

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

**Eightieth Session
February 25, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:01 p.m. on Monday, February 25, 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
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:

Assemblywoman Shannon Bilbray-Axelrod, Vice Chair (excused)

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:

Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources
Tyler Turnipseed, Chief Game Warden, Department of Wildlife

Chair Swank:

[Roll was called. Committee rules and protocol were reviewed.] Today we will hear an overview from the Division of State Parks, State Department of Conservation and Natural Resources.

Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources:

I will begin with a brief overview of the Division of State Parks (NDSP). Page 2 ([Exhibit C](#)) states that as an agency, our mission is to develop and maintain a system of parks and recreation areas for the use and enjoyment of residents and visitors while providing economic benefit to local communities. The NDSP also preserves and protects areas of scenic, historic, and scientific importance to Nevada. Although I may be slightly biased in this area, I am extremely proud of the job that our employees do to live up to that mission on a daily basis.

Page 3 shows a map displaying the distribution of our parks. We cover the state pretty well. There is quite a distance between some of those parks, but we do our best to try to staff each one appropriately.

[A video titled "Nevada State Parks" was shown, page 4 ([Exhibit C](#)).] Hopefully everyone recognized a few of those parks.

As shown on page 5, we have 27 very diverse parks spread throughout the state. For management purposes, we have them divided into three official regions; Lake Tahoe is run as a separate region. The NDSP has 123 permanent staff and 145 seasonal employees. The permanent staff make up a wide variety of job classifications, such as commissioned rangers, park interpreters, maintenance workers, accountants, planners, engineers, and grant coordinators.

The NDSP has a significant impact to local economies; over \$160 million is spent annually in Nevada directly related to the use of our state parks. Money is spent for food, gear, fuel, and lodging. We offer a wide variety of activities and partner with local entities, tourism offices, and businesses to help promote outdoor recreation.

Page 7 relates to a ton of studies over the course of the years dating back to the mid-1800s, which have all documented the significant health benefits to getting people outside and into nature. The NDSP helps to ensure that those benefits will be around for all future generations. We encourage the use of parks through interpretive programs, ranger-led hikes, and accessible facilities.

One of our major focuses is that of safety, both for our visitors and also our own staff. Because of that, we are very dependent on training and travel budgets to keep our staff well-trained and to move our resources around to where they are needed in order to ensure that our visitors stay safe. Over Memorial Day weekend, for instance, it is not uncommon to have park staff from six different parks or more all working at the Lahontan State Recreation Area.

As with all agencies within the state, there are a number of issues presenting challenges to our agency as we are trying to meet our mission. Some of the main challenges we face include maintenance, either deferred maintenance, or emergency maintenance when stuff breaks that you did not see coming, and preventative maintenance, which is us trying to prevent those catastrophic failures from happening. We are steadily getting a handle on our preventative maintenance—we are definitely heading in the right direction. Before my career is over, I would like to see us turn the corner and focus more on preventative maintenance and less on fixing broken stuff.

Another one of our challenges is technology. We do not rely a lot on technology, and that is not doing us any favors in these times. We are trying to incorporate some technology, such as online reservations, so people know whether there is going to be a spot available.

Overcrowding is becoming another challenge. We have a few well-known parks such as Lake Tahoe and Valley of Fire—everyone knows those parks. They are iconic and world-renown. We do not need a lot of help promoting those parks, but we need some of that use dispersed to our other, lesser-known parks. We do not want to forget about our iconic parks. They are beautiful. On the flip side, those parks are using up all of our tourism activities and that is probably not doing us any favors.

Page 10 shows some of the other things that NDSP is responsible for. We oversee two federal grant programs and we assist with creating outdoor activities for other entities. Specifically, those two programs are the Land and Water Conservation Fund within the U.S. Department of the Interior, and the Recreational Trails Program within the U.S. Department of Transportation's Federal Highway Administration. These are both federal programs that we manage, and the money is available both to us and to outside entities. We have been able to fund some projects through those programs: The Recreational Trails Program helped to fund paved paths at Lake Tahoe, the Clear Creek Trail in Carson Valley, and signage at the Las Vegas Wash. The Land and Water Conservation Fund has funded all sorts of projects critical to the Walker River State Recreation Area, Ice Age Fossils State Park, as well as the visitor center at Sand Harbor.

Page 11 ([Exhibit C](#)) shows a quick update on the Walker River State Recreation Area. It has been open to the public since September 2018. We have a primitive campground in place—a day use area, a group use area, and a visitor center which are all open. Our RV campground is about 75 percent done. We are anticipating that the campground will be open by Memorial Day weekend of this year.

The cabins are out to bid; we are expecting those to be usable by the fall of this year after we get the water, septic, and various utilities installed.

Ice Age Fossils State Park is currently under construction. We finished all of the permitting requirements and are in the process of getting utilities put in. The visitor center has gone out to bid. We are anticipating the construction will take most of the summer. The interpretive displays and the trail system are under development right now. We are hoping all of that to be complete by the fall of 2019.

That is our very quick overview of NDSP as a whole.

Assemblywoman Peters:

I am wondering about your federal program funds and how they are used. Are they specifically used to fund programs or projects, or are they used for salary or seasonal positions?

Robert Mergell:

For the Recreational Trails Program, the only funding NDSP uses is to run the program. We are the agency overseeing the program. There is some funding for administrative costs, but it does not offset any costs we have in other places within NDSP. We use those funds for specific projects. Those grants are a competitive process, so even though we oversee the program, we do not get any preference for projects other than the fact that we write grants very well, so we compete well, but we are not guaranteed the funds. We have to compete with all the other entities throughout the state. The Land and Water Conservation Fund is slightly different. Those are not necessarily competitive. As the managing agency, we can hold all of those funds and use them solely for our projects. We typically do not do that because without those funds, many entities throughout the state—counties and cities—would not be able to do outdoor recreation projects which are very important to those various entities. At the most, we usually do a 50/50 split. Again, it is federal funding so there is a match requirement to it. Using Ice Age Fossils State Park as a good example, we had State General Fund money allocated to us specifically to build that project. We were able to double our money to put into the project because of the 50 percent match.

Chair Swank:

Any further questions? [There were none.] I will open the hearing on Assembly Bill 58.

Assembly Bill 58: Revises provisions governing violations of regulations adopted by the Administrator of the Division of State Parks of the State Department of Conservation and Natural Resources. (BDR 35-212)

Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources:

Please allow me to begin by providing context for this proposed legislation. [He continued to read from prepared testimony ([Exhibit D](#)).] *Nevada Revised Statutes* (NRS) 407.0475 section 3 currently provides, "Any person whose conduct violates any regulation adopted

pursuant to subsection 1, and who refuses to comply with the regulation upon request by any ranger or employee of the Division who has the powers of a peace officer pursuant to NRS 289.260, is guilty of a misdemeanor." The effect of the current statute is to require, in all instances, that a Division of State Parks (NDSP), State Department of Conservation and Natural Resources peace officer provide a warning before issuing a citation. In certain instances, however, the violation has already occurred and is irreparable or so egregious that it necessitates an immediate citation, not a warning.

The NDSP posts signs clearly setting forth state park rules and has many noncommissioned personnel working in the field to communicate with and educate visitors. Unfortunately, these types of communications do not meet the strict warning requirements of the statute, making it impossible for the NDSP to immediately enforce egregious violations. Providing verbal warnings and asking a person to please not do that again is often ineffective and fails to deter.

Another unanticipated consequence of the existing mandatory warning requirement is that it prevents other law enforcement agencies from enforcing the NDSP's regulations. County deputies and Department of Wildlife game wardens routinely patrol state parks and are fully aware of park rules and regulations. Unfortunately, other law enforcement officers are unable to act on violations because their warnings are insufficient under existing law.

To better understand the challenges NDSP faces, please consider the following examples: The first example is permits. The NDSP has had commercial photographers enter a park to shoot photographs or video without obtaining the proper permit. These activities disrupt other park visitors, and it is unfair to other commercial photographers who obtain the proper permitting. If a violator is not caught until after the photography or filming is complete, the violator simply receives a warning and often leaves the park with no repercussions.

The next is shooting zone restrictions. While working at South Fork State Recreation Area outside of Elko, I have had to issue verbal warnings to hunters for shooting deer across a field toward a residential development. In designated areas, centerfire rifles are prohibited because of the proximity to residences, park structures, and visitors which poses an extreme danger. Violations of shooting zone restrictions occur regularly every year. Often, staff changes make it difficult to know whether violators have been warned in previous years. Warnings are effective for individuals who have not yet fired a rifle, but warnings are ineffective after the fact.

The next is fee collection. This is a frequent issue at state parks. Seasonal employees, who are not commissioned, routinely make contact with visitors concerning failure to pay park fees. If a visitor refuses to pay the seasonal employee, the seasonal employee must call a commissioned ranger to make contact with the visitor. To be issued a citation, the visitor must refuse to pay the park ranger. Considering that fee notices are well-signed at state park entrances, the visitor has now received three separate notices. By this time, the visitor has already received the benefit of the park and typically chooses to leave without paying any

fee. Moreover, repeat offenders can do the same thing all over again the next time they visit a park as there is no way to track who has previously received a warning.

Campfires are another issue. The maximum length allowed for firewood is 22 inches. Visitors, however, often use large pallets or wood as long as six feet. The oversized nature of the burning wood can cause the fire to spread to adjacent vegetation, camps, et cetera, sometimes causing significant damage. In these instances, the violation is egregious and damage is done. A warning can be effective if a person has not yet started the fire or is in the act of burning unsafe pieces of firewood, but a warning is useless if the fire has already escaped and caused significant damage.

I could go on and on with examples, but I will leave it at that. I would like to reiterate that the NDSP always looks for the lowest level of enforcement to correct a violation. Staff will continue to communicate with visitors and issue warnings when appropriate, but at times, the NDSP also needs the authority to immediately issue a citation. Assembly Bill 58 is necessary to give the NDSP the authority it needs to enforce the rules and regulations developed to protect visitors and state resources.

I would also like to reiterate that the majority of our staff are noncommissioned. We have 268 staff, including both permanent and seasonal employees, of which 41 are commissioned—so 85 percent of our staff are not commissioned. The odds are that if someone is talking to you about a rule infraction, they are probably not commissioned.

Also, as an informational item, in 2018 we wrote approximately 850 citations statewide. That is not many for a law enforcement agency. That number is artificially high due to the significant number of traffic citations or parking-specific citations that we write on Nevada State Route 28 at Lake Tahoe. Of those 850 citations, nearly 500 were parking citations. When you spread the remainder throughout the rest of the state, the majority of those are for minors in possession or traffic violations. Our rangers have the power to write citations, make arrests on every other NRS and every other *Nevada Administrative Code* (NAC) in the state, and we are already using discretion. We are asking for the ability to truly use discretion on our own NRS and NACs. [Also provided but not mentioned is a Fact Sheet for Assembly Bill 58 ([Exhibit E](#)).]

Assemblywoman Peters:

I am thinking about my son, who is notorious for breaking things. If I am at a state park and he wanders off and breaks something, I feel like to give him a citation with this blanket statement of a misdemeanor is a lot. I hear you saying that you will use discretion, but I do not see that in the bill.

Robert Mergell:

A violation of any of our park rules and regulations is already a misdemeanor. That is what the classification is because that is the only thing that the state has to codify violations. A misdemeanor is the lowest level. If there is a kid who inadvertently breaks something, we are not going to write him a ticket. Technically speaking, right now, if your kid were in

a 7-11 and put a candy bar in his pocket and walked out, he could be arrested and taken to a juvenile detention facility for stealing, but that would probably not happen. The officer who shows up would realize this is a good learning opportunity, and that is what NDSP is also going to do. I understand your concern. We hire people who use good judgement, and if they do not use good judgement, we have that first-year probationary period so we can find someone who will use good judgement.

Park rangers are park interpreters at heart, and we want to protect the resource; the kid who breaks something is not going to get a ticket. The drunk adult who breaks something probably is going to get a ticket. We recognize that these are two separate issues. At the end of the day, even if someone feels he was issued a citation in error or that he was not guilty, he just goes to court. Odds are that the judge will then show leniency because his part of the system is to see if the punishment fits the crime. Our bail amounts are some of the lowest of any of the NAC violations in the state. The only way for us to get any kind of reimbursement for the damages that are done, again for someone who intentionally damaged something, is to have a citation associated with the damage. If we do not issue a citation, we cannot ask for restitution.

Assemblywoman Carlton:

If I understand this correctly, you are one of the only enforcement agencies that has to give a mandatory warning before you do anything else. Your rangers are fully Peace Officer Standards and Training (POST)-certified, so they are law enforcement officers. If they are outside of a park jurisdiction and a ranger sees something happen, he has full police power and does not have to give a warning to someone speeding or committing other violations. If they are within park jurisdiction, he has to do a mandatory warning no matter how serious the incident is. Is that correct?

Robert Mergell:

Inside our park boundaries is the only place that NDSP rangers have jurisdiction. The only thing that we are mandated to give warnings on are our own NACs. The Division of State Parks' NACs, which are under Chapter 407, are specifically the ones we have to give warnings on. If we see someone fishing without a fishing license, that is a Department of Wildlife regulation, so we can enforce that without issuing a warning. If we see someone roll through a stop sign, we can pull them over and write a citation. If we see someone violating one of NDSP's NAC regulations—for example, an illegal ground fire or more commonly, a quiet-hours violation—we have to first give a warning. There are no other rules regarding playing your music super loud at midnight. The only rule that is in place is in the NDSP's NAC. If someone is irritated with the loud music, calls 911, and a sheriff's deputy shows up to the campsite, he cannot do anything about it because it is a NDSP's NAC violation. Unless one of us is there to issue the warning first, the deputy's hands are tied. The sheriff's deputy cannot do anything unless someone is willing to sign a complaint for disturbing the peace. Since a peace officer's peace cannot be disturbed, he cannot act on his own. One of us has to come out and warn the offender to turn his music down. If the deputy witnesses us give the warning and there is a future violation—for example, after we are gone someone decides to crank the music up again—and if that specific deputy returns and knows we gave

the warning, he can act on it. If there was a shift change and a different deputy shows up, he cannot do anything because he did not witness us give the warning. We have to go back out and do this game all over again. That is why I say there are some instances for which we cannot have that warning because it is very impractical. To make matters worse, if we do give a warning and we leave with no other action taken, the next time the reporting party will not call 911. That is when a fight breaks out. We could have possibly addressed this upfront had we been able to act on our own rules and regulations.

Assemblywoman Titus:

To follow along those lines, the difference between what you may and may not write a citation on, it seems that you are dealing with two separate sets of rules. Once you are a sworn peace officer or a park ranger, you have law enforcement capabilities, correct? You can write a traffic ticket for running a stop sign, but you still have the discretion to give a warning. This rule eliminating that you must give a warning does not mean you cannot give a warning, correct? I think we are hearing that you would have to write a citation, but you can still use discretion—it is not mandatory that you write a ticket. This is not changing the fact that it is a misdemeanor—destroying property is a misdemeanor. It is at your discretion whether you write a citation.

Robert Mergell:

That is correct.

Assemblywoman Titus:

You have 268 seasonal staff, but only 41 commissioned officers. Those 41 commissioned officers who have gone through POST can write other tickets; your seasonal staff can only write and enforce your park rules, is that correct?

Robert Mergell:

The only people who work for NDSP who can write a citation of any kind are one of those 41 commissioned peace officers. For example, our fee booths are staffed with seasonal employees. If a seasonal employee sees a violation, he is going to let the person know you cannot do that. We have a lot of eyes inside the park always looking for violations. If the seasonal employee sees a violation, he will give the person a heads-up that what he is doing is against the rules. If it is a big enough issue, he will call one of us and we will address it. If that seasonal employee tells a visitor that he is in violation but the visitor continues, the employee will call one of us. When we show up, we have to warn the violator all over again even though he was made aware of the rule and blew off our other employee.

Assemblywoman Titus:

So a warning from the seasonal staff does not count as an official warning based on the way the statute is written. If a seasonal employee says "You cannot break that," or "You must pay your entry fee," or "You cannot burn that log, you will burn the forest down," that does not count as a warning; it requires an additional person coming out, correct?

Robert Mergell:

That is correct.

Assemblyman Wheeler:

I want to make sure that everyone has this right. If one of your employees who is not POST-certified gives a warning, that warning does not count? The warning—not just the citation—but the warning, the way NAC is currently written, must be given by one of your commissioned officers and then followed up. The violator could have seven, eight, or even nine warnings from other employees, but the officer has to warn them again.

Robert Mergell:

That is correct. To make it worse yet, in parks like Lahontan that have multiple commissioned rangers, a person may get three different warnings by a commissioned ranger because each ranger is unaware that a person may have already been warned. That happens fairly frequently; we have no way of tracking who has and who has not received a warning. The commissioned ranger usually has to issue the warning and then check back an hour or so later to see if they have complied.

Assemblyman Ellison:

If there is not a POST-certified ranger at the time, then can a sheriff be called out to make the arrest? Those are the only two people who can actually make the arrest, correct?

Robert Mergell:

The sheriff's deputy who shows up cannot do anything for one of our NAC violations. It specifically has to be a NDSP commissioned park ranger. We have a couple of parks that do not have commissioned rangers, so technically speaking, we cannot enforce park regulations at those parks.

Assemblyman Ellison:

A licensed sheriff deputy cannot go into a park and make an arrest?

Robert Mergell:

Not for NDSP NAC violations. For any other NAC or NRS violations, we have concurrent jurisdiction in all of our parks.

Chair Swank:

If I remember correctly, there was an audit done recently showing that there are a lot of folks who have not been paying the state park fees. Do you think part of that issue ties into the fact that you have to give a warning first?

Robert Mergell:

Yes. It does not take long to train people that you cannot take action on something. We have inadvertently trained a lot of people throughout this state that they can use the park up until the ranger comes a second time. We do have the ability to charge a \$10 surcharge if the person does not pay the fee, but we cannot write the citation. It is funny how word spreads

of citations where you are taking a rule very seriously. For instance, we have had parks at which we were not as active as we should have been in looking for underage drinking parties. Once you start patrolling and looking for that and you write a few citations, those parties go away. Warn people all you want and the activity stays the same. Paying the entrance fees would be a similar issue. If you wrote a few citations at a particular park, the word would spread very quickly and compliance would go up.

Chair Swank:

Are there any further questions? [There were none.] Is there anyone who would like to speak in support of [A.B. 58](#)?

Tyler Turnipseed, Chief Game Warden, Department of Wildlife:

I am here to testify in support of this bill. Our game wardens spend a lot of time in state parks, whether it be anglers at Cave Lake, boaters at Lahontan, or hunters at Washoe Lake. This bill would allow us to enforce those NDSP NAC violations that we cannot currently enforce. Speaking to the "must warn before cite," I am not aware of that being the case in any other area of law enforcement.

Chair Swank:

Is there anyone else in support? [There was no one.] Is there anyone who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral? [There was no one.] Are there any closing comments? [There were none.] I will close the hearing on [Assembly Bill 58](#) and open the hearing on [Assembly Bill 59](#).

[Assembly Bill 59](#): Revises requirements for the issuance of certain permits for entering, camping and boating in state parks and recreational areas. (BDR 35-211)

Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources:

[Assembly Bill 59](#) requests permission to strike language in *Nevada Revised Statutes* 407.065 requiring a person 65 years of age or older to also be a resident of the state for a minimum of five years to qualify for the senior permit offered by the Division of State Parks (NDSP), State Department of Conservation and Natural Resources. [He continued to read from prepared testimony ([Exhibit F](#)).]

Currently, no proof is required to show residency as it is difficult for people to show they have met the five-year residency requirement. As it is right now, we are taking people at their word. Although we do require a valid Nevada driver's license or identification card to prove residency and meet the age requirement, that does not give us the actual date of residency.

We want to encourage our senior population to get outside and explore all Nevada has to offer. As we mentioned earlier, we recognize the health benefits. We want to make it more straightforward in how we issue those permits. Since we cannot really enforce the five-year requirement, we are asking to remove it.

Assemblywoman Peters:

Section 1, subsection 1, paragraph (d), subparagraph (1) is adding "bona fide resident of the State of Nevada." Is "bona fide" defined anywhere?

Robert Mergell:

That is what we require now—some type of identification issued by the state of Nevada that shows the date of birth. So far, we have not had anyone unable to provide either a driver's license or a state-issued identification card.

Assemblywoman Cohen:

Do you know the legislative history as to the five-year residency requirement?

Robert Mergell:

I do not know for certain because that predates me. My presumption would be that the desire was to show that the person had been in the state long enough to have either paid some taxes into the system or contributed to the economy before they were issued a permit that used to be free. It is now \$30 to pay for the administrative costs of running the program.

Assemblyman Ellison:

Once they reach the age of 65, they still have to pay \$30 a year, correct?

Robert Mergell:

That is correct. It is an annual permit that must be renewed every year.

Chair Swank:

Any further questions? [There were none.] Is there anyone here who would like to speak in support of A.B. 59? [There was no one.] Is anyone in opposition? [There was no one.] Is there anyone in neutral? [There was no one.] Are there any final comments? Seeing none, I will close the hearing on A.B. 59. I will open up public comment. Seeing none, this meeting is adjourned [at 4:45 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 "Nevada State Parks Overview," dated February 25, 2019, presented by Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources.

[Exhibit D](#) is a written presentation for [Assembly Bill 58](#), dated February 25, 2019, provided by Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources.

[Exhibit E](#) is a Fact Sheet for [Assembly Bill 58](#), prepared by Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources.

[Exhibit F](#) is a written presentation for [Assembly Bill 59](#), dated February 25, 2019, provided by Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources.