

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

**Seventy-Eighth Session
February 19, 2015**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Robin L. Titus at 1:32 p.m. on Thursday, February 19, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, 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: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Robin L. Titus, Chair
Assemblyman Jim Wheeler, Vice Chair
Assemblyman Nelson Araujo
Assemblywoman Maggie Carlton
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Chris Edwards
Assemblyman John Ellison
Assemblyman David M. Gardner
Assemblyman Ira Hansen
Assemblyman James Oscarson
Assemblywoman Heidi Swank

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Susan E. Scholley, Committee Policy Analyst
Jim Penrose, Committee Counsel
Donna J. Ruiz, Committee Secretary
Cheryl L. Williams, Committee Assistant

OTHERS PRESENT:

Jim Barbee, Director, State Department of Agriculture
Lynn Hettrick, Deputy Director, State Department of Agriculture
Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada
Tray Abney, Director of Government Relations, Reno-Sparks Chamber of Commerce; and representing the Nevada Chapter of the National Federation of Independent Business
Benjamin Griffith, representing Nevada Petroleum Marketers & Convenience Store Association
K. Neena Laxalt, representing Nevada Cattlemen's Association
Clay McCauley, Executive Vice President, Nevada Farm Bureau Federation
Edwin James, General Manager, Carson Water Subconservancy District
Mike L. Baughman, Ph.D., Executive Director, Humboldt River Basin Water Authority

Chair Titus:

[Roll was taken. Rules and protocol were stated.] I am now going to open the hearing on Assembly Bill 77.

Assembly Bill 77: Makes various changes relating to the regulation of agriculture. (BDR 49-346)

Jim Barbee, Director, State Department of Agriculture:

For the record my name is Jim Barbee and I am the Director of the State Department of Agriculture. To my left I have Lynn Hettrick who is the Deputy Director of the State Department of Agriculture. As I go through Assembly Bill 77, I will be relying heavily on Mr. Hettrick. He coordinated the development of the bill working with our staff and our stakeholders. Assembly Bill 77 is a huge bill so to start I will give you an overview. I have provided you a section-by-section description of the different pieces ([Exhibit C](#)). I would open it up to you to identify those that you want to talk about. That would be the most expedient way to handle your time, because I know it is valuable. We are simply trying to clean up existing statutes that we have had in place, in several cases, as far back as 1961. With Mr. Hettrick's background

and experience it worked out well to have him help us start getting some of these parts and pieces cleaned up.

We did not mean this bill to be a policy bill but more, again, focused on cleanup. An example of what we have done is change our misdemeanor ramifications into civil penalties. By using civil penalties we are able to administer a fine and the folks involved are able to move on more quickly. We can take action to get folks to adhere to the regulatory sections. In other cases we are removing sections that exist in our chapters that do not apply to the State Department of Agriculture but apply to other agencies. We have a couple of amendments proposed that I will address near the end of my presentation. We will be working with some of those agencies to get those pieces cleaned up.

Sections that I think you will have some folks voice some concern on are section 136 and section 137 referencing point of sale. Currently, by statute, the State Department of Agriculture under our consumer equitability program is supposed to be inspecting or doing verifications on point of sale. Point of sale would be when you go to the cash register at a store and you do the electronic scan. We are required to verify that the scans are accurate by doing a sampling of products to verify a certain level of accuracy. I believe that is around the 95 percent range. Since the last session we have worked trying to establish a fee for that. We do not currently have a fee to do those inspections. To perform those duties on an annual, ongoing basis, you have to have a fee that supports staff and equipment. We found out working with the Legislative Counsel Bureau that we do not have the authority to charge a fee. I think the intent was, when that was put into statute, that we would have the ability to levy a fee for checking those scans.

Concerns voiced were based upon preliminary work that we did during the interim. That work showed that we did not have significant issues. Part of the problem is that it is in statute, and we would be held accountable for doing it so we need to be able to be paid, and the National Institute of Standards and Technology requires that we do it on a semiannual basis. We talked about doing it under a complaint situation where we would go out and test and the entity would have to pay a fee for that test. Clearly, we would have to do it more than that. We would be looking for a way to develop a fee through regulatory process for that program. Are there any other sections that folks want us to address?

Assemblyman Hansen:

Under section 22, definition of pests, I noticed you have vertebrate pests listed. We have had a huge problem trying to get another state agency to implement predator control programs, even though we have a \$400,000 annual fee going

into that program. I have not talked to anybody about this; it just occurred to me. What do you think about the possibility of transferring that program to the State Department of Agriculture under this regulation? We do that with the federal government. What are your thoughts on that?

Jim Barbee:

We have the State Predatory Animal and Rodent Committee. It is specifically aligned with predator issues, and that committee represents the Board of Wildlife Commissioners, the Nevada Farm Bureau Federation, and the Nevada Wool Growers Association, among others. We do a cooperative with the Nevada Wildlife Services program.

Assemblyman Hansen:

You do not get the \$3 predator management fee that all of the sportsmen pay when they submit a tag application?

Jim Barbee:

That is under the authority of the Board of Wildlife Commissioners.

Assemblyman Hansen:

That is through statute, correct? That is something that we could, as a policy, make a change on and get that money into the State Department of Agriculture.

Jim Barbee:

Yes, sir. You could do that.

Assemblyman Wheeler:

Mr. Barbee, regarding the fee you were just discussing that you want to do through a regulatory process, do you have any idea what the range of that fee might be?

Jim Barbee:

I will turn that question over to Mr. Hettrick because he has done some of the background work on that.

Lynn Hettrick, Deputy Director, State Department of Agriculture:

The fee that has been discussed that would have to go through the regulatory process is \$25 per machine annually.

Assemblyman Ellison:

Could you discuss section 28 and the State Quarantine Officer? Do you have a special person to do that, or is that taken care of by whomever is out in the field?

Lynn Hettrick:

Section 28 allows the State Quarantine Officer, which is Mr. Barbee, to designate a weed as a temporary noxious weed so we can treat something that might have been imported into the state. We have issues with nursery plants that are shipped into Nevada. They occasionally contain all kinds of pests and could contain noxious weeds. It takes time to get some of these designations done. We would like to be able to designate it as temporary and deal with it over the time frame that is allowed here to put it into a permanent status.

Assemblyman Ellison:

I wish you could get rid of whitetops. I am looking back at the fiscal note that states that you got \$53,100. Is that going to be absorbed by fees?

Lynn Hettrick:

I am not aware of the fiscal note you are talking about. Can you tell me which note that is?

Assemblyman Ellison:

Department of Health and Human Services.

Lynn Hettrick:

We are going to offer an amendment on the bill and move the section that pertains to the \$53,000 back to the Department of Health and Human Services. That will eliminate that fiscal note entirely. They are here to testify if you wish them to.

Chair Titus:

Mr. Barbee, you and I have spoken about this. I still have some concerns regarding section 106, the striking of the reimbursement for animals that are quarantined and then destroyed. That is on Assembly Bill 79, but you have the quarantine officers in Assembly Bill 77 too. Will that change what we are going to look at?

Jim Barbee:

All the way through the State Department of Agriculture statutes, the State Quarantine Officer is the Director of the State Department of Agriculture.

Assemblywoman Carlton:

This is such a large bill; I do have a number of questions. I see a lot of penalties in this bill that are changing from criminal to civil penalties. Why do you think that is the best way to go? What are you trying to fix?

Jim Barbee:

In many of these cases when we have a misdemeanor as a penalty, we have to get a district attorney or someone to buy into that. A lot of the issues that we deal with are not as pressing as many of the other issues a district attorney is working with. It is not addressed in here, but in some cases, we have a hard time getting cattle theft cases brought forward. Those are large dollar amount issues that we have to deal with. What we tried to do here is mirror what we are already doing in some of our pesticide programs. We go out and impose a civil penalty and levy a fine. We are trying to do something that is more expedient for the person involved and that has an appeals process. It is more expedient, and we are able to get action and deter the activity prohibited in whatever the law or the regulation is that is being broken. The benefit in that is that this fine would go to the Junior Agricultural Loan Program or the Noxious Weed Regulatory Program. We are trying to become more consistent across the board in how we deal with the lower-level issues.

Lynn Hettrick:

Misdemeanors seldom rise to the level that a district attorney will even look at them. Therefore, we get no penalty and we have no teeth to enforce anything. The thought here was to move it to a civil penalty and purposely not have the department receive the money. There is no benefit to us. It is going to two revolving loan accounts that we administer but have no benefit from whatsoever. I discussed this with Legislative Counsel Brenda Erdoes prior to proposing this, and she agreed that misdemeanors seldom get prosecuted and that a civil penalty probably made more sense.

Assemblywoman Carlton:

Some of these penalties are fairly large. Not ever being on Judiciary, I am not as familiar with civil penalties as I probably should be. You stated that the money is not coming to you, but it is coming to you and going into these designated funds. I begin to wonder how much money you are going to need to fight weeds. Right now you are not collecting any civil penalties?

Lynn Hettrick:

Very few. The question was asked by the budget office when we presented this bill initially through the Governor's office. We went back and reviewed all of the penalties that had been received over the last biennium, and it was a total of \$6,000. There are some large penalties that you see here, but most of those exist in current statute. We just changed the penalty from misdemeanor or gross misdemeanor and the existing penalty to civil penalty without changing the amounts.

Assemblywoman Carlton:

Something is just making my antenna tingle. I guess I do not understand your appeals process and how people would contest these penalties. I would hate to see someone get a penalty and not have any recourse. This just seems like an awful lot of power for one group to have.

Jim Barbee:

We do have an appeals process. We have had appeals on the pesticide program. It is a process that goes through the agency and is appealed to the director. I, as the director, review the case and make a decision. If they do not like the decision, they can take it to the district court or through any other regular legal means.

The invasive noxious weed is the second largest issue relative to the sage grouse and dealing with the sagebrush ecosystem. There is a tremendous need on the noxious weed side, and that is currently a program that is only funded through the pesticide registration program. The abatement fund would allow us to go out and take action and the fund already exists.

Assemblywoman Carlton:

In section 87 there is a lot of language about cleaning up discharges of petroleum tanks. I thought that we were doing that work under the Division of Environmental Protection and some other agencies. I am trying to figure out how those pieces of the puzzle fit together.

Jim Barbee:

We could not agree more. We are trying to move it over to them and get it out of our existing statute chapters. We do not do that.

Assemblyman Ellison:

Do you have the right to hand out citations? Can you do actual citations?

Jim Barbee:

Through our enforcement program which is largely animal-driven, we are able to issue citations.

Assemblyman Ellison:

It seems to me that there would be an easier way to resolve a lot of these issues quicker and faster by citations.

Assemblyman Hansen:

In section 97 you have added the words "or animals" to *Nevada Revised Statutes* (NRS) 561.301: "Aquatic agriculture, which includes the propagation,

cultivation, and harvesting of plants, or animals...." There was a man in Mina who wanted to raise lobsters. I believe it was the Department of Wildlife that blocked him, and to this day he still has a sign down there. If we pass this with this animals provision, would this fall under your jurisdiction? Then could this man raise lobsters as an agricultural product in Mina?

Lynn Hettrick:

This would not allow the cultivation; it says that we would be regulating the cultivation. We added animals because there is a huge fish farm that is going to be built in Douglas County by an Israeli company. Currently there is no agency to regulate those animals. We are in charge of farming, and since this is called a fish farm, we are adding that to make sure that it is understood that we regulate it. We also added "man-made," which is the type of structure that they are building. Otherwise, it would only apply to creeks and streams and so on. I think the issue with the desert lobster being grown in Mina was that they felt they were an invasive species uncontrolled in natural waters. They were concerned that they could appear elsewhere within the state. They were fearful that they would spread, and that was why they shut that down. That did not have anything to do with us. That was the Department of Wildlife protecting the natural waters of the state.

Chair Titus:

I am going back to my original question because when you have a tome of a document like this things can get buried in it. My concern is not only for the next bill that we have, it is also in the middle of this bill. Under section 106, subsection 1, it is also amended that "The State Quarantine Officer may order and have destroyed any animal infected with or exposed to any infectious, contagious or parasitic disease." I am in favor of that. What I am not in favor of is striking subsections 2, 3, 4, 6, and 7 that deal with the Department compensating the owner of an animal so destroyed. I have anxiety over striking that even though you had responded to me that it has never happened. Not that long ago in England with mad cow disease and all those concerns, they went into farmers' properties and destroyed animals. Recently we had the swine flu and avian flu, and flocks of chickens, ducks, and geese were destroyed. Not in America but in other countries. Just because it has not happened does not mean it will not happen and very well may happen. I have some concerns over that. Can you address that for me?

Jim Barbee:

I apologize. I thought it was in Assembly Bill 79, but you are correct. Another example would be anthrax. We have had anthrax in the state, and that would be an example of where we would quarantine those animals and require them to be destroyed. The State Quarantine Officer, in conjunction with the

individual who owned the animals, would determine the value of the animals at the time they were quarantined. What is an anthrax cow worth? Nothing. Even if we had an outside party come in and determine a value that was in the marketing programs, there would not be a market for that animal. It would not have value at that point. There are no state funds aligned with this kind of payout. The only funds that would be associated with this, as I understand our programs, would be the livestock identification program. That program could not support a large payout. If we kept this language in, some kind of fund would have to be aligned to it. I talked to Clay McCauley with the Nevada Farm Bureau Federation before the meeting, and he had some language from New Mexico that we may be able to replace it with. We can take a look at it after the hearing.

Chair Titus:

My concern is that it may have never had designated funds or a stream of revenue, but it has been in the statute for quite a while. The State Quarantine Officer may order an infected or exposed animal destroyed. Just because an animal is exposed does not necessarily mean that it is infected. What I am concerned about is that there is no retribution or cost to the State Quarantine Officer to not make a hasty decision. He can order the animals destroyed because he does not want to take a chance. There is nothing to make you stop and say, Well, I had better be really careful, because if I do this we are going to have to pay these folks. There is nothing there to make you step back and think about this. Even if you decide with input from scientists, not all science ends up being fact in the end. I have some concerns about you taking that out.

Lynn Hettrick:

I fully understand where you are going. I think most cattle producers know if they have a cow that is infected, the infections are going to destroy that cow before the quarantine officer is ever involved. Under the current statute, if you read section 106, subsection 2, it says that the county, municipality, or federal government has to participate. We cannot obligate them to do anything. This would be an unfunded mandate which would go back upon the county, municipality, or the federal government, which we could not control. Again, the owner of an animal infected with a disease that could cause the destruction of the entire herd would destroy that animal immediately. Owners are not going to wait for us to come. They are going to take the veterinarian's word for it and say, I have to get this animal out of the herd. The language is interesting because in section 106, subsection 4, it says they can receive compensation but not greater than the value of the animal. As the director pointed out, the value of the animal is probably zero at that point. If you did use the hide, assuming somebody would even bother to take an infected animal and skin it,

you might get the hide value back. It would be greater than the value of the animal and the statute would prohibit that.

Assemblyman Gardner:

In section 6, subsection 2, you cross out \$1,500 and go to \$150,000. I was wondering about the reasoning for that.

Lynn Hettrick:

That \$1,500 sum was established in statute in 1893. An automobile in 1910 sold for \$400 and today they are \$40,000. That is a 100 times increase. If you multiply that \$1,500 times 100 you get \$150,000. It is just in line with what real costs are. That is permissive language that allows the county to do that. It does not demand they do anything. They could give nothing, which is indeed what 99 percent of them do on a regular basis.

Assemblywoman Swank:

I want to return to what the Chair was talking about regarding destroying animals. We have seen people around the globe get very worried about these animal-borne diseases and we see large numbers of animals being destroyed. I wanted to echo her sentiments. We have good actors in office now, but as legislators we have to think for the next 100 years, maybe to 2118. Who is going to be dealing with these animals, and what are the checks just to make sure that we are not over burdening any of our animal owners?

Jim Barbee:

When something like this is done it is done in conjunction with the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), their veterinary program on the federal level. Also the USDA through the Agricultural Act of 2014, or the Farm Bill, used to have other incentives. Now they do a complete risk management program where producers are able to buy insurance that covers some of these kinds of costs and risks that come with operating an agriculture production business. There are other programs outside of what we have here with the state. We are willing to look at some alternative language.

Assemblyman Gardner:

I have a question about section 108, subsection 2, paragraph (g), where it talks about livestock auctions. The old language says "at least equal to the estimated average weekly gross sales receipts of the public livestock auction that will be conducted by the applicant." Now it says "of \$400,000 or more." My concern is that maybe we are going to be pushing out smaller livestock operators. I do not know livestock auctions so this may be a completely moot point, but I am just wondering.

Jim Barbee:

It is the difference between the time and when it was put in place. We have two livestock markets in the state. Both of them are located in Fallon. On any given day they are going to run somewhere between \$500,000 and \$2 million in livestock through that sale yard. With the example of the old rules being \$50,000 to \$200,000 that was low compared to what the producers would be on the hook for if that market went out of business. We have seen livestock markets go out of business, and it is devastating to the producers because that product is gone and the bond is what they have to rely on as a safety net. This is making that relevant to today's prices. Fat steers are at almost the highest price they have ever been per pound in the United States.

Chair Titus:

I contacted and reached out to all of my cattlemen friends who encouraged this change. Their livestock that they send to this auction are so much more valuable than at any other time in the history of the cattle industry, and this protects the cattlemen. They were absolutely on board with this change.

Assemblyman Gardner:

Section 108, subsection 2, paragraph (g), says \$400,000 or more. Does that mean that the State Department of Agriculture could increase that in the future?

Jim Barbee:

It would be set at a requirement of \$400,000, but if they wanted to do more they could.

Assemblyman Gardner:

I did not understand sections 168 through 174, which deal with caustic and corrosive substances. I read it through a couple of times, and I did not understand why this is being put in here. What is the purpose of this?

Lynn Hettrick:

These sections are actually being removed from our statutes and being moved over to the appropriate party. We have an amendment that we will offer at the end of this presentation to repeal this section. We want to move this because it does not belong in the State Department of Agriculture. We wanted it to go to the Department of Health and Human Services. They looked at this statute and said, obsolete, never been used, we do not have any idea why it is there, and we do not want it. We agreed to offer an amendment to repeal these sections.

Assemblyman Wheeler:

If I can follow up a little bit on Assemblyman Gardner's question about section 108. Throughout the state there are some small auctions, such as for 4-H and the counties. I do not see anything in here for that. Are they going to have to come up with the \$400,000 bond, or is this strictly for organized auctions?

Jim Barbee:

This is strictly for livestock markets. That is a different deal and they are waived. A scholarship auction is basically what that is.

Assemblyman Wheeler:

If you could show me that statute I would like to see it because I do not see it in here.

Jim Barbee:

We will research it and get back to you.

Assemblywoman Carlton:

I have finally figured out the word that was throwing me the curve in this whole thing. The standard language that you are using on the sharing of the civil penalties in section 13, subsection 3, paragraph (a) is bothering me. You have that "Fifty percent of the money must be used to fund a program selected by the Director," yourself, "that provides loans to persons who are engaged in agriculture...." It is really not a scholarship program as I somehow got in the back of my mind. Is it a loan program?

Lynn Hettrick:

This is an existing loan program, and it has no source of funding. This is to allow loans to students who raise cattle, sheep, or whatever for fairs or those types of things. They can purchase the animal and other things that they might need for the animal. At the end of the program or fair when the animal is sold at the auction, the student gets the money back and they repay the loan. It goes back into the revolving loan fund. The weed fund is the exact same way. We have an established weed fund of approximately \$100,000, which will not touch the state's weeds. We offer a revolving loan fund for the counties to go out and control the weeds. They may not have it in their budget, but they need to help the people who live here and take care of these weeds. We loan money to them to do the weed control. The landowner or property owner is required under state law to take care of their own land, and when the money gets paid back it goes back into the loan fund so we can do it again. The money just goes around and around in these loan funds to help fund what other people cannot afford to do or do not have in their budget.

Jim Barbee:

The youth rotating loan fund is pretty common in most states. As a 12-year-old that is how I bought my first sheep when I was in the 4-H program. It is a program utilized by National FFA Organization students across the state. It is a program that has been there that we have not promoted at the State Department of Agriculture in some time. It is one of the things that we are refocusing on. As you see there in the text it is for 21 years or younger. It can also give young adults a kick start on going into the agriculture business. With the average age of producers in our state that is a good thing.

Assemblyman Ellison:

I did not know they did that program. We always raised our kids with our own livestock. We went out and purchased market animals.

The state loses a lot of business. How many trucks a day go across the Idaho border to go to Twin Falls for the small sales? Why not do it here? We are losing a lot of money. You see small traders go up there constantly to the sale yard in Twin Falls. We used to do that.

Jim Barbee:

It depends on the location of the producer. They choose the sale yard that is closest in proximity. If you are in Elko County, Twin Falls, Idaho, is a much closer commute than driving to Fallon. We encourage the producers to use Nevada businesses whenever possible, but it comes down to dollars and cents. There is fuel and trucking involved in getting to market. Fallon is the location of our two markets. We always encourage more markets to open up and expand business in the state.

Assemblyman Carrillo:

In regard to section 107 and the quarantine of animals, it talks about the violations for first, second, and subsequent violations. Is that for each animal or for each incident on a property?

Lynn Hettrick:

It would not be per animal. It would be based on the severity of the infraction and whether or not someone refused a quarantine order. Suppose we did see an infected animal in a herd and the owner destroyed the animal, but we were notified by a veterinarian or we got a sample that came into our animal disease laboratory and was tested. The director might go out as the State Quarantine Officer and say, We want you to quarantine this herd for two weeks. We want to make sure we do not have any spread or increase in disease. We do not want you to market any of these animals for two weeks until we can verify we do not have any disease. If somebody went ahead and marketed those animals,

that would be a violation that would probably rise to a civil penalty. It would not be per animal; it would be based on the severity of the violation and whether that infectious disease was severe. If it were anthrax it would probably be pretty severe. If it were hoof and mouth disease it probably would not be as bad. It is per incident.

Assemblyman Carrillo:

If you went on to a location and saw multiple violations, like different types of animals that have different issues, and the owners are not doing what you ask, I just want to understand that it is not per animal and it is just per property or individual.

Chair Titus:

Are there any more questions?

Assemblyman Edwards:

I want to go back to the way you pay the people if you have to destroy their animals. I understand that the affected animal may become worthless. However, if the government practices eminent domain, they have to give fair market value to the property owner for the property they take. If the government does damage to somebody's house or car, you value the house or the car based on fair market value before the damage. Therefore, to make the person whole you pay them the fair market value before they were injured. In this case would you have to pay the farmer or the rancher or whoever has the animal the fair market value before it became diseased or infected?

Jim Barbee:

I think that would make the assumption that the government did the harm. The harm is the disease. The quarantine is to control the spread of the disease and protect the product of the neighboring producers and the citizens themselves. Disease is a little bit different than eminent domain where you go in and try to take property because we want to do this or that. This is really about public health and public safety.

Assemblyman Edwards:

It goes back to the previous notion if you go in and immediately demand that the herd be destroyed rather than quarantined or treated. That kind of capricious approach could in fact deny the rancher or owner their property without due process, without real thought or a good strategy. You may do it right; however, someone who succeeds you may go in and arbitrarily do things wrong. The people ought to have some sort of recourse to make sure that they are made whole again.

Jim Barbee:

Again, there is other recourse for the producers to recoup their funds. I am not trying to convey to you what we should or should not be able to do. The way it is in statute now does not really work. That is why we are trying to clean it up and trying to address the issue. The New Mexico language basically says the New Mexico Department of Agriculture would work with the producer to help identify any way to recoup their funds. That may be possible through USDA programs. The real issue is animal disease, and what we would do depends upon the disease and the protocols in place. It would not be an arbitrary decision that the State Quarantine Officer, myself or a future director at the State Department of Agriculture, would make. Those decisions are made under consultation with the State Veterinarian and APHIS; it is not one individual's decision. It depends specifically on the disease. Another example would be if we had an exposure of brucellosis. That is a disease that we quarantine, but it is okay to be sold into slaughter. It is okay, it is healthy, you can consume it and there is no problem. That disease has its own particulars and ramifications versus anthrax where there is no alternative.

Assemblyman Edwards:

I just wanted to make sure that the folks have some sort of recourse, just in case.

Chair Titus:

With the permission of the rest of this body I am going to go ahead and have you address your amendments, and that might answer some of these questions.

Jim Barbee:

I believe these amendments ([Exhibit D](#)) are posted on the Nevada Electronic Legislative Information System (NELIS).

Lynn Hettrick:

In the first amendment we ask that you move section 143, in which we currently have asked for you to amend the language. We would prefer that you leave the language alone and move that section into NRS Chapter 446. That is the section of language where you had a question about the \$53,000 fiscal note. That moves that over to the Department of Health and Human Services. It leaves it in their department and leaves them with the fees that make up the \$53,000 fiscal note; therefore, the fiscal note would be removed.

Jim Barbee:

The second amendment would simply repeal sections 168 through 174 versus moving them. That is out-of-date language that no longer would be necessary in statute. When we met with the Division of State Lands and the

State Department of Conservation and Natural Resources we realized that we did not need the third amendment. We ask that that amendment be dropped completely. That amendment was relative to state fairs and expos.

Chair Titus:

Are there any questions from the Committee? [There were none.] Anyone in favor of A.B. 77 please come forward. [There was no one.] Anyone who opposes A.B. 77 please state your name and proceed.

Lea Tauchen, Senior Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada:

I am speaking today in opposition, not to the bill in its entirety, only to sections 136 and 137, the proposed fee schedule for inspecting point-of-sale systems and cash registers. We want to put on the record that we do appreciate the work that the State Department of Agriculture has done. We have worked with them for many years on this, and they have consistently been willing to work with the business industry, so we appreciate that. In this instance we are concerned with the proposed authority to develop the fee schedule for those inspections. As Director Barbee stated, the Department has conducted preliminary price verification audits. I wanted to highlight the figures from those audits because in 2012 and 2013, 208 locations that have point-of-sale systems were inspected. At each location they sampled 50 items, pulled them from the shelf, and conducted price verifications, making sure that the items were rung up correctly. That is a total of 10,400 items that were audited, and of those items, only 42 rang up incorrectly with an overcharge price. Doing the math, that equated to one-half of one percent. Just as many times they found that when there was an error, it was where the customer was actually being undercharged. During the interim, the department provided a presentation to stakeholders where they gave us some additional estimates of their plans. They had planned to charge 5,800 stores the inspection fee, and that would provide them the revenue to hire two to four additional inspectors in their department. With the new inspectors they estimated they would have time to inspect approximately 1,840 of those 5,800 store locations. That amounts to about 32 percent of stores actually being inspected, but everyone would still have to pay the fee. We understand from the Department's perspective that section 136 does provide the mandate, but we would like to see the Department's authority to charge the fees for inspecting point-of-sale systems and cash registers limited to reflect the reality of the issue. Again, that was a very small percentage of overcharges that were documented. We do not see the need to create a new fee-based inspection program and hire additional inspectors when there is no evidence of a problem.

Assemblyman Wheeler:

When we are talking about section 137 and the point-of-sale program, you say that there is just a minute problem there. Even that goes both ways, some undercharged and some overcharged. Do you think that could be because that is an inspection program right now? If the inspection program were not there, would that change to be a wider range of overcharges or undercharges?

Lea Tauchen:

I do not see that would change with or without the inspection program. With these point-of-sale systems everything is computerized now. You have very few manual entries. Everything is in a database and the businesses certainly do not want to upset their customers by overcharging. I think they are very diligent to make sure that they are charging correctly.

Chair Titus:

Are there any further questions? We will go to the next person.

Tray Abney, Director of Government Relations, Reno-Sparks Chamber of Commerce; and representing the Nevada Chapter of the National Federation of Independent Business:

My friend Lea Tauchen said everything that I would need to say on this issue. We are just concerned with sections 136 and 137. I do not know anything about cows and weeds, so I would not offer any opinions on those issues. Besides all the statistics that Ms. Tauchen outlined, we need to think about what the definition of a point-of-sale system is. A point-of-sale system could be a phone nowadays. I think if you walk into any modern cell phone store, computer store, or Apple store, you will see their point-of-sale systems are wandering around the store. We need to be a little bit careful about what the definition of that is. Again, like Ms. Tauchen said, we think this is a solution in search of a problem. According to the two audits that have been done over the last two years, there does not seem to be a real issue. Of course, any dollars that you add in fees is one less dollar that the business can use for other things like paying their employees, or healthcare costs, or putting money back into the business.

Benjamin Griffith, representing Nevada Petroleum Marketers & Convenience Store Association:

I just wanted to echo what my friends over here had to say. I also want to go into what the National Institute of Standards and Technology (NIST) is. I want to read the actual language from the handbook [NIST Handbook 130-2013 Edition, p. 194] which says, "After a program has been in place for a period of time and a database is established, procedures can be developed to randomly select stores for inspections, or to focus inspections on stores with low levels

of compliance." The NIST Handbook 130 is not a regulatory or mandatory book. It is guidelines used by educational institutions, businesses, and government. There is nothing that says we have to do everything that NIST has to say. We do not think the bill should be processed. We do not need an annual or semiannual inspection. The industry is able to regulate itself pretty well so far without adding these increased fees on every point-of-sale system.

Chair Titus:

Is there anyone else in the audience opposed to A.B. 77? [There was no one.]
Is there anyone who would like to testify as neutral?

K. Neena Laxalt, representing Nevada Cattlemen's Association:

I would like to comment regarding concerns, not so much about the intent of Assembly Bill 77 or Assembly Bill 79, but more in the drafting, and how it has ended up with some of the changes and concerns that might follow. If you look at A.B. 77 in section 106, subsection 1, it matches what is in section 2 of A.B. 79, your next bill. There is one difference there, and that is in *Nevada Revised Statutes* 571.190. In A.B. 77 they have kept in section 106, subsection 5, and in A.B. 79 section 2, subsection 5, is deleted. The concerns that are arising are not so much taking out those sections which delete the compensation as the State Department of Agriculture has said. Those have not been used, I believe, ever. If you look at the remaining language of section 2 of A.B. 77 it now says, "The State Quarantine Officer may order and have destroyed any animal infected with," and here is the scary part with the language, "or exposed to...." That is the part that has been a concern. We would like to work with the State Department of Agriculture and put some language in to help them tie up some loose ends there. We would like to give some accountability standards or procedures, something that is in statute so that we can follow through with what this language is trying to say.

Clay McCauley, Executive Vice President, Nevada Farm Bureau Federation:

We too have some concerns with section 106 in A.B. 77 and section 2 in A.B. 79. We certainly appreciate the work that the Department does for all of our farmer and rancher members in Nevada. They do a great job. As Director Barbee mentioned, I did speak with him prior to the hearing today regarding section 106 in A.B. 77. We would be willing to work with the Department and their staff on the concerns the Committee has as well.

Chair Titus:

Are there any questions? [There were none.] Is there any further testimony from the audience? [There was none.] I would suggest that perhaps the State Department of Agriculture, the Nevada Farm Bureau Federation, and

the Nevada Cattlemen's Association get together and work on the language and get back to the Committee.

Assemblywoman Carlton:

I have a comment on the point-of-sale issue for Mr. Barbee or Mr. Hettrick. If I understood you correctly earlier, is it in statute that you are supposed to do this? It is in the law? Did I understand that correctly?

Jim Barbee:

Yes, it is in law. I would also address the NIST comment. The NIST comment was about if you are deemed to be out of compliance. You have to inspect to know if someone is out of compliance. It is in statute currently that we need to do these verifications.

Assemblywoman Carlton:

Would it work better for the agency and the other folks concerned, considering the rate of compliance is so high, that if you had complaints and you had to go out, that you would charge an inspection fee? I know in some of the other licensure things, we do the annual inspections when we can get the qualified people to do it. But if there is a complaint and they have to go out, there is an actual fee associated with that?

Jim Barbee:

We are willing to do whatever the Committee deems necessary. Initially we even discussed eliminating the entire section since the inspection percentage was so good. I think the concern is under regulations we adopt the NIST handbook completely as our neighboring states do. In NIST it also requires that we do that. This is something that is being done in other states. If there is an in-between solution there we are more than happy with that. We currently are required to do it, and we do not have the resources to do it at the level we are supposed to be doing it. It gives me great concern as the steward for the agency.

Assemblywoman Carlton:

With close to 5,000 point-of-sale locations, what dollar amount are you talking about for inspection fees?

Jim Barbee:

I think we had originally looked at a \$25 fee depending upon how many devices they have. I think we were looking at basically doing different stores over a three-year period. Over three years we would hit each one and try to keep the price as low as possible. The point of the 35 percent was to try to get to all the stores, but you would not get to all of them in one year. Actually NIST says

we should be doing it on a semiannual basis. We are open; we just want to be on the record that we are supposed to be doing this, and we do not currently have the resources to do it.

Assemblywoman Carlton:

I want you to do the inspections. We want to maintain the integrity of the technology, but if there is no one watching we know what could happen. There needs to be some in-between on this. If it is complaint-driven that is where we need to go. A fair approach might be a basic fee to register those machines so you know where to locate them.

Lynn Hettrick:

Handbook 130 is one of the documents that we adopt from NIST. Page 194 in that handbook says that you should do semiannual or annual inspections. There are other sections that say once you are in compliance you could drop off to random inspections and do 35 percent, and maybe hit everybody every 3 years. The only concern we had about complaint-driven, and then a fee, was a mom-and-pop with a single cash register. If they got a complaint and we show up and charge them \$300 to cover the expense because we did not have a fee spread out over everyone, to them that would be significant. A Costco could not care less about a \$300 fee on one machine. You are kind of in a catch-22 over how we are going to do this. As the director pointed out, we are willing to do whatever you want. If the Legislature and the current statute expects us to do these inspections and we do not have the resources, we do not want anybody to come back and say, Why are you not doing the work? That is what we are trying to address here.

Assemblyman Oscarson:

I echo the sentiments of Assemblywoman Carlton. I do disagree with you, Mr. Hettrick; \$300 to Costco just gets passed on to me to pay for. Whatever fee it is, it is a tax any way you look at it. We should call it what it is and work through the process. The complaint-driven process is probably a direction I would like to look to and see if you could work through that.

Assemblyman Gardner:

When you are testing the point-of-sale machines, what exactly are you doing? I was reading through this and it is talking about standard weights and measures. From the sound of it you are just checking to see if things ring up correctly. I was just wondering what exactly is being tested so I can understand that better.

Jim Barbee:

They would take 50 products from the shelf and verify that the scan that was registered at the point of sale matches the actual shelf and advertised price of the product.

Chair Titus:

I am going to close the hearing on Assembly Bill 77 and open the hearing on Assembly Bill 79.

Assembly Bill 79: Revises provisions relating to agriculture. (BDR 50-345)

Jim Barbee, Director, State Department of Agriculture:

This was all part of one bill and through the Legislative Counsel Bureau process these pieces were broken out. You can see that some of the programs that we have been addressing earlier, like the Junior Agricultural Loan Program and the Noxious Weed Regulatory Program, are also in here under section 3. We did provide you with a section-by-section list ([Exhibit E](#)). We have taken up a lot of your time, so you can present us with any questions that you have on any of those sections.

Chair Titus:

Are there any questions from the Committee? [There were none.] My questions have already been addressed. I will take further testimony in favor of Assembly Bill 79. [There was none.]

Assemblyman Gardner:

I was wondering if you could describe for me what a cottage food operation is. I have never seen that labeled on anything. I was wondering what that is.

Lynn Hettrick, Deputy Director, State Department of Agriculture:

A cottage food industry is a small farm practice that is allowed by statute in Nevada and many other states. It allows a person to farm or raise and sell homegrown or small farm-grown vegetables and the like up to \$35,000 a year. It is intended to allow people to have locally produced fresh produce and other things. It is in *Nevada Revised Statutes* (NRS) to allow the cottage food industry.

Chair Titus:

I might add the cottage food industry is hugely important for small farmers in rural areas. Your farmers' market folks, a lot of them qualify under the cottage food industry. Are there any other questions? [There were none.] I will now accept any testimony in favor of A.B. 79. [There was none.] Is there any testimony opposed to A.B. 79? [There was none.] Is anyone neutral

on A.B. 79? [There was no one.] Recognizing that we have covered a lot of issues on both of these I am going to close the hearing on A.B. 79. We are going to go to our overview of the Carson Water Subconservancy District.

Edwin James, General Manager, Carson Water Subconservancy District:

I am going to give you a brief overview of the activities we are doing on the Carson River Watershed ([Exhibit F](#)). The Carson Watershed starts out in Alpine County, California, and flows down to Churchill County with several counties in between. We are a unique organization because all five of these counties in the watershed participate on our board. Storey County participates as a non-voting member. We also include Alpine County. We are a bistate, multicounty organization, the only one I am aware of in the country. I am not going to go through all of these details, but a couple of things are important to understand. We have limited upstream storage. I will get into why that is so important to be planning for and also that the rivers are fully appropriated. Every drop of water has already been allocated, so if there are any new demands on the system it has to come from the existing source. It is important to understand balancing the resources. We are not a municipality, we are not an environmental group, and we are not an agricultural group. We look at all the resources and balance those. It is critical to make sure that those needs are all being met. I call it a three-legged stool; if you take too much from one side you are going to be uneven. It is important that you have that ability to balance those resources. That is what we do when we do our planning. In 1989 the legislature charged the Carson Water Subconservancy District with management and development of resources in the Carson River, to alleviate the reductions and loss of supply, and to look at the protection, health, safety, and welfare of the people in the Carson River Basin.

We have 14 board members representing all the counties. Most of them are elected officials from each of the counties. We do have a couple of agricultural representatives. Our funding sources come from property taxes and grants. We have two full-time staff and three part-time staff. We have a very small staff to do everything that we are trying to accomplish. Our mission is to promote cooperation and action across the agencies' political boundaries in the Carson watershed using an integrated water resource approach. We are involved with water quality, invasive species, noxious weed issues, recreation, and bank stabilization. We work with a lot of the conservation districts on stabilizing these banks on the Carson River.

In regard to our outreach and education program, I have a couple of brochures that we have on the desk here ([Exhibit G](#)). We have a map that I think you all have that educators use ([Exhibit G](#)). We also put on a Get On the Bus! tour for the public so they understand more about the watershed they are in, and other

literature, so we are quite involved ([Exhibit H](#)). We get a lot of grants, and part of our grants also help fund these outreach and education programs. We are also involved with flood plain management and water supply. I will get into a little more detail with these two items since they are very hot topics right now.

One of the things I really wanted to point out is the Carson River Coalition. This is a critical organization. We realized early on that one agency cannot do it all. It takes the cooperation of every entity that is in this watershed from federal, state, local, private, and non-profits. Everyone needs to be involved when you start dealing with water resources and the natural health of the watershed. We coordinate the efforts but, again, it is a group effort to bring everyone together. With a small staff we are able to do as much as we do because we use the expertise from other entities. The conservation districts are the ones doing the work on the ground. We help fund them, and we help provide resources wherever we can. They know the ranchers and they know what needs to be done. Utilizing this large group is why we are so successful.

On our flood management plans this picture really does show what our flood plains are like [page 11, ([Exhibit F](#))]. When you start looking at how you protect flood plains, you have a couple of different choices. Here it is comparing us to the Truckee River. These pictures were taken during the 1997 flood [page 12, ([Exhibit F](#))]. You can see on the Carson River that we did have a lot of water and we did have property damage, but the water spread out in the floodplain. This is how Mother Nature used to provide for the areas. On the picture of the Truckee you can see it was going through downtown Reno. The damages caused by that flood in Reno were over 100 times more than we had on the Carson River. When you start looking at trying to protect your floodplains, two of the options are building a large dam or channelizing the river. If you do that it is very expensive. Right now on the Truckee they are looking at a half a billion dollar project trying to protect what they have today. We do not have a half a billion dollars, and we are not asking for half a billion dollars. We are trying to work with the farmers because that is what we want in the floodplains. To go back and help them reestablish their ditches when they flood is far cheaper for the community and it is also more environmentally friendly. When this happens you have a lot of recharge into the aquifer, so it is a win-win opportunity for everyone.

One of the things that we are doing to ensure the protection of our floodplains is remapping the entire floodplain with state of the art technology. When we are finished we are going to have a floodplain map from Alpine county all the way down to the Lahontan Reservoir. This will allow us to see where the floodplains and floodways are. We will also be able to see the cumulative

impacts so when a new development goes in we will be able to see the impact. This also benefits developers and counties because when a developer wants to build in this area they would have to create a model. This model has already been created. They just need to put the data in the model. The counties already have one model that they are familiar with, so they are able to review it more easily.

During a dry year like this it becomes more critical how we are meeting our supplies and demands. Some of the things that we have to look at are the realities that we are dealing with today. One of them is runoff pattern changes. This is a climate station that is located in Twin Lakes in California. It is a high-altitude weather station. What this data is showing here [page 16, [Exhibit F](#)] from the 1940s to 2000 is the minimum temperature for various months has increased. We are seeing that we are not getting as cold as we used to and this has been going on for 60-plus years. What does that mean? We had another study done by the Desert Research Institute (DRI) comparing flows on the Carson River. We looked at the East Fork gauge because there is no upstream diversions above it, so this is basically what Mother Nature provides us. This slide [page 17, [Exhibit F](#)] is taking the fraction of the flows that occur in a given year comparing 1941 through 1974 to 1975 through 2009. What we see here in March is that we are now seeing more of the runoff occur today than we did historically.

On the other side we are seeing the opposite in June. There was more water flowing in later years than there is today. Because of these warmer temperatures we are seeing a shift in that. If the temperature continues to do that, this shift becomes worse and worse as we go on. One of things you may say is, Why do July, August, and September not look much different? We started looking at the data and realized we never had any water in July, August, and September. When you look at a fraction and compare, it just means that Mother Nature's base flow has left the system.

These next few slides [pages 18, 19, 20, and 21, [Exhibit F](#)] I want to point out to you. Again, having very little upstream storage, we depend on Mother Nature for our snowpack. On this chart, the darker the red, the higher the percentage of precipitation that fell as snow versus rain. If it gets lighter that means the precipitation is falling more as rain than as snow. Consider these like a reservoir that we are dealing with on the Carson River. This is really a watershed that feeds the entire Carson area; you can see what happens if we get these temperature predictions going up. All of a sudden our reservoirs get smaller and smaller. These are things that we have to plan for if this trend continues. We are working on this with the municipalities and we are looking at some regional projects. We are moving water through pipelines when we can.

We currently have a pipeline that we helped fund through Lyon County and Carson City that moves water back and forth. With water quality standards changing, most of Carson Valley north of the Minden airport no longer meets the standards for arsenic. You had two options: you could either work together to get the water or have everyone go with an arsenic treatment. We did a study and showed everyone that if we all had our own individual arsenic treatment plant in the Valley, it would cost the communities over four times what a regional pipeline would cost. The community did come together with a regional pipeline. It provides water from Minden, that goes to Douglas County, Indian Hills, and Carson City. This was a benefit of providing a lower cost to all these communities. This just shows you the maps here where the well fields are in Minden, which has low arsenic [page 23, [Exhibit F](#)]. The pipeline comes through and provides water to the Johnson Lane area and then Douglas County and comes across here, and there is a pipeline that comes over to Indian Hills and then provides water to Carson City. Working cooperatively, we were able to meet the demands at a lower cost.

We are working with the U.S. Department of the Interior Bureau of Reclamation and the Desert Research Institute (DRI). They have money for some studies looking at the future. We realize that if the climate change continues, we are going to have to have some kind of upstream storage. We want to start planning for it, and the DRI and the Bureau of Reclamation have programs in place to start looking at that. We are working with them to start developing this data. When I talk about upstream storage, we are not talking about large dams. We are talking about smaller reservoirs, maybe underground storage, something that can meet the demands of the future. Trying to store a large amount of water is very costly, and it is very hard to get through the environmental impacts. We are trying to get the data in place to do something that really meets the communities' needs in the long run. Maybe we could have some water storage in the upper watershed that then could be released in the late fall or summer that floats on top of the agriculture water, enhances the flow through the system, and then that water can be extracted downstream for municipal and industrial use.

What is driving our new demands in the future? Tesla is now developing in the Storey County Industrial Park. When the USA Parkway goes through, which is now part of that whole process, you will see that Stagecoach and Silver Springs are only 15 minutes away from that industrial park. Those areas will be closer to that industrial park than to Fernley or Sparks. We are already getting a lot of people interested in building out there. The problem is there is very limited water. How do you meet that? We are working with entities on planning for it. There are some challenges that we are dealing with. One of those is wet water

versus paper water. The State Engineer has allocated over the years a lot of water that may not physically be there. This is the Churchill Valley groundwater basin, which is around Silver Springs, and this is taken from a pumping inventory by the State Engineer [page 27, ([Exhibit F](#))]. We have our committed groundwater resources here and this is what was pumped in 2013. I would like you to focus on the municipal system here that has almost 6,500 acre-feet of water that has been allocated in permits to them. You can see in 2013 they only pumped 530 acre-feet. The biggest number is actually domestic wells which were not allocated. When you look at 10,000 acre-feet of groundwater permitted in that area, a large portion of the water that is currently being used is from domestic well use. The concern we are dealing with is that the perennial yield out there is only 1,600 acre-feet. How much water do we really have out there? That is a question that is tough. If you are the municipality you have 6,400 acre-feet of water. You could grow, you could be 2/3 the size of Carson City with that kind of supply. So there really is not much of a concern there. If you are going to be limited to your perennial yield we are already upside down.

How do you meet those demands? These are questions that the State Engineer is going to have to deal with and struggle with. When we get into conversations with different entities out there, these are issues that are brought up. There are really no simple answers because if you own this water, those rights are worth a lot to you. They were given to you and you did everything correctly by law, but maybe the science was not that sound at the time those were allocated. Our goal here is that in 50 years, hopefully, Carson Valley will look like this [page 28, ([Exhibit F](#))]. We have made an effort to meet the demands of the municipalities and the growth and to make sure that agriculture is still protected. Do you have any questions?

Assemblyman Ellison:

Could you go back to that last picture [page 27, ([Exhibit F](#))]? In the Churchill Valley area, is that aquifer over-allocated?

Edwin James:

I would say it is definitely over-allocated, if the perennial yield is only 1,600 acre-feet and they have allocated 10,000 acre-feet.

Assemblyman Ellison:

Is it a closed basin?

Edwin James:

Yes, it is a closed basin, but you already have water rights allocated. Every basin in our watershed has been over-allocated, but we have not been over pumping. This is our canary in the watershed because this one is on the edge. Now, how good is that number? There are a lot of questions in that. Maybe the 1,600 acre-feet is not that accurate; maybe it is 2,400 acre-feet, maybe it is a little more than that. We do not know yet, but these are questions that we see. These are questions that we are trying to deal with. If we can get a handle on it now, maybe we can avoid the disasters we see, where all of a sudden the groundwater levels drop and people do not have a sustainable water supply.

Assemblyman Araujo:

I wanted to go back to the Carson River Coalition. I was very intrigued by the fact that you have this coalition in place. I was curious as to whether you as a coalition have pursued any additional grants or any national opportunities. I was curious if you had started looking for those.

Edwin James:

We have received a lot of grants. This organization is not a formal organization, so a lot of the grants come through our organization. We currently manage 12 different grants. A lot of those came out of this organization saying, Hey, we need to do something. We would go after the funds and then push it to whatever organization made sense. For the education outreach with the River Wranglers organization, the funding came through us. We get a lot of Federal Emergency Management Agency (FEMA) grants to do a lot of the flood studies. This organization is recognized; it is a watershed group. The lady who was coordinating this years ago actually got invited by the U.S. Department of State to go to Thailand to talk about watershed planning. We are being recognized throughout the United States now.

Assemblyman Araujo:

That is fantastic. Thank you.

Assemblywoman Carlton:

The one slide you had showed the water going from Minden into Carson City [page 23, ([Exhibit F](#))]. That goes across county lines, so it is an inter-county transfer. I thought I would make sure that we put an exclamation point on that.

Edwin James:

It is, and we were actually able to get everyone to come together and work together. Other places are having huge battles.

Assemblywoman Carlton:

If you have a pamphlet on that I would like to have a copy.

Chair Titus:

Actually, this water goes through three separate counties—maybe four.

Edwin James:

The river does, yes. This pipeline does not. Ultimately I would see a pipeline going from the headwaters all the way down to Lahontan and tying the systems together. It would not be the same water moving through the pipelines, but it is linking the systems together.

Chair Titus:

The one photograph that you showed of Lahontan and the Truckee Canal was dumping into there I believe [page 24, [Exhibit F](#)]. That adds yet another watershed.

Edwin James:

It does, it complicates it. I tell people that we are connected with the Truckee at the ankle because of the Truckee Canal. Now this is a good picture [page 24, [Exhibit F](#)]. We do not have this much water right now in Lahontan. The Truckee Canal brings water over from the Truckee River. To give you an idea about how important that is, in 2014, 73 percent of the water that was in the Lahontan Reservoir came from the Truckee River. If we did not have the Truckee Canal we would not have substantial agriculture in the Newlands Project in Churchill County. The Truckee Canal is critical to the operations, and I know there are a lot of debates back and forth on that. The Bureau of Reclamation in 1902 realized how important it was to enhance the water resources, and this was one of the first projects by the Bureau of Reclamation, to create the Newlands Project. This is a key element because there are definitely not enough resources on the Carson River alone.

Chair Titus:

Are there any further questions? [There were none.] Now we will hear a presentation from the Humboldt River Basin Water Authority.

Mike L. Baughman, Ph.D., Executive Director, Humboldt River Basin Water Authority:

Let me just note for a couple of members of the Committee that have served on natural resources committees in the past or have been on the interim Legislative Committee on Public Lands, you have seen some of these slides, but there is some new information here ([Exhibit I](#)). To the rest of the Committee members I hope that this information provides you with a good

overview of the Humboldt River system. This river system is very important to the north and the northeastern part of our state and the natural resources that are there.

I serve as the Executive Director of the Humboldt River Basin Authority. It is a one-staff-person organization, and I serve part time, so we are quite lean as well. The Humboldt River is a very large area. It is in the northern part of our state. The river from beginning to end is about 1,000 miles in length when you take into consideration all of the oxbows and other things associated with this system. It is a very large area; it is 7,000 square miles or so. The basin itself is larger than several states in our nation. It is a very large and diverse area that we are dealing with.

The river itself generates on average about 290,000 to 296,000 acre-feet of water. The Humboldt River Decree, also known as the Bartlett Decree and the Edwards Decree, basically divided up that water through the courts. This provides for delivery of about 690,000 acre-feet of surface water. You may wonder how that happens. That is largely because of irrigation and surface runoff going from one permitted water user to the next permitted water user. So the efficient reuse of that agricultural irrigation water is very important to the system. Annual variations in flow produce a lot of economic and environmental uncertainty in our area.

The cover photograph on this presentation [page 1, [Exhibit I](#)] which you have and is on NELIS shows you that the river goes dry every year in certain areas. During these drought conditions it is even worse. The river is host to the listed-as-threatened Lahontan cutthroat trout, and that is an issue that we deal with. I would also note that all groundwater basins within the Humboldt River Basin will have been designated in need of further management by the State Engineer on or before July 1, 2015. There is a draft order out right now which will designate every remaining basin in the system that is currently not designated as requiring special management. There is very little unappropriated groundwater remaining in the Humboldt River area, and there are actually about 31 or 32 groundwater basins within the Humboldt River system. Many of those groundwater basins are over-appropriated, and some are significantly over-appropriated.

This region of Nevada is very important to our state's economy. It is a very diverse economic area that has a lot to do with our annual exports. If you look at the exports for our state, most are derived from activities occurring in the five counties that constitute the Humboldt River Basin area. We have the largest gold mines in North America, and we have very diverse agricultural production occurring there. We also have energy generation, and I would note

that this slide lacks geothermal [page 4, ([Exhibit I](#))]. We do have geothermal plants operating now in the Humboldt River Basin and have for quite some time. There is existing oil production, and we have significant long-producing oil wells in the area. We also have extensive oil exploration underway. The controversies and the movement to fracking in our state are occurring up in Elko County and areas of the Humboldt River Basin. We also have key infrastructure in place, and I just list that here for your information [page 4, ([Exhibit I](#))]. Our economic future is uncertain. We expect growth over the next 20 years to actually go down. That is largely the result of uncertainty in the mining industry. We also are facing periods of drought, warming trends, and less snow as Mr. James pointed out. That may cause some significant impacts and stresses on how the water resources that are available to us in the area can be effectively used.

The Authority was formed in 1993 by Elko, Eureka, Lander, Humboldt, and Pershing Counties and by those county commissions. It was in response to a proposal to export about 340,000 acre-feet of groundwater from the upper parts of the basin into the Reno and Sparks area using the river as a conduit. The five counties came together to oppose that project. Applications were ultimately denied by the State Engineer as being speculative in nature. We are organized pursuant to the Interlocal Cooperation Act in the *Nevada Revised Statutes*. We encourage the Legislature to maintain that as a tool for local governments. We are a unit of local government as a result. The annual budget is \$40,000 to \$50,000, with each county contributing from \$8,000 to \$10,000. We have a very lean budget, but we like to think we get a lot done. It is a 15-member board of directors and we meet every three months. I would note that each of the five county commissions appoints three members each. In every case we have at least one county commissioner serving on the board, and in a couple of cases—Elko and Lander—we have two county commissioners.

I am not going to go all through these in great detail. But these are the major roles and responsibilities of the River Basin Authority. I would just note the first bullet there [page 6, ([Exhibit I](#))], first and foremost to recognize and protect all existing decreed and certificated water rights. This group really came together to make sure that the water that is available and existing in that basin—and it is largely totally appropriated at this point—is available for continued beneficial use over time in those areas. We also do a lot of work to resolve inter- and intra-county issues. As the drought worsens and we look at other impacts of overproduction of groundwater pumping, those kinds of intra-county issues become more important.

I would just note on this slide [page 7, ([Exhibit I](#))] that we have over the years done a fair amount of work in terms of developing information that has been used to address different issues. We have done studies with private consultants, and we have engaged Desert Research Institute from time to time. We have come to the Legislature and requested legislation and supported that with various types of information.

What are the key issues facing the Humboldt River Basin Area [page 8, ([Exhibit I](#))]? First and foremost is drought planning and mitigation. Right now much of the Humboldt River Basin is in severe (D-2) to exceptional (D-4) drought conditions. The U.S. Drought Monitor would tell us that drought is expected to persist for the next three months. Recent information that you probably have seen in the newspapers states there are major studies being conducted now where folks are suggesting that we may be in a cycle of drought which is going to extend for decades. We will have to see how that plays out, but certainly for the near term we are looking at very, very, marginal conditions.

As Mr. James pointed out, we are also anticipating and seeing a greater percentage of our moisture falling in the form of rain versus snow. That is very contrary to the way our river system was set up and operates. We depend heavily on a lot of snow falling in the winter in the higher elevations of the various mountain ranges and that snow coming off relatively slowly in the spring. What we are seeing now is that we have a shorter season for snowfall, and in the spring we have a likelihood of rain falling on the snowpack and that snowpack coming off very quickly. We are looking at significant economic and fiscal impacts occurring in the basin as a result of the drought. The State Engineer had meetings in Lovelock recently. The Pershing County Water Conservation District has 17,000 to 18,000-plus acres of irrigated farmland and they got zero water last year. Two years before that they got less than 20 percent of the allocation. At the current pace we are going right now they are probably looking at zero water this irrigation season as well. We had farmers telling us that if something does not change within the next two years they are gone. They will not be able to survive. That little community of Lovelock is facing dire straits right now.

We are very concerned that we do not have a comprehensive state of Nevada drought response and management plan being developed. I brought this up to the interim Legislative Committee on Public Lands. The states around us are taking very aggressive actions to deal with drought. They are developing plans, they are developing reservoirs, and they are floating bonds in California to pay for infrastructure. To date we do not see anything happening here in Nevada on a comprehensive basis, notwithstanding the recommendations of the Governor's

own Nevada Drought Response Committee that such a plan be developed and the Governor accepting that recommendation. Work was started on the plan, and it never surfaced. That is a real concern to us.

This particular graphic [page 8, ([Exhibit I](#))] shows you the Palmer Drought Severity Index for northwest Nevada. The point of this slide is that this current drought that we are in is the most severe drought we have seen since the early 1900s.

Assemblyman Edwards:

What actions would you actually have us taking at this time?

Mike Baughman:

For example, in Wyoming the governor just announced what he is calling his "ten in ten project." The governor of Wyoming intends to develop ten storage reservoirs for additional surface water in ten years. That is pretty aggressive. It is hard to get reservoirs, and they are going to fund those. California developed a drought response plan and I think they issued a bond, or approved issuing a bond, for about \$1 billion of infrastructure. In our own state we are evaluating up in our area what is called aquifer storage and recovery programs where you would actually bank the water underground. If we had years of really high precipitation, we would divert the water and bank it, and during years of low flow we would pull it back out and put it back in the river. It sure would be nice to have the state involved in things like that. We are looking at additional surface storage. These are some actions that I think we are looking at.

Assemblyman Ellison:

We are looking at cloud seeding this year, and we have that bill in the Assembly Committee on Ways and Means. If we do not get this cloud seeding bill passed, what are going to be the repercussions based on what we have right now?

Mike Baughman:

In our area of the Humboldt River Basin we have about nine ranges that have been determined to be eligible for cloud seeding. Cloud seeding can generate anywhere from an extra 10 to 18 percent of snow water equivalent—moisture, basically. In that system we need snow pack in order to pulse the river to move water downstream. We need as much of that snowpack to occur in the middle Humboldt and even in the lower Humboldt Ranges as we do in the Ruby Mountains. Cloud seeding would help us accomplish that. I would note you have got to have storms to be able to seed them. We have not had a lot of storms during this drought situation. We would still be at the mercy of

getting the storm systems, but it would be a tool available to us in the state to help us augment our snowpack.

Let me just close by saying there are a handful of recommendations here [pages 12 and 13, ([Exhibit I](#))]. A few of these were presented to the Legislative Committee on Public Lands, and I have to apologize because I know that a couple of these were adopted by the public lands committee. Let me touch on one in particular, number seven [page 13, ([Exhibit I](#))]. This is an issue that is arising for us. The Division of Environmental Protection (NDEP) basically assumes that all waters of the Humboldt River system are waters of the United States. The federal government has only made a jurisdictional determination on one place, and that is the confluence in the Humboldt River and Rye Patch Reservoir. Under the U.S. Army Corps of Engineers (COE) and the U.S. Environmental Protection Agency's (EPA) tributary rule of the Clean Water Act, it could be presumed that all of the rest of the river might be jurisdictional. The COE has to make a jurisdictional finding before that is, in fact, the case. Our own NDEP has decided to assume that all of it is jurisdictional, so what difference does that make? Every couple of years NDEP produces what is called a 303(d) list of impaired waters and is only required to consider waters that are waters of the United States. We have over 600 miles of stream segments in the Humboldt River Basin that have now been listed as impaired. We are very concerned about this policy. I will tell you the vast majority of those have never been determined as being jurisdictional by the COE or the EPA. It is an assumption by NDEP. We would encourage this body to consider basically prohibiting NDEP from making this assumption. It is only an assumption on their part. We are hurting ourselves, and it makes no sense to us at all as users up in that area.

Assemblyman Ellison:

I agree. I was on that commission in Washington, the navigable waters of the United States. I am not sure where we can put this language in where we can get some teeth into this. I think we need to have staff look at what we can do.

Chair Titus:

Are there any other comments, questions, or observations?

Mike Baughman:

I have abbreviated this so I will leave it to your own reading to figure out whether you can do anything else.

Chair Titus:

I appreciate your time. At this time I am going to accept any public comment.
[There was none.] This meeting is adjourned [at 3:18 p.m.].

RESPECTFULLY SUBMITTED:

Donna J. Ruiz
Committee Secretary

APPROVED BY:

Assemblywoman Robin L. Titus, Chair

DATE: _____

EXHIBITS

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

Date: February 19, 2015

Time of Meeting: 1:32 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 77	C	Jim Barbee, State Department of Agriculture	Bill Explanation
A.B. 77	D	Jim Barbee, State Department of Agriculture	Proposed Amendments
A.B. 79	E	Jim Barbee, State Department of Agriculture	Bill Explanation
	F	Edwin James, Carson Water Subconservancy District	Overview
	G	Edwin James, Carson Water Subconservancy District	Brochure and Map
	H	Edwin James, Carson Water Subconservancy District	Flyer for Get On the Bus! tour.
	I	Mike L. Baughman, Humboldt River Basin Water Authority	Overview