

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

**Eightieth Session
April 1, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:01 p.m. on Monday, April 1, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Sarah Peters
Assemblyman Greg Smith
Assemblywoman Robin L. Titus
Assemblyman Howard Watts
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9



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
Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson
Chris Daly, Deputy Executive Director, Government Relations, Nevada State Education Association
Tom Clark, representing Nevada Outdoor Business Coalition
Andy Maggi, Executive Director, Nevada Conservation League Education Fund
Tobi Tyler, Member, Executive Committee, Toiyabe Chapter, Sierra Club
Patrick Donnelly, Nevada State Director, Center for Biological Diversity
Mauricia M.M. Baca, Executive Director, Get Outdoors Nevada
Robert Mergell, Administrator, Division of State Parks, State Department of Conservation and Natural Resources
James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources
Kyle Davis, representing Nevada Conservation League
Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club
Karen Boeger, Co-Chair/Secretary, Nevada Chapter, Backcountry Hunters and Anglers
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County
Cheva Gabor, Nevada State Liaison, Forest Service, U.S. Department of Agriculture

Chair Swank:

[Roll was called. Committee rules and protocol were reviewed.] We are not going to work session Assembly Bill 171 today. I will move to the work session 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)

Jann Stinnesbeck, Committee Policy Analyst:

Assembly Bill 1 was brought forth on behalf of the Division of Environmental Protection, State Department of Conservation and Natural Resources, and was heard in this Committee on February 20, 2019 ([Exhibit C](#)). The bill repeals the requirement that the State

Environmental Commission publish in a newspaper a notice of its intended action before holding a public hearing on a proposed regulation. There is one amendment on this bill proposed by the Division of Environmental Protection, along with Washoe and Clark Counties.

The amendment removes the requirement that a local air pollution control board provide notice of a public hearing on a proposed regulation in accordance with the Nevada Administrative Procedure Act. The amendment also requires a local air pollution control board to give notice of a public hearing on a public notice by posting such a notice at least 30 days prior to the public hearing.

Chair Swank:

I will entertain a motion to amend and do pass Assembly Bill 1.

ASSEMBLYWOMAN BILBRAY-AXELROD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 1.

ASSEMBLYMAN WATTS SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblywoman Titus:

Although I met with the sponsors of the bill, and I understand why they have brought this bill forward, I am still going to vote no. I feel very strongly that there are many folks who will never look at a website, who will never read an email, and who continue to get their information via the printed word. For that reason, I will have to be a no.

Assemblywoman Bilbray-Axelrod:

I spoke with the bill sponsor as well, and I want to ensure that we have the record straight.

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

We have agreed to a phase-out period that will take place over a period of one year, which would be through June 2020. In each of the newspaper ads we place in that year, we would include in the ad three options for the public to sign up to receive notice after June 2020, other than the newspaper. They could sign up via email, by calling us, or by texting us their email address. They would then be on the list to receive all future notices.

Assemblywoman Hansen:

I, too, will be a no on this. I do appreciate the efforts that are being made. The makeup of my district is very rural; the library postings are a good option. As for the website, many times the broadband is not that great. The population in a lot of my ranching communities is older, and many do not use technology to the degree that some of us might. The newspaper is still a big deal in my rural counties. I subscribe to all of them. While I appreciate the

intent, and I am on board with that, I just do not think we are there yet for the residents of my district.

Assemblyman Ellison:

I will say ditto to my colleagues. I did meet with the bill sponsor and explained to him that my district has many seniors and this would have an impact on them. I will be voting no.

Chair Swank:

Is there any further discussion on the motion? Seeing none, we will vote.

THE MOTION PASSED. (ASSEMBLYMEN ELLISON, HANSEN, TITUS, AND WHEELER VOTED NO. ASSEMBLYWOMAN CARLTON WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Assefa. I will move on to the work session for Assembly Bill 163.

Assembly Bill 163: Revises provisions governing water conservation. (BDR 48-798)

Jann Stinnesbeck, Committee Policy Analyst:

Assembly Bill 163 was sponsored by Assemblyman Watts and was heard in this Committee on March 25, 2019 ([Exhibit D](#)). The bill requires each supplier of water to submit to the Water Planning Section of the Division of Water Resources, State Department of Conservation and Natural Resources (DCNR), the results of a water loss audit with the plan of water conservation or any update to the plan. This bill also requires the supplier of water to submit with any future update to the plan of water conservation: A comparison between the results of the most recent audit and the audit previously submitted; and an analysis of any progress made towards certain goals that must be established in the plan of water conservation for water leakage.

Additionally, certain plumbing components for new constructions, expansions, and renovations of certain structures must have been certified under the WaterSense program, or an analogous successor program, established by the U.S. Environmental Protection Agency.

There are two amendments to this bill. The first is proposed by Assemblyman Watts, which:

- Limits the requirements concerning water loss audits for suppliers of water who serve a population of at least 3,300. Provides that suppliers of water who serve a population of less than 3,300 perform certain calculations related to water;
- Provides that certain public utilities that serve a population of at least 3,300 submit to the Public Utilities Commission of Nevada a water loss audit with the plan of water conservation. Provides that public utilities that serve a population of less than 3,300 perform certain calculations related to water;

- Replaces the terms "leakage" and "water leakage" with "water loss";
- Provides for a 12-month grace period in the event that additional certification requirements are set forth by the WaterSense program; and
- Exempts certain historic structures and public buildings from the requirements to use plumbing fixtures that are certified under the WaterSense program.

The second amendment was proposed by the Division of State Parks, DCNR. It provides that the water loss audit requirements do not apply to transient water systems.

Chair Swank:

I will entertain a motion to amend and do pass A.B. 163.

ASSEMBLYMAN ASSEFA MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 163.

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblywoman Titus:

I appreciate Assemblyman Watts' intent and I recognize the need for water conservation in our state; and I especially appreciate the extra information regarding the fixtures and how that is done. I have concerns about the implementation of this. I recognize that he allowed for homes older than 50 years old to be exempt, but that is a moving target. Your house may not quite fall under that. I am very concerned about the renovation of older homes. I am concerned that although there is an amendment regarding manufactured homes, I am just not convinced that this will not do unnecessary harm to those who are building here, those who are moving here, and those who are trying to fix their houses. If this was just a go-forward bill, I would be more inclined to accept it, but I am going to have to be a no.

Chair Swank:

Is there any further discussion on the motion? Seeing none, we will vote.

THE MOTION PASSED. (ASSEMBLYMEN ELLISON, HANSEN, TITUS,
AND WHEELER VOTED NO. ASSEMBLYWOMAN CARLTON WAS
ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Watts. As a note, over the next two weeks we will be doing a lot of work sessions. It is always good to let your Chair know in advance where you are on the bills.

I will go to our first bill, Assembly Bill 331.

**Assembly Bill 331: Creates the Outdoor Education and Recreation Grant Program.
(BDR 35-89)**

Assemblyman Steve Yeager, Assembly District No. 9:

It is my honor to present Assembly Bill 331 to you. Assembly Bill 331 enacts the "No Child Left Inside" program, patterned after a similar program that the state of Washington enacted in 2007. Before I tell you about the bill, I want to remind the returning members and inform new members about the "Kids in Parks" bill that was enacted into law last legislative session. That was Assembly Bill 385 of the 79th Session, which gave fifth graders in our state a free parks pass for their entire fifth-grade year. I do not have one of the passes with me, but I do have the Nevada State Parks Passport booklet. I have been doing my best in Assembly District No. 9 to make sure that every fifth grader has a passport as well as his park pass.

I was proud when that legislation passed unanimously through the Assembly and also the Senate. We had a great bill signing with then-Governor Sandoval in Assemblyman Wheeler's district [Assembly District No. 39], just down the road at the Mormon Station State Historic Park. I brought one of my favorite props, which is a photo of the bill signing where we were surrounded by a bunch of fifth-grade classes from the area. I want to thank those of you who came out; it was a very special day to have that bill enacted.

This bill in front of you right now, A.B. 331, builds on the legislation from last session by enacting a grant program to help get students outside for educational and recreational programs. Please give me a chance to tell you what the bill does. I will also mention one possible small amendment and then I will try my best to answer any questions.

Section 2 of the bill indicates that the grant program will be called the "Outdoor Education and Recreation Grant Program." That was lifted from the state of Washington's legislation directly.

Section 3 of the bill actually creates the program, spells out the program's goals, and indicates which students the program should be focused on. Section 3 also calls for the promulgating of regulations and specifies what should be in those regulations.

Section 4 calls for the establishment of an advisory committee to assist and advise the administrator of the Division of State Parks (DSP), State Department of Conservation and Natural Resources (DCNR), regarding the grant program. Section 4 also specifies some of the membership of that advisory committee.

Sections 5 and 6 establish accounts. Section 5 establishes an account in the State General Fund for the actual grant program. Section 6 creates an endowment fund in the State Treasury for the grant programs.

I know that this is not a money committee, but there is a fiscal note attached to this bill. I do not expect DSP to carry this out without the necessary financial support. If this bill were to pass this Committee, I know we will be having a short stop in the Assembly Committee on

Ways and Means. I am not sure if this is the appropriate Committee for an amendment, or if I want to add it in Ways and Means. I have been in consultation with Chair Carlton about potentially getting some seed money as an appropriation for the program, specifically with section 5 of the bill, so that there could be money in the fund to start the program. We have had some conversations about whether that might be possible and what it might look like. I have been in contact with DSP, and they have indicated to me that they feel comfortable that with the money requested in their fiscal note, they would be able to carry this program out. I think they are enthusiastic to do so, so long as we are not giving them an unfunded mandate.

Thank you for your time, and I will stand open for any questions.

Assemblywoman Titus:

I think the concept of no child left inside is wonderful. It is how I lived my life and raised my family. It is wonderful to see the emphasis in making sure the kids get away from electronic machines and walk outside. We have a state worth walking outside. Also, thank you for your passport program last year where you wanted all fifth graders to get outside. My question is on section 3, subsection 1, paragraph (d), which states that you are only going to focus on the economically disadvantaged background students. I think that is a disadvantage to all the other students—all the kids in our state should be going outside. I think this program as a stand-alone with state support or grants, or whatever, should be offered to all kids.

Assemblyman Yeager:

I will note that this language was essentially taken directly from the state of Washington and the way they have enacted their program. I am certainly open to potential amendments. In an ideal world, there will be a lot of money, but to the extent that there is not, I think the DSP will have to make some choices about how best to allocate that money. Some of the language could be changed to indicate if there is not enough money, do we want to preference students who are economically disadvantaged, which could be one way to do that. We could also leave this to regulation for the DSP as well. Your point is well-taken, and I hope we will have enough funding that we can open it up to everyone. It is the Committee's pleasure in terms of what you would like to do with that language. I think this is a good starting point, but maybe not the ending point.

Chair Swank:

I would also add that this says it would be primarily focused on those pupils, and there are two other criteria in there: those who are most likely to fail academically, and those who have the greatest potential to drop out of school. It is a bit broader than just those with free or reduced-price meals. It does not specifically say it has to be only those students, it is just primarily focused on those students. Is that correct?

Assemblyman Yeager:

Your reading of the language is correct. In talking to one of the sponsors from Washington, Senator Kevin Ranker, he indicated that it really did make a big difference—probably not

surprising to anyone in this Committee—that some of those students who were most at risk did benefit from just getting outside of the classroom and the stresses that are in the classroom. I think this is a good start. I would certainly be comfortable adding some language to indicate that we could go beyond those parameters to the extent that funding is available. Hopefully, this endowment fund will be very well funded and generate a lot of interest for the program.

Assemblywoman Peters:

Thanks for bringing this bill. I appreciate anything that gets folks outside. Once we get kids hooked, and they become alum of this program, how do we retain them? Can they be appointed to the advisory committee? Can they do volunteer counseling where they take the next in line kids out and do stuff? Is there any vision or intention you have for growing this?

Assemblyman Yeager:

I did not have a vision until you asked your question. I have a vision now, and those are great suggestions. I think the question we have to ask is, Can we pack that into the bill somehow, or should we leave that to regulation? I think some of the membership of the actual advisory committee might be able to help with that as well. The intent to pay it forward is a good one, and I am open to suggestions for how to make that happen.

Chair Swank:

I think the advisory committee would be a great place to have a designated seat for an alum from the program.

Assemblyman Yeager:

I think that is a fantastic idea.

Assemblyman Ellison:

I want to tell you that your bill from last session [A.B. 385 of the 79th Session] was a great success. It was wonderful, and I think this could be the same thing. Section 3, subsection 2, paragraph (c), subparagraph (7), says, "Creates partnerships with other public or private entities." Maybe we could raise funds for the other children so that all children have a chance to get outside.

Assemblyman Yeager:

Thank you for the suggestion and we will work on that.

Chair Swank:

Are there any further questions? Seeing none, I will have folks who are here to testify in support please come forward.

Mike Cathcart, Business Operations Manager, Finance Department, City of Henderson:

I would like to thank the sponsor for bringing this bill. The City of Henderson is in complete support, and we believe this can be a beneficial program to familiarize students with the

outdoor activities that we have in Henderson. Even though Henderson is more of an urban area, we do have the River Mountains Loop Trail and some other very nice areas that, once the regulations for this are completely written, may be eligible to get our students out on those trails.

Chris Daly, Deputy Executive Director, Government Relations, Nevada State Education Association:

Nevada State Education Association (NSEA) has been the voice of Nevada educators for over 100 years. The NSEA supports A.B. 331 creating the Outdoor Education and Recreation Grant Program in the Division of State Parks.

We would like to thank Assemblyman Yeager for his sponsorship of this bill. We were here at this table during the 2017 Session to support A.B. 385 of the 79th Session, giving all fifth graders access to our state parks. This program is an equity-based extension that would provide high-quality opportunities for kids to experience the outdoors while learning about the environment and agriculture. The program will promote equity by giving students from lower-income backgrounds access to outdoor educational and recreational programs while utilizing the resources of Nevada's state park system. This will engage young people who are most at risk, by improving academics, personal health, and appreciation of nature. [Written testimony was also provided ([Exhibit E](#)).]

Tom Clark, representing Nevada Outdoor Business Coalition:

My daughter is taking off on a road trip Wednesday morning with her grandparents from here to Las Vegas—passport in hand. It is something that she carries with her anytime we go someplace fun. The Nevada Outdoor Business Coalition is 40-plus business members in Nevada that very much support this type of activity. As I was listening to the presentation today, I thought there is no reason why our coalition would not partner with this grant program to fund some children to get outdoors, whether they be as described in the bill, or others. I think this will expand; I think this will have legs and get to a lot of kids, not just those who are unable to because of financial reasons or disability. We have a beautiful backyard. Let us get out and enjoy it. If we can encourage those kids, I can guarantee that our coalition will be behind it 100 percent, providing private dollars, whether it be matching or straight up dollars to ensure this type of program is successful.

Andy Maggi, Executive Director, Nevada Conservation League Education Fund:

Thank you for your consideration of A.B. 331, which we are here in strong support of. We would like to commend the sponsor for continuing his excellent work of getting Nevada's children outside and into our parks and open spaces. Outdoor experiences are lasting experiences that have positive benefits throughout the life of children and all Nevadans. We have an amazing place to call home and the more we can experience it, the more committed we are to helping protect it and make it such a great place to live. Perhaps in terms of vision, one day after we have all the kids in the parks, one of the graduates of those programs will come and get an "Every Legislator Outside" package passed.

Tobi Tyler, Member, Executive Committee, Toiyabe Chapter, Sierra Club:

The Toiyabe Chapter of the Sierra Club, representing more than 30,000 members and supporters in Nevada, strongly supports A.B. 331 to create an Outdoor Education and Recreation Grant Program.

It is more evident than ever before that we need to foster our connections to the natural world, especially with young people. Society has become ever more disconnected and unaware of not just the natural wonders around us, but of how our survival depends on the relationship we have with ecosystems and the natural world.

For me, it was a week every summer at my aunt and uncle's rustic cabin at Wrights Lake that made all the difference. Day hikes into Desolation Wilderness with my uncle turned into weeklong backpacking trips throughout the Sierra. I was hooked and couldn't get enough of it. But I was lucky. So many less fortunate don't have these opportunities.

Assembly Bill 331 is important because it recognizes the need to provide access to nature to students from economically disadvantaged backgrounds and those who struggle academically. The Sierra Club's Environmental Justice policy allies itself with communities impacted by environmental degradation, including communities that have less access to park land and other forms of nature. Only with a fully enfranchised society can we make the systemic changes necessary to protect the environment. In that vein, the Toiyabe Chapter actively supports two programs: Inspiring Connections Outdoors in southern Nevada, and Get Kids Outdoors in northern Nevada. Both programs provide nature outings and wilderness experiences for urban youth who have limited access to the outdoors.

As Wendell Berry said: "The care of the Earth is our most ancient and most worthy, and after all our most pleasing responsibility. To cherish what remains of it and to foster its renewal is our only hope."

We thank Assemblyman Yeager for introducing A.B. 331 and hope for swift passage. [A letter was also provided ([Exhibit F](#)).]

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

I just want to get on the record supporting this bill.

Mauricia M.M. Baca, Executive Director, Get Outdoors Nevada:

I want to thank Assemblyman Yeager for introducing this bill. I would like to start with a brief memory of mine, speaking with my stepdaughter when she was eight or nine years old. We talked about how important the outdoors were for her. She said when she does not get outside for a long time, she feels as though there is a little tear in her heart. Then she goes outside and feels like it is taped back up again.

For myself, growing up in New York City, Central Park was my special outdoor place and that is what inspired me to go forward and work in the environment. I have been paying that forward, as I came to Nevada, making the very wise choice to move here in 2006. I love

Nevada, and I love the fact that we can introduce our young people to Nevada. It has been raised that it is an incredibly important part of academic achievement for young people. It has been shown through studies that children who get outside learn better. Children who have disorders, such as attention deficit disorder, also do better outside. Get Outdoors Nevada has been working on these programs since 2012 when we started with our very first grant from The North Face for \$2,500. Last year, through support from private supporters, such as NV Energy, Barrick Nevada, the National Park Service, The Howard Hughes Corporation, and the Kasner Family Foundation, we were able to support 134 field trip opportunities. These were made available with microgrants with the Clark County School District. Every year that we have private funding to support these outings, we use every single cent of that funding. That tells us that there is an incredibly strong desire out there in our communities to engage in outdoor learning adventures. We have been honored to be able to partner with folks such as the Clark County School District and the Southern Nevada Conservancy. I urge passing of A.B. 331. Again, I thank Assemblyman Yeager for introducing this and creating an opportunity to create a state fund to support outdoor adventures for our young people. [Written testimony was also provided ([Exhibit G](#)).]

Chair Swank:

Is there anyone else who would like to speak in support of A.B. 331? [There was no one.]
Is there anyone who would like to speak in opposition? [There was no one.] Is there anyone who would like to speak in neutral?

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

The Division of State Parks, DCNR is neutral on this bill. Assembly Bill 331, as mentioned, would create a new grant program to be managed by DSP. A grant program focused on outdoor education is consistent with the mission of the Division. Unfortunately, the Division is at capacity and is not in a position to take on a new grant program without additional resources.

The DSP administers two grant programs: the Recreational Trails Program (RTP) and the Land and Water Conservation Fund (LWCF). Both programs are funded via federal agencies, with DSP selecting and managing local grantees. The RTP originates with the Federal Highway Administration and funds small- to large-scale projects throughout the state; from repairs to local playgrounds to entire trail systems across multiple jurisdictions. The LWCF program originates with the National Park Service and funds larger-scale projects such as neighborhood swimming pools and entirely new community parks. Both programs require that grantees apply for funding via specific criteria and conduct their grant-funded projects according to defined principles. The DSP receives approximately \$1 million from each source on a yearly basis. Both the RTP and LWCF grant programs allow DSP to contribute beyond our traditional park boundaries to Nevada's neighborhoods and communities.

In order to implement a new grant program, the Division would require an additional staff position. This position would be responsible for establishing and administering the program,

securing additional funding through donations and other potential funding sources, and marketing the grant program once adequate funding was reached. The Division would also need additional funding to cover costs associated with the program such as travel and commission meetings. The Division of State Parks is certainly willing to manage a new grant program, but it simply does not have the current capacity to handle a new program.

Thank you for your time. I would be happy to answer any questions the Committee may have.

Chair Swank:

With that, Assemblyman Yeager, do you have closing remarks?

Assemblyman Yeager:

"No Legislator Left Inside" also sounds like a great idea. One of my regrets sometimes with being in the Legislature is that we rarely have time to get outside and see the beautiful state that we live in. We certainly are lucky to live here. I do have some passports in my office if anyone would like one. The last thing I want to say is that I urge your support of this bill because I would really like to replicate the signing and Assemblyman Wheeler, if you will have us again, we can go down to your district and get this legislation signed.

Chair Swank:

I will close the hearing on Assembly Bill 331.

[Assemblywoman Bilbray-Axelrod assumed the Chair.]

Vice Chair Bilbray-Axelrod:

I will open the hearing on Assembly Joint Resolution 3.

Assembly Joint Resolution 3: Expresses support for the Nevada Greater Sage-Grouse Conservation Plan and the Nevada Conservation Credit System and urges the United States Bureau of Land Management to require compensatory mitigation to offset anthropogenic disturbances in accordance with the Nevada Conservation Credit System. (BDR R-511)

Assemblywoman Heidi Swank, Assembly District No. 16:

It is my pleasure to walk you through the beginning of Assembly Joint Resolution 3. The resolution is a result of the Legislative Committee on Public Lands that happened during the 2017-2018 Interim.

As a little background, as you all know Nevada is home to the greater sage grouse, which is a large ground-dwelling bird that some say looks rather awkward, but I actually think looks pretty cool. If you have not seen a good sage grouse video, you are missing out. It lives in the sagebrush habitat and is prevalent in our landscape. However, years of drought conditions, wildfires, habitat fragmentation, invasive weeds, and continued development have put that sagebrush habitat under threat.

Due to concerns with the population of the greater sage grouse, and its habitat, the U.S. Fish and Wildlife Service initiated a formal species status review in 2004. For Nevada, the potential listing of the greater sage grouse as threatened or endangered would greatly impact the management of lands. It would limit backcountry tourism and other industries such as ranching, mining, and renewable energy development. Nevada has worked extremely hard with a variety of stakeholders and has developed a robust program to protect the greater sage grouse known as the Nevada Conservation Credit System (CCS). The majority of greater sage grouse habitat is located on lands managed by the Bureau of Land Management (BLM), U.S. Department of the Interior. As such, most of the permitted disturbances to that habitat occur with permits issued by the BLM. Last summer, the National Office of the BLM issued an instruction memorandum [IM-2018-093] which instructed BLM staff that they cannot require compensatory mitigation for the disturbances on BLM-managed lands unless that mitigation is a state requirement. That is how we got here. With that, I am going to hand things over to Mr. Lawrence.

James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources:

With me today is Kelly McGowan who is our coordinator for the Sagebrush Ecosystem Program. It is a pleasure to be here to testify in support of A.J.R. 3. I also would like to thank Chair Swank for bringing this resolution forward.

Assembly Joint Resolution 3 expresses support for the Nevada Greater Sage-Grouse Conservation Plan and the CCS. Assembly Joint Resolution 3 also urges the BLM to require compensatory mitigation utilizing the CCS.

Nevada has been a leader among other western states and has a great story to tell regarding greater sage grouse conservation. In 2013, the Nevada Legislature passed legislation establishing a Sagebrush Ecosystem Program [Assembly Bill 461 of the 77th Session], making Nevada the first state to place into law a program specifically for greater sage grouse conservation. This legislation specifically required the establishment of a governor-appointed Sagebrush Ecosystem Council that, among other duties, required the Council to develop and adopt a state plan for greater sage grouse conservation along with a science-based mitigation program to offset anthropogenic impacts to greater sage grouse habitat.

The Sagebrush Ecosystem Council brings together 16 stakeholder groups representing the wide variety of interests regarding the sagebrush ecosystem and greater sage grouse conservation. The Council includes representatives from tribal nations, environmental interests, the Board of Wildlife Commissioners, local government, agricultural interests, mining, and energy, to name just a few. The Council also consists of representatives from the applicable state and federal land management and wildlife agencies.

In 2014, this broad stakeholder group unanimously adopted Nevada's Greater Sage-Grouse Conservation Plan that addresses the threats to greater sage grouse habitat specific to Nevada. A foundation of this plan is Nevada's Conservation Credit System. The CCS is a

scientifically based mitigation program that ensures net conservation gain when offsetting anthropogenic disturbances in greater sage grouse habitat.

One of the many benefits of the CCS is that it provides incentives to landowners to implement land management actions for the benefit of protecting and improving sage grouse habitat. Those actions are evaluated using a scientifically based habitat model that quantifies the number of conservation credits generated from those management actions. Those conservation credits can then be sold to persons or entities that are being permitted to disturb sage grouse habitat.

To date there are at least 15 different landowners, involving approximately 50,000 acres of land, who are protecting and improving habitat for the purpose of generating conservation credits. Many more landowners have expressed interest in generating conservation credits but are waiting to see whether the BLM will be requiring mitigation.

Utilization of the CCS for mitigation ensures that consistent metrics are being used to quantify both conservation activities as well as habitat impacts. Having consistent metrics is critical for Nevada to be able to demonstrate to the U.S. Fish and Wildlife Service that impacts have been appropriately mitigated. This consistent evaluation of protecting greater sage grouse habitat will be extremely important when the Fish and Wildlife Service reassesses their decision in 2020 to list the species under the Endangered Species Act. It is imperative to have adequate regulatory mechanisms in as this is a primary criteria the Fish and Wildlife Service evaluates when deciding whether to list a species as threatened or endangered.

One of the challenges Nevada faces when implementing the state plan and the CCS is that the majority of sage grouse habitat is located on land managed by either the Bureau of Land Management or the United States Forest Service. The success of Nevada's plan is dependent upon it being followed and utilized in federal land use plans and permits.

This challenge was highlighted in 2018 when the National Office of the BLM issued an instruction memorandum [IM-2018-093] stating that the BLM could not require mitigation of habitat disturbances unless it is voluntarily offered by the permittee or unless there is a state requirement for mitigation. If the Nevada BLM does not require mitigation for permitted habitat disturbances, the state will not be able to demonstrate to the U.S. Fish and Wildlife Service that there are adequate regulatory mechanisms in place to protect habitat. As a result, the state becomes vulnerable to having the greater sage grouse listed as a threatened or endangered species.

In response to the BLM's instruction memorandum, Governor Sandoval issued Executive Order 2018-32 in December 2018 requiring the Sagebrush Ecosystem Council to adopt regulations requiring mitigation and utilization of the CCS on state and federal land. The Council is currently in the process of developing temporary regulations with an adoption hearing scheduled for later this month.

Passage of A.J.R. 3 will demonstrate to the BLM that the Nevada Legislative and Executive Branches are unified in requiring mitigation to offset permitted anthropogenic disturbances to greater sage grouse habitat. Passage of A.J.R. 3 also sends a message to the many private landowners carrying out conservation projects under the CCS that Nevada continues to support and advocate for their participation and conservation actions.

Assemblywoman Titus:

This is essential, even more now with all of the fires that took out so much habitat. We need to circle the wagons and ensure that we reconfirm our compassion and our passion to make sure that we protect this bird and reward those who are stepping up to protect them. Many people do not know that we have different populations of sage grouse in Nevada. This resolution addresses the greater sage grouse. I always remain concerned about the ones in my district, which are the bi-state sage grouse. This resolution does not seem to identify that particular species. Are there any conservation credits for the bi-state sage grouse? We did a pinion juniper cutback in our area for sage grouse habitat. Is any of that considered for conservation credits?

James Lawrence:

The bi-state sage grouse population is separate and distinct from the greater sage grouse population. One of the largest differences is the size of the habitat area. The size of the bi-state population is much less than the millions of acres for the greater sage grouse. The efforts for the bi-state sage grouse population started before the planning efforts of the greater sage grouse. For the bi-state sage grouse population, there are a series of projects on the books to protect and conserve that habitat. It has gone through a little history where it was determined that having those projects being implemented was adequate and showing enough conservation so that the bi-state sage grouse population did not need to be listed. There has been some court cases since then, and the U.S. Fish and Wildlife Service is doing data call regarding the projects. That is where it stands with the bi-state sage grouse. I think folks involved in that effort believe that there is enough going on to warrant a no-listing decision. In the meantime, our credit system for greater sage grouse is very specific to that population, and it could be amended and modified to address the bi-state sage grouse population as well. It would take a little bit of resources and time to do that, but there is not as many permanent disturbances on federal land in the bi-state sage grouse population as there are for the greater sage grouse. For the time being, the folks have decided that maybe at some time in the future, doing the credit system for bi-state sage grouse would be necessary, but it is kind of in a holding pattern, and it is seen as not being necessary in the immediate future.

Assemblywoman Peters:

What are some examples of other conservation credit systems that have worked for other animals? Also, what is the cost to the state of the sage grouse being listed?

James Lawrence:

The first example is not necessarily a species, but habitat, which is the wetlands mitigation banking. To my knowledge, that was the first and in the forefront of what is called

"ecological services" where private landowners can do conservation work to get credit that could be sold for mitigation. Regarding sage grouse, we have been the leaders. We came to the party a little later than other states, and we have surpassed them. The state of Colorado has a habitat exchange, which is the same as a credit system, and they are using it for greater sage grouse. The state of Oregon is doing more of an in-lieu fee program, but it is the same thing—a habitat exchange where you evaluate sage grouse habitat, you model it, you determine how functional it is for the bird, and those improvements can be used for mitigation. Those are the ones that I am most familiar with. I know there has been work in Texas regarding the dunes sagebrush lizard, and there are other ones being brought forward.

The idea of valuing habitat and conservation credits attached to it is in some ways an emerging field. There are a lot more private companies getting involved in ecological services. Will you repeat your second question?

Assemblywoman Peters:

I was wondering what the cost to the state would be with the sage grouse being listed under the Endangered Species Act.

James Lawrence:

It is hard to quantify the cost, but when we are talking about greater sage grouse, we are talking millions of acres of habitat. If the species were to be listed, it means that consultation with the U.S. Fish and Wildlife Service would occur and would have to occur every time there was going to be a disturbance with sage grouse habitat. That means impacts to renewable energy projects, mining projects, ranching, and livestock. So much of rural Nevada is dependent on the use of federally managed lands that those activities could come to a standstill. As for economic impacts, I do not know the exact number. The University of Nevada, Reno has been working on an economic study to answer that question. I do not think the results are out yet.

Vice Chair Bilbray-Axelrod:

I will now invite those who are here to speak in support of A.J.R. 3 to come up to the table.

Kyle Davis, representing Nevada Conservation League:

We are here today in support of A.J.R. 3. We appreciate the Legislative Committee on Public Lands bringing the issue forward. Nevada really has been a leader in terms of putting together a collaborative process to deal with the issue of sage grouse conservation and has brought in a number of stakeholders in putting together our state plan that created the CCS. Unfortunately, we have been undercut in the last couple of years by the U.S. Department of the Interior by changing the rules after we had worked so hard to get many different people on the same page and put together a system that creates good conservation outcomes for the greater sage grouse.

A big part of what we have been able to put together is our program of compensatory mitigation due to the CCS. When BLM said that they were not going to require compensatory mitigation, obviously that was a big problem for a system such as ours that had

been put together based upon those concepts. While we are certainly encouraged at this point in that they say they will defer to the states—if a state requires it that they will stand behind us. We have some concerns that they are actually going to hold up their end of the bargain.

Nevertheless, this resolution is very important to show that Nevada stands behind the program that we put together, and that we are committed to the overall conservation of the sagebrush ecosystem and the greater sage grouse. It will also show that we are going to continue to implement our program, even if there are opportunities for us to get away from the program and not do what we had said we were going to do. I am very encouraged by our state continuing to lead on this issue and continuing to say we are going to implement our plan even if we could do less than what we would say is required in order to support sage grouse conservation. We would urge the Committee to support this resolution and continue to support the efforts of our state in ensuring greater conservation outcomes for sage grouse.

Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club:

On behalf of more than 30,000 Sierra Club members and supporters in Nevada, we are grateful for your leadership in introducing and considering Assembly Joint Resolution 3. We strongly support this bill.

Our members highly value our public lands and the communities, plants, and wildlife which depend on these resources. We conservationists have been working on the development and implementation of sage grouse plans and projects since 2000 when concerns about declining greater sage grouse populations and habitats became national as well as state issues. Our members have been appointed by Nevada governors to both Nevada Greater Sage-Grouse Conservation Plan teams and have participated in local working groups. We submitted extensive comments on the 2015 environmental impact statement and were pleased to see significant strengthening by federal agencies of sage grouse conservation actions in Nevada.

We understand that the protection and enhancement of the sagebrush ecosystem is critical to dozens of sagebrush obligate species as well as the sage grouse, and that Nevada has a large stewardship responsibility for sagebrush ecosystems since it is home to almost 14 million acres of sage grouse habitat on lands administered by the Bureau of Land Management, the Forest Service, and the Fish and Wildlife Service. We also understand that it is in the best interest of Nevada to protect and enhance sage grouse habitat through implementation of the Nevada Greater Sage-Grouse Conservation Plan and utilization of the CCS so that these iconic landscapes can be protected for generations to come. The 2015 decision not to list the greater sage grouse as endangered or threatened by the U.S. Fish and Wildlife Service could be reevaluated at any time if new information indicates that listing is necessary.

Therefore, we strongly urge you to support Assembly Joint Resolution 3. Thank you for the opportunity to speak about this important issue. [A letter in support was also provided ([Exhibit H](#)).]

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

We support A.J.R. 3 with a proposed amendment. I would like to make a comment on sage grouse in general. We are very deeply involved in this issue; we just filed suit last week against the new sage grouse plan amendments. Our group and a coalition of groups are taking the Trump Administration to court over the legality of the new amendments which cut out mitigation. I would say that the concept of the Nevada Conservation Credit System is somewhat independent of listing the bird. The bird is highly likely to be listed in 2020, the next time the U.S. Fish and Wildlife Service reevaluates it. Lek attendance has gone down 30 percent in the past three years in this state. Habitat is being carved up at an alarming rate in Wyoming—which is the other stronghold of the sage grouse—for oil and gas. That is outside of Nevada's control, but I think the CCS in Nevada is important whether or not the bird gets listed, and we need to shore it up so that we can mitigate impacts to the bird. Whether that prevents listing in a year, it is still very important to the conservation of the bird.

As far as a proposed amendment goes, it should be noted that the secretarial order referenced in A.J.R. 3 did not just deal with sage grouse, it broke down the compensatory mitigation system across all BLM lands across the western United States. Fully 50 percent of Nevada is not sage grouse habitat. There is now no mandated compensatory mitigation for damage to public lands on the non-sage grouse portions of the state. I do not have language at this moment, but I would encourage the bill sponsors consider adding a clause to address compensatory mitigation on other public lands in the state. This is particularly important for the desert tortoise where BLM has gotten rid of compensatory mitigation. This is extremely problematic because that is how we have been able to successfully manage the desert tortoise, which is doing fairly well in Nevada for an endangered species. I would be happy to discuss this amendment with the sponsors, and I think that would be addressing the broader issue of the Trump Administration's attacks on compensatory mitigation.

Karen Boeger, Co-Chair/Secretary, Nevada Chapter, Backcountry Hunters and Anglers:

I do not have a prepared statement, but I want to encourage you to support this resolution. I think any determination that you can give is going to be great fodder for both our congressional delegation, for our Governor, and to support our prior Governor Sandoval's intent of trying to keep compensatory mitigation as a most important tool for us to use for the work of the CCS. My organization has been following and participating in all of the deliberations of the Sagebrush Ecosystem Council for years, going back to prior councils. We have been so impressed with the success that this current council has had. As many have said, we have been leading the West, we have been a model, and I would like to see us continue to be that model. I know the time is short and we are going to be reassessed and we all have grave concerns about that. We have to keep plugging forward and do what we can. Please support this resolution.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

Nevada Farm Bureau is testifying in neutral on A.J.R. 3. Nevada Farm Bureau policy supports the adoption of the Nevada Greater Sage-Grouse Conservation Plan, and the state's conservation plan includes foundational provisions which include compensatory mitigation.

The comments that I am making here are consistent with the same types of comments that we have made in our involvement organizationally in providing input to the public National Environmental Policy Act of 1969 process as well as our comments to the Sagebrush Ecosystem Council as they have been working through the process of adopting Nevada regulations concerning compensatory mitigation. We do not believe that enough of the Nevada's Greater Sage-Grouse Conservation Plan has been incorporated into the federal land management agencies' sage grouse conservation plans, and we take exception to the provisions that are part of the plans the federal agencies are working to implement for livestock grazing, which run counter to the Nevada Greater Sage-Grouse Conservation Plan.

Federal agencies' association with the BLM and the U.S. Fish and Wildlife Service do not have authority to require compensatory mitigation of federal land users. They lost this authority in federal policy changes; however, they maintain that they can use and enforce state regulations, evidently the ones they select as being something they are interested in using.

We have stated that if the federal agencies want to use part of the Nevada Greater Sage-Grouse Conservation Plan—compensatory mitigation—they should fully adopt the entire plan instead of the federal plans that they are working from or are in the process of amending. We do not agree that the selected portions of the Nevada plan, which grant federal land managers authority they would not otherwise have, is acceptable or appropriate.

Assembly Joint Resolution 3 might also be premature in regard to seeking endorsements from the Nevada Legislature to compensatory mitigation because state regulations are not finalized and adopted. There is an uncertainty in regard to there being a clear understanding of how the federal agencies will operate state-based regulations that have not been fully adopted. We support the state plan; we just do not think enough of the state plan is being included in the way that the federal land management agencies are implementing it.

In looking at the memorandum of understanding between the state of Nevada and the federal government in order for them to move forward with the adoption of the regulations, we think that should be leverage that is used in negotiating with the federal agencies in order to get more of Nevada's plans incorporated into the full package of implementation. We believe that the use of Nevada's compensatory mitigation regulations should be reevaluated in order to protect private landowners as they are going through their providing credit systems. We also believe that if the bird were to be listed under the Endangered Species Act, we think there needs to be provisions in the memorandum of understanding in order that Nevada's plan would then be withdrawn.

Vice Chair Bilbray-Axelrod:

With that, is there anyone else here in opposition of A.J.R. 3? Seeing none, is there anyone here in neutral?

Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County:

We are testifying in neutral for A.J.R. 3. We support the state plan, including the CCS. In fact, the chairman of the Eureka County Board of Commissioners, J.J. Goicoechea, is also the chair of the Sagebrush Ecosystem Council, where he represents local government. We are very supportive of the state plan and the CCS. The reason we are coming in neutral today is for the following reasons: First, the resolution in front of you supports the CCS, but in the language, the specific request to the BLM, it references only the CCS, but not the state plan. It should be the whole state plan, not just the CCS portion of the plan.

The second reason is that it talks about compensatory mitigation many times. I think it is important to define that according to the state plan. I heard someone say there are 50 shades of compensatory mitigation. Does that mean it is a net conservation gain? Does it mean equivalent functional acres? The state plan says in accordance with the state plan. We were recently involved in a legal issue with BLM and the Interior Board of Land Appeals, and it was determined that the BLM was in accordance with the local policy and plan as long as they were not less restrictive. That asserts that the BLM could be more restrictive and still be in accordance with the state plan.

The third point is that circumstances are a bit different now than when this resolution was drafted. The BLM records of decision were signed just a few weeks ago. Now this resolution can really do nothing to affect any change in those. That should be referenced in the resolution.

The fourth issue is that this resolution is focused on BLM only. The United States Forest Service, while they have not come out with a policy saying they cannot implement compensatory mitigation, they are working on their land management plan amendments and this has bearing on them as well. The resolution could be amended to actually go to the United States Forest Service as well.

Lastly, Senate Joint Resolution 5 of the 78th Legislative Session passed. There was some good language in there regarding the state plan as a whole, not just focusing on the CCS. We would refer you to that to see if some of those previous points that the Legislature adopted can be melded into this to make it stronger.

Vice Chair Bilbray-Axelrod:

Your testimony was a little more opposition than neutral. I am going ask our legal counsel to discuss the compensatory mitigation issue.

Allan Amburn, Committee Counsel:

You mentioned that compensatory mitigation is not defined in this resolution. The reason for that is because we are referring back to IM 2018-093 issued by the BLM. That memorandum defines mitigation by referring to federal regulation, which is 40 CFR § 1508.20. In that federal regulation, it provides that mitigation includes compensating for the impact by replacing or providing substitute resources or environments. Additionally, the BLM instruction memorandum defines compensatory mitigation to mean a project, proponent activities, monetary payments, or in-kind contributions to conduct offsite actions that are intended to offset adverse impact of a proposed action on site.

Assemblyman Ellison:

Are you asking for the sponsor of the bill to consider the entire state plan? Also, I cannot remember seeing anywhere in the state plan about predator control. We do still have problems with predator control.

Jake Tibbetts:

If it is this resolution or no resolution, we would like to see this resolution move forward. That is why we are not in opposition. To Assemblyman Ellison, the resolution does state, in one of the whereas sentences, support for the state plan, including the CCS. In the whereas to the BLM, it specifically asks them to include compensatory mitigation according to the CCS. The Nevada Farm Bureau Federation testified very similarly. The state plan is the foundation as Mr. Lawrence stated. The state plan has other things, such as local engagement and certain policy statements. There are other things in the state plan that did not make it into the BLM plan. We think the whole plan should be supported, not just the CCS.

Regarding predator control, the state plan does have language related to working with the appropriate entities that can carry it out. There are no specific measures of what the state will do, but it does reference predator control. The updated BLM resource management plan amendments that were just approved also have language in them about working with the appropriate agencies to ensure that activities on the BLM-administered land do not benefit predators that have a negative impact on sage grouse.

Cheva Gabor, Nevada State Liaison, Forest Service, U.S. Department of Agriculture:

I would like to make a point of clarification regarding the Forest Service as it relates to the resolution. We are in the final stages of our plan amendment. We will come out with a final environmental impact statement at the end of April. We do not contemplate moving away from requiring compensatory mitigation to the net conservation gain standards. We are not in the same position as the BLM as related to this issue. To the degree that the state passes temporary regulations, or eventually permanent regulations that are more restrictive, we are likely to defer to the state based on our general counsel's advice. To the degree that restrictions passed by the state would be less restrictive than ours, we would defer to our more restrictive regulations. We do intend to work with the state closely if they pass approved temporary regulations. I also want to clarify that we are not in the same position as BLM related to the compensatory mitigation requirement.

Vice Chair Bilbray-Axelrod:

Seeing no closing remarks, I will close the hearing on Assembly Joint Resolution 3.

[Assemblywoman Swank reassumed the Chair.]

Chair Swank:

I will move on to public comment. [There was none.] I would like to mention that Vice Chair Bilbray-Axelrod's mother, Michaelene Bilbray, is here visiting. Welcome to the Committee. With that, we are adjourned [at 5:16 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 the Work Session Document for [Assembly Bill 1](#), dated April 1, 2019, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for [Assembly Bill 163](#), dated April 1, 2019, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is written testimony dated March 31, 2019, presented by Chris Daly, Deputy Executive Director, Government Relations, Nevada State Education Association, in support of [Assembly Bill 331](#).

[Exhibit F](#) is a letter dated April 1, 2019, to Assembly Committee on Natural Resources, Agriculture, and Mining, signed and presented by Tobi Tyler, Member, Executive Committee, Toiyabe Chapter, Sierra Club, in support of [Assembly Bill 331](#).

[Exhibit G](#) is written testimony submitted by Mauricia M.M. Baca, Executive Director, Get Outdoors Nevada, in support of [Assembly Bill 331](#).

[Exhibit H](#) is a letter dated April 1, 2019, to Assembly Committee on Natural Resources, Agriculture and Mining, signed and presented by Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club, in support of [Assembly Joint Resolution 3](#).