000 curies of very long half-lived radionuclides such as plutonium and uranium which have half-lives of up to 4.4 billion years.

Despite this massive contamination, the U.S. Department of Energy (DOE) has ranked Nevada at the bottom of its priority list for cleaning up major sites in the nuclear weapons complex. The NNSS receives about \$65 million per year out of the DOE's nuclear clean-up budget. By comparison, \$1.8 billion has been spent at the Hanford Test Site in Washington State. Soil and water contamination at the Hanford Test Site are only one one-thousandth as severe as the contamination in Nevada.

The contaminated water is especially problematic in Nye County where water is the single limiting resource for economic development. Former Nye County consulting geo-hydrologist Tom Buco has estimated the underground tests polluted 1.6 trillion gallons of water. To put that into perspective, it is as much water as the Southern Nevada Water Authority is allowed to withdraw from the Colorado River in 16 years. It is enough water to fill a lake 300 miles long, a mile wide and 25 feet deep. At today's prices, the value of this destroyed resource is estimated to be between \$18 billion and \$48 billion. When British Petroleum destroyed natural resources in the Gulf of Mexico, the federal government demanded they put \$20 billion into an escrow account to pay for the damages. Nevadans should hold the federal government to the same standard. The federal government needs to man up, clean up and pay up.

DARRELL LACY (Department Director, Nye County Nuclear Waste Repository Project Office):

As stated in A.J.R. 5, Nye County has almost 98 percent of its land area controlled by various federal agencies. The NNSS had withdrawn from public access approximately 1,360 square miles for use in the weapons testing program and related national security activities. Large sections of this land were contaminated by the weapons testing program and will remain contaminated for many thousands of years.

In addition to the contaminated land surface area, large quantities of underground water were contaminated by the weapons testing program. As a result, these waters are not useable by the residents of Nevada. When Nye County filed to appropriate uncontaminated waters on and adjacent to the NNSS, the DOE protested the filings. The state engineer has denied most of these filings and the filings are currently under appeal. Nevada, through the Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources (SDCNR), is the primary regulator of the NNSS through delegated authority from the NDEP and a negotiated agreement called the Federal Facility Agreement and Consent Order (FFACO). The FFACO has attempted to characterize the contamination and develop a model to estimate future movement of this contaminated water. In the area of Pahute Mesa, the DOE has found that contaminated water has already left the NNSS and is predicted to be moving in the direction of Beatty and Amargosa Valley. The DOE has said they are protesting water applications including Nye County's in the area on and around the NNSS for fear that additional pumping may accelerate the movement of contaminated water.

We support this resolution which urges the federal government to engage in discussions with Nevada and Nye County regarding mitigation of the contaminated water. I have submitted a detailed analysis ([Exhibit C](#)) of the cumulative impact of Yucca Mountain and the NNSS. This analysis includes a study of water impacts from contamination.

GARY HOLLIS (Chair, Board of Commissioners, Nye County):

I support A.J.R. 5. Nye County has always supported NNSS and their mission to keep America safe. The weapons program jobs have helped Nevada for over 60 years. However, the nuclear testing program at NNSS has created a legacy of contamination with which Nye County and its residents will have to live for generations to come. There are many thousands of acres of land and millions

and millions of gallons of water with radioactive contamination. Nye County has applied for water in the unincorporated areas of the basin on and around the site. The DOE and other federal agencies have protested Nye County's application for water around the site for fear that nearby pumping will cause contaminated water to move fast. We support A.J.R. 5 and ask the federal government to work in good faith with the State and Nye County to determine ways to clean up the contamination wherever possible and mitigate the impact of contamination in other areas.

ASSEMBLYMAN GOEDHART:

I have provided a copy of the lawsuit between the DOE and the Los Alamos National Laboratory in Los Alamos County, New Mexico ([Exhibit D](#) original is on file in the Research Library). It is an example of the possible result of being proactive. This is the direction we want to move toward. We want to bring awareness to this problem. We want to bring some political pressure to allow us to come up with some agreements that will both mitigate and contain the contamination. The contamination is currently moving at varying rates of speed through radioactive plumes.

I would like to read correspondence I received from a constituent ([Exhibit E](#)).

The Pahute Mesa range is directly behind my property. I have several concerns regarding the DOE finding contaminated water outside the NNSS in this area. How can I find out more about this issue, such as exactly where the contamination has occurred and how I might be affected?

We are now having people expressing concern because the plume is moving beyond the borders of the NNSS.

SENATOR LEE:

I understand the radioactive plume but want to know the process for restoration of contaminated water.

MR. LACY:

There are technical ways to clean up radioactive contaminated water. We would like to work with the federal agencies to determine if it is possible to clean up this water. It may be more cost-effective to provide alternative sources of water.

SENATOR LEE:

I understand you are trying to determine exactly which problems exist. Clark County also needs to be considered before we could pass this bill. May I add Clark County?

ASSEMBLYMAN GOEDHART:

Yes, we did not mean to preclude anyone from the language of this bill. The bill primarily addresses Nevada, which would encapsulate every locality within the State. We presented it from Nye County since the test site is located entirely within the Nye County borders. We definitely are open to making the language as inclusive as the Committee would like. This could help us get exposure that could make a difference. At this time, Nye County is not being treated with the proper priority level. This is evident in the pittance we are getting to characterize and evaluate the problem versus what is being spent at the Hanford Test Site.

SENATOR LEE:

This resolution might add an additional congressman or two to join your cause.

MR. HOLLIS:

We have asked the DOE to do an oversight program by drilling approximately five holes along the Pahute Mesa border outside of the test site boundaries. We want to be able to monitor the contaminants. We have been denied the money to do our own independent program. Nye County does not have the money to drill five wells that are 2,000 feet deep.

KYLE DAVIS (Policy Director, Nevada Conservation League):

The Nevada Conservation League is in support of A.J.R. 5. There is a significant environmental problem in this area. This resolution could have some impact in cleaning it up or mitigating the problem.

PATRICK T. SANDERSON (Laborers Local 872):

I worked at the original camp when this test site was placed. We know how much water is underneath it. We definitely need to protect our future. In Anchorage, Alaska, Labor Local 341 helped bring in money for the tribes and people who lived near the Alaskan nuclear testing sites. We worked diligently to get a payment and health care for everyone who was or might get sick in the future. We would be very happy to help in whatever way we can to get this resolution moving forward.

CHAIR MANENDO:

We will close the hearing on A.J.R. 5 and bring it back to Committee. We will now open the hearing on Senate Concurrent Resolution (S.C.R.) 9.

SENATE CONCURRENT RESOLUTION 9: Expresses opposition to the location of a proposed wind power project on Mount Wilson and Table Mountain. (BDR R-1286)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District)

This Committee heard a similar bill, Senate Bill (S.B.) 287, earlier in this Session. Senate Bill 287 proposed wind energy projects in Lincoln County. Due to the confusion about the form of that measure, the bill died on the Senate Floor. Senate Concurrent Resolution 9 is a replacement measure that addresses the concerns with the proposed wind energy projects in Lincoln County at Table Mountain and Mount Wilson. There are additional amendments that will add language about avoiding sage grouse priority habitat. I have seen the proposed sites, and I am concerned this might not be the best place to put 100-foot wind turbines. The projects will be improved and the process streamlined by giving Lincoln County and the Nevada Grazing Board of District No. 4 (N-4 Grazing Board) a chance to have input at all stages. This resolution recommends that more suitable locations be identified and that the Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), allow Lincoln County and the N-4 Grazing Board to participate fully and actively in the process from start to finish.

SENATE BILL 287: Expresses opposition to the location of a proposed wind power project on Mount Wilson and Table Mountain. (BDR S-216)

CHAIR MANENDO:

We have heard this resolution in bill form. We are fairly familiar with it, so please keep your comments brief.

GEORGE (TOMMY) T. ROWE (Chair, Board of Commissioners, Lincoln County):

As chair of the Lincoln County Board of Commissioners and a lifetime resident of Lincoln County, I am asking for your support of S.C.R. 9. This resolution is very important to Lincoln County and its residents. It opposes the construction of several hundred wind turbines on Mount Wilson and Table Mountain. The board of county commissioners have unanimously approved four separate resolutions opposing this project. The Lincoln County Public Lands Policy of

2010 specifically identifies these mountains as containing valuable concentrations of natural and cultural resources and large scale development. Where appropriate, Lincoln County supports all forms of renewable energy.

Lincoln County has offered alternate wind energy sites to be explored. In July 2010, we scheduled a tour of Mount Wilson and Table Mountain for Senator Rhoads. We had concerned citizens, ranchers, county commissioners and representatives from the Department of Wildlife (NDOW) on this tour. Roads that are able to accommodate the heavy haul and wide loads necessary to transport the wind turbines and equipment, as well as the concrete trucks and the power lines would be a ruination of these pristine areas.

The proposed development would encompass over 31,000 acres in elevations varying from approximately 6,200 to 9,300 feet. It would divide four separate watersheds. It is difficult to visualize the amount of resource destruction during the construction phase of the project. Many millions of tons of earth would have to be manipulated to accommodate the necessary roads, turbine locations and transmission lines that would be needed.

These mountains also accommodate the sage grouse population in Lincoln County. Nesting sites and brood rearing occurs heavily within the project location. A wind energy project in these mountains would be devastating for Lincoln County's fragile sage grouse population. The economic landscape of our county would be further devastated if the sage grouse were to become endangered. These mountains are the farthest south known sage grouse leks in Lincoln County and probably in Nevada. These mountains are also a critical summer range for mule deer and elk. Lincoln County's economy benefits tremendously from big game hunting and other family oriented recreation. The citizens and the county commission openly support renewable-energy projects. We are and have been willing to work with developers to find locations that are suitable for all concerned.

The Governor's executive order for the statewide sage grouse plan stated the policy of Nevada is to preserve and to protect sage grouse habitat whenever possible. It further states that the NDOW shall continue to work with state and federal agencies to implement fully the recommendations of the Governor's sage grouse plan.

JEREMY DREW (Engineering Intern/Resource Specialist, Resource Concepts, Inc.): I am representing the N-4 Grazing Board. The N-4 Grazing Board is a legal entity of Nevada government organized under *Nevada Revised Statute* (NRS) 568.040. We represent grazing interests within the Ely BLM District which is where the Wilson Creek wind project would be developed. The N-4 Grazing Board is in full support of S.C.R. 9. We are also in support of the sage grouse amendment.

The proposed Wilson Creek project would have a serious impact on the ranchers and public lands grazing operators whom our board represents. We have clearly made our concerns known to the project proponent. The project developer has done nothing to address our concerns other than to say any impacts could be mitigated. Our board strongly believes most of the impacts cannot be mitigated and to assume so reveals a lack of understanding of the significance of this area and the long-term viability and sustainability of the renewable-energy industry in Nevada.

The N-4 Grazing Board was represented at the BLM's mandatory project pre-application meeting held in Reno on April 29. We requested the BLM either to recommend the application not be filed or to deny the application per their own policies and screening criteria. This request was based on the high potential for adverse negative impacts to ranching, private property, wildlife, visual resources, multiple uses and economics. In terms of economics, we were speaking particularly about ranching, agriculture and recreation. It also includes the potential for long-term statewide impacts if the sage grouse is listed under the Endangered Species Act. This would result in significant restrictions for future ranching, recreation and renewable-energy development on public lands.

Despite raising our concerns, it appears that the BLM is moving forward with this project. We do not oppose renewable-energy development on public lands, but we advocate and demand responsible development. This project does more to impact Nevada negatively than to benefit Nevada. It is not sustainable from a natural resource standpoint. It is not sustainable from a multiple use standpoint. It is a poor representation of what a responsible renewable-energy project can mean for Nevada. We welcome the opportunity to explore alternative renewable-energy projects. We reiterate our support of S.C.R. 9.

I have provided a proposed amendment ([Exhibit F](#)) which adds language to this resolution. The first part is a statement that the NDOW has determined a significant portion of the project overlaps or is adjacent to priority sage grouse

habitat. This priority sage grouse habitat language is consistent with the BLM policies and procedures. We also have a resolve statement that addresses avoiding such priority habitat and following the guidelines listed within the Nevada Energy and Infrastructure Development Standards published by the Governor's sage grouse conservation team in April 2010.

We have also provided a preliminary working map ([Exhibit G](#)) which shows the overlap between the wind project tower locations and the sage grouse habitat. In many instances the wind towers directly overlap with active leks' locations. A great portion of the wind turbine sites and transmission lines are within the three-mile buffer recommended by the report.

MR. DAVIS:

The environmental concerns of these specific projects have been outlined, and we share those concerns. The environmental community has been working very hard to build renewable-energy projects in appropriate areas. This is something the state needs to do, and we definitely need to develop renewable-energy projects as quickly as possible. This needs to be done in an appropriate manner. We support S.C.R. 9 and want to work with industry to find the right project sites.

WES HENDERSON (Deputy Director, Nevada Association of Counties):

We are in support of the responsible use of federally managed public lands for renewable energy including wind. However, we believe the host county should have significant input during the site selection process. The Nevada Association of Counties (NACO) adopted a resolution in 2008 that supported the right of a county commission to oppose sites for wind generators on public lands that they find will negatively impact the environment, economy and quality of life in their counties. We have submitted a copy of the resolution ([Exhibit H](#)). The Lincoln County Board of Commissioners opposes the proposed location for these two wind generating projects and has expressed their willingness to work with proponents to identify a suitable location for these facilities. We request this committee add its voice to that of the county by passing this resolution. We urge your support of S.C.R. 9.

LARRY JOHNSON (President, Coalition for Nevada's Wildlife):

The Coalition for Nevada's Wildlife is strongly in support of the proposed amendment which includes sage grouse protection as part of the resolution. If sage grouse gets placed on the endangered species list, there will be vast

economic repercussions to mining, recreation and ranching. This will not be devastating to Lincoln County alone but will domino across the state. Renewable-energy projects need to be located in correct areas that have minimal or no impact to the sage grouse. We are equally concerned about all wildlife resources. We urge your passage of S.C.R. 9.

SHAWN ESPINOSA (Upland Game Staff Specialist, Department of Wildlife):

On behalf of the NDOW and sage grouse, we support S.C.R. 9. In this part of the world, sage grouse basically use the valley bottoms for breeding habitat and the mountaintops for nesting and raising their broods. I have included a map showing locations of GPS collared and radio-transmitted sage grouse ([Exhibit I](#)). This shows the importance of the top of Table Mountain. Table Mountain, as well as White Rock Mountain, basically are hubs. The birds in the valleys concentrate on those areas during their nesting period. The critical habitat available on Table Mountain would be difficult if not impossible to replace. The brooding habitat consists of meadows and sagebrush habitats that do not occur in other areas. Jeremy Drew of Resource Concepts presented you with a map, [Exhibit G](#), of all the proposed turbine locations. Approximately 300 turbines would be placed within these areas. The map has a three-mile buffer. We have found through various studies throughout the state that the three-mile buffer accounts for 80 percent of nesting hens. That is why we have chosen to use that buffer distance.

The placement of 300 turbines and the road network that would be required would be quite extensive. Placing one turbine requires about seven semitruck trips up a mountain. This translates to 2,100 vehicle trips up to an area that has a two-track road. Prior research conducted in oil and gas states suggests that even a slight amount of vehicle traffic from 2 to 12 vehicle trips in a 12-hour period affects the nest success of these hens. We know the U.S. Fish and Wildlife Service has found a warranted but precluded finding. They have said that one of the top factors affecting sage grouse right now is the lack of regulatory mechanisms to protect their habitat. This resolution would be a step that Nevada could take to show it is serious about sage grouse conservation.

SENATOR LEE:

When I first heard this bill, I wanted Lincoln County to get into the process of making the state better and to get involved with renewable energy. Lincoln County told me they would like to move these locations to another mountain range. I just heard the NDOW say they do not want it in that area.

After hearing both sides of this issue, once through S.B. 287 and now through S.C.R. 9, I think this issue will not be solved by this resolution. Even if we pass it out of the Committee today and pass it through the Senate and Assembly, these type of issues are not new. They have been part of the renewable-energy industry and the communities into which they go for years. There will be concerns from here on out. If we try to solve these problems through legislation and resolution, we are setting precedents that we are talking out of both sides of our mouth.

We have the Senate side with nearly 20 different bills that encourage renewable energy. We also discourage it by supporting local interests that do not want it in their backyards. This is not right for either side. I would like to suggest that we request the Office of Energy (OE), Office of the Governor, to act as a facilitator for these types of issues. This would allow the proper avenue for the project developer and the local community to work together to bring about a project the community can support and the developer can build. It will let the federal government know our concerns at times other than when we are in session. The process can help identify the various projects and their issues so time and money can be directed in the correct area, and we as a state can build upon the positive side of bringing jobs and tax revenues to our citizens. At this time, I would like to allow the OE time to get back to me to see if there is some way the local communities can talk to someone in an ombudsman position. I see Tommy Rowe and Tim Carlson here. I am supporting S.C.R. 9, but I would just like to have a day to see if I can come up with a better plan.

JOHN HIATT:

I serve on the Governor's sage grouse team. It makes no sense to develop heavy industry in the best wildlife and key sage grouse habitat in Lincoln County. I am in support of this resolution.

TIM CARLSON (President, CEO, Powered by Renewables):

We are not in favor of supporting this resolution. It is well documented that we have done what was needed in relation to our planning, developing and evaluating the wind site. If we have to move the site, the project dies. We need to solve the issue. Senator Lee has come up with the possibility of solving the problem by having people work together. The developer would like to see ways in which we can solve this problem. Solving the problem without legislation sets a good precedent for the State in its quest for economic development as well as job creation and tax development.

PAUL MCKENZIE (Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO):

I am familiar with Lincoln County. I am not going to argue the merit of whether it is a good place to have a wind farm. It is not appropriate for a state to ask everyone in renewable energy to come here and then afterwards come to the Senate to block it. This project has to go through a strenuous Environmental Impact Statement (EIS) process which includes all involved parties. There is mitigation involved for cause of action. This process draws out for several years and gives the parties time for review. At this point, the developer has probably spent several million dollars. If we now say not to go forward with the project regardless of whether we can mitigate the issues, place turbines in other places and make this work with the wildlife, we are going backwards. We are trying to create jobs in Nevada. Right now, we are telling everyone who wants to build a renewable-energy plant here that if the people who live next door are not happy, those people can come to this legislative body and have it blocked. We are in opposition to this resolution.

CHAIR MANENDO:

Did you testify on this when it was a bill?

MR. MCKENZIE:

No, Senator. I was not aware of this until after it had been heard. Some people asked if I had read it. I then realized what it was. I did not testify at the original hearing.

CHAIR MANENDO:

I was not sure and just wanted to refresh my memory.

MR. SANDERSON:

Everyone says they want green energy. No one wants it in their backyard. It is not where the job is built, it is how the job is built and how it is cleaned up after it is built. I worked on the Alaskan pipeline for 13 years in some of the most pristine land in America. The pipeline extends from the frozen tundra all the way to Valdez. The area has every type of wild game, fish, goats, buffalo, etc. This pipeline gave wildlife a place to scratch their backs. It gave the bears a place out of the snow to walk in the winter. If this project is built properly, you do not have a problem. It must be built properly and cleaned up. We have to have green energy. We have to build it properly. I hope this project goes through. Please look towards the future of Nevada, and green energy projects. Do not

knock them down every time they come up. I would be happy to meet with anyone to answer any questions.

SENATOR PARKS:

Some of the permitting process seems to go back to 2004. How can we get seven years into a project and then realize it is in the wrong location? It seems to send a bad message.

DANNY THOMPSON (Executive Secretary and Treasurer, Nevada State AFL-CIO):

I was formerly a member of the renewable-energy task force. I have the same question. How do we let a project get this far down the road with \$4 million invested and then have an issue with it? We have done a lot to try to recruit these types of projects. It seems there should be some mechanism that does not allow this to happen. There is a lot of work by a lot of people to vet these wind projects. We are opposed to the resolution.

MR. CARLSON:

Projects are developed over a period of time to determine where the wind is best. We found the wind at this location, and we had to prove it up. We have spent \$4 million doing that. Before it is a financeable project that we can take through an EIS process, we had to determine if we could actually finance and build a project at that location based on the wind. That is where the vein of gold exists just as in a mining site. We are mining into the air versus the ground. The resource is at this location. Moving the site to another location is like asking a miner to go somewhere else to mine. That is what kills projects. We had to prove it just like a miner has to prove a mine's site. This is why it has taken so long.

MR. ESPINOSA:

In partial response to Senator Parks' question, there is a big difference between the exploration phase and the actual development phase. There are a lot of ramifications and nuances regarding the BLM process that need to be clearly understood. Opposition to this project has been occurring since 2004. Since the beginning, the county as well as the NDOW has attempted to divert this project to a different area of Lincoln County. Several different locations were provided to the proponent.

MR. DREW:

The N-4 Grazing Board has worked on this project with Lincoln County for the past four to five years. Both the N-4 Grazing Board and the county have been adamantly opposed to this project since the beginning. The project proponent has told us that anything that happens can be absolutely mitigated. It is the stance of the county and the N-4 Grazing Board that this is not the case. We are not doing this at the last minute. We are being responsible in telling the project proponent in clear terms what our concerns are before he spends a lot more money for a project that may never happen.

CHAIR MANENDO:

We will close the hearing on S.C.R. 9 and open the hearing on Assembly Bill (A.B.) 322.

ASSEMBLY BILL 322: Revises provisions relating to wildlife. (BDR 45-150)

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

I am here today to talk about A.B. 322. This bill does three things. It creates criteria for the conservation appointment on the Board of Wildlife Commissioners (BWC). It changes the appointment process for the director of the NDOW. It requires the NDOW rather than the BWC to implement the Dream Tag program (DTp).

The first item is the appointment process for commission members. This bill specifies that the conservation member of the Board of Wildlife Commissioners (BWC), NDOW must have experience and expertise in advocating issues relating to conservation. This language is the same language used for the conservation member appointment on the State Environmental Commission (SEC), Division of Environmental Protection, SDCNR. Our staff drafted it with the same requirement. I had worked with some of the conservation community, and they felt it would be pertinent to have a stronger definition for the background and criteria for the position.

The second issue is regarding the position of director of the NDOW. This bill gives greater discretion to the Governor in appointing someone to fill that position. It removes the requirement that the Governor must choose from nominees provided by the BWC. It puts the appointment procedure for the director in line with other State agencies. When a cabinet member answers to the Governor, the Governor should have the ability to appoint that person. The

Governor can still receive nominees from the BWC, but he would not have to choose from the list of nominees. It still involves the grassroots group of the BWC, but it gives the Governor the autonomy to select either from the list or outside of the list. The significance of having the connection between a cabinet member and the Governor is very important. The appointment should be made by the Governor.

The last item is in regard to the DTp. It requires the NDOW to implement the program. I want to give a little bit of background about the DTp. It is not a new program. It was passed in the last Session and it enabled the BWC to develop regulations to implement the DTp. The DTp is a big game tag that can be given out in a lottery. It is a simple program. You sell tickets and someone can win a big game tag. Almost all of the western states have this type of program, and it brings in millions of dollars. It is a great idea that was developed by some sportsmen and sportswomen. We were very excited to be able to put it together last Session. The money would be used specifically for habitat restoration. If we can restore some of the habitat, some of the herds may improve. We will have a better ability to deal with terrain after wildfires. This is the concept behind the DTp. Unfortunately, it was not implemented in the interim. This bill takes the requirement from the BWC to the NDOW.

ASSEMBLYMAN DAVID BOBZIEN (Assembly District No. 24):

I want to talk briefly about section 1 of A.B. 322, specifically the definition for the conservation seat on the BWC. As Assemblywoman Smith pointed out, this is a direct mirror of the statute for the SEC. I sponsored A.B. 217 of the 74th Session which received unanimous support in both Houses. It set a high standard for a conservationist. Former Assemblyman John Carpenter from Elko asked if a cowboy could be a conservationist under this definition. I responded, "Yes." I could think of plenty of ranchers who had a progressive approach to how they do ranch management, and if they had experience advocating issues related to conservation, they would meet this definition. Conservation is a very broad term. The definition that is referred to in statute is from *Black's Law Dictionary*. It talks about the very broad conserving of resources. This definition makes it clear that we are looking for someone who has experience and advocates these issues.

I also wanted to speak in support of the DTp. Previously, you heard me talk before this Committee about dire needs when it comes to habitat restoration after wildfires. We are all very motivated to keep the sage grouse off the

endangered species list. Any conservation work we do for the landscape is good for the range, deer and anything else that uses the range. This would provide more resources to deal with that very real challenge.

SENATOR RHOADS:

I am a little concerned about letting the Governor appoint the director of the NDOW. This is probably the most sought-after appointment in the State. I can see a situation where the Governor selects someone who has donated a lot of money to the campaign. Before wildlife boards turn in names, they really vet the applicants' background. They find well-qualified people, and we have had some really good appointments. I have a problem with this bill letting the Governor make the appointment of the director.

ASSEMBLYWOMAN SMITH:

I appreciate your concern. My issue is that the Governor should be able to hire a person who works directly for him or her. You see the same thing happen with elections, campaigns and commissioners. We elect our Governor and our Governor is held to the highest standards. The Governor puts together a cabinet of people in the belief they will best run the state and manage budgets worth hundreds of millions of dollars. I think the Governor should be able to make the selection.

SENATOR RHOADS:

What if we say the Governor can make the appointment but the Senate has to approve it?

ASSEMBLYWOMAN SMITH:

I would certainly be open to that. Would it take a special session if you had to hire someone in the interim?

SENATOR RHOADS:

You could say the Legislative Commission had to give approval during the interim.

ASSEMBLYWOMAN SMITH:

I would be open to that.

CHAIR MANENDO:

I have a question regarding expertise in advocating issues related to conservation. Advocating is a broad term. Some people may say they are card-carrying members of the Parent Teachers Association and they are advocates. Others may spend 20 hours a week at schools, go to conventions, work on resolutions and generally make it their lives. The second group are definitely advocates. Do you see a middle ground? What do you envision as an advocate?

ASSEMBLYMAN BOBZIEN:

There is still an incredible amount of latitude granted to the Governor. The importance of the statute is that it does provide a basis for a resumé test. The Governor could approach the appointment of this seat from the standpoint of needing to know background, experience and expertise. The applicant would make the case, similar to any other job interview. The applicant could describe letter writing campaigns, conferences run and some experience and expertise in conservation issues. There is an incredible amount of latitude for the Governor to make this appointment, but there should be some minimal tests to establish someone's experience and expertise.

ASSEMBLYWOMAN SMITH:

One of the points important in considering this bill is that you will see that the conservation community and the sporting community are working well together. This bill enhances that relationship. You will hear support from both sides for this legislation.

ASSEMBLYMAN BOBZIEN:

This is an initiative that came out of the transition team for Natural Resources, for the incoming of then-Governor Gibbons' administration. It was a consensus approach as to how to establish a good strong conservation voice on the SEC.

DALE ERQUIAGA (Senior Advisor to the Governor):

I am here to talk about the first two provisions of A.B. 322, regarding the appointment of the BWC member and the appointment of the NDOW director.

The administration is in support of those two sections of this bill. In general, this bill reinforces executive authority. With great respect to the Senator from Elko County, I have watched him process the bill over senatorial appointment or confirmation for many years. This administration would not support that. The

appointment of the Governor's cabinet is a very critical step. There are certain entities that are separate, independent boards such as the State Gaming Control Board and the Public Utilities Commission of Nevada. They are meant to operate separate from the Governor's cabinet. They hire their own staff. They are regulatory in nature, and they operate in a separate manner.

The BWC and the NDOW do not operate in that manner. We did not introduce this bill. Had we introduced bills regarding gubernatorial appointments, we would have introduced a number of them. There is a hodgepodge in the way the cabinet is selected today. Having just gone through the transition from one administration to another, I can tell you it is very difficult for an incoming Governor to have some say over budgetary and policy matters. Sometimes, we find ourselves negotiating with people who serve at the pleasure of the Governor. We support the effort to have the director of NDOW appointed by the Governor. The Governor would consult with the BWC and the local advisory boards. They are an important part of this process. We support this on the basis of executive power, not on the basis of any recent events.

Next, I would like to talk about the appointment of the conservationist in the BWC. The Governor is in a difficult position when he newly arrives in office and is told some people are not qualified for the job they have and that the Governor needs to do something about it. We support the first provision of this bill concerning the definition of conservationist because it will provide clarity for future governors. Governor Sandoval voted for this definition when he was a member of the legislative body. Some of the things the Legislature does have to be corrected over time. We think that having a standard definition of this term across boards gives guidance to future Governors as they make those appointments. We want to be as clear as possible for any future appointments. We would expect the same of those who follow us in office.

CHAIR MANENDO:

There are some possible proposed amendments. One is to allow the term to continue until it expires and then reappoint. I do not know if you have seen these proposed amendments. If so, could you enlighten us on the Governor's position?

MR. ERQUIAGA:

I have not seen those amendments. I understand they will be coming. We are satisfied with the way the bill is written. There is a significant amount of controversy regarding the commissioner's position. We would like to be able to make that appointment a clean one. The Governor has given no indication whether he would retain the current BWC commissioner or appoint a new one. If you have been told differently, that is not true.

MR. DAVIS:

We are in support of this bill. We think this is a very important bill for this committee to consider. This is an issue that is very important to the conservation community. There are a lot of opinions, but our organization and our coalition of groups have worked well together with all interested parties to do what is best for wildlife resources. During the 2007 Session, I was part of the process to create the conservation position on the SEC. This bill mirrors the language for that board. We would certainly support bringing that language in for the BWC so we have balance between the two boards. We are satisfied with the bill as it is written, and we feel it is appropriate for clarification.

The second part of this bill allows the Governor to appoint the director of NDOW with advice and recommendation from the BWC. He would not be bound by their recommendation. In response to Senator Rhoads' comment, the actual impact of this is not very significant. Under current procedure, the Governor is required to choose from a list of three names provided by the BWC, but there is no requirement that the person remain in that position. Also, the Governor can ask the BWC to provide a list of another three names. The Governor can appoint someone for four years as an acting director. It makes sense for us to go to this alternate route where the Governor has the ability to make the appointment. This will work, and we will continue to have well-qualified directors of wildlife.

The third part of the bill deals with the DTp. We participated in putting together the DTp legislation last Session. This program can result in a lot of money being raised for habitat improvement projects and to restore the health of the range. We are in strong support and encourage its passage.

GILBERT A. YANUCK (Advisory Board to Manage Wildlife, Carson City):

I am a member of the Governor's sage grouse conservation team and president of Nevada Wildlife, a nonprofit Nevada corporation. I am here as a private citizen to provide you with commentary on A.B. 322. It contains legislation that

is very much needed to resolve some of the problems facing the NDOW as well as every sportsman and sportswoman in Nevada.

Section 1 of A.B. 322 is necessary to see that individuals who purport to represent specific wildlife-related interests are properly vetted to ensure they meet the criteria for selection.

Section 2 of A.B. 322 would provide the Governor with the discretion to select the most qualified individual for the director of NDOW position. To address what Senator Rhoads brought up, I direct your attention to the attachments of my testimony ([Exhibit J](#)). These are letters to the Governor from people in attendance at the interviews held at the BWC meeting on April 15, 2011. Your staff can review the tapes of the interviews. They may agree there was bias by a number of commissioners of the BWC in selecting the names to be forwarded to the Governor.

I would like to explain why the implementation of the DTp is probably one of the best ideas to encourage sportsmen and sportswomen to stay involved in big game hunting in Nevada. For a fee of approximately \$20, the average hunter will be on equal footing with those who can afford to bid the \$20,000 to \$40,000 price that a similar tag commands during the auction of a Heritage Tag. I predict the DTp will raise several hundred thousand dollars from the approximate 60,000 licensed hunters in Nevada plus thousands more from the nonresidents. The proceeds will be used for efforts to preserve, protect, manage or restore game and its habitat in Nevada.

TINA NAPPE:

I was the first conservationist appointed to the BWC position in 1979. I served in that capacity until 1994. I am pleased the position continues in the BWC. In 1979, the conservation community recognized that interest in the wildlife community was expanding. This increased interest included the Sierra Club and the Lahontan Audubon Society. The first conservationist incumbents were selected from those two groups. The incumbents needed to be active in their local organizations so they could share information on wildlife management and how the NDOW operated. The Governor can appoint anybody he wants to this position. The nonhunting conservation community has expanded over time. Nevada is facing tremendous problems in funding wildlife programs. We need to expand the funding and advocacy bases for our wildlife. This position is very important. I am here to urge support for it. This definition is broad but good.

SENATOR LEE:

I am a master trainer at Leave No Trace and Tread Lightly. I am on the Tahoe Rim Trail Advisory Board. I have hiked the whole trail. Would I be someone with experience or expertise? What defines a conservationist as having experience and expertise in advocating these issues? What did you bring, and why were you selected as a conservationist?

MS. NAPPE:

I had been involved with conservationism for over 10-15 years. I was very involved with the NDOW activities. I opposed trapping. I wrote articles on all of Nevada's wildlife. I attended hearings. This definition is extremely broad. The question is whether you are willing to spend the time that being on the BWC requires. This includes not only attending the BWC meetings but also attending many other meetings to discuss wildlife in the State. I am very familiar with the Tahoe Rim Trail Advisory Board, and it is a wonderful organization. If someone in that organization was interested in wildlife and committed to being part of the process, that person could learn.

SENATOR LEE:

If I was just a member of Nevada Bighorn Sheep Unlimited and a member of the Audubon Society, would my membership and my going to meetings allow me to be a conservationist?

MS. NAPPE:

The Governor is obviously free to appoint anybody. To develop the integration of sportsmen and conservation groups, it would be helpful if that person is active within the conservation community. We are trying to shed light into how the NDOW acts. Sportsmen and sportswomen shortcut a lot of their language, and many times outsiders think that managing wildlife only means hunting. They do not recognize the huge investment that goes into understanding wildlife. This is a very complex organization. Saving our wildlife relies on all of us. A prospective conservationist could have a lot of experience with land trusts. Land trusts are big conservation organizations. Historically, this position has been filled by someone who had some documented experience in wildlife, and both the NDOW and sportsmen and sportswomen were familiar with the appointed person.

SENATOR LEE:

I am sure the Governor would make the right choice. Someone who was only a hunter and had a membership in three conservation organizations would not be the type of individual we would seek for the conservationist position. I am looking for a better definition of a conservationist.

MR. DAVIS:

The key components we are looking for are experience and advocacy. The Governor would be looking for someone who has experience in advocating conservation issues. For example, the candidate could be involved in the BWC process, the legislative process or any other type of public setting that advances the cause of conservation. The Governor has the ultimate authority to appoint that position. We would try to lay the groundwork for him.

MR. HIATT:

I am with the Red Rock Audubon Society, and I am in favor of this bill. Cleaning up the definition of conservationist is a good idea. We also support the DTp and the change of the appointment of the director of NDOW to the Governor.

CLINT BENTLEY:

I have been involved with Bighorn Sheep Unlimited, one of the largest conservation groups in the State. We are strongly in support of section 1 of A.B. 322. We would urge this language be implemented immediately.

TOM SMITH (Coalition for Nevada's Wildlife):

I would like to address a question by Senator Rhoads about the Governor appointing the director. The director serves at the will of the Governor. Ken Mayer, former director of the NDOW, was on his way to a meeting, and he was terminated. He was reappointed as acting director. He had been one of the better directors of this state. He has good qualifications, and he led the NDOW in some good directions. Even though this bill gives the Governor the right to appoint a director, the Governor already has that ability. I am sure that no Senator would want to be acting Senator. You want to know your job is secure and you have a position that is more than acting. If we were trying to recruit someone from another state, that person would not want to come in as an acting director. We are not going to get the most qualified people for acting positions. The Governor should have the right to choose the person to hire. This does not take away from the BWC. They still have the right to interview, submit names and make nominations. Since those policies are in place, the Governor

would depend heavily on the BWC to provide this information. Unfortunately, this BWC has not submitted the best name. The Governor has asked them to resubmit names.

Senator Lee asked what makes a conservationist. A conservationist is a lifestyle. It is not that a person is carrying any cards from organizations. Is that person on the group's board of directors, the group's education committee or involved with the projects they do? Not all members show up to projects or come to meetings. Many of those people would not qualify as conservationists. The conservation community knows who lives the lifestyle. You expect a conservationist not to hunt, and not vote for shooting bears. Regardless of personal feelings on those matters, you do not expect that person to say that it is okay to shoot bears or coyotes. You expect the person to try to preserve the animals we have in Nevada. Whether a hunter, fisherman or a conservationist, the conservation community expects the conservationist to walk the walk. Regardless of personal feelings, the conservationist should be a vote for conservation. Politicians are expected to put their own feelings aside sometimes and vote for their constituents. That is what we would expect of a conservationist.

MR. JOHNSON:

I am president of the Coalition for Nevada's Wildlife, and for 26 years I have been director of Nevada Bighorns Unlimited and a member of the Rocky Mountain Elk Foundation. I am a very active conservationist. I consider myself the ultimate conservationist. In 2011, we completed six conservation field projects involving water developments and desert mountains that serve bugs, bats, big game and everything in between. We have poured hundreds of thousands of dollars and man-hours into wildlife-restoration programs. We may have a big game title, but we are wildlife conservationists. Section 1 refers to advocating issues related to conservation. This is wildlife conservation. It means to have the background and activism necessary for the position. We support the intent of the conservation communities to establish a uniform definition throughout state agencies for the position. We also support the Governor's desire to have the same discretion in appointments of directors of his cabinet. This is a double-edged sword. If we have the wrong Governor, we could have the wrong appointment. If we have the wrong BWC, we could have the wrong names submitted to the Governor. Regardless of how we craft this bill, there is no guarantee we find the most qualified person for the position. We rely on our

elected officials to serve the public, the sportsmen and sportswomen and the conservation community in their appointments.

We need the DTp implemented. Last Session, we worked hard to get this bill passed. It has not been implemented. There were concerns about sole-source proprietors in the administration of the program. These are not valid concerns. Each year, the same BWC issues a great number of contracts through wildlife heritage programs to sole-source contractors. The BWC has dragged its feet and cost the State over \$1 million in badly needed funding. We have declining boating revenues. We have declining General Fund monies. We have so many sorely needed programs and so few dollars. The DTp is much needed. I strongly urge your support of this bill as written.

STEVE ROBINSON (State Government Affairs Director, R&R Partners):

I am here today as a citizen and a sportsman to urge your approval of A.B. 322. Recently, I served as transition director between the former and the current Governor. In my work life, I also served four years in then-Governor Guinn's office. I was the liaison to the NDOW and the BWC. I represent mining, ranching, pipeline activity and renewable-energy projects. I can tell you the path for permitting and approval for most of these projects was led through the NDOW. The NDOW and the BWC have to have credibility with other state and federal organizations. If they do not, many of these projects are going to be in trouble. They need to get along. That has not been the case over the last four years. It has hurt our credibility as a state. Governor Guinn felt the system of having three names for selection was incorrect. He said he was CEO of the State and should have the ability and accountability to name his cabinet. The lists and communications with the BWC were not a problem in Governor Guinn's administration. Everyone worked closely to make the appointments. During the last four years, this has not been the case. Some tightening of the qualifications and the prerogative of the Governor in making the selection is timely.

SENATOR LEE:

Governor Guinn was a pretty fair guy. He once told me one of the things he wished for was that when a Governor appointed someone to a commission, the appointee should also sign a letter of resignation. That way, a new Governor could look at a board and remove people. Governor Guinn said he was working with people who were not in his vein of thinking. What would be your

experience with this? Do you like the process where the Governor cannot and does not quickly make radical changes?

MR. ROBINSON:

At the national level, when a President leaves office, the cabinet and many of the subcabinets also leave. In some states, everybody leaves when a new Governor comes in. This has not traditionally been done in Nevada. The scenario of a new Governor coming in and choosing who stays and who goes is a good plan. The Governor should have the complete ability to remove people from his cabinet, boards and commissions. Members of boards and commissions who have a term to complete are problems for any incumbent governor.

BEVERLEE MCGRATH (The American Society for the Prevention of Cruelty to Animals; Best Friends Animal Society; Nevada Humane Society):

The citizens of Nevada were probably all hunters many years ago. This has drastically changed, and there is a huge population of people who are concerned with the environment, conservation and animal protection. We would like to see a true conservationist in the position and not someone who is an advocate for hunting practices. We urge you to support this bill.

ASSEMBLYMAN IRA D. HANSEN (Assembly District No. 32):

I have been a hunter, sportsman and conservationist all my life. You will notice from my handout ([Exhibit K](#)) that this is an old debate. One hundred ten years ago Gifford Pinchot, the first chief of the U.S. Forest Service, had an argument with John Muir on the definition of conservationist. We are still arguing over that definition. The proponents of this bill are using the word conservationist when they really want an environmentalist or preservationist. You will notice the part of the exhibit with Pinchot and Muir which says this philosophical divide split the conservation movement into two camps. The preservationists led by Muir and Pinchot's camp co-opted the term conservation.

I specifically asked Randy Stephenson, legal counsel for the Assembly Committee on Natural Resources, Agriculture, and Mining (ACNRAM) if the man who is currently occupying this seat under this new bill fit the definition of a conservationist. Mr. Stephenson commented, "On Assemblyman Hansen's concern about the definition of conservationist according to *Black's [Law Dictionary]*, the individual who holds that position on the Board of Wildlife Commissioners would fit the definition." The man already is qualified.

We also have some significant laws in regard to this. *Nevada Revised Statutes* (NRS) 501.172 has a protection clause. It states that a member of the BWC may be removed for just cause. That was put in place so that someone who voted their conscience would have protection from being arbitrarily removed because of that vote. People on boards and commissions need to be able to make honest and open decisions without being fearful they will be removed from their positions. We do not want to make radical changes quickly. There are reasons for the staggered terms on commissions. We are not all going to be in agreement about how people vote.

An advocate who testified today mentioned that anyone who hunts cannot serve in the conservationist position. Theodore Roosevelt, the founder of the conservation movement in the United States, would not qualify to serve in this position. Aldo Leopold, founder of modern wildlife management would not qualify. Gifford Pinchot, Chief of the U.S. Forest Service would not qualify. George Bird Grinnell, founder of the Audubon Society, and James John Audubon himself, who was a hunter, would not qualify as a conservationist. Ernest Thompson Seton and William Hornaday are people who are the absolute bedrock, founding fathers of the conservation movement in the United States. By this new definition, they would not qualify to serve as conservationists on the BWC.

On pages 3-7, [Exhibit K](#), I noted three separate definitions of conservationist including what is found in *Black's Law Dictionary*, *Ballentine's Law Dictionary* and the *American Heritage Dictionary*. They all state that the conservationist position as currently occupied would clearly fit within the definitions of the law. The purpose of section 1 of this bill is to come up with an excuse to remove a sitting commissioner because some have a disagreement with that commissioner's voting record.

I was heavily involved when we passed A.B. No. 307 of the 68th Session. That bill remade the BWC as it today. Brian Sandoval served on the ACNRAM in 1995. At the time, he supported the concept of the bill which remade the BWC. He said he "could not support the wholesale removal of the present commission as it was constituted unless language is found to phase in a new commission in a reasonable manner," page 10, [Exhibit K](#). He was right, and we should think about it. With this bill, we are doing exactly what he then opposed.

Page 11, [Exhibit K](#), refers to the Governor's ability to bypass the BWC to appoint the director. Page 11, [Exhibit K](#), also is a flowchart from 1947 to 1979. It was called the Department of Fish and Game, and this was the chain of command for it. The Governor appointed the commissioners and the commissioners appointed the director. That changed in 1979 when we created the NDOW.

In 1993, then-Governor Bob Miller decided to reorganize state government. He created the then Department of Wildlife as a division of the SDCNR. The SDCNR was headed by Pete Morros, and the Nevada Wildlife Commission was headed by Mahlon Brown. The director of the NDOW did not answer to either position, and the law did not specify to whom he reported. In 1995, this was clarified in the current structure. When it was time to choose a director of NDOW, input from sportsmen and sportswomen was requested. That is how they came up with the idea that the Governor would choose from a list of three people selected by the BWC. As Legislators, one of our duties is to make certain there are separations of power with checks and balances in these processes. The BWC acts as that check. It is a mistake to allow the Governor to bypass that tradition. Our duty is to protect the right of the public and to make sure there is a reasonable separation of power between the three branches of government. This bill gives the complete power to the Governor. I have confidence in Governor Sandoval's ability, but these types of power have been grossly abused in other states. Also, in the 1980s and 1990s several people who had no background as sportsmen were appointed to sportsmen positions.

Section 3 of the bill deals with the DTp. In the 2009 Session, two bills dealt with the same thing, the Silver State Tag bill and the DTp bill. The Silver State Tag bill was introduced by Chad Bliss from Eureka County who served on the County Advisory Board for Eureka County. The BWC agreed to support his bill. The DTp bill did not go through the process and was rejected because it competed with the Silver State Tag process. When it came to the Nevada Legislature, Chair Claborn of the ACNRAM did not have a hearing on it. The DTp bill was rejected by the ACNRAM. Last Session, A.B. No. 246 of the 75th Session was in the Assembly Committee on Ways and Means, and the bill's sponsor attached an amendment to it, which is essentially the DTp bill.

The DTp was actually enacted as an amendment to another bill. When we had the hearing on [A.B. 322](#), our committee criticized the BWC for failing to enact

the DTp. As shown on page 11, [Exhibit K](#), the first line of the bill states that the BWC may establish a program. It was not mandatory.

On page 13, [Exhibit K](#), I asked our legal counsel, Randy Stephenson, for a quick comment on the lottery provision. The *Constitution of the State of Nevada* clearly prohibits lotteries. Mr. Stephenson said the purpose of having a designated private fiscal agent to handle this contract is to circumvent the issue of a constitutional prohibition on lotteries. As a Legislator, I reviewed the *Constitution of the State of Nevada*. It says the state and political subdivisions thereof shall not operate a lottery. All proceeds of the lottery must be only used to benefit charitable or nonprofit activities in the State. As a Legislator, I swore that:

I would support, protect and defend the *Constitution of the United States* and its government, and the *Constitution of the State of Nevada* and its government against all enemies whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any state including Nevada notwithstanding.

I have a problem that this bill came into existence in the first place. It circumvents the intent of the *Constitution of the State of Nevada*. We may have split legal hairs and counsel may say it is okay, but as a Legislator I have a problem with it.

Page 15, [Exhibit K](#), shows the reason the DTp never was implemented was because of the single-vendor payer issue. On page 17, [Exhibit K](#), you will see the NDOW working group status report, and you will see that they say they went forward with the exception of the DTp. They said the DTp was being delayed due to some longer-term issues. On page 18 you will see that in 2009, the community foundation asked for a commitment of five to ten years. The NDOW would not enter into the contract because of the time commitment. We still have the same single-vendor problem, and we are forcing the NDOW to go to the same organization that demanded a five-to-ten year commitment. This is not reasonable.

Page 19, [Exhibit K](#), clearly states NRS 502.225 has hereby created the Advisory Board on Dream Tags. It never happened.

The BWC has taken a lot of heat over things like the bear hunting season. As a legislative body, we made the law. Decisions are supposed to be made on scientific principles, not political principles. When biologists said there are scientific reasons to offer a bear season, we gave a mandate to follow the scientific principle. They followed the law we forced on them. The BWC is a very difficult commission on which to serve because you are dealing with sportsmen and sportswomen and anti-hunters, etc. There is a lot of political pull in different directions.

Assemblyman Bobzien brought up the idea of following the SEC for the conservationist definition. There are a couple of commissions that have conservation positions. There is an advisory board to the SDCNR. Page 23, [Exhibit K](#), shows the conservation member on that board is the same individual who has held the Governor-appointed position since 1996. This individual is Donald Quilici. For 22 years, Mr. Quilici was the outdoor editor of the *Nevada Appeal* Newspaper. He has served as chair of the seven-member board representing conservation interests. The biography on the bottom of the page says he is famous to anyone around these parts who hunts or fishes. In other words, he is a hunter and fisherman. If this Legislature wants preservationists or environmentalists, we should use the correct title. The individual who was appointed to the conservation position for the SEC was in charge of the Nature Conservancy. If that is the type of person we want, we should say so. Hunters, fishermen and people who work in the outdoors are every bit as qualified to be conservationists as anyone in the Nature Conservancy, the Audubon Society or the Sierra Club.

SENATOR LEE:

You mentioned a change of direction, perhaps to an environmentalist, for the BWC position. You have had a lot of experience with this. What do you think the right type of person would be for the future? I want the Governor to be able to choose, but what are your feelings about the term "conservationist?"

ASSEMBLYMAN HANSEN:

If we leave it as a conservationist, then the person who currently occupies it is perfectly qualified. If we truly want to get a preservationist or an environmentalist on that board, we need to say it. Conservationist is a broad term and it includes people who are consumptive users. They are pushing for a nonconsumptive person, someone who does not hunt or fish. I would be opposed to this. The NDOW and the BWC are unique in that they are

98 percent user funded. Those user funds are derived almost exclusively from sportsmen and sportswomen. That is why we changed this in 1995. This board should be left the way it is. The term of the individual who is now being challenged is expiring. The Governor can then appoint accordingly.

SENATOR LEE:

A previous testifier said that a conservationist was someone who would not allow a bear hunt even though there may be scientific evidence that it is something that is needed. What is your thought on this?

ASSEMBLYMAN HANSEN:

I think it is crazy. There is a lot of controversy on hunting issues. That is why there is now a provision in the law that scientific principles are to be followed. Bear hunts are completely scientifically justified. Politically, it has been a nightmare.

SCOTT RAINE (Chair, Nevada Board of Wildlife Commissioners, Department of Wildlife):

All nine members of the BWC are definitely conservationists. We all want healthy and viable wildlife populations. We would likely all meet both the current and proposed language for the conservation position. I am a representative of sportsmen and sportswomen; however, I could also show documentation I am a skill for the environmental movement. I could show a letter from President Clinton recognizing my dedicated service and outstanding contributions to world peace, global understanding, sustainable development, etc. As a representative of sportsmen and sportswomen, I would never vote against an environmental thing just because of my background. You have to look at the entire picture. We are one big state. Everyone's viewpoints need to be taken into account to determine what is best for the State's wildlife.

The important thing about sections 1 and 4 is that you remove the person who is there currently and put in another person. That is a creating a law around a person, not a position. All laws should be created around positions. Either definition in section 1 is fine.

Section 2 of this bill is about the elimination of the open and transparent process that exists. It is an open interview process, subject to the Open Meeting Law, guided by the Office of the Attorney General. The

Department of Personnel also is part of it. There is no compelling reason to remove the public from this process.

Regarding section 3, page 15 of Assemblyman Hansen's testimony, I have a copy of a memo I sent to Amelie Welden, Policy Analyst, Legislative Counsel Bureau, regarding the DTp, [Exhibit K](#). It was on our agenda last month and is on our next agenda.

DARYL CAPURRO (Board of Wildlife Commissioners, Department of Wildlife):
I appreciate the opportunity to appear before you on A.B. 322. I am the conservation member on the BWC. I also serve as the legislative committee chair for the BWC. I am appearing here today on behalf of myself but also to advise you that the full BWC has reviewed A.B. 322 and voted to oppose the bill. You have undoubtedly heard the saying "I am not paranoid; someone really is out to get me." That perfectly describes the combination of sections 1 and 4 of A.B. 322. Let me explain the BWC's reasons for opposing this bill.

Section 1 revises the definition on qualifications of the conservation member of the BWC. You will note there is no attempt to amend the qualifications of the other eight members of the BWC which represent ranching, farming, sportsmen and sportswomen and the general public. For instance, no one has suggested that a rancher member should be a sheep rancher or a cattle rancher. No one has suggested changes to the farming representative's qualifications, for example a hay or a wheat farmer. It has been suggested that I am not a conservationist or at least not green enough to hold this position. The proposed changes to the qualifications contained on page 1, lines 10-12, have been cited as reasons to remove me from this position as set forth in section 4 of the bill.

I would like to give a little background of my qualifications as they pertain to allowing me to finish out my three-year term, scheduled to end on June 30, 2012. I am a member in good standing of several conservation organizations. I was a member of most of these organization prior to my being appointed to the BWC in mid-July 2009. Among those groups are the Izaak Walton League of America; the National Audubon Society; the Sierra Club, Toiyabe Chapter; the National Parks Conservation Association; the Arbor Day Foundation; Ducks Unlimited; the Mule Deer Foundation; the Rocky Mountain Elk Foundation and other conservation-oriented organizations. I have consistently responded to requests from various organizations to advocate for or against issues that have come before the federal congress or

various federal and state agencies such as the BLM; the U.S. Fish and Wildlife Service (FWS), DOI; the U.S. Forest Service, U.S. Department of Agriculture; the DOI; the U.S. Department of Agriculture and others. That advocacy has been accomplished by e-mail, snail mail, phone conversations and personal appearances. Even under the new definition, I already qualify as the conservation member of the BWC and there is no discernible reason to process the aforementioned sections 1-4 of A.B. 322. I should also mention I have participated in sage grouse studies and deer studies conducted by the FWS on the Sheldon National Wildlife Refuge in northwestern Nevada. Along with my brothers, I have done maintenance on the water guzzler installed in Stateline Canyon in the Sheldon Refuge.

Section 2 of A.B. 322 would fundamentally change the manner in which the director of the NDOW is selected. Currently, the law requires the BWC go through an extensive process of acquiring applications for the position, requesting the applicant's pertinent qualifications including education, as well as a thorough BWC interview process, subject to the Open Meeting Law, with input from others. When that process has been completed, it is the BWC's responsibility to forward the three most qualified applicants for the NDOW director's position to the Governor for consideration in making the appointment. I should say parenthetically that the nine questions asked of the candidates were all cleared through the Office of the Attorney General. The questions were asked of every applicant in the same order. The passage of section 2 of A.B. 322 would remove all transparency of the process. Regardless of who may be Governor now or in the future, the adoption of this section would greatly politicize the process of director selection for the NDOW. This very same process was contained in an education bill that was considered by the Assembly during this Session. That was bill A.B. 548 which died because it did not meet the passage deadline.

ASSEMBLY BILL 548: Revises provisions governing the system of governance of K-12 public education. (BDR 34-741)

Section 3 of A.B. 322 would remove the BWC from the regulatory process in dealing with the DTp. This was passed last Session in a bill that contained two other major changes to wildlife laws. This section would give the complete authority to regulate and administer this program to the director of the NDOW. Again, there is an issue of transparency. The real problem with the DTp provision of law was not even addressed in this bill, and I am not persuaded

that such a change will speed up the implementation of this law as envisioned by the last Legislature. This bill still contains what can only be described as a single named exclusive vendor. That prevents competition in the process of administering the tag allocation system for the DTp. A working group attempted to negotiate a contract with the named vendor and ran into problems dealing with the length of the contract, the administrative fees they required and some other issues. This prevented staff from drafting a proposed implementing regulation for the BWC's consideration. Adopting section 3 would remove BWC oversight of this issue now and in the future.

Section 4 of A.B. 322 outlines how I am to be removed as the conservation member of the BWC. Provisions of NRS 501.172 set forth the manner and reasons for removal of a BWC member. Generally, the removal must be for just cause. The section also sets forth other reasons for removal, all related to the commission of various crimes. Obviously, I have not violated any of those provisions or I could have been removed before now.

Last month, the Senate passed S.B. 354 which made various changes to regulatory bodies of the State. The vote on that bill was 21 to 0. Although it generally pertained to professional and occupational boards and commissions and not to members of the NDOW, it is instructive that section 105 clarified that current members of the boards and commissions involved remain in office until the end of their terms. This description is provided in the Legislative Counsel's Digest on page 1 of the bill. If this Committee approves section 1, and more particularly section 4 of A.B. 322, you will have ignored the premise and protection set forth for other members of boards and commissions. The concurrence of the majority of the BWC, is that there is little redeeming value to most of the provisions of A.B. 322. If it fails, nothing would change. Several of our county game boards have expressed problems with some of the sections, primarily section 2, which is the NDOW director appointment process. A couple of county boards either did not agree with the premise of A.B. 322 or with section 4, which is the removal of the conservationist.

SENATE BILL 354 (1st Reprint): Makes various changes to regulatory bodies of professions, occupations and businesses. (BDR 54-254)

GERALD A. LENT, O.D. (Board of Wildlife Commissioners, Department of Wildlife): I am opposed to A.B. 322. If my proposed amendment ([Exhibit L](#)) is adopted, I would support it. I did the amendment as a compromise. I would like to read it

into the record. Do not strike the existing wording on page 3, section 2, lines 2-3. Strike the new wording on line 3. On lines 9-11, strike the new wording. On pages 4-5, delete section 4. The BWC needs to remain a balanced effort to address all beneficial facets of wildlife. The removal of Mr. Capurro before the end of his appointment will allow a nongovernment organization which donates thousands of dollars to control the BWC on a five to four vote. All wildlife except the bighorn sheep will be put on the back burner. The one member targeted for replacement keeps balance on the board.

In regard to Senator Lee's concern about bear hunting and the conservationist position, I would like to offer the following information. Teddy Roosevelt was the biggest conservationist in the world. He doubled the number of national parks from five to ten. He hunted bears. He formed the Boone and Crockett Club. Mr. Roosevelt traveled all over the world to hunt. I would qualify as a conservationist because I have helped reseed thousands of acres. I have protected many animals with many different bills. Sportsmen and sportswomen are the biggest conservation group of all. If this bill passes, the public would have little to say in the matter of who our director of NDOW would be. Why should we not get to give advice about who we would like to see as director? If the Governor does not like any of the nominees, they can be rejected and the Governor can receive three more names. The current language gives the Governor the final say. Why change it? This is an attempt by the Governor to bypass the BWC and the public. This would create many hardships for businesses involving wildlife, hunting and fishing.

Senator Rhoads asked about Senate confirmation. Right now there is no requirement or guarantee that the Senate has to confirm the Governor's selection. In the past, Governors have not picked the most qualified persons. California has that problem. They have had several department directors who had to be confirmed by the Senate. One of them was very close to a fishing agency, and he was not confirmed by the Senate. The Governor had to pick someone else. It was a good thing for the sportsmen and sportswomen in the state.

Regarding the lottery question, can education have a lottery and bypass the *Constitution of the State of Nevada* by the same Title 26 Internal Revenue Code, section (501(c)(3)) nonprofit organization? They could return the proceeds to education and bypass the *Constitution of the State of Nevada*. That is what the DTp is doing. If the DTp can do it, can education do it? There could

be a constitutional issue here. Please consider my amendment as a compromise to A.B. 322.

CHARLES HOWELL (Board of Wildlife Commissioners, Department of Wildlife):
I represent sportsmen and sportswomen for Clark County. I am opposed to A.B. 322 for several reasons. I looked up "conservationist" in Merriam-Webster's Dictionary. It defines a conservationist as a person who is actively engaged in the enhancement of natural resources. Mr. Capurro fits the description. I support Mr. Lent's amendment to this bill.

WALT GARDNER:
I am representing myself. I do not see the need to change section 1.

Section 2 will take away the separation of powers on which our Country was founded.

Section 4 addresses a person instead of a position. You should not remove a person for how that person votes. That person should be allowed to vote as felt and not be in fear of losing the position.

CHAIR MANENDO:
How does the lottery work right now for the tag?

MR. LENT:
Right now, hunters put in an application, and the draw is privatized. The random generator gives the hunter a number. If there are 100 tags and your number is between 1 and 100, you get a tag. If you do not get a tag, you get a bonus point. They square the bonus points and give you extra chances in the draw. If you have two bonus points, you get four chances in the draw.

The DTp is different. You get five chances for \$100. In Oregon, wealthy people are getting around it. They are buying 25,000 tags. They buy 80 percent of the tags and in three out of five years they get a tag. The DTp bypasses the average sportsman and sportswoman and the *Constitution of the State of Nevada* by going outside and having a 501(c)(3).

CHAIR MANENDO:
Would a private entity handle the DTp?

MR. LENT:

Yes, it would have to be contracted with a private entity. This would be a private 501(c)(3) so they would have to contract with someone to do the drawing.

CHAIR MANENDO:

I think that is how they get around the lottery issue. We will look into it.

HANK VOGLER (Rangeland Resources Commission, State Department of Agriculture):

I represent several entities. One is the Central Committee of the Nevada State Grazing Board. I believe you have a copy of the letter sent by Steve Boies. I would like to defend the conservation position ([Exhibit M](#)). I am the rancher representative on the BWC. I have served on the Resource Advisory Council for the BLM. I have been a hunter all my life. I cleared 800 acres in 1 field and another 400 acres in another field for wildlife. I now have springs coming up all over that land. I have created a lot of habitat, but I would probably never be able to qualify as the conservationist. Conservation includes limiting the prey-predator base. If you have too many predators, the prey base is what we pay to hunt. Most of the funding that goes to the BWC and to the NDOW is created by hunters. Will we next change the qualification for rancher? I have cattle and sheep, but would I have to include pigs and goats? When you fall out of favor with the present administration, do they reshuffle the deck and say you do not qualify? Why not let people finish out their terms? The Governor can still replace everyone who is on the board within a three-year period. I have a serious constitutional problem with replacing someone now.

The people who set up this Country set it up as a representative republic. All the Federalist Papers talked about their fear of democracy. Benjamin Franklin referred to a democracy as two wolves and a sheep voting on what to have for dinner. Liberty was a well-armed sheep. We have someone from ranching, someone from farming, someone from all walks of life on the BWC, and we also have county advisory boards. We put a beautiful bow on this package in the DTp and then we stuffed in all this hate and change. The county advisory boards all have input on this. I do not know how the other BWC members voted on the three names we submitted. I could certainly explain why I voted the way I did.

The DTp will create a lot of money. Do we need more money, or do we need a change in direction? If sage grouse go on the endangered species list, it is going to affect everything from mining, ranching and wind power. When the sage grouse and the mule deer were at their zenith, we had a million sheep in this State. We had hundreds of thousands of cattle. Grazing has not hurt us in this State. Now we have limited sage grouse, and the number of deer is down and continuing to decrease. Perhaps we need less money and a change in direction.

We created the U.S. Department of Education and the U.S. Department of Energy on a national level. Our school test scores have gone down, and we have gone from a 30 percent to a 70 percent dependency on foreign oil.

Years ago it was said that if NDOW did not hire George Tsukamoto and instead hired Terry Crawford it would be the worst choice we could make. Terry Crawford got the appointment and was there for many years. We have people who want to take a different direction. They want to balance the predator-prey base a little faster, bring back the mule deer and keep the sage grouse off the endangered species list.

I would like to see A.B. 322 set aside for a different version that does not punish Mr. Capurro for voting for a bear season. In Utah, \$1.9 million was just awarded to a family because of a bear attack. Is this a liability we may have to assume because we have not addressed the bear problem? We have the science behind us which says we can hunt bears and the minimal amount we plan on hunting will not affect them.

HAL SHRUM (Board of Wildlife Commissioners, Department of Wildlife):

I am a BWC commissioner. I am very proud to be on the BWC. This is a bad bill. It is a bad political bill. This should have never taken up our time. I was one of those who voted for the persons whose names were forwarded to the Governor. We picked whom we felt was the best. We went over their qualifications. We were told there was no travel money for a meeting to interview them in person. We were told it had to be a telephone conference. I did not understand how you could hire someone over the phone. Two of us decided to drive up from Las Vegas at our own expense because it was our responsibility to make certain we made the right decision. We submitted three names to the Governor. All three are outstanding and well-qualified.

We keep hearing that the DTp is going to be the great deal for the habitat. Over the years, we keep hearing about the habitat. It is a sacred cow. Habitat is not the answer. We need to go in another direction. We have a predator problem that no one wants to recognize.

CLIFF GARDNER:

I am a rancher who has lived in the south Ruby Valley all my life. I am here representing the Rural Heritage Preservation Project. It is a small group of mostly retired ranchers. A number of years ago, we became concerned with trends occurring in our Country. We were hearing more and more that ranching, hunting and trapping were bad. We launched a project to uncover the science and historical evidence. What we heard and what we witnessed were completely different.

For a long time, my family ran livestock in the Ruby Lake National Wildlife Refuge. Today, the number of livestock to be run there is insignificant. There are just a handful. What is going on in the Country is not good. Fires are occurring because we have taken more than 50 percent of our cattle off the range. We have lost 90 percent of our sheep industry. When the fires occur, they burn vast amounts of deer winter range. It takes years and years to come back. I have visited and gained a lot of knowledge concerning the Ruby Lake National Refuge, the Sheldon National Wildlife Refuge and other lesser refuges across the western United States. Most people do not realize that only 2 percent of the wildlife in the United States is in our national wildlife refuges. Those areas are growing more and more each year.

My preference would be to go back to the fish and game department. It was very grassroots and county oriented. It was respected and heeded the needs of the people. Since then, I have seen more and more power that goes to the government at every level. When fellow testifiers say this is all a political move, I agree 100 percent. This deal will put more power in the hands of those people who, in the long run, are destroying our animals. I recently came across two studies. One was done over a period of about 12 years beginning in 1981. The second was done around 1993. During that time it was shown that we were losing 69 percent of our bird life. I grew up in the valley and the numbers of wildlife that were there at that time have been on the downturn ever since. That is what we are seeing. This conservation movement is not good for the wildlife. It is destroying our wildlife. It is destroying our livestock industry and

helping to destroy our economy. I have the ability to show hours and hours of data and slides to support my testimony.

ASSEMBLYWOMAN SMITH:

I wanted to come back to respond to the DTp issue. The provisions of the DTp do not change with this bill as far as the tag itself. I am concerned about the accusation that there was no process with this. I can provide the PowerPoint presentation done during the last Session. This bill was heard and got amended with another bill. We all know that happens. This bill had a hearing. It was passed last Session. I wanted to assure you a lot of discussion took place about the provision. Our legal staff spent months vetting the idea of the DTp and using the lottery. It is not intended to circumvent anything. It is intended to meet the law and the *Constitution of the State of Nevada*. We all know Mrs. Erdoes is very conscientious about helping us craft legislation which is legal. That is why a 501(c)(3) is involved. It is not a sole-source contractor. It is a community foundation that is nothing more than a fiscal agent for a 501(c)(3) to function. No money has to be put up front, and you do not have to create your own separate foundation. I have plenty of information on the DTp to show you if you would like to see it.

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CHAIR MANENDO:

We will close the hearing on A.B. 322 and bring it back to committee. This meeting is adjourned at 6:50 p.m.

RESPECTFULLY SUBMITTED:

Linda Fehr,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.J.R. 5	C	Darrell Lacy	Nye County Study
A.J.R. 5	D	Assemblyman Ed Goedhart	Los Alamos Lawsuit
A.J.R. 5	E	Assemblyman Ed Goedhart	Constituent Letter
S.C.R. 9	F	Jeremy Drew	Proposed Amendment
S.C.R. 9	G	Jeremy Drew	Wind Turbine Map
S.C.R. 9	H	Wes Henderson	Resolution
S.C.R. 9	I	Shawn Espinosa	Wildlife Map
A.B. 322	J	Gilbert A. Yanuck	Letters to Governor
A.B. 322	K	Assemblyman Ira Hansen	Testimony
A.B. 322	L	Gerald Lunt	Proposed Amendment
A.B. 322	M	Hank Vogler	Grazing Board Letter