

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

**Seventy-Seventh Session
April 25, 2013**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Skip Daly at 1:28 p.m. on Thursday, April 25, 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. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman 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 Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Senator Justin C. Jones, Clark County Senatorial District No. 9
Assemblyman James Oscarson, Assembly District No. 36
Senator Mark Manendo, Clark County Senatorial District No. 21

STAFF MEMBERS PRESENT:

Amelie Welden, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Cheryl Williams, Recording Secretary
Ashlynd Baker, Committee Assistant

OTHERS PRESENT:

Gabriella Jones, Private Citizen, Las Vegas, Nevada
Max R. Heeman, Private Citizen, Blue Diamond, Nevada
Tom Warden, Senior Vice President, Howard Hughes Corporation
Aaron Barborka, Intern and Guide, Escape Adventures
Matthew Tuma, State Director, Nevada Chapter, Nature Conservancy
Kyle Davis, representing Nevada Conservation League
Chris Giunchigliani, Commissioner, District E, Clark County Board of Commissioners
Joe Johnson, representing Toiyabe Chapter of the Sierra Club
Margaret Flint, representing Nevada Humane Society; Canine Rehabilitation Center and Sanctuary
Christine Schwamberger, representing Nevada Political Action for Animals; Compassion Charity for Animals
Chuck Callaway, representing Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Kristy Knight, Game Warden Captain, Division of Law Enforcement, Department of Wildlife
Fred Voltz, Private Citizen, Carson City, Nevada

Chair Daly:

I want to welcome our newest member, sworn in yesterday, Assemblyman Tyrone Thompson.

Senate Bill 159 (1st Reprint): Declares the Legislature's support for a land exchange near the Red Rock Canyon National Conservation Area. (BDR S-552)

Senator Justin C. Jones, Clark County Senatorial District No. 9:

I am here to ask for your support for Senate Bill 159 (1st Reprint). Many of the Committee members are familiar with Red Rock Canyon, an area that lies just outside the Las Vegas valley. [Read from prepared testimony ([Exhibit C](#)).] Every year, more than 1 million visitors tour the Red Rock National Conservation Area (NCA) by car, bus, and bike, or on foot. Red Rock Canyon boasts miles of trails, petroglyphs, and at least 24 critically endangered species, including the Blue Diamond cholla. I am fortunate to live within ten minutes of Red Rock Canyon. When I am not here in Carson City, I enjoy cycling along the Red Rock Scenic Byway or hiking the Discovery Trail with my kids.

In 2001, a developer purchased lands adjacent to the Red Rock NCA from the former owner of a gypsum mine. The developer then announced plans to build a residential development with more than 5,000 homes on top of Blue Diamond Hill, within view of Red Rock NCA and Spring Mountain Ranch State Park. Over the past year, the developer has been extracting gypsum and transporting it in construction vehicles on the Red Rock Scenic Byway, where hundreds of cyclists ride each day.

Recognizing the importance of these sensitive lands, our federal delegation pursued a purchase or swap of these lands under the Southern Nevada Public Lands Management Act (SNPLMA). However, the developer advised that it had no interest in a purchase or land swap at the time. In 2003, the Legislature passed Senate Bill No. 358 of the 72nd Session in an attempt to limit development of lands adjacent to Red Rock Canyon. Clark County followed suit with a similar limiting ordinance.

Thereafter, an expensive and lengthy legal battle ensued between the developer, the county, and state. The county eventually settled and the state continued its battle in the courts. That battle, which spanned many years and multiple courts, culminated in January 2013 in the Nevada Supreme Court decision holding that S.B. No. 358 of the 72nd Session was unconstitutional.

The federal district court and Nevada Supreme Court provided some guidance on how the Legislature might enact new legislation which would pass constitutional muster. When I originally requested this legislation in November 2012, the idea was to fix the constitutional issues raised with regard to S.B. No. 358 of the 72nd Session. Since then, there has been a significant development that I hope will provide an avenue for permanent protection of these important lands near Red Rock Canyon.

Recently, Clark County Commissioner Susan Brager, who has worked on protecting Red Rock for some time, announced that she had convinced the

developer to seek a land swap so the adjacent lands could forever be protected. Thereafter, the Clark County Commission adopted a resolution with near unanimous support calling on the Bureau of Land Management (BLM) to move forward with a swap of the adjacent lands in order to afford them permanent protection. After discussions with the commissioners, Blue Diamond residents, conservationists, and others, have concluded that the prudent course is to focus on pressing BLM to move forward with a swap for land of comparable present value.

After more than a decade of fighting, it is time for all parties to lay down their arms to work together toward permanent protection for lands surrounding Red Rock. I would ask this Committee for speedy passage of S.B. 159 (R1) so that we can express our strong support for preservation of these sensitive lands surrounding Red Rock.

Chair Daly:

Could you please introduce the guest with you today?

Senator Justin Jones:

My daughter Gabriella has some remarks she would like to make.

Gabriella Jones, Private Citizen, Las Vegas, Nevada:

I am a third grader at Blue Diamond Elementary School, which is very close to Red Rock. We even have wild burros that come over to our playground. [Read from prepared testimony ([Exhibit D](#)).] I see a lot of big construction trucks every day that go past my school. My dad told me that they want to build a lot of houses near Red Rock. I think Red Rock should be safe for kids like me to enjoy. One day, if I have kids of my own, I want them to enjoy it too. [Continued to read from prepared testimony ([Exhibit D](#)).]

Assemblyman James Oscarson, Assembly District No. 36:

The Red Rock and Blue Diamond areas are in Assembly District No. 36. If there is one thing that was clear throughout my travels there last year, it was that these people are very protective of their area and way of life. They moved there for a reason. I respect that and appreciate it. I echo the comments of Senator Jones and appreciate all the work that has gone into this. There have been significant revisions. Everybody now has a common ground.

Assemblyman Ellison:

If mineral rights come into play in this area, what kind of swap could be made that could compensate for the lost revenues?

Senator Jones:

That process is left up to the BLM. The original purchase price of the land was \$54 million 11 years ago. The current Clark County assessed value is \$6 million. I appreciate your concern in regard to the minerals. It is a different aspect of the property value. It is something that is going to have to be worked out with the BLM through their process through SNPLMA. I am fortunate to have an expert on this named Max Heeman. He has lived in Blue Diamond for many years and is very familiar with these issues.

Max R. Heeman, Private Citizen, Blue Diamond, Nevada:

I am here in a volunteer capacity as primary researcher and writer for Save Red Rock Canyon, which is a citizens' ad hoc committee. It was formed in 2002 to question the scope of the massive proposed development for Blue Diamond Hill. [Continued to read from prepared testimony ([Exhibit E](#)).]

The map on slide A ([Exhibit E](#)) is in southwestern Las Vegas. The area in blue represents the privately owned land. It is abutted on the north, west, and south by the Red Rock NCA. Except for a small portion in the upper left, the area in blue has been a gypsum mine for decades but was purchased by a developer in 2002 who did not have mining in mind.

Save Red Rock Canyon has never denied the ability to develop the land but recognizes that the owners have the right to develop one house every two acres. Every plan that has been submitted has been much more grand and complicated than that. In this land exchange process, there will be an appraisal performed by BLM. We trust that the appraisal process will be as transparent as possible. As Senator Jones mentioned, we strive for a fair land exchange when and if it occurs. The asking price of \$54 million is in the bid. With Nevada real estate going through the turmoil that it has since 2002, we are not certain what it is valued at today. [Continued to read from prepared testimony ([Exhibit E](#)).]

On slide B ([Exhibit E](#)), the green is the subject area. The area in reddish tint to the north, west, and south is the Red Rock NCA. On the east side is the face of Blue Diamond Hill, which you see when you look to the west from Las Vegas.

About 11 years ago, just less than 2,500 acres were purchased by a developer who had grand dreams. He went through the major project process in Clark County. He had purchased rural, or "R-U" zoning, which is one house every two acres. Through these 11 years, that zoning has not changed because the process never came close to completion.

This image titled slide C ([Exhibit E](#)) was drawn by political cartoonist Mike Smith of the *Las Vegas Sun* in 2003. Save Red Rock Canyon uses this cartoon with his express permission. It illustrates in a comical way what we may have been looking at if the development went through more smoothly. Our town, Blue Diamond, would be renamed Red Rock Estates and we would be overlooking the Red Rock Strip Club.

This vote represents an important step in the process of ending a decade of political battles and helping ensure the lands atop Blue Diamond Hill are eventually secured with the conservation area. We ask approval of this bill and its eventual forwarding to our federal legislature so that they may move with all deliberate speed to protect this land forever.

Assemblyman Paul Anderson:

I am very familiar with the area. I spent a lot of time there riding bikes on the trails, hiking, and spending time with my family. I am in support of the bill. We have Calico Basin and other areas of development up there. As soon as somebody moves in, they do not want development to happen beyond them. I understand that this is an area we want to conserve. What do we say to folks who are in other situations who may like the Las Vegas Wash just the same as they like Red Rock and do not want any development beyond their backyard?

Senator Jones:

The idea was not that Mr. Rhodes could not develop the land. He bought the land with the restriction of one house per two acres and then sought to get zoning variances. For the citizens of Red Rock, Rhodes Ranch Community, and Mountain's Edge, the idea was not that there should not be development there, it was to live with the restrictions.

Assemblyman Paul Anderson:

Why are we requiring state legislation to get BLM to move?

Senator Jones:

It is not required. It was not required for the county commission to weigh in on it, either. However, it is an important step to ensure that we get the attention of BLM and our congressional leaders on this issue. I have been in contact with Congresswoman Titus and Senator Reid, and it is on their radar. Along with many others, I have been in contact with BLM. It is one more step to get the message across that this is important.

Assemblyman Thompson:

If the land swap is successful, what will the community want as far as additional amenities, such as trails, in the future?

Senator Jones:

We are thinking about that right now. Mr. Warden has been working on a trail system that will go around the entire valley. It includes trails that are in and around these exact parcels. It is definitely on our minds. There have been preliminary discussions with how to deal with reclaimed mine lands. There are issues with that land that make it difficult to use it as a conservancy.

Max Heeman:

I am present chairman of the Red Rocks Citizens Advisory Council. We have had preliminary discussions in this regard. A lot of this property is available for uses like camping. There are old gypsum mine lands there. Decades ago they used to tunnel into the mountain. As of 1950, they started strip mining off of the top. There are some tunnels. It is not pristine property, but it is reclaimable. It has a magnificent view. When we can move forward to have the land exchanged, these are preliminary conversations.

Assemblyman Oscarson:

Most of the people who have been to Red Rock Canyon know that it is a great area for bicyclists and hikers. It is for people who want to get away from the urban areas and go into a place that is still beautiful. I make a point of driving through Red Rock when I go into Las Vegas because it is a great opportunity to relax and refresh. Large additional developments would really take away from that and make a huge impact on what has been established there. It is vital to protect it for the constituents and the folks who live there.

Chair Daly:

Seeing no other questions from the Committee, we will open the microphones to people in support.

Tom Warden, Senior Vice President, Howard Hughes Corporation:

Our company is developing Summerlin, which is the master plan directly adjacent to Red Rock Canyon. We have a long history of preservation actions and stewardship of the environment along those lines. The Howard Hughes Corporation had land exchange in 1988 when we started building Summerlin. We created a buffer zone and a gateway to Red Rock Canyon by giving up 5,000 acres of beautiful land that went into the canyon. With that as a background, I am here today to speak on behalf of three nonprofit organizations. The Outside Las Vegas Foundation is building the Vegas Valley Rim Trail all the way around the valley that would tie in with potential trails up on this particular ridge eventually. Also, the Nature Conservancy of Nevada and the Red Rock Canyon Interpretive Association provide all kinds of educational programs inside Red Rock Canyon. We hope that you will vote in the affirmative.

Aaron Barborka, Intern and Guide, Escape Adventures:

We manage daily tours through the Red Rock area for visitors to southern Nevada. It is pretty safe to ride a bike with the road conditions right now, but with increased traffic, the safety precautions are getting to be more difficult to manage. From a business standpoint, saving Red Rock Canyon would really support our local business here in Las Vegas and encourage tourism to the area. We encourage your support.

Matthew Tuma, State Director, Nevada Chapter, Nature Conservancy:

I am here to voice my support for S.B. 159 (R1) and thank Senator Jones for his leadership. The Nature Conservancy has a long history of working on protecting Red Rock and its surrounding areas. We helped negotiate the 5,000-acre land transfer from the Howard Hughes Corporation to the BLM to create that buffer zone from where the development is to where the visitor center is now. We have done extensive work to protect Red Rock. One of the species mentioned was the Blue Diamond cholla, which is a very threatened species and exists in very few places. It is not just about the Blue Diamond cholla; it is about the entire cactus garden. At the top of Blue Diamond Hill there are at least 15 documented cactus species that represent a unique concentration of biodiversity in the entire Mojave Desert.

For the record, the Nature Conservancy is in support.

Kyle Davis, representing Nevada Conservation League:

We are in support of this resolution and are hopeful that this can be a vehicle where we can protect the area around Red Rock and have it maintain the character that it has now.

Chair Daly:

Seeing no questions, we will move to neutral testimony.

Chris Giunchigliani, Commissioner, District E, Clark County Board of Commissioners:

I am here as an individual today. The original bill was an absolute gem and I commend Senator Jones for that legislation.

The language before you now is a resolution directed to the county to call on BLM to do a potential land swap or purchase. It was voted on 6 to 1 and I was the single vote in opposition, even though I strongly and passionately believe that we need to protect Red Rock.

My vote goes back to a political issue that arose three years ago, when the original settlement agreement came before the county commission. It was an

extremely emotional day. We had over 350 people in the audience against the settlement when Commissioner Reid, Commissioner Weekly, and I voted to not settle the agreement with the Rhodes developer. Then it sat for a long time.

Unfortunately, the state just lost their case because they were arguing back to 2003, when I served here along with Senator Titus. We wrote the legislation to protect Red Rock and the adjacent conservation camp areas and that was the genesis. Part of that legislation was struck down, which gave local government the ability to properly protect those areas from zoning and density changes.

I voted against the resolution because I fundamentally do not believe in rewarding bad behavior. Maybe it is the schoolteacher in me, but when someone buys land with knowledge of its zoning, they should not expect the public sector to give up its public land to give them something they can build on. They have no road to it and they have no water, so it just bothers me that down the road we would give them public land or do a land swap.

That aside, that is what the commission voted for and that is fine. That is what the legislation here says. It at least gives us another alternative.

But I am here to ask you to add language from the original bill back in so you have both components as tools for local government to properly protect Red Rock and the adjacent areas. If you go back to the original bill, it specifically says that the intent was to take language from the decision on the gypsum resources that was struck down by the Nevada Supreme Court in the state's law and at least fix that clarification. I still think that should happen no matter what. Then, if BLM chooses, they can decide at that point. I would like you to add the language back in so that we have both protections.

There is no guarantee that they are going to move. I had people check with BLM last week and they said they have no money. How long do we sit here hoping and praying that we can protect this jewel? It is just like Lake Tahoe, Wheeler Peak, the Ruby Mountains, and Mount Charleston. I am hoping that you look at the original language and add it to this language. That gives us both bites of the apple if something does not occur.

I went to the town hall. It was a very emotional time to hear from people. For the hikers, bicyclists, and everyone else there, we have an opportunity to fix it, to at least legally fix what the Supreme Court case struck down.

Chair Daly:

Seeing no other neutral testimony, I will open the microphones to opposition.
[There was none.]

Senator Jones:

I spoke with Commissioner Giunchigliani earlier today about her suggestions. I am happy to continue to have those discussions. If we were to go down that path, we would probably need to have another hearing because there would be substantial opposition from certain factors, including Clark County. That was part of the reasoning that went into this compromise measure that I presented before you here today.

Chair Daly:

I appreciate that and hope you come and talk to me about it. I would like to learn a little more. Compromises are delicately struck. I know you might suggest another hearing but we are not having one. Are there any questions from the Committee? Seeing none, we will close the hearing on S.B. 159 (R1). We will move to Senate Joint Resolution 9.

Senate Joint Resolution 9: Urges the Director of the Bureau of Land Management to expedite the process for approving special recreation permits for certain uses of federal public lands in Nevada. (BDR R-1008)

Senator Justin C. Jones, Clark County Senatorial District No. 9:

Senate Joint Resolution 9 urges the director of the Bureau of Land Management (BLM) to expedite the process for approving special recreation permits. As you know, Nevada has approximately 85 percent of its land base under federal management, 67 percent of which is managed by the BLM. Nevada's opportunities for outdoor recreation are boundless and the economic benefits are significant. As the resolution notes, outdoor recreation in Nevada generates nearly \$15 billion in annual consumer spending, \$4.8 billion in wages and salaries, and \$1 billion in state and local tax revenue.

Outdoor recreation stands as a major theme in statewide and regional tourism-related promotions and is a significant draw for out-of-state visitors. In recent years, the Las Vegas Marathon went from a small event starting out in Jean, Nevada to a world-class, Rock 'n' Roll marathon drawing more than 40,000 participants. Henderson attracted the triathlon world championships for a long-term commitment. National companies are looking to franchise cycling, triathlon, running, and other events in Nevada including Ragnar and Spartan races. I have had the opportunity to participate in several of these events including the Tough Mudder race two weeks ago in Beatty.

Many of the events are on public lands. Special recreation permits, or SRPs, are issued by BLM to authorize specified and time-restricted recreational uses of the public lands. The BLM issues SRPs to manage visitor use, protect natural and cultural resources, achieve the goals and objectives of the BLM's land use plan's

field office recreation program, and authorize specific types of recreational activities. There are five types of recreational activities for which SRPs are required: commercial use, competitive use, vending, special recreational activity use, and organized group activities.

While I appreciate the thoroughness by which BLM analyzes and issues SRPs, the slow processing of these permits negatively impacts outdoor recreation businesses in Nevada. These businesses cannot operate efficiently, effectively, and profitably if they must wait an unreasonable amount of time to secure an SRP. Currently, an application must be submitted to the local BLM office 180 days before the intended event or use takes place. This resolution expresses the Nevada Legislature's desire to see BLM expedite the process of approving special recreation permits. I believe doing so will create additional jobs and generate additional state and local tax revenue for Nevada, particularly for outdoor recreation programs and events. The BLM in Nevada does great work maintaining our resources, promoting multiple use, and protecting our environment. Nonetheless, extensive delays in the processing of SRPs places too much risk on outdoor recreation businesses.

In addition to expediting SRP approval, the resolution urges the director of the BLM to amend the Code of Federal Regulations to expedite this approval process and ask Nevada's congressional delegation to use its best efforts to do the same. Outdoor recreation goes beyond hiking, mountain biking, and horseback riding. It is big business. A robust, efficient, and timely BLM approval process for special recreation permits is critical to Nevada's economy. I urge your support of S.J.R. 9.

Assemblyman Thompson:

You said that it takes 180 days for processing and approval. Do you have a specific time frame that you want to shorten it to?

Senator Jones:

Ninety days or sixty days would be great. It is a resource issue. Every day, we all deal with the limited resources that we have. The federal government has similar issues. Any reduction would be a benefit to recreational businesses here in Nevada and throughout the West. I have had discussions with our congressional representatives on this topic and I think it would be a good opportunity for Nevada to express our concerns with this issue as well as our interest in ensuring that the vast swaths of lands managed by the BLM in Nevada are used as much as possible for recreational uses that will benefit our state.

Assemblyman Thompson:

Do you have any data from the last year or two? You are saying that people who are interested have to apply 180 days in advance. Have you been able to study how long it usually takes for the approval?

Senator Jones:

It depends on the event itself and the history of the permit requester. This came to my attention as a result of a mountain bike touring company that sought to start doing mountain bike tours out at Gold Butte, which is under consideration right now by the federal government for designation as a national recreation area. The head of the company beat his head against the wall trying to get operations going in Gold Butte despite the fact that they have a 20-year history of conservation-friendly activities on BLM lands. There are a lot of opportunities being missed as a result of the slow process.

Chair Daly:

Most of the events you are talking about regarding recreation and competitive use are temporary, similar to Burning Man. They may have an impact but there is mitigation. You mentioned Tough Mudder, which I was not familiar with but I looked it up. They used to have the Frontier 400. What types of events are you talking about?

Senator Jones:

If motorized vehicles were to do an event on BLM land, they would have to go through a similar permitting process. If there is a greater detriment to the environment as a result of motorized vehicles, then there are more substantial mitigation efforts involved in the SRP process.

Chair Daly:

Two years ago, when I was on the Assembly Committee on Legislative Operations and Elections, we heard a resolution [Senate Joint Resolution No. 8 of the 76th Session] to tell the BLM and the U.S. Forest Service to hurry up and do mining permitting. I voted against it because these are public lands and there is a process in there to make sure they are preserved. All of the issues that affect the lands need to be addressed. Of course, having mining operations tie up land for 20 to 30 years is different from these events, but the processes are there for a purpose. The impacts need to be known and mitigated. I am not going to say expedite this but do not expedite that. I will let the Committee do their thing even though I may not support it.

Senator Jones:

I am not suggesting that every single event should have an expedited process. Say you are trying to mountain bike at Gold Butte and you are told it will be

180 days. When you own an operation that has been around for 15 years and have shown that you know what you are doing, there could be an expedited process for that. If you are brand new or you are going to have a substantial impact on the environment, it would mean a different process. I agree with you a hundred percent that we should not have an expedited process for every event.

Chair Daly:

I think I understand. This is a little different from the mining, but I want to be consistent. Seeing no questions from the Committee, we will open the microphones to testimony in support of S.J.R. 9.

Aaron Barborka, Intern and Guide, Escape Adventures:

We have been in operation since 1992 providing tours, mountain biking, road biking, hiking, and multisport tours in Nevada and surrounding states. In 2006, we became the world's first carbon-neutral outfitter. Today, many of our vans are powered on recycled and renewable vegetable oil.

Many of our tours are operated on public lands. Each year in Las Vegas, more than 3,000 visitors are taken on tours through Red Rock. Other destinations include Lake Tahoe and Death Valley. We create many jobs for Nevadans and generate tax revenue for local and state governments.

We recently sought to obtain permits from BLM for land use in Gold Butte, Nevada's slice of the Grand Canyon. Because of the slow processing, we have been unable to obtain these permits despite our conservation-minded history. If BLM were to speed up the process, we would be better able to support the tourist industry. This would create more jobs and generate more tax revenue. With that, we encourage your support for S.J.R. 9. These events are not permanent. They are usually three- or four-day tours. We are very conscious of our footprint in these areas.

Chair Daly:

Seeing no one else who wants to testify in support, we will move to opposition for S.J.R. 9. Seeing no opposition, we will take testimony in neutral.

Joe Johnson, representing Toiyabe Chapter of the Sierra Club:

I had expressed concern in the Senate side about expediting applications in general. We are not opposed to timely processing of applications but there are categories where the impact might be much larger. I do not believe the wording exactly differentiates between the scale and the type of activity. I have not processed any changes, but the concern is still there. It may not be what we conceive as small-scale, environmentally friendly events. On the Senate side,

we had representatives testify in favor of this. I simply do not know if that scale is covered or if they are separate provisions. I stand in neutral but express concern that the wording is there.

Chair Daly:

I echo some of your concerns as well. The problem is that you cannot specify and that is really the issue. You either urge them to timely process these things or you do not. Is there any other testimony in neutral? Seeing none, we will close the hearing on S.J.R. 9. We will move to Senate Bill 73.

Senate Bill 73: Revises provisions relating to cruelty to animals. (BDR 50-55)

Senator Mark Manendo, Clark County Senatorial District No. 21:

Senator Breeden sponsored Senate Bill No. 223 of the 76th Session that went through both houses. It had to do with the abuse and neglect of animals and made it a felony.

We all deal with constituents who call us about public response issues and we guide them to the city or the county. When people report on their neighbor's junk car, they can do it with confidentiality so they are not retaliated against. When we amended S.B. No. 223 of the 76th Session, we wanted the person coming forward to have confidentiality. The original bill did not have that. Basically, Senate Bill 73 is a clean-up bill. The application of the provision has proven difficult because the report is helpful in determining the nature and scope of the alleged occurrence of animal cruelty. Senate Bill 73 protects the identity of the person making the report, which better matches our intent of S.B. No. 223 of the 76th Session.

The report will still be able to be viewed for purposes of law enforcement. It also clears it up for the media. Many times the media wants to talk about these particular issues but if the report is confidential, they would have to rely on somebody else coming forward to notify them. For instance, the media did not know about the cats that were drowned in Las Vegas until people came forward with that case.

Chair Daly:

We will go ahead and take testimony.

Margaret Flint, representing Nevada Humane Society; Canine Rehabilitation Center and Sanctuary:

Beverlee McGrath representing the American Society for the Prevention of Cruelty to Animals would normally be here. She asked me to speak on her behalf and submitted a letter in support ([Exhibit F](#)).

There were a couple of cruelty issues that arose in Washoe County. The Washoe County District Attorney's Office interpreted this piece of legislation in a way that kept the entire report confidential. It made it very difficult for animal organizations to be able to solicit funds, which is often how we are able to treat the animal victims when they come in from abuse cases. We were unable to obtain any of this information so that we could properly go in and investigate. This legislation clears up an important piece. It is my understanding that it is strictly a Washoe County district attorney's interpretation. None of the other counties had any issues.

Christine Schwamberger, representing Nevada Political Action for Animals; Compassion Charity for Animals:

I represent Nevada Political Action for Animals and Compassion Charity for Animals, both groups from Las Vegas. This bill expressly protects the identity of the reporting party but allows for the release of the name of the reporting party for the purposes of criminal investigations and prosecutions. That is all the bill does. It passed both the Senate Committee on Natural Resources and the Senate floor unanimously.

Assemblyman Carrillo:

The Legislative Counsel's Digest says that the data in the report is confidential with certain exceptions. What would those exceptions be?

Senator Manendo:

The exception to this protection of identity is for the purpose of criminal investigation or prosecution.

Assemblyman Hansen:

As I read this, the lead-in concerns me because there is a due process factor. If somebody accuses somebody else of abusing an animal, if they do not have a day in court, somebody could be labeled as having abused an animal even though they may not have done so. I am concerned that the language on page 2, line 9, "any report made pursuant to subsection 1 is confidential," would be removed. It should remain confidential to protect potentially innocent people until they have actually been proven guilty in a court of law.

Christine Schwamberger:

If there were a prosecution, they would need a witness. That witness would then need to be identified. The confidentiality provisions would operate in cases of animal neglect. If a neighbor saw another neighbor's dog neglected, they could report that without being identified. At the point that any prosecution took place, there could not be a prosecution without that witness.

Assemblyman Hansen:

I understand that. However, it sounds like the accused individual is also trying to be protected by keeping it confidential. If you remove this section, somebody who is accused could be subjected to a media circus. Right now, the way the law is set up, you have a reasonable amount of protection. That information would be released after you are properly accused and face prosecution. Just like any other crime, when you are accused it becomes public, but this is just the report. This is before the investigation has been concluded and the district attorney goes forward with the prosecution.

Christine Schwamberger:

This bill only provides for the release of the name of the reporting party for purposes of the prosecution or investigation, not the accused. In the same instance, if there was a prosecution, all of that becomes public.

Chair Daly:

I understand what Assemblyman Hansen is talking about and we will get with Legal. This is just a clean-up bill to clarify the original intent. It is my understanding that when someone makes a complaint because your dog is barking or there is a code violation, all of those are held confidential. Say a cop knocks on your door to say that there is a complaint because your dog is barking. You say, "Oh yeah, who was it?" They never tell you. The fact is, you have been accused and it is just a report. The police do not advertise that. Any time you make a report, it is theoretically open to the public. If they investigate and do not find anything, nothing happens. If they find something, then you go forward until you clear the charges. People get accusations made against them all of the time. Assemblyman Hansen has a valid point. What is the normal process? Those reports are kept confidential until there is a charge. The enforcement agency is not putting it in the paper that they have an allegation from somebody.

Randy Stephenson, Committee Counsel:

Mr. Hansen, I believe your concern is that by removing the confidentiality provisions for the report, somebody could be accused of a crime in the form of committing cruelty to animals and dragged through the papers and it might be a due process issue. It would not be a due process issue at all. It would be the same as any other person who may be accused of a crime. The prosecutor's office would have to follow all the normal constitutional provisions and provisions in the *Nevada Revised Statutes* (NRS) otherwise applicable to you as an accused defendant. If there were other provisions that would make your identity confidential, then they would apply. That should not involve due process. This bill simply says these reports of a person who may or may not have committed a crime are not to be treated any differently than any other

person who may or may not have committed a crime. I think the purpose of subsection 2 of Section 1 is to get rid of that specific confidentiality provision.

Chair Daly:

We will try to get more information. I think what Randy is saying is right. If you are accused, they do not put it in the paper until you have actually been charged. I do not think it is normal to say these reports are confidential. The name of the person reporting it is kept confidential in many other circumstances, so that is not unusual and the language makes it clearer as the legislation's original intent.

Assemblyman Livermore:

Most municipalities have some form of ordinance dealing with citizen complaints. Would this fit in the group? How far does this go?

Senator Manendo:

This is just dealing with NRS 574.100 for cruelty to animals. It does not deal with the barking dog. If I complained about my neighbor having a barking dog, I would call code enforcement. I do not think that applies to this section.

Assemblyman Livermore:

Most calls originate from somebody who thinks that something is wrong. Typically, they contact the local government. I doubt many people would understand how to find the definition of what this affects in what you have identified. I just want to make sure that we are not undermining or contributing to more local government workloads.

Senator Manendo:

If you file a complaint with code enforcement in Clark County, you do not even need to identify yourself. There is some type of confidentiality in there. We drafted the amendment to this bill because it did not come out the way we wanted it to. We knew that people would complain about certain things. If they want to come forward to say that their neighbor is torturing the dog next door, they would be protected. The neighbor cannot say, "I know Mr. Livermore squealed on me and I am going to get him tomorrow."

Assemblyman Livermore:

Ten to fifteen years ago, somebody in Carson City supposedly was accused of torturing animals and burning them in the backyard. Everything came unglued after that. The local government came out and excavated the whole property. This is the extent of what a complaint goes to even though there was never any evidence found. Once your name and picture appear on the front page of the paper, it does not matter what happens. You can never shake that information.

The expense the local sheriff's office went through to verify that was extensive. I want to make sure that the confidentiality law is not contributing to something there. It may never happen again.

Assemblyman Carrillo:

Were there any issues when S.B. No. 223 of the 76th Session passed? Of course, we do not know how many incidents were reported. Was there anything else to change this to make sure this was put in place or was it just an oversight from S.B. No. 223 of the 76th Session?

Senator Manendo:

Are you taking about since this has passed?

Assemblyman Carrillo:

Was this an oversight that was not put in there or did certain events cause this to happen?

Senator Manendo:

The way the bill was written, it was really our intent but the bill did not come out that way. We thought we were good. We know Legal does a wonderful job. We even got an opinion from the Legislative Counsel Bureau. It was only that Washoe County had an issue with the language so we decided to bring it back, clear it up, and get everybody on the same page.

Chair Daly:

Seeing no other questions, I will just say that I think the language is much clearer. We attempted to do it the first time. It may be a little ambiguous. In some of the issues that Assemblyman Livermore was talking about, if you make a false report that is purely for harassment, all of those other things are still against the law. People make bona fide reports. We all have a duty to report child abuse or elder neglect. If you make a false claim on that, you are making yourself liable. If it is an actual complaint, they want people to report it and the police will investigate it. If there is something there, they will find it.

We will open the microphones for testimony in support of S.B. 73.

Chuck Callaway, representing Las Vegas Metropolitan Police Department:

We are here in support of S.B. 73. As stated by Senator Manendo, in the bill from last session, S.B. No. 223 of the 76th Session, the intent was to protect the person who reports the crime from retaliation, not to protect a potential suspect in the crime. I think this language makes that very clear.

Chair Daly:

What is the procedure when you get a complaint?

Chuck Callaway:

If we were to receive a call and an officer went out to the scene, if they cannot determine that a crime occurred, the probability is that no report will be made. There is a possibility that an officer's report might be done in some cases just to document a certain situation if the officer feels it needs to be documented.

If the officer believes that there is probable cause that a crime has occurred, a police report will be done and submitted through the detective bureau and then through the prosecutor's office to determine if charges will be filed against the suspect if an arrest is not warranted at the scene. If the case is an open investigation, we typically do not release that information to the public. Once charges are filed, most police reports are public record.

The news media has the ability to do a public records request for those reports and the information contained within them. There are some laws, such as those regarding sexual assault, where the victims are protected. In addition, information on juvenile suspects or victims is protected. We redact that information when we release the report. In this case, it would be no different. The person who filed the report or the witness to the crime would have their information redacted when the rest of the report is released.

Chair Daly:

Could you speak to what happens if someone makes a false report?

Chuck Callaway:

It is against the law to file a false police report. It is a misdemeanor. If the person were to actually stick to the story and the officer took a report and later it was found that the witness was maliciously attempting to falsely accuse, charges could be brought against that witness. Of course, if there is a pattern of harassment, a report could be filed for harassment against that person.

Eric Spratley, Lieutenant, Washoe County Sheriff's Office:

Washoe County Regional Animal Services is the consolidated animal control and service agency for all of Washoe County, including the Cities of Reno and Sparks. We support this clean-up language to the NRS and to S.B. 73. Everything is the same as stated by Las Vegas Metropolitan Police Department.

Chair Daly:

This bill will protect the person filing the complaint and then the report and all of that is standard operating procedure with a lot of history behind it. Do we have

any further testimony in support? [There was none.] Do we have any testimony in opposition to S.B. 73? [There was none.] Do we have any testimony in neutral for S.B. 73? Seeing none, we will close the hearing on S.B. 73. We will move to Senate Bill 11.

Senate Bill 11: Prohibits the possession in Nevada of wildlife that was acquired, hunted, taken or transported in violation of a law or regulation of another state or country. (BDR 45-347)

Kristy Knight, Game Warden Captain, Division of Law Enforcement, Department of Wildlife:

For us to go through anything with the Lacey Act, which enacted criminal penalties for the illegal trade of wildlife and plants, we have to go through the U.S. Fish and Wildlife Service (USFWS) and have a USFWS agent with us. The problem is that there are only two USFWS agents in Nevada. Additionally, they are now more interested in the Endangered Species Act than the poaching violations that are going on. Poaching is not only a problem in Nevada but in all of North America and poachers do not know boundaries. [Continued to read from prepared testimony ([Exhibit G](#)).]

Assemblywoman Cohen:

The wording in section 1, subsection 2 says "'wildlife' has the meaning ascribed to the term in the applicable law or regulation of the state or country of its origin." If we do not define it as wildlife here, are we saying that an animal poached in another area may be considered wildlife?

Kristy Knight:

If the state where they take it has it defined as wildlife, and they bring it to Nevada, we can still prosecute through them because it is considered a wild or game animal there.

Assemblywoman Cohen:

What if it is wildlife here and not there? What if something is poached in California that is not considered wildlife there but is considered wildlife here? Is it still applicable?

Kristy Knight:

If it is poached in California and it is not considered wildlife, it is determined in their law what that animal is classified as. It depends on how that state classifies the animal.

Chair Daly:

For instance, there is a moose population in Montana. If someone poached moose and brought it here, that would be one.

Assemblyman Wheeler:

The bill brings birds to mind for me. Parrots come from other countries where it is legal to take them but it is illegal to bring them here. What do you do in that case?

Kristy Knight:

That is when the federal Lacey Act would take more precedence. Ours is more of a state issue than a federal issue. If it is legal to take it in the country but it is illegal to bring into the United States, it is a federal issue.

Assemblyman Wheeler:

Is this more like a law for possession of stolen property?

Kristy Knight:

Kind of. If it is illegal in that state, then it is illegal here. If it is legal there, it is legal here.

Assemblyman Paul Anderson:

Could you please explain the Lacey Act?

Kristy Knight:

The Lacey Act applies if an animal is taken unlawfully in another state of origin. If they do not have a game tag, if they just killed it, if they take parts that are not legal to take, and they bring them to another state, right now we cannot do anything about it. We cannot seize it and they can get rid of the evidence. The state where it was poached has to come here. If we had a state Lacey Act, we would be able to seize the property and continue the investigation.

Assemblyman Paul Anderson:

Is Lacey an acronym for something?

Kristy Knight:

The federal government came up with it.

Assemblyman Hansen:

Lacey was the name of the person that actually came up with the law. We have not had this law before. You indicated that in the absence of this law, we are going to become a haven for this kind of illegal activity. Is there any evidence that we have been a haven for the last century?

Kristy Knight:

Each year we have approximately 6 to 12 cases. As it is, we have to do all of the footwork and then the investigators from another state have to come in and we walk them through the entire process. We still have to be on the search team because they will not have enough people here for it. We have become a haven for them. It can be even higher than 6 to 12 a year. That is just what is turned in to us.

Assemblyman Hansen:

In most of those cases, you have to bring the federal government in anyway.

Kristy Knight:

We have big game animals that are brought into the state and the federal agency has no part of it. They are not doing much with the Lacey Act anymore. They are going more with the Endangered Species Act.

Chair Daly:

We will open the microphones to testimony in support of S.B. 11.

Fred Voltz, Private Citizen, Carson City, Nevada:

I believe this is a good first step and I commend the Department of Wildlife for doing something to help wildlife rather than trying to kill it for a change. This is very positive. Two things need to be modified to make it effective. First, the fine level of \$50 to \$500 is really not much of an incentive when some of the wild animals can bring in hundreds of dollars if they are sold on the market. My suggestion to you is to raise the fine threshold to a range of \$500 to \$1,000, still keeping it as a misdemeanor offense. With the handful of game wardens for the state at any given moment—there are just about eight or ten on duty to cover our huge state—it would seem prudent that any fines collected from this would go to expanded law enforcement through the Department of Wildlife so that the many laws and rules in effect could be enforced.

Assemblyman Wheeler:

What organization do you represent?

Fred Voltz:

I just represent myself. I am a member of the public who is concerned about wildlife and its future.

Chair Daly:

Is there any further testimony in support? Seeing none, is there anybody in opposition to S.B. 11? Seeing no one, is there anybody in neutral to S.B. 11? [There was no one.] As far as the penalties are concerned, those are standard

penalties that we have for similar violations already in state law. That is not what this bill is about. It is about getting enforcement under the Lacey Act. The penalties would be addressed in a different committee.

Kristy Knight:

You are correct. The penalties are set.

Chair Daly:

If I did my math correctly, it is 83,000 square miles per federal USFWS officer, if there are only two for the whole state.

Kristy Knight:

Correct. There is one in Reno and one in Las Vegas.

Chair Daly:

With that, we will close the hearing on S.B. 11 and open the hearing on Senate Bill 434.

Senate Bill 434: Revises provisions relating to vessels. (BDR 43-1002)

Kristy Knight, Game Warden Captain, Division of Law Enforcement, Department of Wildlife:

Senate Bill 434 amends *Nevada Revised Statutes* (NRS) Chapter 488 to mirror motor vehicle law. Specifically, it mirrors NRS 482.540. Most stolen boats are reported to county sheriffs or city police departments. [Continued to read from prepared testimony ([Exhibit H](#)).] It is a pretty simple bill.

Assemblyman Wheeler:

Do you know what the standard deductible on a boat accident is?

Kristy Knight:

No, I do not.

Assemblyman Wheeler:

I am just wondering about the \$2,000 on page 3, line 7 of the bill. I understand that it goes to the U.S. Coast Guard. Would a boat accident with a \$1,000 deductible need some kind of report to get their insurance?

Kristy Knight:

We can still do boat accident reports. We actually have mail-in reports. If they want an accident report, even if it is just a couple of dollars, we will do one. If there is no damage whatsoever, we can still do an accident report.

Assemblyman Ellison:

You are talking about compensation and the fine. First, we are not on the seas. How many times has property damage exceeded \$500 or \$2,000? Could you go back to page 2, line 7, where it says in excess of \$500 and you change it to \$2,000?

Kristy Knight:

It was changed because the U.S. Coast Guard does not require reporting of the accidents until they exceed \$2,000. We are getting in line with the Coast Guard. Also, if you just take off a rub rail it can cost \$500. The cost of repairs has changed. Anything will cause \$500 worth of damage in a boat accident now.

Assemblyman Ellison:

Under section 1, line 3, it says "In addition to any seizure authorized pursuant to NRS 488.910, any police officer, without a warrant, may seize and take possession of any vessel" Can you talk about that?

Kristy Knight:

Under NRS 488.910, an officer can seize if they have probable cause that a crime has been committed with the vessel itself. If the hull number has been disturbed or any serial numbers have been changed and we feel there is probable cause that there has been a crime, then we can seize it.

Assemblyman Ellison:

Do drugs or alcohol fall under that category also?

Kristy Knight:

No, it does not fall under NRS 488.910.

Assemblyman Hansen:

Are you currently required to get a warrant before you do all this?

Kristy Knight:

To do all of this as it is, no. If the identification number is obliterated or taken off, we can seize it now. The reason we went this way is that a lot of sheriffs' offices and police departments are the ones that get the stolen boats. It makes it easier for them to follow the law because it mirrors the Department of Motor Vehicles. That is the reason for the change.

Chair Daly:

You said this was similar for automobiles. I understand you have to have probable cause to pull someone over. Game wardens are a little different.

You check on the vehicles and have them show you their license. The standards are different. A cop cannot just pull me over down the street and check to see if I have a driver's license, but you do that routinely with hunters and hunting licenses. Please bring me the corresponding language for automobiles.

Boats are required to have their identification number on the boat in the same way a car has a license plate. But if you do not have a license plate on your car and they pull you over, there has to be some other probable cause before they can seize your vehicle. The way I read this, if you do not have those numbers on your boat, we can seize your boat. That is where I am having this disconnect. I do not know if it is exactly parallel. I know you are category I peace officers and can do all of this stuff, but I have concerns over this language. I need to know exactly how it is going to work.

Kristy Knight:

We would not seize simply because registration numbers were not there. They have a hull number and they are not the easiest things to see. If there was no registration or there was a suspicious registration, then we would investigate and look at the hull number. That is when things would come about for seizure.

Chair Daly:

I want to talk to you a little more about this and understand it better. They have to have some probable cause to pull me over. They cannot just randomly check to see if I have insurance. Apparently, that is different in your normal course of duty.

Kristy Knight:

We usually do not pull people over just to pull them over. If their registration is missing then we pull them over. If they are fishing, we check their fishing license and the registration number is there. We do not just go and check the hull numbers. It is in the course of an investigation when we do that. For example, one of my cases only had one side of a boat with decals and registration numbers. I started looking into it and the hull number had been removed.

Chair Daly:


Are there other questions from the Committee? [There were none.] We will take testimony in support. Seeing none, is there any testimony in opposition? [There was none.] Is there testimony in neutral on S.B. 434? [There was none.] We will close the hearing on S.B. 434. We will take public comment. [There was none.]

There may be exhibits that were submitted to the Nevada Electronic Legislative Information System (NELIS) but were not directly referenced during the hearing. Those exhibits [([Exhibit I](#)), ([Exhibit J](#)), ([Exhibit K](#)), and ([Exhibit L](#))] will be made part of the record. This meeting is adjourned [at 3:05 p.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Recording Secretary

RESPECTFULLY SUBMITTED:



Mistia Zuckerman
Transcribing Secretary

APPROVED BY:

Assemblyman Skip Daly, Chair

DATE: _____

EXHIBITS

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

Date: April 25, 2013

Time of Meeting: 1:28 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 159 (R1)	C	Senator Justin Jones	Prepared Testimony
S.B. 159 (R1)	D	Gabriella Jones	Prepared Testimony
S.B. 159 (R1)	E	Max Heeman	Prepared Testimony
S.B. 73	F	Margaret Flint	Letter of support from Beverlee McGrath
S.B. 11	G	Kristy Knight, Department of Wildlife	NDOW Testimony & Presentation
S.B. 434	H	Kristy Knight, Department of Wildlife	Testimony & Presentation
S.B. 73	I	Kevin O'Neill, American Society for the Prevention of Cruelty to Animals	Letter of Support
S.B. 73	J	Beverlee McGrath	Reno Gazette-Journal
S.B. 11	K	Jeremy Drew, Board of Wildlife Commissioners	Letter of support
S.B. 434	L	Jeremy Drew, Board of Wildlife Commissioners	Letter of support