

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

**Seventy-Seventh Session  
April 4, 2013**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Skip Daly at 12:09 p.m. on Thursday, April 4, 2013, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Skip Daly, Chair  
Assemblyman Paul Aizley, Vice Chair  
Assemblyman Paul Anderson  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblyman John Ellison  
Assemblyman Ira Hansen  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblywoman Heidi Swank  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

Assemblyman Tom Grady, Assembly District No. 38  
Assemblyman James Ohrenschall, Clark County Assembly District No. 12  
Assemblyman David P. Bobzien, Washoe County Assembly District  
No. 24

**STAFF MEMBERS PRESENT:**

Amelie Welden, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Cheryl Williams, Recording Secretary  
Steve Sisneros, Committee Assistant

**OTHERS PRESENT:**

Rusty Jardine, Manager, Truckee-Carson Irrigation District  
Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation  
District  
Lindsay Knox, representing Washoe County Conservation District  
John Pappageorge, representing Republic Services  
Robert Ostrovsky, representing Waste Management, Inc.  
Kyle Davis, representing the Nevada Conservation League  
Colleen Cripps, Ph.D., Administrator, Division of Environmental  
Protection, Department of Conservation and Natural Resources  
Paula Nesbitt, Private Citizen, Dayton, Nevada  
Joe Johnson, representing the Toiyabe Chapter of the Sierra Club  
John Hadder, Director, Great Basin Resource Watch  
Glenn Miller, Professor, Department of Natural Resources and  
Environmental Science, College of Agriculture, Biotechnology &  
Natural Resources, University of Nevada, Reno  
Stacey Shinn, representing Progressive Leadership Alliance of Nevada  
Sean Gamble, representing Barrick Gold of North America  
Alan Biaggi, representing Nevada Mining Association

**Chair Daly:**

[Rules and protocol were explained.] We will call up Assemblyman Grady and  
open the hearing on Assembly Bill 310.

**Assembly Bill 310:      Revises provisions governing irrigation districts.  
(BDR 48-941)**

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

In early 2013, I was asked to meet with the Truckee-Carson Irrigation District (TCID) in Fallon to discuss *Nevada Revised Statutes* (NRS) Chapter 539 and problems with a recent court case related to a canal breach in Fernley in January of 2008.

After the meeting, I continued to follow their court case and the results of the court decision, which was to hold the directors of TCID personally liable for damages due to flooding. Board members will explain this further and answer your questions on the subject. [Continued to read from prepared testimony ([Exhibit C](#)).]

I may have to leave because we have a work session in another committee.

**Chair Daly:**

When you do have to go, we do understand. We understand we have a few days left before the bill passage deadline.

**Assemblyman Grady:**

I would like to put on the record that I have talked to Mike Pagni, an attorney for one of the irrigation districts in Reno. He has some questions on section 4, subsection 6, paragraph (a) on page 5, and I have told him that if he can get together an amendment, we would bring it forward on the Senate side to address his concerns there. He was unable to be here today to discuss this with us.

**Rusty Jardine, Manager, Truckee-Carson Irrigation District:**

I am a Nevada attorney and the manager for TCID. I have served in this capacity now for three years. My service to this district came after the breach of 2008. I think most of you are familiar with the facts and circumstances with the flood that occurred in the city of Fernley. [Referred to Truckee Canal paper ([Exhibit D](#)).]

Part of our interest in advancing a request for legislation was that we looked at this and saw the experience of our individual directors named in the suit and, ultimately, their insurance carriers were called upon to step up, and eventually a settlement was reached. It left us wondering how we will be able to continue into the future as an entity and have the ability to provide for men and women that are willing and able to serve but are very concerned about the issues associated with personal liability in connection with their service. It was in that vein that we brought this forward and met with Assemblyman Grady and others. You have before you this proposal, which we have had a chance to look at and with which we are pleased. We recognize that there could be some

issues associated with it, as signaled in section 4, subsection 6, where that limit could be altered.

By and large, we view this proposed legislation as a measure to provide us with a standard by which the conduct of the directors or officers of the district will be judged. I think that has been set forth clearly. As we proceed through litigation, oftentimes it was necessary by analogy to make reference to the best judgment rule associated with the conduct of a board, and to also look at the standard of care and loyalty that arises in connection with a board member.

I think what this does is provide us with that standard by which we can judge the future conduct of officers of a district. I think it is clear as well that when those officers are acting in good faith within the scope of their employment, this legislation would govern how their conduct is to be examined in terms of any possible liability associated with that.

With regard to the fixing of a number under section 5, we have historically been limited to an aggregate sum of \$500,000. I think you can see by the letter I provided to you ([Exhibit E](#)), in contemporary practice, that is not very much money. To have an aggregate limitation on our ability to incur debt at times is a burden. The engineering fees associated within a single improvement project within the district can amount to as much as or more than \$500,000. Raising that limit would certainly assist us with our regular operation.

With that, I will defer to our president of the board, Mr. Schank.

**Ernest C. Schank, President, Board of Directors, Truckee-Carson Irrigation District:**

I concur with what Mr. Jardine has said. I would like to add one further comment on the insurance part of this bill. Under section 3, subsection 3, it says "a majority of the members of the board of directors of the irrigation district who are not interested directly or indirectly in the act or transaction." My question would be, in the case of the Truckee Canal, all of the board of directors was sued individually. There would be no majority to act upon that. I do not know whether that is something that ought to be looked at or language in that section should reflect unless all are directly affected.

I would like to comment on section 5. It is important for us in our business dealings to have the \$500,000 raised to \$1 million simply because on any given day, we may be in violation of state law. We do not want to be, but the cost of doing business these days has increased from what it was in past years. As Mr. Jardine said, many times we have to prepare engineering studies so we can then go through the process of getting approval from our electorate to bond it.

In order to have those kinds of things ready to present to the electorate, we need to have those engineering plans and drawings ready, so that we know what the true cost of a project is and can present the facts to our electors.

When you add in the cost of equipment nowadays and attorney fees that sometimes are not necessarily fixed because of things that happen in the spur of the moment, sometimes our costs do exceed what is in the law. We would ask that you raise that to \$1 million.

**Assemblywoman Swank:**

How did you come to \$1 million? When was the \$500,000 set?

**Ernest Schank:**

I think the \$500,000 was set about three Legislative Sessions ago. As I recall, the original number was \$50,000 but they raised it to \$500,000. I think \$1 million is something we could all live with. \$500,000 is not a large enough amount.

**Assemblyman Grady:**

There were about five or six irrigation districts that sat down together in my office and we talked about some of the things that need to be changed. There are other things that need to be changed under NRS Chapter 539. The irrigation districts want to get together in the interim to work on that.

Lovelock recently leased a piece of equipment, and just by leasing that equipment, they exceeded their \$500,000. They felt, collectively, they could very easily work under the \$1 million.

**Assemblyman Wheeler:**

This bill makes sense to me. In business, this is fairly normal practice. But, normally, in business, if negligence was proven against the director, you would still be able to sue. The way I read this bill, I would say that it stands within this bill. Is that correct?

**Rusty Jardine:**

I certainly do not want to misspeak on behalf of the Legislative Counsel Bureau, but this is not a blanket. It does not immunize an individual from liability. We do not view it that way. However, it certainly affords a protection associated with the application of the business judgment rule. When they are acting in good faith, it would be difficult to assert that they had breached a duty owed to some other person.

**Chair Daly:**

I see the bill is kind of in two parts. I do not think I have too many issues with the \$500,000 to \$1 million. The only question is, of the five irrigation districts you met with, Assemblyman Grady, how many other irrigation districts are there? It is not just TCID.

**Assemblyman Grady:**

The big ones in our area are TCID, Walker River Irrigation District in Smith Valley, and Mason Valley in Pershing County. There are a number of smaller ones; there are four or five down south. Some of them do not go under irrigation districts but under conservation districts. You are probably looking at ten districts that would be affected.

**Chair Daly:**

On the other part of the bill regarding liability—and these are some of my concerns, and I am happy to have the discussion on them—tell me if my understanding is not correct. The TCID is recognized as a political subdivision of the state, and the liability to the irrigation district was capped at the \$75,000 state liability, from my understanding.

The other portion of the lawsuits, where each one of the board members got sued individually, had a separate finding that went to due diligence or negligence, or maybe you can help me with what it is called. What I see when I read this is if we put this type of language in and you have a duty as a member of the board, I do not know if we have to put that in. I believe it is implied. You have a loyalty to the board to which you were appointed to carry out duties in accordance with the law to the best of your ability. If we put it in here for irrigation districts, my concern is that something happens to someone on a general improvement district, and they want to claim the same type of immunity, they will say, No, the Legislature only gave that to the irrigation districts. If they wanted you to have it, they would have put it in the law for you. I spoke to Legal, and if you tried to put it in a general term for all of the types of districts, there was a concern that it was too nebulous. I do not think you can put it into one district but I do not think you can put it in general terms.

Then you have the issue of TCID being recognized as a state agency with a \$75,000 limit on liability. There were other findings from the court case which caused the individual members of the board to be found liable. I do not know if we can penetrate or shield that.

**Rusty Jardine:**

What you might understand in regard to the process that has unfurled as part of the litigation is that, while named individually as directors of the district, there

were no findings associated with their personal liability or the shield of immunity that would rise guarding them under existing state law. A settlement was reached far before that. We did not get to the point where any determinations of law were associated with their personal liability or the application of the general provisions associated with liability under NRS Chapter 41. Yes, these direct themselves to an irrigation district. Could they be made available to other districts? I suppose so, with that express language.

One of the concerns we have in this regard, and this is where we would ask for your consideration, is districts like TCID have very small budgets. We have an annual budget of \$6.5 million to \$7 million. We are charged with the responsibility of maintaining dams like the Lahontan Dam. We can all imagine if the Lahontan Dam were to fail the kind of widespread liability that would be associated with that kind of failure. I do not know how on Earth we could stand that kind of outcome absent the protections associated with directors specific to an irrigation district like TCID that would insulate them from personal liability through application of these principles. Yes, they are certainly applied; not because they rose as tenets of law to benefit particular districts, but by analogy to corporate entities who enjoy the same kind of rules. These things drive our desire to have these provisions made applicable to an irrigation district. There is tremendous amount of risk associated with the maintenance of a district like ours, particularly in regard to the large structures that would cause widespread damage should they fail.

**Ernest Schank:**

I agree.

**Chair Daly:**

I hear you. I understand. For instance, if you were on a board of trustees, you would have a duty spelled out for you. We do not necessarily have that type of language in our laws, but I think it is implied. Everyone understands that you have a certain duty and you swore, when you took that office, to do things to the best of your ability. I do not know the particulars of this case, what the accusations were, or why there was an agreement to settle. My point is, the irrigation district itself was recognized as a state agency and was capped at the \$75,000 liability. Then there are additional burdens of proof that if you go to the board of directors, you have to show they acted negligently or irresponsibly or did not do their due diligence. As long as you felt you could prove those things and you did that, then people will make the decision to settle things out.

The concern is if we give this type of language, pointing out that you have a duty of loyalty without telling all the other boards they have a duty of loyalty, too, it gets implied, by us making the distinction for this board, that we do not

intend this for the others. Is there something in the statute that would prohibit you from purchasing fiduciary liability insurance for the board in case they do make a mistake?

**Rusty Jardine:**

I cannot represent to you faithfully that we do not have the ability to purchase that kind of coverage. What this proposal does, however, is provide a district such as ours additional levels of flexibility associated with what form that protection can take. If you look at section 2 as an example, it talks about express authorization for the creation of a trust fund or the establishment of a program of self-insurance. Section 4 on page 4 is current language, but this new language purports to allow us the flexibility to come up with additional proposals that might better suit our needs.

The reality is I would hate to see a point where an insurance carrier might refuse to provide some kind of coverage to a board member. Imagine, if you could, that you have some kind of umbrella provision over your personal liability coverage, or a limitation borne thereby, that you are covered for some amount of money except if you are engaged in representation through some kind of public board. I would hate to see that become a limitation we will have to bear in the future.

Generally, the provision before you affords us some flexibility in the structuring and a mechanism to at least meet the needs of our directors by saying. We will, as a district, afford you protection in the following fashion so you need not worry about the scope of personal liability to which you may be subjected in the event of something catastrophic. It is something that would encourage participation, and allow that level of confidence to a prospective member of the board. You also saw in there some indemnity provisions, which, as a matter of board policy, we could agree to indemnify our directors or officers, so they can be protected against the kinds of bad things that could happen with regard to an irrigation district. There are many.

**Chair Daly:**

So how many other times that you know of—and this may be an unfair question—has a board of directors been sued and it was settled? I saw the language in there on indemnity or guaranty, and when I read that, it seemed more along the lines of what you normally do. You might say that we are going to mutually indemnify a contractor that is doing some work for you, or a vendor, or we are going to get a guarantee you are going to perform to a contract. I am not sure you cannot get some form of insurance for this.



The other part I got when you were talking is you may have a self-insured insurance policy. Are you going to build a pool of money to guarantee against this, but that all goes against your ratepayers? How big is the pool going to be? We want you to do it right but we do not want you to have a get-out-of-jail-free card. I am not suggesting that in any way, but you do not want people to think that way, either.

These things are unfortunate. That canal has been there for a long time. Since the 1930s, right?

**Ernest Schank:**  
1903.

**Chair Daly:**  
So it has been there a long time. I do not know if there have been other breaches or not, but I do not know how many other boards have been sued. How often does this really happen? Are we just reacting to something that is very unlikely to happen again?

**Ernest Schank:**  
Without getting too specific, I think this was a case where the plaintiffs were just throwing spaghetti at the wall to see what would stick. This happened to be the case, I believe, in the liability suits that were filed individually against the board of directors. Six of the directors had the same insurance carrier, and it was a farm owner's policy, and they chose to pay rather than to fight. It was something that was completely out of our hands, but it goes against all of us and our insurance rating. I think this bill would give some flexibility so extra umbrella coverage could be purchased so good people would be willing to run for a position that is very important in a community who otherwise might have second thoughts, if they had a big business, if something like this might happen. It has happened once, because it happened to us, and if it happened once, it might happen again.

This is one of the reasons why we are asking that you consider this bill. It gives a little added buffer for those of us who are serving publicly, trying to better our communities, and trying to protect our businesses as we do so.

**Assemblyman Grady:**  
Truckee-Carson Irrigation District gave a handout to you ([Exhibit F](#)). If you look at the three pages of maps, it will show you the approximate area where the breach was, and it will show you Fernley in three different eras. You will see the farm fields, a few houses, and then you see a city. There were people that bought homes there, unfortunately, that did not even know the canal was there

until they woke up one morning and the water was there, too. They have a huge area of urbanization that has come into an agricultural community.

As far as the language that was in there, it was not drafted by Mr. Jardine; it was drafted by our legal counsel and looked at by various attorneys of the districts who agreed with the language.

**Assemblyman Livermore:**

I look at the canal almost like you would look at a pipeline. Generally, you insure the pipeline for the miles of water that are out there. Is the canal as a whole insured, or just the operation part of it?

**Rusty Jardine:**

That is a great question. The Truckee-Carson Irrigation District does not own the canal. It does not own a dam, a structure, or a facility. We operate and maintain the federal Newlands Reclamation Project, which is owned by the United States. We do not provide insurance for loss against any of those particular structures or features.

**Assemblyman Livermore:**

Do you have legal counsel on retainer, or are you paying month by month?

**Rusty Jardine:**

We are represented at all levels by counsel.

**Assemblyman Hansen:**

I can certainly see the problem. It would be like us serving, and something happens, and we get sued individually as representatives of the State of Nevada. I have a question for Randy in Legal on this thing. Is TCID part of the State of Nevada's government structure, and if they are, why were they not covered with liability in the first place? Is something they are asking for here really something out of the ordinary for that?

**Randy Stephenson, Committee Counsel:**

I have to admit I am not intimately familiar with the case law on this subject. Yes, an irrigation district is created by statute, and I presume that, yes, it is an agency of the state that is subject to the immunity of liability that is waived partially in NRS Chapter 41.

The other provisions in this bill are all taken from the private corporation provisions or nonprofit provisions from NRS Chapters 78 and 82. It is usual for provisions to include boards, members, directors, and officers of boards in this case.

**Assemblyman Hansen:**

To us, it may be language we are not familiar with, but as you look at it, as an attorney for the State of Nevada, this is not something out of the ordinary that they are requesting.

**Randy Stephenson:**

In drafting this particular bill, all the provisions are typical provisions that are borrowed from private/corporate law as well as some nonprofit provisions.

**Assemblyman Hansen:**

I grew up in Sparks near the Orr Ditch, which is actually above the City of Sparks. If the same scenario developed, it could flood thousands of homes very quickly. I am wondering, is the Orr Ditch part of your irrigation district? Who controls that? If it is not you, does the entity who covers that have some sort of limited liability or immunity if a situation like that develops?

**Ernest Schank:**

I cannot answer the entire question, but each of those ditches is owned by a ditch company. They are controlled somewhat in their diversions by the federal water master's office, but I believe each of them acts as an individual entity or organization. I think there is a ditch company statute in Nevada law.

**Rusty Jardine:**

We define ourselves as a political subdivision of the State of Nevada. In that connection, we make recourse as a district to the protections and immunities provided generally by NRS Chapter 41. These provisions are those which would be applicable to the individual officers. The district itself is still in litigation and we are still in the process of asserting those protections borne by Chapter 41. We are asking that these be accorded to these officers under circumstances which, depending on the scope of the problem, could be beyond the ability to provide for a measure of relief associated with damages.

Insofar as your question is concerned regarding the ability of an individual ditch company, I can only assume they have procured their own individual arrangements regarding their insurance coverage and that kind of thing.

**Assemblyman Hansen:**

For other boards in the state that are in similar situations, whatever the board may be, does the State normally provide a level of immunity that these guys in this district for some reason did not get? If you are serving on the Board of Wildlife Commissioners, and there is a big flood at Mason Valley and it is part of your responsibility, are we going to see the individual commissioners on the board being sued personally?

**Randy Stephenson:**

I would probably have to go through NRS and do some specific searches as to the extent to which similar provisions have been included in other boards created by statute.

**Assemblyman Hansen:**

If you could do that, I would really appreciate it.

**Randy Stevenson:**

I want to add one more point of clarification. I am not trying to oppose or support this bill, but it might help for everyone to know that for many, many years, the Supreme Court has held that if you own or operate a ditch, canal, or something similar, you are liable for maintaining that ditch. I am sure our counsel for the TCID here can attest to that. I think that is probably the source of liability for this entire case and for this bill—that you can be held liable as the owner/operator of that ditch.

**Chair Daly:**

Are there any further questions from the Committee for this group? Seeing none, we will open the microphones for testimony in support of A.B. 310. Seeing none, we will open up for testimony in opposition. [There was none.] We will hear testimony in neutral.

**Lindsay Knox, representing Washoe County Conservation District:**

I am testifying on behalf of my colleague, Michael Pagni, who could not be here today. McDonald Carano Wilson represents the Washoe County Conservation District, and, despite its name, it is an irrigation district under NRS Chapter 539. We are supportive of the concept of A.B. 310 and thank Assemblyman Grady for taking our concerns into consideration, which will be addressed in the amendment Mr. Pagni will be submitting to Mr. Grady.

**Chair Daly:**

With that, we will close the hearing on Assembly Bill 310 and we will go to Assembly Bill 487.

**Assembly Bill 487: Makes various changes relating to recycling. (BDR 40-120)**

**Assemblyman James Ohrenschall, Clark County Assembly District No. 12:**

During the interim, I was able to chair a committee that was looking at improving recycling in Nevada. One of the things we considered was a bottle deposit, such as was enacted in Oregon in the 1970s. There was not an appetite in the committee to go that direction, but we did learn about a lot of other very positive things that are happening in Nevada.

In Nevada, we have gorgeous mountain ranges, but if you drive out to Lockwood or Apex or any of the other landfills in our state, you are going to see mountains of bottles, cans, and other recyclables that could have been recycled. Even worse, if you go out hiking at Red Rock Canyon, to the Tahoe Rim Trail, or to Lake Mead, you will see a lot of bottles on these trails and on the side of the road.

The committee met four times during the interim. One of the things the committee was able to agree on was trying to improve the county goals for recycling. A little over 20 years ago, in 1991, a bill was passed that established a 25 percent recycling rate for counties. Twenty-five percent is not bad, but it is not great. If you look at some of our neighbors that either have bottle deposit or single-stream recycling, they have a much higher rate of recycling—some above 70 percent, and some above 80 percent.

The committee felt that 25 percent was antiquated and set the bar too low for Nevada. I think we are getting closer to getting to that 25 percent, but it is still a very low rate compared to the rest of the country. One of the things this measure does is ask the counties to increase their goal to 40 percent. That is just a goal and not a mandate, but hopefully, the counties will take action.

One thing we learned during the committee hearings is some states back East really achieved success when local municipalities provided the infrastructure to make recycling easy. If it is easy for someone to have a recycling bin in which to throw a bottle or can and not have to lug it around all day or for a couple of weeks until they can take it to a recycling center, people are more likely to recycle. We did see evidence that a lot of that happens at the local level. Of course, that is not free, it is not cheap, but it can be significant, and I think the dividends are definitely worth it. The committee certainly thought so; I believe this measure passed unanimously.

The other thing we had a lot of testimony on was single-stream recycling. Different pilot programs have been very successful. People do not have to segregate their recyclables. This measure asks the counties to report back to the Legislature on how efforts to implement single-stream recycling are working.

[Assemblyman Ohrenschall submitted his testimony in writing ([Exhibit G](#)).]

**Assemblyman Pete Livermore, Assembly District No. 40:**

As you look at the measurements that different communities in the state had, there were some over and above the 25 percent level. In fact, most of them were up around the Carson City and Gardnerville area, where it exceeded 40 percent at that time. In some of the smaller communities, there was no way to measure their rate as they did not have single-stream recycling. All in all, I think the goal is to encourage people to recycle, support single-stream recycling, and make sure we can continue to grow.

**Assembly James Ohrenschall:**

You bring up a great point, Assemblyman Livermore. I think the rates were higher in western Nevada than down in my home county. That was something we could not figure out a reason for. We were very dismayed about it but we are hoping to see those rates improve.

I know I mentioned this last time, but the University of Nevada, Las Vegas (UNLV) has the Rebel Recycling Program. They really make recycling easy on campus. They have bins everywhere; it is easy and convenient. I think if we could implement a program like that, where it does become easier, then people will recycle. These commodities do have a value. They are being reprocessed and resold. It is not a burden on recycling companies.

**Assemblywoman Swank:**

Thank you, Mr. Ohrenschall, for bringing this. I am a big fan of recycling. I was wondering, being from southern Nevada myself, why our numbers were so low there. It occurred to me that it might be because we have a lot of apartment complexes, and I am not sure how much access people in apartment complexes have to recycling. I live in an apartment up here and I do not have access, so I take it elsewhere.

**Assemblyman Ohrenschall:**

I think that is also a very valid point. I know when I was living in an apartment, I would try to store all my recycling and take it to UNLV to drop it in those bins. I think it is the same problem in condominiums and mobile home parks. There have been arguments it would take up parking spaces to put a bin in. I am hoping we will see more recycling in these types of housing voluntarily, but if not, maybe that is something the Legislature needs to look at.

**Assemblywoman Swank:**

I lived in Minneapolis in the early '90s, and I know there was a program that had mandatory recycling accessibility for apartment complexes. I do not know if it was the city, county, or state, but they brought in big bins and put them right by the dumpsters.

**Assemblyman Ohrenschall:**

That sounds like a good idea, and perhaps something we should have considered during the interim.

**Chair Daly:**

So we are not quite at that 25 percent goal.

**Assemblyman Ohrenschall:**

Posted on the Nevada Electronic Legislative Information System (NELIS) is the report ([Exhibit H](#)) to the 77th Session of the Legislature, and I believe we have come very close to 25 percent but did not quite reach it. I believe it is in this report, but I do not know where in the report.

**Chair Daly:**

Is that a statewide number?

**Assemblyman Ohrenschall:**

It is. My recollection is that Washoe County, Carson City, and Douglas County were outperforming Clark County in terms of recycling.

**Chair Daly:**

The report in section 2 is just to get the county commissions to continue with their report. There is no requirement to actually do single-stream recycling, which is something I think everyone should look at.

**Assemblyman Ohrenschall:**

Correct. It requires reporting to the Legislature what is being implemented. It also increases the recycling goal from 25 percent to 40 percent, which is set in *Nevada Revised Statutes* (NRS) Chapter 444.

Another example of how successful something like single-stream recycling can be is that big hotels, like the MGM Grand and the Mirage, testified that they recycle everything. They have a process where they go through all the trash and sort out the recyclables. Testimony presented that it was cost-effective. The value of the commodities extracted from the hotel patrons' garbage paid for the recycling program.

**Chair Daly:**

In Washoe County, we have two bins to separate the recyclables. They ask us to separate it, then they throw it all in one bin. I have seen the processes where they separate the recyclables—they have air that blows the paper out, a magnet that pulls all the tin out, and an electromagnetic thing that pulls out the

aluminum, so then you are left with the plastic—so they have a way to separate the recyclables in single-stream recycling.

I am not aware of any of those facilities here. Where are they taking this stuff to recycle it? We have heard—we do not know for sure—that they come and pick it up in the recycling deal, and everybody feels good about being green, but it gets taken to the landfill anyway.

**Assemblyman Ohrenschall:**

I know that in Clark County, Republic Services has a sorting facility located in North Las Vegas to sort through the recyclables. As for Washoe County or any other part of the state, I cannot speak to that.

**Assemblyman Livermore:**

I think you will start to see some improvements. We have heard of a program Waste Management and Republic Services were going to do in the larger counties. I have seen the county commission for Clark County take efforts to basically stop the single-stream recycling process down there. They go from twice-a-week pickup to once-a-week pickup and different cans. Republic has sent us a plan of what they were going to do.

As we continue to move down the line to recycling, I think with processes like that, you will start to see a larger percent, especially in the weight and measurements of the product you are recycling. Maybe in 2014 if we come back here again and do not like the reports, then we can go back and reconsider what we did.

**Assemblyman Ohrenschall:**

That was the goal. Hopefully, every session, we can improve on Nevada's recycling rate. Obviously, some of our low rates come from tourists who are not interested in recycling. We definitely need improvement. Hopefully, with that information, we can come back next session and maybe there will be some new ideas, like Assemblywoman Swank's idea. That is an idea that has merit.

**Chair Daly:**

I agree with you. We should continue to improve. Just over the last few years, I have seen, in a lot of the cities and counties, a lot of recycling canisters in parks and almost all public buildings. The report I saw showed 25.3 percent, so we have hit 25 percent.

I think moving forward is a good thing. We need to encourage recycling and make it easier to get the rate up. It will save us all money, landfills, and



resources. I see no problem with it. At this time, we will open it up to testimony in support of A.B. 487.

**John Pappageorge, representing Republic Services:**

We participated in the interim study. What came out of that was a desire to improve the single-stream recycling program. That program is underway but we have improved it considerably. Henderson has the program underway and North Las Vegas has completely adopted it for their city.

Just recently, Clark County passed a recycling ordinance that includes a majority of the county. We are hoping it will be adopted entirely in Clark County. They are waiting for experience to see if it works. I believe it will. Part of the problem down there is that Republic is changing their twice-a-week pickup to once a week. There is public opposition to that. They are waiting to see if this program will really work.

The program has increased recyclables pickup from 15 percent to 30 percent. We expect that to increase.

I was part of the 1991 lobbying team for Republic Silver State Disposal and Reno Disposal and fought hard to get the recycling program. We are glad it was implemented. However, not much has happened since then.

**Assemblywoman Swank:**

My neighborhood is one of the neighborhoods participating in the recycling program and we have had good luck in our neighborhood. People have been generally happy with it. I think larger families have had more challenges with the fewer garbage pickups but I think it is better overall.

**John Pappageorge:**

Thank you, Assemblywoman Swank. I believe that is the experience in Clark County. Our hope is that once people are experienced with it, it should get better.

**Assemblyman Hansen:**

You mentioned that back in 1991, you started the program, and then it had not gone anywhere without legislative impetus. This is market-driven; they have to come up with a way to subsidize this. Is it actually going to be paying for itself at some point? One concern I have had about recycling is that in some cases, you actually use more energy in recycling stuff than you have a net savings for the environment. I am wondering what the status of this is. Is it going to move forward on its own because it is market-driven?

**John Pappageorge:**

I really cannot answer that question. If I may relate my personal experience, I have some property in Washington state where they have a program similar to what we are talking about. Having a separate container to throw your recyclables in is very effective and we thought it was very good for us.

Here in Las Vegas, I throw a lot of cardboard and bottles away, and I have not been the guy I should be when it comes to recycling. I just do not know how to answer that question. I think putting the program forward is going to increase recycling. I think that is why we see the numbers in Clark County going from 15 percent to 30 percent. I think it has been made easier, and that may be the reason for it happening.

**Robert Ostrovsky, representing Waste Management, Inc.:**

I think it is a balance in the cost. If you impose certain recycling restrictions that are beyond a market value, then the ratepayer generally ends up having to pay extra to have that done. As we know, the recyclable market is variable on a daily basis. Waste Management does recycle at its facility plastic, glass, wood, and paper—not 100 percent; some goes to a landfill. The clean material that we can separate gets recycled. The problem for northern Nevada is that there is no material recovery center. There is not a large enough population base to create enough material to make it financially feasible to build such a facility.

Entering single-stream recycling will create enough trash that meets the requirements of recycling that we can begin to build a material recovery center. Part of the problem is we do not have many manufacturers in the state that use recyclable materials. The honest truth is a lot of these materials end up in the Port of Oakland, on a ship, and they go to China, and you end up paying for them at Wal-Mart because they become a product.

It is a delicate balance. The costs of those materials change every day. As a part of this study over the interim, we looked at what it would take to create a better market environment in Nevada that would sell those products, and unfortunately, it means importing materials from other markets to build enough synergy to have somebody build a plant to recycle cardboard or glass.

We think this bill is a start. It is asking the counties to take a look at what they are doing. It is asking them to push for an increased recycling rate. As we get materials, we will do better.

You will probably be a little taken aback to know that Carson City does not require trash pickup. Waste Management is the hauler here, but you are not

required to have trash pickup at your home. You can haul your own trash to the landfill here. This is very different from Clark and Washoe Counties. It is more of a rural approach to the way they handle trash. So to go to single-stream recycling, first we have to get mandatory trash pickup to build a big enough market.

Those are all things we are moving toward. We support those efforts. We worked with Assemblyman Ohrenschall and will continue to do so. We are doing a fair job, but we could do much better.

**Assemblyman Hansen:**

As you know, I represent seven different counties. As you mentioned, Washoe County does not have enough trash for this to be financially feasible.

We are still making this a goal, and potentially this will be mandatory for Esmeralda County, Mineral County, and Humboldt County, which are not even close to the size of Washoe County. How are we going to expect those counties to recycle without substantial subsidies from people using dumps?

I am wondering, as we look at this bill, while I love this concept, we are getting down to the nitty-gritty here where people are going to have to pay substantially more for these feel-good things that are financially feasible in Clark County and maybe Washoe County, but not the little counties. Is it financially feasible to expect counties the size of Eureka County, Humboldt County, or Pershing County to do these things?

**Robert Ostrovsky:**

I think that is why this is recommended to be a goal, not mandatory. It is very difficult in the rural counties. I will tell you Douglas County does a really good job. They have a privately run operation. The majority of their material comes from South Lake Tahoe. They have pretty good numbers there, which the Department of Conservation and Natural Resources keeps.

If this was mandatory, I would totally agree with you. However, I think they tried to take that into consideration. This Committee always has the option of putting a county cap on there if they feel they want to give some relief to the rural areas where it is much more difficult. Much of the trash pickup in rural counties is done by private haulers or by individual landowners. It is a much bigger problem if you are in one of those other counties that are rural in nature.

**Chair Daly:**

If that was the bill in front of us, that would have been an appropriate question, but it is not. When it is, we will have that whole debate. Right now, it is a

goal. We want to try to achieve it. I hear what you are saying. We all recognize once we recycle, there has to be a market for that recycled material. There are encouragements all the way through. There are limits sometimes. Plastics are more easily used; others, like glass, cost more. Metal, though, I think you can reuse all the time.

**John Pappageorge:**

Assemblyman Hansen makes a very good point. I would consider that too, but this is statewide and not local entities. Hopefully, we will get enough out of Clark and Washoe Counties so it will not be a concern for smaller counties.

**Assemblyman Healey:**

Mr. Ostrovsky, in my daytime life outside of the Legislature, with the hospitality industry in southern Nevada, there has been a huge effort to focus on increasing recyclables and the sustainability of our state. Since you represent the north with Waste Management, has there been an effort from the hospitality industry in the north to focus in on increasing their recycling percentage? For instance, at New York-New York Hotel and Casino, we went from 7 percent three years ago and we are now at 49 percent for our property. That is companywide as well.

**Robert Ostrovsky:**

I am not sure. I would have to check for you. Commercial firms do not necessarily have to use Waste Management. They can make choices about whether they use other haulers for their materials. I know MGM has been a leader in southern Nevada, and other companies have followed suit, and MGM does own properties in the north. I do not know the answer, but I will ask and try to get you some information. Northern Nevada has a pretty good record of recycling.

**Assemblyman Healey:**

In the event this goal was to increase, with the increase in the amount of commodities that are being recycled, would that potentially spawn some additional growth in businesses coming to Nevada that may have operations in California or Arizona. Are these recyclables processing facilities we lack here in Nevada? Just speaking from southern Nevada, we have a huge market for this. I discuss on a weekly basis sending our commodities and the price of those commodities. It just seems like there may be a great opportunity for some economic development there for the state.

**Robert Ostrovsky:**

I agree. There is an opportunity. If we can generate enough clean recyclables, there are manufacturers who will build in market environments where they can get these materials readily available at reasonable costs. Part of those costs is transportation. You can imagine sending stuff thousands of miles across the ocean and bringing it back. We ought to be able to find a way to send it 100 miles to Nye County or wherever to manufacture some product using those recyclables.

If we get these numbers up, I think business will follow that and say, we have a market, and we have a broad market in California to sell our products in, and we can now manufacture them right in this state and create jobs.

To Assemblywoman Swank, I believe there have been two attempts by the Legislature over the years to require apartment buildings to recycle. Both of those have been rejected by the Legislature. We will deliver recyclables containers to apartment buildings anytime they ask. We will send trucks to pick them up. The only problem is space. When they give up parking spaces, they view it as giving up revenue. For one reason or another, they have never made it through this process, so that might be something to think about for next session.

**Chair Daly:**

It was my understanding, when they started the recycling program in Washoe County, there was no cost to the rate payers. The cost to pick up was paid for or offset by you getting those materials. Obviously, they are not throwing this stuff in the garbage; they are reselling the aluminum, the plastic, et cetera. There is a market there and it is obviously paying at least that cost. I understand you have to have a certain mass, but at some point, the ratepayers are going to start asking, how much money are you making on this? Why not reduce my bill?

**Robert Ostrovsky:**

Yes, we did it with no cost to the ratepayer. I do not know if we are breaking even or making money. I think the Department of Conservation and Natural Resources has collected some data about some of that which we can bring forward at the appropriate time. A lot depends on what plastic is selling for today as opposed to tomorrow or how long you can store it. Waste Management is a nationwide company and has people who do this full-time, testing the market waters.

In talking about expanding, the Assembly will be receiving a bill from the Senate, sponsored by the Senate Majority Leader, Mo Denis, that will require

construction sites to recycle. Unfortunately, the only recycling facilities for construction materials are in southern Nevada. They will be separating materials at the job site if this bill becomes law, which will increase construction recyclables, like wallboard and metals. That will become a mandatory requirement.

**Chair Daly:**

More and more and more, and I can tell you, I see it all the time, they are recycling asphalt and concrete. They put it in a separate pile and they regrind it and reuse it. Demolition companies recycle copper wires or heavy metals. There are, having worked on a job like the Silver Legacy, hundreds of thousands of tons of garbage off those buildings, and it is cheaper to throw it away than to move it around. That is the nature of the business. But I have seen in the last few years a huge increase in the amount of materials that are recycled, even on road jobs. We need to expand that into building sites.

**Kyle Davis, representing the Nevada Conservation League:**

It is interesting that you bring up that issue, Mr. Chairman. We had a bill last session that dealt with recycled aggregate in roads, and we took small steps to increase that, and I think that is having some success.

Increasing the recycling goal is a good thing for our state to do. Having the recycling goal in place over the years has been helpful in terms of moving us down the road to where we are recycling more and more of our materials.

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

I want to thank the Committee and Mr. Ohrenschall for their interest in recycling and all the work that they did over the interim. We do support this bill. The only other comment I want to make is I did want to confirm that we did exceed the 25 percent recycling rate for the first time this past year.

**Paula Nesbitt, Private Citizen, Dayton, Nevada:**

According to Waste Management, they do not pay out for a redeemable container in the state. I support this bill because it does increase the amount of recycling, but where I am seeing a problem is there is no incentive, and incentives are what cause people to move. Currently, we are in a position where we have to pay to receive curbside recycling in addition to our regular garbage. I understand the financial need for a collection place. Just the user friendliness of recycling is a lack of incentive for folks in the rural communities.

Another part of this bill deals with the limitation of transporting recycling across state lines to get your redeemables paid for in California. The people I have

talked to have said they would recycle if there were payout stations. As it is, it is not convenient, it is not user-friendly, and it is easier to throw it away. If there were proper incentives, people would, indeed, recycle.

**Joe Johnson, representing the Toiyabe Chapter of the Sierra Club:**

We are in support of this bill. Of a personal nature, I was here in the 1991 session as an assemblyman, and it was one of the bills I worked on extensively. The issue of how recycling programs were to be addressed and how they affect the rural counties was and continues to be a sticking point in developing recycling bills in particular, or simply the handling of trash and the various economic impacts it has on disseminated rural populations. We feel very strongly in support of this in establishing goals and increasing goals.

Mr. Pappageorge and I have had continuing dialogue on the issues of recycling over the years. Sometimes we are on the same side and sometimes we are not. It pleases me we are on the same side on this.

**Chair Daly:**

Is there further testimony in support? [There was none.] Is there any testimony in opposition? [There was no response.] Neutral? [There was no response.]

With that, we will close the hearing on Assembly Bill 487 and open the hearing on Assembly Bill 346.

**Assembly Bill 346:**      **Revises provisions governing mining reclamation.**  
**(BDR 46-1035)**

**Assemblyman David P. Bobzien, Washoe County Assembly District No. 24:**

By rights, this bill should be highly contentious, but I am happy to report we have made significant progress on this issue. Of all the bills I have brought to you, this may very well be the least controversial, if all goes well, but knock on wood, I know how these things go.

This bill deals with mining reclamation law and specifically arises from concern about pit lakes that are left behind from mining operations that have concluded. As we all know, and as this Committee is acutely aware, mining is a very important part of the Nevada economy and the Nevada landscape, quite literally. Across our state and our public lands, mining operations have a huge presence.

Upon conclusion of many of these mining operations, a pit is left. Groundwater will come back in after pumping and result in a lake known as a pit lake. As we all understand, earth disturbed is earth disturbed, and while there are many

great practices the mining industry uses to reclaim a lot of the disturbance they make, the lakes themselves are a lasting stamp on our public lands.

It is not the intent of this bill to say, you have to turn everything back to exactly the way it was before you started your operation. That is just not feasible. However, if there is an opportunity, particularly with the larger pit lakes left behind, to create something of value in the operation's wake, it is my belief we should pursue that. In many cases, the pit lakes provide opportunity for recreational use, whether it is boating or fishing or some other form of water recreation. That is what this bill intends to do.

From the outset of my interest in this issue, stretching back into the interim, I have been working with the conservation community and the mining industry on furthering this conversation about how we can plan for future public use of these pit lakes. I am most appreciative of all the parties working with me to come to what we have before you. I think you will hear some varying responses to where we are, but overall, I think we have made tremendous progress with this amendment you have before you ([Exhibit I](#)). I am confident we can all move forward with this.

I will walk you through the amendment and what it does to the mining reclamation statute, *Nevada Revised Statutes* (NRS) 519A.230. The first issue I want to address is currently, when there is an exemption applied for under the mining reclamation statute, it goes to the Division of Environmental Protection (NDEP). Quite often, those exceptions are granted. It is my understanding that oftentimes those exceptions are granted because of issues related to the feasibility of what the plan would require or a desire to have access to future mineral production. What we do with this language is make it very clear that, if an exception is granted, there is a decision point that is made and it is based on the points in section 2. By having these criteria in place, when an exception is granted, it is a decision that has been made, and should there be a need for the appeal of that decision, it could go before the State Environmental Commission. The original bill mandated that all exceptions would go right to the commission, and based on discussions we had with the industry, we decided that was probably not the most workable solution. This way, there is a public point whereby you could take that up with the State Environmental Commission if you thought the exception granted did not address these points.

Moving now to pit lakes and the idea that access could be provided, we start with section 3: "For a pit lake that will have a surface area more than 200 acres of filled surface area, in consultation with the operator, land owners, including federal land manager"—because, obviously, a lot of these are on federal lands—"if applicable, provide, if feasible, for at least one point of public



non-motorized access to the water level when that pit reaches 90 percent of its predicted maximum capacity."

First, we are talking about the size of the pit lake that this would apply to. The measurement we landed on was the surface area had to be more than 200 acres of filled surface area. We are essentially talking about six large existing pit lakes. We are not talking about pits that may be used in exploration operations. We are talking about the bigger pits in the state. These are large potential public-use assets that we want to address.

There has to be a consultation with the landowners, which is key. You have a checkerboard of land ownership involved with a pit. You have a mixture of federal lands, public lands, and private lands, and you have to account for that. The test here is you would provide, if feasible, for at least one point of public access. We had a lot of conversations right up to the start of this hearing about this point of "if feasible." The concern here is there are going to be those situations that will come down to two possible scenarios when providing that access will not be feasible. The first is safety—if there is a clear safety problem with a particular pit. The second is if there is an overwhelming conflict presented because of the checkerboard land ownership situation. This would not be just because there are two landowners, but there is some overriding, compelling reason why one of the landowners could see this as being a problem. Those are some rare, extreme cases, but there are cases nonetheless.

We will move to the point of public nonmotorized access to the pit when the pit reaches 90 percent of its predicted maximum capacity. We are looking into the future. For many of these pits, this will be many, many, many years in the future. Once the water level has risen to that point, is when you would provide the access. If you have a rock wall 500 feet down, it is not a matter of providing access to that. When it is pretty much filled up, you would provide access to that surface. I think oftentimes what you will be talking about is the haul truck road. If that were left behind, the operator would essentially find a way to keep that open in such a way someone could use that as the access point. I think the nonmotorized test is a reality of engineering. I wanted to make it clear that if somebody wanted to hike down there and wheel their canoe or what-have-you on a handcart, then they would be able to do that. I think there was some concern about the engineering challenges if you were actually providing for a full boat ramp a truck would be able to back down to.

If you look at section 6, we have a definition of pit lake. In section 7, we are getting into two parentheticals that I need to highlight for staff and the Committee that we did not get quite right in this amendment that need to be cleaned up before we move forward. Section 7 speaks to the fact that a lot of

these pits already have current reclamation plans, and just because there is already a plan does not mean we do not want to find some way to address this and get public access to these pit lakes. The test here is "On or before July 1, 2014, a plan for reclamation if a mining operation filed with the Division of Environmental Protection of the State Department of Conservation and Natural Resources before October 1, 2013 that includes a pit lake that has a surface area of (value needed). . . ." That should read 200 acres. It is the same whether it is for future plans or the pits that might have plans already in place. The idea here is if there was a plan filed before 2013, we would still allow for the planning of that public access.

Section 9 probably should be numbered section 8. I will leave that to your legal staff and how they eventually do the mock-up on this. What we need Legal to do is draft some connection between this statute and the existing recreational use statute, making it clear that there is a liability shield for landowners for any conflicts that might arise. We want to make it clear the recreational use statute absolutely applies to this.

With that, Mr. Chairman, we have a list of supporters who I am sure would like to come up. Hopefully we can get some more technical background on this. I would be happy to stand for any questions the Committee may have on this amendment.

**Assemblyman Ellison:**

The mines put in millions and millions of dollars into reclamation on the mining sites that have to be cleaned up and remediated. What about the money that has been paid into these projects? How would you address them? Would they be reimbursed for the money they put into these, or are these older lakes that might not fall under that?

**Assemblyman Bobzien:**

I think the companies could better walk through the scenarios of how this would work. My take on it, not being a geologist and certainly not being a mining policy expert, is the bulk of reclamation activities—reseeding, dealing with leach pads, those sorts of disturbances—in the situation of pit lakes, every pit lake is different. Lone Tree Mine might be one of the better examples. Once the pumping ceases, the water starts to come back. The companies now keep an eye on the chemistry, understanding that there is a lot going on with exposed rock and the water that is coming back in. The focus of this is specific to just being able to provide public access. Again, I think the usual scenario for these is going to be the existing ramp back out of the pit and finding some way to make sure that can still be used for access. It costs money and is going to

be part of the existing reclamation activities that go on, but I am confident this is something the operators can deal with.

**Assemblyman Wheeler:**

In section 3, where it talks about the landowners, sometimes a lot of this land is owned by the Bureau of Land Management (BLM). It takes nine or ten years to get a mining permit. How long do you think it will take to get a permit from the BLM for recreational use? Obviously, that would have to happen before you could make these public. Also, you will have land crossings going to these mines that are on private property. Have you considered that, as well?

**Assemblyman Bobzien:**

That is exactly the set of concerns we wanted to address with that "if feasible" test. We are talking about concerns that might arise regarding land ownership, the direction given by the federal land for what that use might be, and any ancillary concerns about ownership that might impact the ability to provide public access.

It is hard for me to tell what a federal land management agency would want to do at any given site. Personally, my belief is these are public lands, and at the end of the exclusive use of those public lands by the mining operation, the intent would be to find some way to get the land back to the public for multiple use.

**Assemblyman Wheeler:**

I am really worried about the liability of it. When you have an open pit, there are chemicals and certain things inherent in mining that, not being an attorney, I think could be construed as negligence later. From what I have seen in court, negligence trumps everything. I am very worried about the liability under this and I would love it if you could get with mining and do something about that.

**Assemblyman Bobzien:**

That is exactly the nature of a lot of the conversations I have been having for a long, long time with the mining industry. I believe the connection to the recreational use statute takes care of a lot of those concerns. I think we are also in a situation where, particularly on public lands, at the conclusion of the operation, at the end of the day, these are federal lands. I realize that does not give anybody a blanket exemption from those concerns, but the recreational use statute connection will go a long way toward alleviating those concerns.

**Assemblyman Wheeler:**

Do we not have regulations in this state where mines have to be reclaimed and put back to their premine condition? If that is the case, how does this affect that, because they cannot refill the pit?

**Assemblyman Bobzien:**

That is exactly the crux of this bill. If you read the reclamation statute—and if you have not, it is really interesting reading—the reality is, there are a lot of exemptions granted. This makes it clear that if we are going to grant an exemption and this pit goes forward as a lake, this is what you are going to do. If feasible, you are going to provide recreational access to the lake.

**Assemblyman Hansen:**

I talked to Tom Gallagher, and he, at one time, was trying to use a pit to grow some kind of algae that was going to be used to recycle and produce energy. Have you ever heard anything about that? We had a bill just the other day and that came up. I remember talking to him and it did not work out, but there is some energy potential in those things. I am curious if you had heard of that before.

**Assemblyman Bobzien:**

I have heard of it, but that is about it.

**Assemblyman Hansen:**

We have these pit lakes and the odds of them being used for recreational purposes are minimal for a variety of reasons. I am looking for some private-sector way to make this thing go away in a positive way. Regarding federal land ownership, did they stop patenting mines? Are these grounds, once they have been used like that, ever patented like they used to be where they are private land?

**Assemblyman Bobzien:**

We are starting to get into federal mining law and I am not sure of the best way to answer that question. We do have a representative from the Nevada Mining Association who may be able to answer some of the more technical questions.

**Assemblyman Hansen:**

Along the lines of creating a recreational area, ideally, to keep that thing funded over time, are they going to be able to plant fish or charge access fees for boat-launching facilities? How, in the long term, are these things going to be kept up? An example I can think of is the pit lake we had in Sparks which was the Helm's Gravel Pit forever and now it is a city park. It costs quite a bit of

money to keep it up. I would assume that, over time, while you have a pit lake, it is going to have a certain amount of financial needs.

**Assemblyman Bobzien:**

This is really specific to just the public access of the ramp itself. It is a compelling discussion of what the possible uses of the lake will be down the road, but I would say that is beyond the scope of this bill. Without this, it is a hole in the ground with water in it. This is a jumping-off point to the possibility of a recreational fishery or getting a boat on the water. Could somebody, if he really wants to, create another Sparks Marina out in the middle of the desert someplace and invest some serious capital into boat ramps and other things? That would be a different scenario beyond this minimal level of access.

**Chair Daly:**

I will say for the record that reading the mining statutes is not that interesting.

I had one quick question when you were talking about the Division of Environmental Protection granting these exemptions. I just want to clarify, an exemption to what? Are the pit lakes closed off and you need an exemption to open them, or are they open and you need an exemption to close them?

**Assemblyman Bobzien:**

The exemption is to the reclamation plan requirements. That is one piece of this. The other piece is the directive that public access needs to be provided if feasible. That is the piece specific to the pit lake and safety or significant complications that may arise because of the mix of ownership. Beyond that, it might be helpful to hear from NDEP or the Nevada Mining Association about the technical aspects.

**Chair Daly:**

When you say "nonmotorized," what is contemplated in this bill are canoes, kayaks, metal boats, inner tubes, et cetera, but we are not trying to provide a boat ramp. I suppose if you wanted to carry your 16-foot aluminum boat with a motor, you could, but you are not supposed to.

**Assemblyman Bobzien:**

We are not building a boat ramp, which is the quickest way to answer that.

**Chair Daly:**

But you could wind sail if you got any wind down on those things.

**Assemblyman Bobzien:**

You can get pretty creative with handcarts for getting pontoon boats for fishing down onto the water. There are ways.

**Chair Daly:**

The Sparks Marina is a pit lake. We would still be fighting over whose oil was down at the bottom if we did not have the flood. So that is a silver lining in the flood—we got the Marina. They are still pumping that lake to keep it at the level it is now. If they did not, it would rise up and flood that area.

Are there any other questions? [There was no response.] We will open up to people in support.

**John Hadder, Director, Great Basin Resource Watch:**

Great Basin Resource Watch was founded in 1994 as a regional organization working with the communities of the Great Basin to protect their land, air, and water from the adverse effects of resource extraction and use, and other industrial development. We have been looking at these kinds of issues for a number of years.

Assembly Bill 346 has come before you as a result of years of work in studying the impacts of mining in the Great Basin. In our work, we very often find ourselves examining how water is used and how water quality will be affected by mining. Nevada will have more precious metal pit lakes than any other state in the Union and these lakes will over time represent a very large volume of water. In the Humboldt River basin, the volume of water has been estimated at 1,052,000 acre-feet of water. That is actually more than all of the existing manmade reservoirs' 600,000 acre-feet, excluding Lake Mead. [Continued to read from prepared text ([Exhibit J](#)).]

We are talking about a lot of water. This is why it has gotten our attention and why this bill is before you. [Continued to read from prepared text.]

Under our current regime, all of the water in the pit lakes will be officially unused and a portion lost forever as a result of the evaporation process. The groundwater infiltrating into these pit lakes is typically of sufficient quality to be of some use. Thus, we are taking usable water and converting it into unusable water. [Continued to read from prepared text.]

While the water in pit lakes is generally going to be degraded, compared to the premine groundwater, many of the pit lakes will be able to support fish and probably water contact recreation. For example, the Sleeper pit lake started out

very poorly, but now the water quality has improved considerably. [Continued to read from prepared text.]

Since most of these pit lakes will exist for centuries and beyond, simple fences are not going to be much of a deterrent, and people will want access. We feel this is an inevitable situation. It is time that we plan for it. [Continued reading from prepared text.]

To the question that was asked earlier about exemptions, the fencing-off of the pit lakes is when it is exempted. All they do is fence them off to prevent intrusion. [Continued reading from prepared text.]

Our research indicates that the process of reclaiming a pit lake should ideally begin before the lake begins to form. This is really a planning issue. You want to prepare for how you are going to provide access. The mining industry could probably address this better, but there may be some structural aspects that need to be in place before the water starts coming in. We leave this open to the industry and the engineers to determine the best timing for this. There is language in the bill about not having to provide public access until 90 percent of the pit is filled. If that is the best, safest way to do it for the people doing the reclamation, then so be it, but we have noticed that research does indicate that the engineering process should start as soon as possible. [Continued reading from prepared text.]

**Assemblyman Hansen:**

There are obviously several ways to look at this. One would be to call it a hole full of water. Another is that it is a potentially very valuable recreation site. What is an eyesore created by the mining industry could be a unique recreational site in the future if it is handled correctly.

As far as the access question I have, there are roads going up to the pits. If the lake fills up to a certain level, there will be an access point already in place with the roads used to get to the bottom of the pit in the first place, correct?

**John Hadder:**

We do think it is a conversion of something that is not useful to something that is. As far as access, the industry would better address that. However, there is that road in place. As water begins to fill the pit, it tends to change the structure of that entire pit. We have seen this at the Lone Tree Mine. A year after it started to fill, the water became so acidic that strong reagents had to be added to the water to neutralize the acidity so it was not a risk to wildfowl. Their ramp getting down to the lake collapsed at one point and they had to stop putting the reagents in. Sometimes, even though the ramp was initially

structurally sound under dry conditions, it can become unstable under wet conditions. This is one reason why maybe it is good to wait, but we do have research indicating that you want to start your planning early.

**Assemblyman Ellison:**

You talked about a study that was done at the Lone Tree Mine. When was the study done?

**John Hadder:**

There has been a lot of analysis done on the Lone Tree Mine. The Division of Environmental Protection has done a lot of studies on the pit lake itself, the inflows and the outflows, the possible impacts, and so forth. There is a lot of data on that particular pit lake at this time.

**Kyle Davis, representing the Nevada Conservation League:**

We are here today in support of this bill. This bill is one of the four priorities of the Conservation Priorities for Nevada, which is a coalition of conservation and environmental groups that work together on priorities for the legislative session. We appreciate Assemblyman Bobzien bringing the bill forward and the conversations we have had with the mining industry. This is a positive step forward in terms of taking these pit lakes and turning them into something that has a productive postmine use. We urge your support.

**Glenn Miller, Professor, Department of Natural Resources and Environmental Science, College of Agriculture, Biotechnology & Natural Resources, University of Nevada, Reno:**

I am an environmental chemist and have worked on mining issues for many years. In fact, I remember the discussions during the 1989 Legislature about the reclamation bill itself. Newmont Mining Corporation was a big help in finally getting that legislation through. The reclamation bill has stood the test of time. It is a very sound bill. The Division of Environmental Protection has done a very good job enforcing that bill and reclaiming the land.

Pits are generally not refilled unless there is a use to get rid of wastewater from another source. The ones that penetrate the groundwater table are generally going to have a pit lake associated with them. Depending on how the calculations are done, there are 30 to 50 pit lakes in Nevada. Some are very small; some are very, very large. It is a major issue. The big ones are not established now but they will form in the distant future. This is a policy decision that is really important for long-term use of public lands. Most of these pit lakes have at least one part that is on public land. Some of them are wholly on public land.



Because of the reclamation legislation, mining companies cannot leave a pit lake that will adversely affect avian or terrestrial wildlife. This is a big deal. If it is an avian species, they have to get selenium down, metals down, they have to get the pH neutral. Both Sleeper and Lone Tree mines prior to 1989 would have gone very acidic and there was nothing to prevent that. Both Newmont and the owners of Sleeper added lime, brought the pH up, and stabilized those lakes very well.

When the pit lake issue came up, and it has been around since the early 1990s, we were all concerned about quality of water and how we were going to make that okay so we did not leave something like the Berkeley Pit in Montana, which has very toxic water. The assumption was the water would be suitable for wildlife use. In fact, that has come to pass. There are one or two exceptions, but for the most part, the water in the gold mining pits is going to be suitable as fish habitat. Bob McQuivey, who worked for the State Department of Wildlife, said to never expect that if there is an open body of water that will support fish, that somebody is not going to put fish in it. If somebody puts fish in it, fisherman will go down and fish. The notion was that you are creating an attractive nuisance with quite a large liability when people would have to walk 200, 300, or even 400 feet to get to those pit lakes. That will limit use in many cases, but, on the other hand, if we have an access point, it could be a very valuable recreational resource.

If you get an exemption from refilling a pit, and the operator takes the sufficient measures to ensure public safety as required by NDEP, what that means is they put a fence around the pit and signs up saying you cannot go down there. Nobody is going to look at those signs. People can get hurt going down the steep cliffs. The idea is to take this negative and turn it into a positive.

These are very large bodies of water. If access is taken out, it is going to be very dangerous and very expensive to put that access back in. The idea is to make some access point available for the residents of Nevada to use these pit lakes for recreation in the future.

This is an excellent idea. I commend Assemblyman Bobzien for taking the leadership role on this. The discussions with the industry have been very fruitful. They have concerns, and you will hear those, but overall, this is an excellent idea.

**Stacey Shinn, representing Progressive Leadership Alliance of Nevada:**

We are here in support of Assembly Bill 346. We applaud policy that considers how our actions today affect future generations.

**Sean Gamble, representing Barrick Gold of North America:**

We are here to support Assemblyman Bobzien's bill.

**Alan Biaggi, representing Nevada Mining Association:**

The Association is neutral at this time. I am here to provide technical input as it may be necessary.

Assemblyman Wheeler asked what the land use is after the mining operation is completed. I want to point out that it is not to restore the land to its natural conditions, but the requirement is to provide a productive postmining land use. There are requirements that NDEP and the Mining Association and its members deal with that allow that mine to be placed back into wildlife habitat, other industrial uses, or those sorts of things. The requirement is not for restoration per se.

The question of chemical stabilization was brought up as well. There is a requirement that is placed upon the mining industry that mandates that all the chemicals are stable. Others have talked about the stabilization of the pit lake water quality; it is a requirement before the mining operator can leave the site.

Finally, the issue came up with regard to patenting the land. That activity was terminated by Secretary of the Interior Babbitt during the Clinton administration. It has not occurred since that time.

**Assemblyman Hansen:**

From your many years in government, I have a question about the bill. We have NDEP, but then you bring in the State Environmental Commission. You have, basically, two state agencies refereeing this stuff. I have a hang-up with that. It does not say that if these two cannot work it out, the Governor makes the final call. Normally, I like to see things all handled by one state agency. I would like to know your thoughts on having the Environmental Commission in an unusual referee position on this bill.

**Alan Biaggi:**

They are not separate agencies. They are all sequential agencies with the umbrella being the Department of Conservation and Natural Resources. The Division of Environmental Protection is within the department. The Environmental Commission oversees many of the activities of NDEP. It is an 11-member body that is quasijudicial and quasiregulatory in nature. It hears NDEP's recommendations before they are sent to Legislative Commission for further hearing and approval and they hear contested cases.

The due process within the Department is that anyone who is aggrieved by a decision by the NDEP may appeal that decision to the State Environmental Commission, which will weigh the evidence of both sides and make a decision. That decision may then be appealed to the district court and ultimately to the state supreme court.

**Assemblyman Ellison:**

A lot of people think that pit lakes are holes where they took ore out but they did not put chemicals in there. Usually that pit lake is where they removed ore. Could you elaborate on that?

**Alan Biaggi:**

The processing of the ore usually takes place outside of the pit. Oftentimes the only chemical residue that may be present is from the blasting agents or those types of things in extremely low concentrations. The water quality concerns that often occur are a result of the water, air, and base rock interactions as the pit begins to fill. It is very important to point out the mining industry and NDEP have a lot of experience now in dealing with those water quality concerns and how to address them to ensure the pit lake water quality is as good as possible.

**Assemblyman Ellison:**

Several years back, I was involved with a study that was done at Newmont on dewatering. The water that would go into the Humboldt River was actually purer than what you would get out of a tap. The numbers that came back were unbelievable.

**Alan Biaggi:**

There are situations where the groundwater quality from the dewatering activities is of extremely good quality and can be discharged into a surface water body. It depends a lot on where the mine is. There are some that have to be treated for things such as temperature, arsenic, and other naturally occurring materials in the groundwater. Oftentimes it is of very good, high quality.

**Joe Johnson, representing the Toiyabe Chapter of the Sierra Club:**

We are here in support of this measure. From personal experience, I served two terms on the Environmental Commission, and would like to reinforce the statements of Alan Biaggi.

**Chair Daly:**

We will transition over to opposition.

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

The Division has been actively regulating mining operations and reclamation since the inception of Nevada's mining regulation and reclamation program in 1989. Since that time, NDEP has permitted 159 open pit mines. Of those, 56 were expected to generate pit lakes. Of those 56, 8 have been partially backfilled to eliminate surface water, and 4 others are expected to be partially backfilled. In addition, there are ten pit lakes in the state that have resulted from historic mining operations and are not currently regulated.

As this bill was originally drafted, NDEP was strongly opposed. The Division's primary concern is that approving a permit that contains the language "safe access to a pit" has the potential to create significant liability for the State. Open pits and, by extension, pit lakes are, for the most part, inherently unsafe. Open pit mines are not designed to become recreational lakes. Typically, the walls are steep and the pits are deep. The fact that these pits are so steep and deep means, depending on the geology of the deposit, the pit walls can be unstable. During active mining, pits are monitored and managed to ensure safe and stable conditions for the workers. After closure, that active oversight does not continue and dangerous conditions can develop without warning. Evidence of wall failure is visible in many closed pits. In addition, there is often a large vertical drop from the natural rim of the pit to the surface of the pit lake. Even if a small section of the pit could be contoured to provide easy entry, the remaining steep walls would still pose a hazard.

Due to the inherent long-term instability of pit walls I have described, access restriction through fencing or berms has long been considered the best means to provide for public safety. To permit safe public access would create an expectation that the pit lakes themselves are safe and ultimately create a liability to the State through our agency's permitting.

I recognize there have been some modifications proposed to the original bill as drafted which eliminates the term "safe." I think that is a great step in the right direction. It also limits those to a small number of pit lakes of very large size.

I also wanted to comment on section 2 of the proposed draft. While the statute, as currently drafted, does not explicitly include the criteria for granting an exception to the reclamation plan for open pits and rock faces, the regulations that we implement and were adopted pursuant to these statutes do. The criteria on which NDEP would base its decision, and currently does base its decisions, are relatively consistent with what is being proposed. In *Nevada Administrative Code* 519A.250, NDEP is required to "base its determination of the feasibility of reclaiming open pits and rock faces on the

technological and economic practicability of achieving a safe and stable condition suitable for a productive postmining land use. The Division shall consider, without limitation, the: (a) Topography of the site; (b) Geology and stability of the site; (c) Time required to complete reclamation; (d) Consumption of resources required to complete reclamation; (e) Potential adverse environmental impacts to the quality of the air and water associated with the activities for reclamation; and (f) Future access to mineral resources." As you have heard, in a number of those cases where we have granted exemptions, those criteria are evaluated.

Those requests for exemption that are made by NDEP and the evaluation whether or not to grant the exemption are part of a permitting process that we go through. Any permit that is issued, which would include the decision of an exemption from reclamation, is subject to a 30-day public comment period, and, if requested, a public hearing. Once the permit is issued, under current regulations, that permit may be appealed to the State Environmental Commission. There is already a process in place for addressing those concerns and for ensuring an appeals process should individuals feel our determination has been made incorrectly.

We provided a small fiscal note to this bill that is related to the initial drafting requiring that these requests for exemption be evaluated directly by the State Environmental Commission. The modifications being proposed may address that. We have not had an opportunity to look at the proposed amendment ([Exhibit I](#)) and we would like to have an opportunity to really evaluate it in detail.

**Chair Daly:**

Your agency is the one that would grant the exemptions. People come in, get the permit to do the mine, go through the Bureau of Land Management, and so on. We have laws in place that say you have to reclaim the mine. That does not mean you put it back exactly, but you have angles of repose, typical slopes, and various things to meet stability requirements. After they are done mining, they ask for exemptions, and you grant exemptions to reclaiming it based on the factors we see here and the others you were talking about.

**Colleen Cripps:**

The process you just described is not exactly correct. The reclamation plan is required prior to issuing a permit and would include the request for exemption. That is all evaluated prior to the beginning of mining.

**Chair Daly:**

So they start out with a mine that they plan on not reclaiming.

**Colleen Cripps:**

Again, those exemptions are only for pits and rock faces. They are not for the rest of the facility. The reclamation does have to occur; they have to get bonding and reclaim all the other areas of the mine site. It is just the open pits and rock faces that the exemptions can be requested for.

**Chair Daly:**

You were saying there are potential hazards. Is that because the mine is closed for a certain period of time and those rock faces degrade? I am not following. If those rock faces were there and there was active mining going on and they were not unsafe then, why are they unsafe now? Those guys have Mine Safety and Health Administration requirements to provide a safe work environment. How were they ever able to do anything with those unsafe conditions? There is a disconnect for me. I understand that you said we do not want a liability for the State, but I am not seeing how you connect those dots from an open, approved, active mining operation to now an unsafe condition for someone going into a pit lake.

**Colleen Cripps:**

When the mining is occurring, the company is actively working those faces and monitoring the pit itself. Once the operation is over and it is not actively being worked and monitored, the rock faces are steep and slough off. There are also potential rock falls. I assume you will not have people going fishing in hard hats. I think there is a potential for liability under these conditions. I am uncomfortable with NDEP being required to permit something as safe.

**Chair Daly:**

That word has been removed, so you might want to get with the sponsor. I am not trying to get into the whole thing that is not in the bill in front of us today, but some of those issues with granting exceptions and leaving this, we believe, are unsafe conditions. Earlier we heard in testimony that people are going there anyway. Maybe they do, at their own risk, and that is what the release of liability provisions that are to be added will state. The fact that we are leaving those mines in those conditions with the blessing going in causes me concern, but that is an argument for another day.

**Assemblyman Livermore:**

In the proposed amendment, it talks about how the operator may request NDEP to grant an exemption for the pit due to the presence or configuration of a pit lake, if any. Do you possess geographical documents that show the depth or structure of the lake?

**Colleen Cripps:**

Yes, we would have that information.

**Assemblyman Livermore:**

Do you provide that to local authorities? If emergency services were to go to rescue somebody, how would they access that?

**Colleen Cripps:**

That is not something we have discussed, but it is an interesting point.

**Assemblyman Livermore:**

If we make pit lakes more available, you would think local authorities should have some information about how deep the lake is, how steep the drop-off is, or something like that for rescue purposes.

**Colleen Cripps:**

I agree with you. That is something that needs to be considered.

**Chair Daly:**

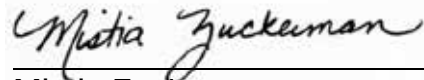
We will take testimony in neutral. Seeing none, we will close the hearing on Assembly Bill 346. We will open the microphones for public comment. Seeing none, the meeting is adjourned [at 2:45 p.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Recording Secretary

RESPECTFULLY SUBMITTED:



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Mistia Zuckerman  
Transcribing Secretary

APPROVED BY:

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Assemblyman Skip Daly, Chair

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

**EXHIBITS**

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

**Date:** April 4, 2013

**Time of Meeting:** 12:09 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 310	C	Assemblyman Grady	Testimony
A.B. 310	D	Truckee Canal	Paper
A.B. 310	E	Rusty Jardine	Letter
A.B. 310	F	Truckee-Carson Irrigation District	Fernley maps
A.B. 487	G	Assemblyman Ohrenschall	Testimony
A.B. 487	H	Legislative Committee to Study Deposits and Refunds on Recycled Products	Final Report
A.B. 346	I	Assemblyman Bobzien	Amendment
A.B. 346	J	John Hadder	Testimony