

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

**Eightieth Session
February 20, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4 p.m. on Wednesday, February 20, 2019, 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 at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Shannon Bilbray-Axelrod, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Maggie Carlton
Assemblywoman Lesley E. Cohen
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Sarah Peters
Assemblywoman Robin L. Titus
Assemblyman Howard Watts
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Allan Amburn, Committee Counsel
Nancy Davis, Committee Secretary
Alejandra Medina, Committee Assistant



OTHERS PRESENT:

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Jennifer Carr, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Jeffrey Kinder, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Valerie King, Chief, Administrative Services, Division of Environmental Protection, State Department of Conservation and Natural Resources
John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County
Charlene Albee, Division Director, Air Quality Management, Washoe County Health District
Richard Karpel, Executive Director, Nevada Press Association
Patrick Donnelly, Nevada State Director, Center for Biological Diversity

Chair Swank:

[Roll was called. Committee rules and protocol were reviewed.] Today we will start with a presentation from the Division of Environmental Protection, State Department of Conservation and Natural Resources.

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

Good afternoon, Chair Swank and members of the Committee. With me today are Jeffrey Kinder and Jennifer Carr, both deputy administrators with the Division of Environmental Protection (NDEP).

Today we plan to provide a general overview of our agency and then dive a bit deeper into three specific topics: our safe drinking water program, the air program diesel emission mitigation fund and the Volkswagen settlement, and last, an overview and update on the Anaconda Copper Mine site.

Page 2 ([Exhibit C](#)) shows our mission statement, which is included in our current agency strategic plan and emphasizes our commitment to clean air, land, and water while helping to sustain a healthy economy.

The division implements a number of federal environmental laws with delegation from the U.S. Environmental Protection Agency (EPA), including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Resource Conservation and Recovery Act. We also implement state-only laws, including the Chemical Accident Prevention Program and those under the purview of NDEP's Bureau of Mining Regulation and Reclamation. We use the traditional regulatory tools of permitting, inspection, compliance assistance, and enforcement to assure compliance with environmental laws.

Page 4 shows an overview of our operating budget. You can see that we are primarily fee-funded. We do receive grants from both EPA and the U.S. Department of Energy that supplement our fees. It is important to point out that EPA grant funding has been flat or declining in some programs over a number of years. We are continuing to assess the impact of that on our long-term revenue and operations.

We have offices in both Carson City and Las Vegas, with 30 positions in our Las Vegas office. There are 265 positions in NDEP and we are requesting 3 new positions this legislative session: a payroll technician in administration, a public service intern in the air program, and a professional engineering specialist in the environmental cleanup program within our Bureau of Corrective Actions.

In addition to our primary regulatory role with personnel, NDEP's budget funds a number of contracts to provide specialized technical assistance to our hazardous substance cleanup programs, subgrants for recycling and source water protection projects, and we also fund the University of Nevada, Reno Business Environmental Program to provide compliance assistance.

I will now turn the presentation over to Jennifer Carr, who will review our drinking water program.

Jennifer Carr, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

Good afternoon. Thank you, Chair Swank and members of the Committee. I am responsible for oversight of our water quality programs.

Page 6 ([Exhibit C](#)) describes NDEP's Bureau of Safe Drinking Water, which has 32 staff and 7 program areas to implement the federal Safe Drinking Water Act in lieu of the EPA. Nevada has been maintaining delegated primacy for this program since 1978. Our staff recognizes that safe drinking water is vital to the public health, welfare, and economy of Nevada, and they take their charge both seriously and conscientiously.

My intent with page 7 is to give you a feel for the breadth of the program areas within the bureau. I listed the engineering design review first, because ensuring that water infrastructure is designed and constructed properly is the first and best barrier to waterborne disease protection.

Staff in the compliance branches of public water systems (PWS) are our front line in technical assistance and communication with water systems. They monitor thousands of data points coming into the agency and react constantly to that data as it changes. They perform sanitary survey inspections to monitor the integrity of our infrastructure over time, and they assist water systems in managing compliance with the myriad state and federal rules and regulations. I would be remiss if I did not say that to call this a complex program would be a true understatement. It has an extreme depth to it.

Our program areas listed on page 7 also support these efforts, such as source water protection, operator and laboratory certification, and data management. The program for source water protection is pleased to report that over half of the regulated public water systems are covered under a source water program or the Wellhead Protection Program; and 92 percent of those that have these plans, have significantly implemented some elements of source water protection strategies. A final item that crosses over several program areas, but is not specifically listed, is a vulnerability assessment program. That program identifies potential contaminant sources for water supplies such as the presence of a gas station near a water supply well—that is a potential contaminant source to the drinking water supply. If a contaminant source is not actually a reality near a public water system supply source or a well, the vulnerability assessment program allows NDEP to save water systems significant costs by either waiving or reducing monitoring requirements for unnecessary analyses. Conversely, it also helps us keep a close eye on things that might be areas of concern.

Page 8 shows one item of good news to report to you today. With all these efforts that we put forth across programs, 99.89 percent of our population served by community water systems are receiving water that meets all primary, health-based drinking water standards. However, one of our greatest challenges is helping very small water systems handle the complexity of this program. The "very small" systems are federally defined as those serving fewer than 500 people; 77 percent of our water systems are in this "very small" category. Many of these very small systems serve far fewer than 500 people and include systems such as mobile home parks or systems in which the primary business function of that entity is not the production of water. It may be a stand-alone restaurant, a business, a school, or someone who just does not necessarily think of themselves as a water producer. These systems receive the bulk of our staff time in providing one-on-one technical assistance; we also use contract resources such as the press. You may have seen last week, or on Channel 4 news this morning, there was an announcement of our \$1 million contract solicitation for our technical assistance providers.

Despite diligent and intense efforts to communicate with systems and assist with compliance, sometimes a water system goes awry and other strategies have to be used. In a recent mobile home park case that we worked on over many years, the owner just did not have the technical, managerial, or financial capacity to properly manage his system to comply with primary drinking water standards. Even after being issued a compliance order, we were largely ignored. Even after pursuing district court intervention to compel compliance, the court order was also ignored. It was only after the owner was jailed for contempt of court that we finally saw action.

In this case, and others, we have valued our sister state agencies and other local partners such as those in the Department of Health and Human Services (DHHS) and the Department of Education to leverage our respective authorities and human resources to gain compliance. For example, the Division of Public and Behavioral Health within DHHS can leverage their responsibilities for issuing food permits to gain compliance with the drinking water standards for a restaurant that they may be permitting. Those partnerships are incredibly valuable.

Some more good news on page 8 is our partnerships with local community leadership and our source water protection program. I am very proud of the work we do in assisting local communities with science and engineering resources to help plan for growth and protection of precious water resources. The Bureau of Safe Drinking Water also collaborates internally with our water quality planning and water pollution control programs on several levels to tie the Clean Water Act with the Safe Drinking Water Act authorities for stronger program implementation overall.

Technical assistance ties in here as well in our work with municipalities as they work to maintain their infrastructure, operations, and management in an ever-changing regulatory and economic environment.

Finally, I would note that the Bureau of Safe Drinking Water is actively seeking opportunities to streamline the work they do to create efficiencies allowing them to redirect our internal resources and increase capacity to assist and provide oversight to anyone in our regulated community.

Page 9 shows that in 2017 we began to be audited by the Legislative Counsel Bureau (LCB). You might be surprised to hear that, although it was rigorous, we really valued their effort to review our program. Unlike prior fiscal audits that we have been through as an agency, this one focused on our implementation of the safe drinking water program. We are very proud of the overall LCB findings that we are effectively supervising public water systems and ensuring Nevadans are provided with safe and reliable drinking water. The two programmatic findings have been addressed and the final report is that we have fully implemented the follow-up requirements.

During this same period, the program also underwent a thorough and comprehensive audit by the EPA. That report is still forthcoming, but the EPA Region 9's drinking water management section chief stated the NDEP Bureau of Safe Drinking Water implements a comprehensive monitoring, inspection, and enforcement program to ensure water system compliance with federal Safe Drinking Water Act requirements. We were very pleased with that outcome as well.

Page 10 relates to a project we initiated that goes beyond the regulatory program. In 2016 we pursued a federal grant to fund a voluntary screening program for lead in elementary school drinking water. Although the Safe Drinking Water Act has the Lead and Copper Rule which is implemented at regulated public water systems, it is a residential testing program. While compliance with this rule is high in Nevada, and we know the water delivered to the school is safe, there is a gap in overall knowledge of the quality of water produced at the tap in school buildings where our children are spending 180 days a year.

This project has targeted testing of drinking water fountains and culinary fixtures in each elementary school to find whether or not an old fixture or fountain might be contributing lead to the building's water service. A portion of the grant was committed to also purchasing

replacement fountains or fixtures if a problem was found, so we would not leave the school district hanging.

As you can see, we thankfully have only found 9 faucets out of 662 samples—no drinking fountains—that had results above the project action level. In each of the nine faucets that were found to be above the project action level, NDEP took immediate action to take the faucets out of service while further investigation or replacement was conducted. Because of the extremely low number of problematic fixtures that were found, we have expanded the program to include private schools as well as public middle schools and high schools as school district interest and funding allows.

Thank you for the opportunity to provide an overview of Nevada's safe drinking water program, and I am happy to take questions.

Assemblywoman Bilbray-Axelrod:

You mentioned that screening for lead in elementary schools is voluntary. What is the percentage that are involved? I think elementary school and high school are probably the only times in my life in which I actually used a water fountain on a daily basis. We know that the unsafe lead levels can really affect children.

Jennifer Carr:

In the initial program, we were just looking at Nevada public elementary schools. There were 391 schools eligible for the program. As of the end of January, 330 of those schools have been tested, and we are working with the remaining counties to finish their testing programs as well. Testing bottles have been sent to almost all of those counties, and they are engaged in participating in the program. Our goal is 100 percent participation of the elementary schools.

Assemblywoman Bilbray-Axelrod:

I understand participation is voluntary, but obviously we would like to see 100 percent.

Jennifer Carr:

We are doing our best to get 100 percent participation.

Assemblywoman Bilbray-Axelrod:

I would appreciate a follow-up on that.

Assemblywoman Titus:

You said you hope to get 100 percent of the 391 schools that were eligible. There are certainly more than 391 elementary schools in Nevada, or is that all of them?

Jennifer Carr:

The schools eligible in the program for this grant funding excluded schools that already have their own regulated public water systems. If we are already regulating them under our normal program, we did not use this grant funding to provide additional analysis.

Assemblywoman Titus:

So that would mean that all elementary schools have either been tested with this grant, or they have some other system that is being tested. There is no elementary school in Nevada that is being left out, correct?

Jennifer Carr:

They are not being left out of the opportunity.

Assemblywoman Titus:

So they do not have to sign up. I understand that. My next question is about water safety and water security. I take it that our water is safe to drink. That made me think about other insecurities of a water system, such as homeland security. One of the ways that we feel we are perhaps vulnerable to some person who may want to harm citizens is contamination of our drinking water. Are you involved in partnering with the Office of Homeland Security within Nevada's Department of Public Safety, to ensure that the major water systems are safe?

Jennifer Carr:

The Division of Emergency Management has a separate vulnerability assessment program that they are mandated to do in order to look at those types of vulnerabilities and nefarious acts that might cause problems. This is outside of the NDEP.

Assemblywoman Titus:

Do you have communication between the two of you as a partnership?

Jennifer Carr:

We are aware of each other and we do communicate occasionally. The ties are not tight. For example, we do not see their plans because we do not have the public records protection that they have for those vulnerability assessment plans. If those plans were to come to our agency, we do not have the statutory protection to keep them from being released under records requests. They have different protections for those documents, and they manage that program wholly within the Division of Emergency Management.

Assemblywoman Peters:

Regarding the screening in the schools, is there a report that will be available for review? Also, did you review a suite of contaminants, or was it specifically addressing lead? Is there a microbial component to this?

Jennifer Carr:

This project is solely for testing lead in elementary schools as the primary element of concern for elementary school children and the physiology of their developing brains. We have been providing update reports, and I would be happy to provide a report upon completion.

Assemblywoman Peters:

If a vulnerability is seen, how is it mitigated, and how do you work with other agencies? For example, if you have a leaking underground storage tank, how does that relationship with NDEP's Bureau of Corrective Actions work? How do you work together to ensure that there is no contamination of water?

Jennifer Carr:

The Bureau of Safe Drinking Water and the Bureau of Corrective Actions physically sit right next to each other. They are tightly tied amongst the staff. They use similar databases to overlay information from the different programs with geographic information system capabilities and things of that nature on a planning scale. All the monitoring that is done provides really early warning systems as well; if there is a gas station next to a public water supply well, we would ensure that the monitoring frequency is adequate to monitor that for gasoline-type contaminants on a regular enough basis so that we can see any new detections of those sources of contaminants far before they would be at or even near a drinking water standard. It does not necessarily have to be gasoline; it could be nitrates from a wastewater plant, for instance. There are triggers in which we are monitoring all of those contaminants and when we start to see upward trends, we take certain actions early before they get near our drinking water standards.

Greg Lovato:

One other way our bureaus coordinate is this: NDEP's Bureau of Water Pollution Control issues discharge permits for construction dewatering, and oftentimes those are quick turnaround permits for a construction project. We make sure that they check with air corrective actions to see the status of any contaminant plumes in the area, making sure we understand what contaminants to monitor. It is not only for safe drinking water, but also for our Bureau of Water Pollution control interactions.

Assemblywoman Peters:

Is that how you marry up the Clean Water Act and the Safe Drinking Water Act?

Jennifer Carr:

That is one example. The permitting programs are integrated with the drinking water program. Our source water protection program is now in the Bureau of Safe Drinking Water. It used to be in the Bureau of Water Pollution Control. Those staff interact across program lines very regularly. Our subdivision review program is done in both the drinking water and clean water programs. The Bureau of Water Quality Planning within NDEP also assists on the Clean Water Act side by looking at water resources and other elements of watershed planning, and looking at all the surface waters and groundwater interactions to protect the resource across the basins.

Assemblywoman Hansen:

When you talked about screening for lead in schools, I am assuming it is a pipe issue. Are you screening the water after it comes into the school?

Jennifer Carr:

The chemistry of water distribution and supply, materials, and the water itself can be very complex and it can vary from one water system to the next. Depending on the chemistry of the water and the age of the building materials, there can be adverse reactions in which lead can leach out of old brass if the water is sitting in a fixture. We are actually testing the water first thing in the morning, after it has sat overnight, as a worst-case scenario to see what the maximum lead level might be to the first person who uses that water in the morning. That gives us an indication whether there is anything going on with that faucet or drinking fountain.

Assemblywoman Hansen:

When selling real estate, we worry about lead-based paint in any homes that are pre-1978. Similarly, does it depend on the age of the school whether you start to worry about lead pipes? Do you necessarily screen schools of a certain age?

Jennifer Carr:

We had initially thought we needed to prioritize our school sampling and do the oldest schools first, but we ended up having a tremendous amount of resources available to test all the schools in Nevada. There was a lead ban in 1989 that affected the lead content of solder in putting plumbing together, and the definition of lead-free fixtures has changed over time, most recently in 2014. We decided that there was no value to only testing the older schools. We opened it up to every elementary school in Nevada so that everyone could have the peace of mind that their school had been screened and they knew what was going on in their building.

Assemblyman Watts:

I would like to follow up on the source water protection program. You mentioned some statistics regarding the number of entities that had one. Can you provide some detail on what entities are required to participate? Knowing that there is a wide variety of providers, what are some of the core elements that are in those plans?

Jennifer Carr:

I can provide you more detail in a follow-up on the types of things that are included in the plan as far as the elements go. When I said that more than half of the regulated systems had plans, out of the 600 public water systems, 301 are covered under the resource water Wellhead Protection Program. Generally, they include things like looking at wellhead capture zones or various manufacturing facilities in a watershed. If it is looking at surface water quality as a water supply, it is looking at what is throughout the surface of the watershed and what might be running through stormwater mechanisms. Also, we use local partnerships to improve stormwater quality and our own other internal permitting programs for stormwater industrial permits to try to protect the water quality on a basin scale.

Chair Swank:

Are there any further questions? [There were none.] We will continue with the presentation.

**Jeffrey Kinder, P.E., Deputy Administrator, Division of Environmental Protection,
State Department of Conservation and Natural Resources:**

We will now change gears and go from water to air. Page 11 ([Exhibit C](#)) shows that the goal of our air program is to achieve and maintain healthy levels of air quality. The air quality programs collectively regulate over 800 facilities in counties other than Washoe and Clark Counties, which have their own air quality management districts. Currently over 98 percent of Nevada air basins are in attainment with the National Ambient Air Quality Standards, with only a portion of Clark County in marginal nonattainment for ozone due to the recently lowered federal standards.

Today I would like to present one of our important mobile source programs, the Nevada Diesel Emission Mitigation Fund. On page 12 you will see one of the first tasks with the Volkswagen (VW) mitigation fund was to create and develop Nevada's Beneficiary Mitigation Plan. That effort was accomplished in collaboration with the Nevada Advisory Committee on the Control of Emissions from Motor Vehicles. That committee has a wide range of membership, including NDEP, both the county air quality management districts, the Department of Motor Vehicles, the Department of Transportation, and the State Department of Agriculture.

Nevada's Beneficiary Mitigation Plan established the three goals for the program. The first two goals concern reduction in nitrogen oxide (NO_x). At the heart of the VW mitigation fund was abatement of the NO_x from the subject vehicles that were a part of the settlement fund. The third goal focuses on supporting the long-term investments toward a zero-emission transportation sector.

Page 13 shows the three parts of our program. The first part is the Nevada Electric Highway initiative, the second is the Diesel Emission Reduction Act (DERA), and the third part is the competitive grants under the VW settlement. I will talk a little more about each of those.

Page 14 relates to the Nevada Electric Highway initiative. Under the VW mitigation settlement, each state was allowed to allocate up to 15 percent of the funds toward zero-emission vehicle infrastructure. The NDEP allocated all of the 15 percent to the Office of Energy (GOE) within the Office of the Governor for the Nevada Electric Highway initiative. There are four stations that we are currently working on with GOE.

The Nevada State Clean Diesel Program, also known as a DERA Option, is a program that our air program has been actively participating in since its inception in 2008. Shown on page 15 are two pictures: The first one shows a recent truck replacement done with the City of Reno. In this case, we went from an older model vehicle with very high emissions to a cleaner diesel vehicle. The second picture shows the scrapping of a school bus. The hallmark of this program is once the vehicle is replaced, it is destroyed so that it does not show up anywhere else on our roads. That is done through either drilling a hole in the engine block, cutting the drive train, or in this case, shredding an entire school bus.

Page 16 relates to our competitive grant program under the VW fund. Last year, which was the first year of the program, we awarded \$6.6 million while leveraging \$9.2 million from our project partners. Through grants that we will be working on through 2021, over 740 tons of NOx will be mitigated by these projects, and 88 percent of the vehicles will go from diesel to electric. It was a very successful first year under our competitive grant program. Our next grant program will be starting June 1, 2019.

Finally, page 17 shows the scoring criteria for projects under the competitive grant program. As you can see, there are several criteria, but the last goal is the most important to us which is maximizing NOx reduction with each dollar we are spending through the VW mitigation fund.

Assemblyman Wheeler:

Regarding the NOx reduction, are you just reducing by getting rid of the high-NOx-producing vehicles, or are you looking at other ways to reduce NOx in existing engines?

Jeffrey Kinder:

Primarily it is through eliminating the high NOx emission vehicles, but it is not just NOx that these vehicles emit. We are getting air improvement through the whole criteria of air pollutants as well as greenhouse gas emissions that these vehicles produce. However, under the DERA program, we are allowed to look at things like more efficient improvements to the engine or engine replacement. It is not just vehicle replacement, which is the vast majority of this, but we are allowed to look at other technologies as well.

Assemblyman Wheeler:

That was my business for years. When you reduce NOx, usually the carbon dioxide goes up, which is also a pollutant, as you well know. I would love to see the technology on what is happening when you reduce NOx in current vehicles.

Assemblywoman Peters:

When talking about healthy levels of air pollution, we generally, in this state, defer to federal levels. We know in the state of Nevada we have different air quality issues because of our high levels of dust and other meteorological issues that we have across the state. Are there any mechanisms for addressing long-term exposure or acute exposure levels that may occur in certain neighborhoods and areas? How do we address healthy limits in those areas?

Jeffrey Kinder:

Generally, our air program follows the National Ambient Air Quality Standards with the Nevada ambient air quality standards, which are essentially the same as the national ones, with the exception of a Nevada ambient air quality standard for hydrogen sulfide that is unique to Nevada. We also have a suite of dust regulations that we implement. Basically, it is a zero-dust regulation, so for any activity that is creating dust, we would regulate and work to ensure that dust is not created. More specific to urban issues and mitigation goals, we talked more about urban areas and reducing the vehicle emissions. So we are looking at the

urban centers and the congestion of where these vehicles are located as we focus on the VW mitigation fund.

Assemblywoman Cohen:

Will you give us some information about the airline awards?

Jeffrey Kinder:

The airlines are electrifying their ground fleets. It is changing the infrastructure to put in power ports and change out the diesel vehicles that they use to move airplanes around, such as the tugs and baggage carts. What is great about this project is that these diesel vehicles are very old and were built long before standards were put in place. That is why we are seeing such a large reduction in pollution as we move to electric vehicles. We are working with two airlines, but as the infrastructure spreads, hopefully we will be able to do more work at the airport.

Assemblywoman Cohen:

What was replaced? Were there compliance issues, or was this something that would not have been covered by any regulations?

Jeffrey Kinder:

When we look at air quality, we look basinwide at the total number and look for reductions there. This equipment was not out of compliance; it was just older model vehicles that had higher emissions.

Assemblyman Watts:

Regarding the competitive funding, how much of the funding has been awarded? How long are you planning to award these grants?

Jeffrey Kinder:

The state was allocated roughly \$24.8 million. We have \$12 million remaining that has not been allocated. The settlement allows for up to ten years. Any money that has not been spent within ten years is returned to the trust and distributed to the other states. We are in the first year of allocation and we will continue to do annual funding until all the funds are spent. Based on the interest we have seen, we have no expectations of having any money left over at the end of the competitive grant cycle.

Assemblyman Watts:

I notice that you have projects for school bus replacements that were diesel to diesel. Why were those covered here and not in the DERA program? It seems like the mitigation fund might be better for moving past diesel to other alternative energy sources.

Jeffrey Kinder:

We replace school buses all the time under our existing DERA program. Why DERA is listed here is because if you use VW funds to support DERA, you get a 50 percent additional

match from EPA, so we are leveraging VW money to get additional funding under our DERA program.

Assemblywoman Titus:

Along the same lines as Assemblywoman Peters' question, Nevada has some unique air quality concerns that other states may not have. You mentioned that you follow dust and that you want to make sure that we limit the dust exposure. Are you involved with anything in the Black Rock Desert during Burning Man when an incredible amount of playa dust is released?

Jeffrey Kinder:

The Bureau of Land Management (BLM), U.S. Department of the Interior regulates Burning Man, so the environmental impact statement and work for Burning Man is done by BLM. We have collaborated with BLM in the past and provided support to model events and suggest best operating practices to limit the dust created.

Assemblywoman Titus:

Certainly, that dust does not stay over that area and the rest of us can be affected by it.

Assemblyman Ellison:

Regarding the 50 percent match fund on the diesel motors, is that for any company? How does a company qualify for that? If I had a fleet of older trucks I wanted to get rid of, can I qualify for a grant to get rid of half of the old engines?

Jeffrey Kinder:

If we are dealing strictly with DERA, it is public fleets such as school busses and the City of Reno. Under the VW competitive grant, we can consider private industry as well.

Assemblyman Ellison:

Most of the vehicles at airports are propane, not gasoline. Is there a breakdown of how many are gasoline or diesel versus the propane units? Do propane units put out as many emissions?

Jeffrey Kinder:

I do not know the breakdown, but propane is a lower-emission vehicle. The work we are doing is strictly with the diesel-powered vehicles.

Chair Swank:

When thinking about reducing these emissions, we have a lot of low-income communities with older cars that do not have such good emissions. Is there some kind of buy-back program for these low-income families so they could then purchase a car that was more efficient?

Jeffrey Kinder:

I am not aware of any buy-back program, at least through the programs we administer. With the VW program, they could exchange their vehicle if they were interested, but that is just for the subject vehicles under this settlement.

Chair Swank:

So an individual would have to know about this and apply for it?

Jeffrey Kinder:

That is true. When I discussed our scoring criteria, we did have additional environmental issues and are looking at low-income areas as well.

Chair Swank:

Thank you. We can move on.

Greg Lovato:

I will give you a brief background on the Anaconda Copper Mine site, explain the 2018 decision to defer to state lead oversight, and then review our plan forward for final closure of the site.

Page 18 ([Exhibit C](#)) shows that the mine, which is located in Lyon County near the City of Yerington, has had a long history of different mine operators with different liabilities, and it is also a mixed ownership site. About 50 percent is public land managed by the BLM, and the rest is owned by a private prospective mine development company who acquired the private portion during the previous operator bankruptcy proceedings.

The key to understanding the current status and path forward at the site is understanding the different operation periods and what happened because that affects who has liability for addressing different portions of the site. Keep in mind the time frames listed [page 18] as we review how the contamination problem at the site originated.

Page 19 shows an oblique aerial view of the site looking to the northwest. Those of you familiar with the area will recognize the City of Yerington in the foreground, the Walker River flowing from south to north just west of Yerington, the Mason Valley agricultural area to the north, and the Singatse Range to the west at the top.

The Anaconda Copper Company mined ore starting in the 1950s through the 1970s down below the water table. It moved waste rock to the southern areas of the site; this is waste rock that did not have ore value. The ore was processed in the middle of the site.

Tailings, which are residual waste material left over after ore has been processed and copper removed for smelting elsewhere, from the Anaconda operation were deposited in the central and northern areas of the site. The Anaconda operation used sulfuric acid to leach out copper, and a portion of the process also had a byproduct of mine tailings which were transported in a wet slurry via a ditch to unlined evaporation ponds in the northern part of the

site. The chemical process used to yield copper also mobilized environmentally significant concentrations of naturally occurring uranium, arsenic, and other contaminants, including sulfate. These contaminants leached down into the groundwater, which is approximately 30 to 50 feet below ground surface in the northern areas of the mine property.

The Atlantic Richfield Company (ARCO), now a subsidiary of BP Amoco, acquired the Anaconda Copper Company in 1977 and then shut down operations at the site in 1978. Because ARCO owned and operated the facility in that period from 1977 to 1978, they are considered a potentially responsible party for the release of hazardous substances resulting from Anaconda operations.

Other owners used the site for nonmine uses until Arimetco, Inc. began operating the site as a heap leach operation starting in 1989. Arimetco did not mine additional ore; they processed and stacked portions of the residual Anaconda waste material that had higher copper concentration and put it onto lined heap leach pads. Arimetco applied sulfuric acid and then collected and processed drain-down fluids in this area, extracting copper for smelting off-site. Arimetco declared bankruptcy and abandoned the site in 2000, requiring NDEP to step in and manage the fluids draining from the heaps. Since 2000, several fluid management and dust control mitigations have taken place and an extensive network of monitoring wells were installed to determine the extent and magnitude of contamination in groundwater beneath the site and off-site to the north.

Because ARCO did not own or operate the facility or the heaps constructed by Arimetco, neither EPA, the state, nor BLM have attached liability for this portion of the site to ARCO. The Arimetco heaps cover about 250 acres and are still draining acid fluid at an average rate of five- to ten-gallons-per-minute year-round. The fluids are contained in a series of evaporation ponds as an interim measure, but those ponds will reach capacity and new ponds will be perpetually needed unless a long-term solution is put in place to cut off precipitation by recontouring and covering the heaps to prevent precipitation from infiltrating and generating additional fluids.

The NDEP, BLM, and EPA jointly completed a record of decision [U.S. Environmental Protection Agency and Nevada Division of Environmental Protection National Priorities List Deferral Agreement Anaconda Copper Mine Site, Lyon County, Nevada] in 2017 selecting a cap remedy for this area of the site at an estimated cost of \$30 million to \$40 million. The agencies also estimated that, weather dependent, the current pond capacity may be reached in 2019. Because it is considered an orphan share portion of the site with no viable responsible party, the only source of potential funds available in 2017 to address this portion of the site was the federal EPA Superfund.

In March 2016, Governor Sandoval provided a conditional concurrence to list the site on the EPA National Priorities List (NPL) to make the site eligible for federal funds. It is very important to remember that listing the site on the NPL does not guarantee federal funding, and the Superfund has been underfunded for years with many EPA fund lead sites across the country having delayed or extended design and construction schedules.

Simply put, NDEP sees the following as the main advantages of deferral and state lead under agreements reached in early 2018: First, instead of uncertainty about federal funding for the Arimetco portion, ARCO signed an enforceable agreement with NDEP to fund what would have been the federal cost share of that phase of the cleanup for Arimetco and to perform the cleanup in accordance with the remedy selected. Second, the deferral agreement between EPA and NDEP has an overall schedule for final closure of the entire site that I will explain further. Third, the deferral agreement requires the cleanup to meet the same cleanup standards and processes as what would have been required under EPA lead.

Lastly, I did not include this in the presentation because we are not sure of timing or certainty as it is dependent on the price of copper, but having the site deferred to state lead may make remining, one of the potential long-term uses of the site, more likely than if the site were listed on the NPL. There are still significant copper deposits beneath the pit and underground to the north.

As with any complex situation, there are many misconceptions and questions about deferral. To help, we have prepared a blog entry on the NDEP website to give background information in a plain language format.

Finally, looking forward, we have an overall plan and a schedule. The site was grouped by EPA into eight areas called "operable units." The EPA's progress over 14 years accomplished a great deal in the groundwater investigation area, but an overall site schedule was not provided. The NDEP has now grouped the overall site closure plan into three phases. The first phase is construction of the remedy for the Arimetco portion. Design work is underway and we are planning to start construction this year.

Phase 2 includes the northern areas of the site, including groundwater and the Wabuska Drain, which is an irrigation return flow ditch that extends north of the site. Phase 3 includes the pit lake and southern areas of the site. The current schedule calls for final remedy construction to be completed by 2029.

The NDEP has reviewed these overall plans with the community in a public meeting in November and before the Lyon County Board of Commissioners in December and the Yerington City Council in January.

I hope this helps shed some light on our plans for managing the Anaconda Mine and we would happy to take questions.

Assemblywoman Peters:

I want to address the cost of this site and the state's ability to manage a large corporation, such as BP Amoco as the parent company of ARCO, and their bank of lawyers who have, as we have seen through the EPA, litigated to the cost of \$13 million to sue the federal government. How does the state intend to mitigate that potential cost for the cleanup of this site? My follow-up question is, How are we going to address the groundwater impact to one of our most at-risk resources, especially in an area such as Mason Valley?

Greg Lovato:

I will answer the last question first. The groundwater remedy at this site is going to be pretty involved and complex because there is ongoing use of groundwater in Mason Valley for agricultural uses. It is a problem that extends well north of the site and is fairly deep. We are going to have to look at all of the available options for managing the cleanup. I think the first phase is going to have to be cutting off any contaminants from leaving the site. I cannot make that judgment now. We will have to go through a remedy selection process and weigh out the feasibility of these things. Ultimately, the goal of the groundwater cleanup decision is to restore aquifer water quality to the extent technically feasible. We have not gone through the process for selecting a remedy for groundwater. We have gone through it for the first phase, but we have not actually compared all the different options for managing groundwater.

I am not sure I understand your first question. Will you please restate it?

Assemblywoman Peters:

When the site was under EPA's lead, they did emergency response actions that were not in line with what BP Amoco deemed appropriate or their responsibility. The parent company of ARCO litigated until there was, I believe, \$21 million banked towards those efforts for cleanup, stating that they were not liable for them. After the state took lead, BP Amoco and the EPA settled for the difference, leaving \$13 million of taxpayer money on the table for that cleanup process. The state does not have those kinds of resources. We cannot hold \$13 million in an account to potentially risk losing to a big company like BP Amoco for not doing the job that we intend them to do to clean up this site. How are we mitigating that being a potential concern for cleanup of this site? How do we keep BP Amoco from holding up the process without having a bank of money to do those emergency response actions? I want to address the larger issue that this is a big company whose budget is more than Nevada's state budget. How are we going to keep them liable for the cleanup of this huge site?

Greg Lovato:

I think you might be talking about two issues. One is the portion of the costs the EPA expended during their management of the site that they were able to recover from ARCO. I think that has to do with the fact a large portion of EPA's costs were related to the Arimetco portion of the site. The Arimetco portion of the site had a number of fluid management issues. When you are managing acidic drain-down fluids over the high-density polyethylene liners for the ditches and ponds, all of them need to be replaced. The EPA had to construct an evaporation pond for Arimetco. There were a number of costs that the EPA spent on the Arimetco part of the site, which I talked about earlier, that did not necessarily attach as a liability to ARCO.

The second part of the answer is, it really is how you manage the site. The NDEP has experience through the Superfund program, both at the Rio Tinto Copper Mine site and also at the Black Mountain Industrial Complex in Henderson, of getting a lot of cleanup under state authority. It is really a matter of proving up the case and managing the project

diligently. We can achieve cleanup regardless of the size of the company or the size of the problem. I think we have demonstrated through other projects that the state is capable of managing this project.

Assemblywoman Bilbray-Axelrod:

Thank you for addressing the Superfund; I was very confused as to why we would leave that. I am wondering how much money we could have expected to get from the EPA. How much money did they leave on the table that Nevada is now on the hook for?

Greg Lovato:

When I point to the three phases of the site, the first phase is the Arimetco portion. That is the only portion of the site that the EPA would have spent federal money on. When we entered the enforceable agreement with ARCO, they effectively stepped into the shoes of the federal government. That not only included the EPA—although 50 percent of the site is on public land, 22 percent is actually on BLM land. The BLM would have had to kick in additional money as well. The Central Hazardous Materials Fund for the U.S. Department of the Interior is even more stressed than the Superfund. We were not sure exactly, as a state, when those funds would come forward. To answer your question directly, there is no additional cost to the state as a result of deferral.

Assemblywoman Titus:

For those of you who do not know where Smith Valley is, it is at the very top of the picture on page 19 ([Exhibit C](#)). This is literally in my front yard. We have dealt with this for decades. I would like to thank you for actually making some progress; we have heard about this for a long time. They have done hundreds of test wells around the area for the citizens who are on domestic wells—all of the beautiful agriculture—testing and testing to ensure there is no contamination in those fields or in those wells. I need some clarification. I heard you say they are still leaching five-gallons-per-minute out of those ponds, is that correct?

Greg Lovato:

I was talking about the Arimetco heap leach pads. There is still ongoing precipitation that infiltrates through those. Most of it comes within a few days after a storm, but averaged out over the entire year, it is five- to ten-gallons-per-minute. That is currently managed in evaporation ponds. The two that NDEP constructed a few years ago are double-lined with leak detection, so it is not leaking out into the environment. If we do not cover these heaps to prevent the rainwater from going in, we will have to keep building those ponds because they reach capacity after a few years.

Assemblywoman Titus:

This mine was built long before the reclamation mandates for which you fill everything back in and it looks pristine after you are done with mining. Mining as a whole have been better stewards because they have to be of late. That hole on this mine is never going to be filled back in; the heaps are never going to go away. What we are looking for with long-term management is to ensure that whatever is there just stays there. Is that the ultimate goal?

Greg Lovato:

The ultimate goal is to mitigate any risks associated with releases from the site. Often that means covering up areas of the site that may continue to leach into the groundwater over the long term. Just looking at what has happened at the site, it is clear that most of the release has happened in the 1970s and 1980s, when a lot of the material was still wet. We do have rain events now that episodically contribute to leaching. The long-term goal is to close the site, mitigate risk, and restore groundwater quality to the extent that we technically can.

Assemblywoman Titus:

The community of Weed Heights is also in that picture [page 19]. People live there. There is no one who has been contaminated; there is no stunted growth, et cetera, so it is not a big worrisome contaminated field. The worry is if we do nothing and allow this to continue. Are you looking at closing and covering it so that the state can walk away?

Greg Lovato:

Ultimately, the goal is a passive remedy for most parts of the site. It is not clear if that is going to be enough for addressing the groundwater situation. Right now, based on the data we are looking at—it appears we are still going through this evaluation—most areas of the groundwater plume are stable; they are not expanding. Determining what can technically be done to address and restore groundwater quality while balancing all the other uses of groundwater that take place in the basin is what we will be looking at. Most of the site and most of our mine closures end up being passive walkaway remedies. The portions of the site that are related to groundwater may or may not be able to be a walkaway.

Assemblyman Watts:

What is your involvement in this process with the Yerington Paiute Tribe, especially given that substantial participation by them in areas outside of their reservation was removed from the deferral agreement? Related to that, does the 2029 end date on your schedule include plans to have the members of the tribe use groundwater and not rely on bottled water by that time?

Greg Lovato:

The involvement of both the Yerington Paiute Tribe as well as the Walker River Paiute Tribe has been an ongoing interaction between the EPA, the BLM, and NDEP as part of the evaluating deferral. When we first had the idea that we could reach an agreement for deferral, NDEP approached EPA, which was the lead of the site at the time, and EPA actually went through a series of meetings with the Tribal Chairs and Tribal Councils to explain deferral. I know that neither tribe is satisfied with the outcome of deferral and would prefer the site to stay under EPA lead, but we believe that all through the process, both the deferral agreement and everything that we looked at were vetted by veteran EPA Superfund attorneys as well as program folks.

We believe that with all of the concerns that were raised, neither we nor the EPA were able to determine that any of those concerns were significant and valid enough to not defer the site.

One of our goals from the beginning of considering deferral was to afford equivalent participation by the tribes as it would be under EPA lead. We set up provisions for providing technical assistance grants to the tribes. We have been unable to successfully negotiate those, but we are continuing to try to do that. Part of the involvement of the tribes actually includes—in addition to what is required under the Superfund law in terms of commenting on remedy selection—there is a whole series of studies that take place: individual technical memorandums, documents, and sampling plans. We actually have provisions for the tribes to comment specifically on every single technical document, and there are hundreds that get produced at this site. We are committed to continuing to work with both tribes to try to meet their needs, but ultimately the decision for deferral was not something they supported. The decision was made for the reasons that the EPA found we had provided a protective alternative to managing the site under the EPA lead.

In regard to the bottled water situation, it is important to talk about how the bottled water program at the site started. It started in 2004. In 2004 there was not the extensive network of groundwater monitoring wells—there are over 350 now, both on-site and off-site. The bottled water program was put in place as a protective measure. It was not known what the extent of groundwater contamination was at the site, so the offer to provide bottled water was put in place before we knew where the plume was. It is my understanding that, based on documents that the EPA approved prior to deferral, the groundwater plume had neither reached nor affected the groundwater well that the tribe uses for drinking water. We are currently evaluating the bottled water program and whether it needs to continue based on all of the new information we have. Ultimately, a decision has to be made as to whether the bottled water program needs to continue based on what we see. Right now, we are not seeing that it actually needs to be provided to the Yerington Paiute Tribe, but we are going to continue and go through a process that they will be able to participate in to make a decision about whether it should continue.

Assemblyman Watts:

Why was the substantial participation of the tribes in the process outside of their reservations removed from the deferral agreement? Was it because they did not support deferral?

Greg Lovato:

I would not agree that the tribes have been removed from substantial participation.

Assemblyman Watts:

I understand that there are already processes in place that have specific participation from the tribe, but there is a draft agreement for the deferral that included specifically the substantial participation of the tribes outside of their reservations. That was removed from the final deferral agreement. Why?

Greg Lovato:

I think when you talk about what participation should look like, it was important to NDEP as well as the EPA that all the terms be defined. When you put together an agreement like this, it is going to mean different things to different people. The goal of NDEP was to define what

that meant. Since the tribes were opposed to deferral, we were unable to really define what that would mean. Our ultimate goal was to create a memorandum of understanding because EPA actually maintains the lead role on reservation land. We saw the need going forward to have a three-party memorandum of understanding (MOU) between each tribe, the EPA, and NDEP to really define what was meant and what would constitute adequate participation, and to define it more specifically rather than leaving it a vague term. We were unable to negotiate the MOU with either tribe before deferral. The main reason we moved forward without that MOU is we had a need to address the construction for the first phase of the remedy, which is this year. We had to make a decision in 2018 whether we were going to seek federal funds or not because we had to get those appropriated ahead of time. We are still continuing to try to negotiate the MOU to allow for adequate participation by the tribes, and we are committed to doing that.

Assemblywoman Peters:

We have not talked much about the potential for remining. There is a stakeholder who has invested in remining efforts at the site, correct?

Greg Lovato:

Yes, that is correct.

Assemblywoman Peters:

Is that something that the state is considering for a remedy process at the site?

Greg Lovato:

I think it is something that we are mindful of, but it is hard to wait indefinitely to determine what that might mean. When we are designing what looks like the final topography of the site, any new mine operator is going to highly desire flat areas of the site to operate on, rather than hilly areas that they have to rework. To the extent that when we select final remedies and design them for the northern and southern parts of the site, we will also have to include the understanding of the potential future mine operator as to if we can design or contour it slightly different and whether that would be helpful or not. Or can we place any infrastructure that has to do with cleanup in a certain location that would be helpful to facilitate remining? I think it is something that we are not going to stop and wait for because we cannot afford to do that. We do not know when remining may happen, but we are going to take a prospective mine operator's comments into consideration when we come up with final remedies and designs.

Assemblywoman Peters:

Would the EPA have allowed those remedies under their lead?

Greg Lovato:

Under the EPA lead, when we were deciding whether to select a remedy for the Arimetco first phase, they did allow a five-year pause in terms of selecting and implementing a remedy for the first phase of the cleanup that we actually ended up doing in 2017. Based on that experience, I think the EPA would consider that. I know there are other sites across the

country for which the EPA is the lead and has entered into a prospective purchaser agreement or another type of agreement that would allow remining. Neither the EPA nor NDEP is in a position to either relax or change cleanup standards to accommodate mining, but there may be ways that either agency could accommodate plans for remining.

Chair Swank:

Are there any more questions from the Committee? [There were none.] Thank you for answering all of our questions. With that, I will open the hearing on Assembly Bill 1.

Assembly Bill 1: Revises provisions governing the adoption of certain regulations by the State Environmental Commission or a local air pollution control board. (BDR 40-360)

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

Assembly Bill 1 proposes a simple change to *Nevada Revised Statutes* (NRS) Chapter 445B, aligning the public notice process for adopting proposed Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources regulations with the state's legislatively approved process entitled the Nevada Administrative Procedure Act found in NRS Chapter 233B. Specifically, A.B. 1 replaces the existing 1971 requirement that notices for all State Environmental Commission (SEC) meetings held for the purpose of adopting NDEP regulations be published in newspapers and replacing that with notice requirements that are consistent with the Nevada Administrative Procedure Act.

Under the Nevada Administrative Procedure Act, which all state agencies are required to comply with, meetings to adopt regulations are not required to be noticed in a newspaper. The act does, however, ensure comprehensive noticing, including posting the notice on the Legislative Counsel Bureau's (LCB) website; posting on LCB's *State of Nevada Register of Administrative Regulations*; posting on the agency's website; disseminating the notice via an email distribution list; and posting the notice at multiple physical locations, including every county library within the state.

To give you some background, the requirement to publish in newspapers all SEC meetings being held to adopt regulations was placed in 1971 when newspapers were the predominant way the public received information. Nearly half a century later, that is no longer the case. Despite spending an average of approximately \$12,500 each year over the last five years, there has been no feedback or inquiries from members of the public as a result of a newspaper publication.

We believe it to be good government practice to align the SEC regulation adoption process with the LCB's process prescribed in the Nevada Administrative Procedure Act.

I would like to quickly point out that we have a friendly amendment to this bill from Clark County (Exhibit D) on behalf of its air quality management district. A section of NRS Chapter 445B refers to local air pollution control boards, affecting both Clark County and

Washoe County, and requires the counties to comply with the section of NRS Chapter 445B we are proposing to repeal. To address this, the original language in A.B. 1 required the counties, instead, to comply with NRS Chapter 233B; however, we realized that section of the NRS is specific to state agencies within the Executive Branch. We worked collaboratively with both Washoe County and Clark County to resolve this. Because the two air pollution control boards each have different rulemaking statutes, the amendment from NDEP references the "applicable statutory notice requirements" ([Exhibit E](#)).

Assemblywoman Bilbray-Axelrod:

I am curious, how much would this save, and is that the motivation?

Greg Lovato:

This would save approximately \$12,500 per year. That is not the primary motivation for doing this. We have not received any feedback that this is an effective way to get information out to the public. That is the main reason why we are proposing to align with NRS Chapter 233B, which every other state agency follows. We are the only state agency that is still required to publish in newspapers.

Assemblywoman Bilbray-Axelrod:

When you are dealing with issues that can impact people's lives, I would prefer to have notice in as many places as possible.

Chair Swank:

You stated you have not received any feedback that came from those who found this notice through a newspaper. How do you know that?

Greg Lovato:

Over the past several years, everyone who comments on our regulations learns about them through some other media pathway. We have not received any indication that people who send us comments, pro or con, or are asking questions, learn about what we are doing through newspaper ads.

Assemblywoman Peters:

Not everyone has access to the Internet in my district, even though it is in urban Reno, and the folks who do not have access to the Internet live in areas that are being impacted by some of these issues that come up. Is there a way to integrate into some of the more localized paper options? The Latino neighborhood has a newspaper that is prevalent in that area, or there is the *Reno News & Review*, which is read more than a statewide newspaper would be. I think people would be interested in participating in these things if they saw it in something that was more readily associated with themselves. Another area that I do not see in here, that I find interesting to consider, is social media. What is the advantage in posting this on your website versus posting it on other venues if we are going to be changing the regulation anyway?

Greg Lovato:

I think if we are considering great ideas for enhancing understanding or awareness of any changes that are available through the methods you mentioned, those should be looked at as a part of changing this for all state agencies. We are not in a position to propose how statewide noticing should take place for all proposed regulation changes, regardless of whether they are environmental or something else that could affect people. We would be happy to participate in a conversation about proposed changes to NRS Chapter 233B to enhance what should be already existing in the Nevada Administrative Procedure Act if that is the desire of policymakers.

Assemblywoman Titus:

I am concerned that there are still folks out there who do not use the Internet, especially in the rural areas where we frequently do not have Internet access, let alone a laptop. Many of my constituents still get the weekly newspaper. There is a reason that we ask that these notices are posted—because people have not responded to you does not mean they are not reading them. Depending on just posting it to your website does not mean anyone will see it. Can you tell us how many hits your website gets versus how many notices there are? How many notices do you send out per year? How many hits do you get to your website regarding those notices? Do you use any other way to notify folks of these changes? Some of these notices would be appropriate to have in the newspaper. I need a little more information about how you arrived at the point where newspaper notification is no longer necessary.

**Valerie King, Chief, Administrative Services, Division of Environmental Protection,
State Department of Conservation and Natural Resources:**

Right now, NRS Chapter 233B, which is the Nevada Administrative Procedure Act, states that the posting that we have to do does not include newspaper publishing. Here are the notice requirements in NRS Chapter 233B: We have to physically post the notice and the proposed regulatory amendments at all 17 county libraries in Nevada, at our NDEP office, at the State Department of Conservation and Natural Resources office. We also post the notice and the regulations at the Nevada State Library. There are a few other requirements for physical postings. We have our email distribution list, and truly, this is where we get comments because we have over 300 people on the SEC's email distribution list. We also post to the LCB website, the Department of Administration's website, and, of course, SEC's website. Lastly, we provide a copy of the notice and the proposed amendment to LCB for posting in their register of administrative regulations.

Greg Lovato:

When this newspaper posting is taking place, it is after a process of regulatory workshop development. When we are developing a new air regulation or safe drinking water regulation, those individual bureaus are reaching out to potentially affected regulated entities and letting them know what is coming. Those entities would have already had an opportunity to comment prior to it being heard by the SEC. The whole rulemaking process is not a one-time notice and a meeting—there is actually a whole regulation development process that includes workshops prior to an item being heard by the SEC.

Assemblywoman Cohen:

How do people know about the email distribution list?

Valerie King:

People go to our website to find out what the agenda is and what will be discussed at the SEC meeting. There is a very prominent envelope on the home page, which is where you sign up to be on the email distribution list for the SEC.

Assemblywoman Cohen:

You mentioned that you are the only state agency that still publishes in the newspaper. Do you know how long it has been since the last state agency was required to do this?

Valerie King:

I am not sure if another state agency has statutes that it has to publish notices in newspapers. We have had to do it since 1971 when the SEC and the air regulations were originated. It was clearly good for that time frame when people were getting most of their information from the newspaper. I cannot speak if there is perhaps another state agency that must publish.

Greg Lovato:

What we are talking about is not specifically agency decisions, but proposed changes to our regulations. Proposed changes to regulations for all other state agencies follow NRS Chapter 233B. There may be other specific decisions, even within the State Department of Conservation and Natural Resources there are certain water rights decisions that are still required to be posted in newspapers. I am also aware that for implementing several of its regulations in terms of hunting seasons and licensing, the Department of Wildlife also publishes in newspapers. The difference between those and what we are proposing is that those are specific instances affecting property rights of specific individuals, and they maintain and continue that requirement. For rulemaking regulations, people who want to follow that generally can follow it for all state agencies in one place.

Assemblyman Ellison:

I have heard for several years about reducing ads in rural newspapers, but I can tell you most of the problems that we are running into is with seniors. Seniors are the ones who do not get to the library or do not have a computer. They have a daily newspaper, and that is where they get their information. Even though you may not hear from them, they are reading the newspapers and they are contacting us. For the amount of money you are spending, this is getting the information out to the people.

Chair Swank:

Are there any further questions? [There were none.] I will move to support.

John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County:

We support A.B. 1 but not as written. Mr. Lovato referenced the friendly amendment that we have provided ([Exhibit D](#)). I would like to mention that the cost savings for Clark County would be approximately \$50,000.

Charlene Albee, Division Director, Air Quality Management, Washoe County Health District:

We, too, are in support of NDEP's proposed amendment with A.B. 1 ([Exhibit E](#)). We looked at it as it was originally written and realized that it did not address statutory notice requirements that we have as a local health district. With the language that is being proposed, I think we can meet our statutory requirements and also our obligations.

I would like to offer that Washoe County Air Quality Management has done an extensive amount of work to build out our social media network with our community partners. We are actually reaching out on things other than just regulatory changes and actions. Our community partners include all of the media: television, radio, and newsprint. We also reach out to the Latino networks so we can get information out to those who are not of the English-speaking community. We have the National Weather Service, the hospitals, and the Washoe County School District. Our elected officials are actually hooked in on this so that when we send out a notice, they can send it out to their constituents so that we have a network. We also have regional planning and regional transportation. We are reaching out as far as we can to ensure that everyone in the community is seeing what is going on. At this time of year, I would say the best example I have is that if you watch the news in the evening, you will see the burn codes. That is one of our programs for the control of emissions from woodstoves. I think the language that is before you not only gives us the ability to operate the way we have been, but it also allows us to be able to engage future communication methods that we may not know about today.

Chair Swank:

I will now move to opposition.

Richard Karpel, Executive Director, Nevada Press Association:

Coincidentally, I am also the Executive Director of an organization called the Public Notice Resource Center, which is a nonprofit organization that is now based in Nevada to promote effective public notice. I am not here representing them today, but I wanted to mention my affiliation with that organization to let you know that I have thoroughly studied the issue of public notice. You can even say I wrote the book on public notice—I had a book published last month.

There are three outcomes from A.B. 1 if it passes. Number one, the citizens of Nevada will know less about environmental regulations proposed by the SEC than the local air pollution boards of Clark and Washoe Counties. Number two, the only people outside of the agencies who will know about the proposals are the lobbyists and other insiders who follow these matters closely. Number three, the thing that we will know for certain with the passage of

this bill is the agencies will receive less citizen input about their proposals and it will become easier for them to pass new environmental regulations. Those are givens.

I was going to give a note of caution and discuss two situations in which environmental agencies eliminated newspaper notice in Michigan and Arkansas and controversies blew up. Because of the lateness of the hour, I will not discuss those.

Assemblywoman Titus asked a question that I would like to answer. You asked how many people visit the website of the SEC. I do not know the precise answer, but what I can tell you is that far fewer people visit that website than visit the website of the local newspaper in the town where whatever regulation is being proposed. We are now at a point where most papers in Nevada publish notices on their websites weekly. All of them also publish on our statewide aggregated website.

Chair Swank:

Are there any questions? [There were none.] Is there anyone else who would like to testify in opposition to A.B. 1? [There was no one.] Is there anyone who would like to testify in neutral?

Patrick Donnelly, Nevada State Director, Center for Biological Diversity:

I do not work on air quality issues, so I do not feel I have expertise to weigh in pro or con on this issue. I just wanted to relay that I do work on water issues all across rural Nevada, and the way I find out about new water issues is from our senior citizen supporters who email me notices they have read in the newspaper about new water applications. There are many seniors across this state who pour over the local rural newspapers to find out about environmental issues in their area.

Chair Swank:

Are there any closing remarks?

Greg Lovato:

Thank you for the opportunity to introduce and support A.B. 1. I think what is critical here is aligning regulations from the SEC with all other agencies across the state. How we post public notice regulations is a key point here. If we had any indication, maybe it is that none of the regulations we introduce are of interest. Maybe they are not controversial. We do tend to hear concerns about environmental issues, which often arise because of land-use issues. People become aware of facilities through land-use permitting. If we had any indication that we were actually getting a return on our investment, we would not propose this. We have zero indication over the past several years that anyone is reading the notices or that anyone is providing input. If we had one, we would let you know, but we do not have any.

Valerie King:

If I could please ask the Committee to keep in mind that we are not talking about land-use permits, discharge permits, or a wildlife permit; we are talking about regulations and a

meeting at which regulations will be adopted. We are trying to change something that was put in our statutes for the SEC in 1971. We are trying to align our regulatory process with the legislatively approved process, the Nevada Administrative Procedure Act, which does not require publishing in the newspaper. As Mr. Lovato said, we are not seeing a benefit of noticing in newspapers. We want public participation; we want to engage the public and be as transparent as possible. We are not seeing that happening here, and we are trying to be pragmatic and apply good government practices and align our process with the legislatively approved process found in the Nevada Administrative Procedure Act.

Chair Swank:

I will close the hearing on A.B. 1. I will open up for public comment. Seeing none, this meeting is adjourned [at 5:42 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblywoman Heidi Swank, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Division of Environmental Protection Agency Overview," dated February 20, 2019, presented by Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources; Jennifer Carr, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources; and Jeffrey Kinder, P.E., Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit D](#) is a proposed amendment to [Assembly Bill 1](#) from Clark County, dated February 18, 2019, submitted by John Fudenberg, Coroner, Government Affairs, Office of the Coroner/Medical Examiner, Clark County.

[Exhibit E](#) is a proposed amendment to [Assembly Bill 1](#) submitted by Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.