GOVERNMENT AFFAIRS COMMITTEE

Minutes of Meeting - February 16, 1977

Present:	Chairman Gibson
	Senator Foote
	Senator Faiss
	Senator Gojack
	Senator Hilbrecht
	Senator Raggio
Also Present: (See Att.)	Senator Schofield

Chairman Gibson called the twelfth meeting of the Government Affairs Committee to order at 2:05 p.m.

AB-67
Revises the state accounting procedures. (BDR 31-315)

Mr. John Crossley, Deputy Legislative Auditor for the L.C.B. had a prepared testimony and supporting letters from the various departments affected by AB-67. (See attachment #A)

Mr. Crossley indicated at the conclusion of his testimony on AB-67 that it may take several sessions to get all the accounting procedures revised within the State but this bill sets the groundwork. Will also be able to give a clear opinion.

Mr. McGowan, State Controller, indicated that he has worked with Mr. Crossley and Oliver setting up the accounting procedures and is in favor of the bill.

Mr. Howard Barrett, Administrator of the Budget Division, stated that they were also in favor of AB-67

Chairman Gibson also read a letter from Assemblyman Demers who could not be present. Mr. Demers letter indicated that he had worked with Mr. Crossley and was in favor of AB-67 and its affects on the State accounting procedures.

Motion of "Do Pass" by Senator Raggio, seconded by Senator Foote. Motion carried unanimously.

AB-68
Abolishes obsolete Data Processing Division funds. (BDR 19-451)

Mr. Crossley noted that sections enacted in the 1969 session regarding the installation of the computer are no longer necessary as those funds are not needed. He indicated that this was a housekeeping measure.

Motion of "Do Pass" by Senator Raggio, seconded by Senator Schofield. Motion carried unanimously.

SB-193
Provides for assessments for improving certain streets.(BDR 20-737)

Frank Daykin, Legislative Counsel, informed the committee on the changes that occur in this bill. Mr. Daykin stated that the bill makes several changes in the county improvement law. The substantive change occurs on page 3, beginning with line 5; removes requirement of 50% of the lots on a block that have some permanent structure on them. The next substantive change occurs near the bottom, beginning on line 38. This change was to conform the county improvement law to local Purchasing Act. They have done this by deleting from the county improvement law those areas that are covered by the county improvement districts. This same thing was also done by eliminating language midway through line 34 in Section 3. Also deleted was the reference to bidders where there is only a single source of supply.

Senator Hilbrecht felt that on page 3, beginning with line 5 those improvements mentioned would become a burden on the adjacent property. Senator Hilbrecht referred the committee to the map provided by Mr. Warren from the Nevada League of Cities. In this map it reflects a bottleneck situation and a small piece of land where there is no development. Questioned if there was any distinction between the situation depicted on the map and a situation where the homes on either side of the bottleneck were created by a developer coming in the development approved by this municipal subdivision without any requirement that they improve offsite access.(See Map, Attachment #B)

Mr. Bob Warren, Nevada League of Cities, had no clear answer for Senator Hilbrecht with the above posed problem. He noted that the bill would permit only counties to do this type of assessment and suggests that you change the bill as well as SB-271 to permit cities as well as counties to be able to assess for improvement of certain streets.

Mr. Hal Smith, Burrows Smith & Company, agreed with Senator Hilbrecht's remarks and offerred any assistance in changing the bill to be more workable.

Chairman Gibson asked Senator Hilbrecht to work with Mr. Daykin on the bill and come up with some amending language.

Ray Knisley, representing himself, indicated that he has listened to all the comments made and feels that it is within the power of the cities and counties to prevent such situations from happening in the first place.

Senate

SB-216
Clarifies provisions relating to municipal airports.(BDR 44-736)

Frank Daykin went over this bill for the committee indicating that this change is to define public utilities. It is used for requiring or giving notice of airport zoning and utilities that have structures within the airports.

Chairman Gibson stated that Mr. Hal Smith of Burrows, Smith and Company, indicated that this came up in the construction of McCarran Airport and they had some problems with this type of situation. Needs to be clearly spelled out in the statutes.

Motion of "Do Pass" by Senator Raggio, seconded by Senator Schofield. Motion carried unanimously.

SB-153
Reorganizes functions of energy and natural resource conservation. (BDR 18-22)

Glen Griffith, Department of Fish and Game, spoke to the committee and indicated that although the decision was not unanimous and that with the understanding that there would be no diminishing of authority and power the commission has no objection to the bill as it is presently written.

Bruce Arkell, Planning Coordinator with the Governor's Office, assured Mr. Griffith and the committee that there were no regulatory changes and the power and authority would remain intact. The bill really provides the Fish and Game Department with a "home".

Mr. Van Peterson, Nevada Association of Conservation Districts, came before the committee with written testimony on SB-153. (See Attachment C) They have become directly involved in the water quality program and therefore feel we should retain this part of our law which is on Page 112, line 47 - repeal 548.410 to 548.510. Our problem with using this law is that we were using the term "land use" all the way through. The definition of land use does not necessarily apply to use of the lands. We want to change the words "land use" to "conservation management" regulations.

Mr. Arkell indicated that there was a considerable amount of testimony taken on this aspect of the bill. The sections that Mr. Van Peterson mentioned essentially gives to the Conservation District the authority to regulate land use within the Conservation District. There are no definitions in the act, it is really unclear. This act was primarily directed towards sediment and soil errosion. The committee felt, during the course of its deliberation, that it would be best to avoid any conflict with local governments authority. The solution was to repeal the statutes because later on during the deliberations it was questioned that the Environmental Protection Agency might come in with a bill to revamp all the statutes.

Mr. Roger Steele, speaking for Assemblyman Demers, who was unable to attend, had his testimony written for the committee (See Attachment #D). In addition to the testimony there was a map of Utah and Mr. Steele explained the air control qualifications. Mr. Steele felt that it was very important to have a uniform environmental policy within the State.

Mr. Trounday indicated that the rule making exists with the State setting the overall policy and direction. With the exception of Washoe and Clark who are able to make their own standards. They can make their regulations more stringent or the same as the State's but not more relaxed.

Dr. Vernon Scheid, informed the committee that he was speaking as a citizen with considerable knowledge in the geothermal area. Dr. Scheid stated that he was a member of the State Advisory Board but did not represent them today. Dr. Scheid wanted to be sure that geothermal energy and everything connected with that aspect of energy should remain with the Bureau of Mines.

He also went over the bill giving changes, additions and deletions. (See Attachment #E).

There was discussion from the committee with regards to confidentiality. Dr. Scheid indicated that the confidentiality period should be at least three years.

Mr. Ray Knisley, making a statement for Mr. Noel Clark, Public Service Commission who was unable to be in attendance. Mr. Knisley indicated that on page 87, section 260 there is an unworkable position for the Public Service Commission. Mr. Clark asked that it either be stricken or be rewritten.

Mr. Knisley also stated that there would be several cross-filings necessary on geothermal, oil and gas. The State Engineer's office has turned out to be a policing office and we will have a chaotic condition underground as far as our fresh water strata is concerned. It would also be necessary for cross filing with Nevada Environmental Commission. Some of the wells only discharge hot water but might pose a problem with air pollution. It was apparent to Mr. Knisley that the State Engineer's office would have to remain the policing force for the underground strata.

Mr. Paul Gimmel, Executive Secretary for the Mining Association, Inc., read his testimony to the committee and passed out an article entitled, Legislation and the Small Miner - Aime Pacific Southwest Mineral Industry Conference. (See Attachments F & F_1).

Mr. Arkell was in agreement with the testimony that Mr. Gimmel presented to the committee.

Lewis Bergeuin, Cattlemen's Association, feels that most of the water rights are vested in irrigation priorities, some dating back to before Statehood in Nevada. They feel that the present State Engineer and his office is doing a very good job and wants to keep the authority in that office. If a division should be created along that line it should be only for Water Planning. The Association is very much opposed to anyone regulating the water that is used on their ranches.

Bruce Arkell stated that their committee agreed in general about the need to have regulations and alternatives in water planning, but Mr. Arkell also feels that with the growing need for water regulations and alternative techniques in the water area there might be some adherent problems within the State Engineers Office.

Daisy Talvitie, President of League of Women Voters, read her testimony to the committee.(See Attached #G) Ms. Talvitie complimented the legislature in pursuing this type of legislation. Ms. Talvitie felt that the bill needed clear cut decision making policy.

Mr. Arkell indicated that this was true but the problem in making that decision making policy clear was not knowing the direction that the Federal government would take. Until its known their regulations on water we won't be able to make clear cut decision making in the bill.

Ernie Gregory, Environmental Protection Agency, had some suggested amendments for the committee's consideration. (See Attachment #H)

The committee requested some insight to the fiscal impact that this bill will create. Mr. Arkell stated that they had prepared a fiscal note on the bill which addressed the Department of Natural Resources and Department of Conservation, Environmental Protection. Essentially the fiscal impact on those charts as drawn indicate a need to create a new director's office. The fiscal impact would give you a director, assistant director, clerical position, travel and operating budget. The total is $109,204. We have an amendment that would provide that in either of the two departments the division head or director could serve as one of the division heads. If this amendment is put into the bill it will remove the fiscal impact. Fiscal impact on the Planning Division would be a reduction on the Water Resources Budget. The Energy Agency as proposed in the bill would be approximately $150,000. The difference is that in the past the functions were optional with the Public Service Commission, not mandatory.

Chairman Gibson informed the committee and audience that there would be no further hearings on this bill. The committee would take some time to digest the material given here today and try to work out some of the problems before taking action on the bill.

Chairman Gibson presented BDR-30-1062, requested by bond counsel, clarifying the relation of general obligation securities to the State debt limit. Motion for committee introduction by Senator Schofield, seconded by Senator Raggio. Motion carried unanimously.

SB-62
Provides for codification and review of administrative regulations. (BDR 18-107)

Frank Daykin went over the changes for the committees consideration. He indicated that the first group of amendments on the first page all clarify language. In Section 3, page 2 - instead of having these exceptions for November 1st (of the even number years) and June 1st (of the succeeding years) we provided a consolidation of Sub Sections 2 and 3 and then added a new subsection 3, An Agency may adopt a temporary regulation between December 1st of an even numbered year and June 1st of the succeeding odd numbered year. Without following the procedure required by this section & Section 4 of the act, any such regulation expires by limitation by August 1st of the odd numbered year, an identical permanent regulation may be adopted.

On page 1, wherever I talked about a period longer than 120 days I have put in permanent regulation and defined permanent regulation as one which is not an emergency regulation and not a temporary regulation.

On page 3, Section 6 - consolidated language, purpose is that we are inserting one new section of substance and one section that handles the language. We are permitting the Attorney General also to object to a regulation as inconsistent with the intent of the legislature or arbitrarily or unreasonably adopted. Section 7 would provide for the Attorney General to find a regulation inconsistent with the intent of the Legislature as it appears from any statute, or that the agency adopting it has acted arbitrarily or unreasonably. He shall notify the agency of his objection and file a copy of the notice with the Secretary of State. The next section would provide part of what was cut out of Section 6. Section 8 would read a regulation as to which the legislative commission or the Attorney General have given notice of objection pursuant to Section 6 or 7 of this act expires by limitation 90 days after the date of filing the copy of the notice with the Secretary of State. Unless the agency has obtained a declaratory judgement that the regulation is valid. That procedure makes two changes from the existing bill.

It first gives the regulation 90 days of life, instead of making it ineffective as soon as the Legislative Commission objects. Second, it requires, because of this, both the Legislative Commission and Attorney General to file copies of their objections with the Secretary of State as well as the agency. Puts the public on notice to its effectiveness.

Chairman Gibson and the committee in general expressed concern with the 90 day limitation. Frank Daykin suggested that an alternative might be to provide that if the objection raised, as it would be in the process of a new regulation, then the regulation should not go into effect. If the objection is raised as the result of some citizens coming before you objecting that in the past they acted arbitrarily and unreasonably the 90 day moritorium might go into effect.

The committee felt that this was a good suggestion, Mr. Daykin will work on this language.

On the remaining amendments, Mr. Daykin stated that they go back to what he was stating on permanent regulations. It defines, permanent, defines temporary. The next substantive change is in Section 18, adding a provision ahead of line 32, The Attorney General may by regulation strike the form of notice to be used in one or more additional means of giving notice - which may differ according to the agency or kind of regulation. The Attorney General felt that it would be desirable to work out some form of giving better notice to the public at large.

Mr. Daykin continued and stated that the next substantive amendment comes in on Section 21, page 9 - this would add to the declaratory judgement provision - subsection - with respect to any regulation as to which the legislative Commission or the Attorney General has given notice of an objection, the burden of proof is upon the agency to establish that the regulation is valid. The Attorney General asked for the next sentence; If such a regulation is held to be invalid the court shall enter judgement against the agency for the cost of the action, including a reasonable attorneys fee in favor of a 'private party prevails', payable from any money appropriated with the support of the agency.

With the suggested language change regarding the 90 day moritorium the committee agreed with the amendment changes in the bill. Will consider action after the changes are complete.

With no further business the meeting was adjourned at 5:00 p.m.

Respectfully submitted,

Janice M. Peck/Committee Secretary

Senate

Approved:

James D. Gibson

Chairman

NOTE: REVISED AGENDA

SENATE

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS

Date Wed. Feb. 16th Time 2:00 PM Room 243

Bills or Resolutions to be considered	Subject	Counsel requested*
AB-67	Revises the state accounting procedures. (BDR 31-315)	
AB-68	Abolishes obsolete Data Processing Division funds. (BDR 19-451)	
SB-193	Provides for assessments for improving certain streets. (BDR 20-737)	
SB-216	Clarifies provisions relating to municipal airports. (BDR 44-736)	
SB-153	Continuation of hearing from 2-9-77 Reorganizes functions of energy and natural resources conservation. (BDR 18-22)	

*Please do not ask for counsel unless necessary.

GUEST REGISTER

GOVERNMENT AFFAIRS COMMITTEE

DATE: 2-16-87

THOSE WISHING TO TESTIFY SHOULD IDENTIFY THEMSELVES BEFORE GIVING TESTIMONY.....

NAME	DO YOU WISH TO TESTIFY	BILL NO.	REPRESENTING
Roger L Steele	Yes ✓	SB 153 SB-39	Donners
JOHN MEDER	NO		STATE PARKS
LOWELL SMITH	NO		NEV DIV OF FORESTRY
ADDISON A MILLARD			NEV DIV OF LANDS
Marian R. Green			Reno, Nevada
[illegible]	yes ✓	153.	Nevada association of Conservation Dists
[illegible] P.O. Box [illegible]	No		Div of Conservation Districts
DICK SEROOZ	NO		AIR QUALITY - EPS
Wilma Taylor	NO		Environmental Protection
Ernie Gregory	Yes ✓	153	Environmental Protection
VERNE ROSSE	NO	153	" "
Vernon Scheid	Yes ✓	153	Self
Geraldine Tyson	No	153	Interested Citizen
Dwight MILLARD	No	153	SELF
Gary Simms	No	153	Interested citizen
Ingrid Ewaldt	NO	153	Interested citizen
R. Zappettini	NO	153	Interested citizen
Kbi Boyd	NO		ENVIR. COMM.
Geo J Allen	—	153	Kennecott Copper Corp
[illegible]	NO	67	Budget
HAL SMITH	YES	SB 193	Burrows, Smith & Co. of Nevada
Roland D. Westergard	NO		State Engineer
R B. Clark	NO	SB 153	DCNR RID
Norman Hall	No	SB 153	Dept. Conservation & Natural Resources
Steve Robinson	NO	SB 153	Dept Conserv. & N.R.
DON PAFF	No		Div. of Colo. River Resources
Glen Griffith	yes ✓	SB 153	Dept. of Fish & Game
Joyce Lounsbury	No	SB 153	Dept. Human Resources
Dennis BERGEVIN	Yes ✓	SB 153	Nevada Cattlemens ASSN
Robert E Bruce	NO	AB 67	St Controller's Office
Melvin McMorris	NO	AB 67	St Controller
Carol A. Mendel	No	AB 67	State Controller's Office

In our Biennial Report dated December 31, 1974, in the section entitled "Future Projects, Reports and Studies", we said we would prepare a catalog of the State's Funds. That Biennial Report was presented to the Legislature in January 1975. Immediately thereafter, we set out to accomplish just that. We reviewed the State Constitution, the NRS, the Controller's Listing of Funds, the bills enacted during the 1975 session, etc. We identified 294 funds and categorized them as follows:

Active Statutory Funds in Controller's System

Statutory Funds not active in Controller's System

Active Funds Administratively created in Controller's System as set forth in Controller's listing of Funds (Excludes 400 series - Capitol Project Funds)

New Funds created by 1975 Legislature not yet established in Controller's System

Statutory Revolving Funds

Revolving Funds created Administratively in Controller's System

We prepared a special report for the Legislature entitled "Identification of State Funds as of May 1975." We distributed it in October 1975.

As a result of our work in developing that report, we identified certain problems:

1. NRS 353.293 states that only the Legislature can create funds. We identified in our study that over 100 funds had been administratively created.

2. The MFOA, the AICPA, college courses, etc., all basically agree on the fund structure that a governmental entity should have in which to account for the financial transactions. One that fits Nevada was not in the statutes, as is the case in many other states.

3. NRS 218.820 provides that the Legislative Auditor can request only statements itemizing receipts and disbursements rather than the generally accepted financial statements which include a balance sheet, operating statements, change in Fund balance, etc.

4. Many State agencies do their accounting outside the Controller's centralized system. However, the results of their operations were not being included in the Controller's annual report. Accordingly, the complete financial picture of the State was not being reported in any one report.

5. The present Fiscal and Accounting Procedures Law includes both budgetary and accounting requirements.

We felt that to upgrade the accounting and reporting requirements of the State legislation would be required to cure the problems we identified in our study.

Accordingly, we contacted other states to obtain information on how they had proceeded to accomplish such a project. We obtained copies of their statutes to draw from. We put together a rough draft of our plan. We met with the Controller's Office several times in as much as they would have to be the agency to carry out the purpose of the legislation. We also met with various other State agencies, such as the Budget Office, University, Fish & Game, and Retirement. They had suggestions which we also incorporated into the draft. Many of the agencies responded, with letters, concurring that the proposed legislation would provide for better accounting and reporting of the State's financial operations.

In October 1976 we issued our second report on the subject. It was entitled "Identification of State Funds, Report No. 2". That report spoke to just the Administratively Created Funds. We pointed out that through the efforts of the Budget Office and the Controller's Office there had been a reduction of Administratively Created Funds from 108 to 66.

Our October 1976 report also included a draft of our proposed legislation to amend the Fiscal and Accounting Procedures Act. At this time, we would like to go through the bill and explain the various changes and what their affect will be.

The first 8 sections on page 1 set forth definitions.

Section 9 - This section addresses one of the problems we identified earlier. That is the categorization of the State's financial activities. Section 10 defines what type of activity will be accounted for in the categories set forth in Section 9. An example, #3, Capital Project Construction Funds. We now have Capital Construction Projects being accounted for in special funds and in the General Fund. By virtue of this act, Capital Construction Projects will have to be reflected in this section of the Controller's reports. For those agencies that process their financial transactions through the Controller's Office, the Controller will have to account for them in this category. If an agency does not account for its financial transactions through the Controller's Office, that agency will have to establish, in their own set of records, a Capital Construction Fund if they embark on a capital construction project. It follows that the same ground rules will have to be followed in the other categories.

Section 11 - (Lines 3 through 7, page 3) Address another problem. That is of the State Controller's Annual Report covering all of the State's financial activities. This section, as it reads, does not mandate that the Controllers shall immediately report all of the State's activities. This section provides that when he requests it, these other agencies shall furnish the required data. We invision that it will take 3 to 5 years to where all of the financial activities of the State of Nevada are included in that one document.

Section 12 - (Number 9, starting on line 48 on page 3.) This provides that the Budget Office shall respond to requests for Budget information.

Section 13 - This section removes the duplication between section 1a and 2 of 353.195.

Section 14 - (Page 4, lines 40-43) This section transfers a function from the Fiscal and Accounting Procedures Law to the Budget Office Law. This was done at their request.

Section 15 - This section changes the title of the "Fiscal and Accounting Procedures Law" to the "State Accounting Procedures Law".

Section 16 - This section retains the right of the Legislature to create funds.

Section 20 - (Page 7) In this section we have amended 218.820 to provide that in lieu of a statement of cash receipts and disbursements, each agency, when requested by us, shall furnish the appropriate financial statements required by the bill. (Section 11)

The rest of the bill sets forth examples of how the statutes will identify the categorization of a fund, such as:

Section 22, page 7, line 33-34, Printing Plant Fund

Section 24, page 8, line 39-40, Fish and Game Fund (Special Revenue Fund)

AB 67 establishes the framework for the accounting system. It follows that some of the statutes will have to be amended to relate to this bill. It could take 2 to 3 sessions to bring the NRS in line with this bill. We have requested some of these changes in this session. Many of those bills have been, or are, currently before your committee. For example, AB 83, which you approved last week related to this bill. It was on the Military Department. AB 65, which was on Gaming, which you approved, made an account of the Confidential Fund. AB 51, which was approved by your Committee 2 weeks ago, relating to the Public Works Board Construction Fund and AB 68, which relates to obsolete funds of the Computer Facility. All of these bills are necessary in and of themselves, but AB 67 provides the foundation for good accounting and reporting for the State's financial transactions.

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STATE OF NEVADA
OFFICE OF
STATE CONTROLLER
CARSON CITY, NEVADA 89701

WILSON McGOWAN
State Controller

August 13, 1976

Mr. Earl T. Oliver, CPA
Legislative Auditor
Legislative Counsel Bureau
Capitol Complex
Carson City, Nevada 89710

Dear Earl:

We have reviewed the proposed legislation entitled "State Accounting Procedures Law" as prepared by your office.

We feel that this proposed legislation will assist our office in establishing uniform accounting practices and financial reporting.

Sincerely,

Robert E. Bruce
General Manager

REB:trl

cc: John R. Crossley, CPA

OF
NEVADA
SYSTEM

University of Nevada • University of Nevada • Desert Research Institute • Community College Division
Reno Las Vegas

NEIL D. HUMPHREY
Chancellor

July 22, 1976

Mr. Earl T. Oliver, C.P.A.
Legislative Auditor
Legislative Counsel Bureau
Carson City, Nevada 89710

Dear Earl:

Thank you for delivering to me copies of the proposed State Accounting Procedures Law. We submitted the draft to each University of Nevada System division business office and carefully reviewed it in this office. We have no changes to recommend in this proposed legislation and appreciate the opportunity to comment on the material at this early stage.

Cordially,

Neil

Neil D. Humphrey
Chancellor

NDH:jh

405 Marsh Avenue • Reno, Nevada 89502 • (702) 784-4901

MIKE O'CALLAGHAN
GOVERNOR

GLEN K. GRIFFITH
DIRECTOR

1100 VALLEY ROAD P.O. BOX 10678 RENO, NEVADA 89510 TELEPHONE (702) 784-6214

August 4, 1976

Mr. Earl T. Oliver, Legislative Auditor
Legislative Counsel Bureau
Audit Division
Legislative Building - Room 243
Carson City, Nevada 89710

Dear Earl:

We have reviewed the Legislative Counsel Bureau's proposal for statute changes concerning state accounting procedures. We agree with the recommended changes in the State Accounting Procedures Law.

We also concur that the required financial statements for each fund or group of accounts should be uniform and we foresee no difficulties in complying. We, presently, follow the format for financial statements for a Special Revenue Fund as recommended in the publication, "Governmental Accounting, Auditing and Financial Reporting."

There might be an added burden created for those agencies who do not at present prepare their own statements but rely totally on the FMIRS reports. We have one nebulous area under NRS 501.358, Fish and Game Reserve Fund. It does not fit into your definition of "fund" as it is used only to collect the interest received by the Department on its investments; it is accounted for internally and is not now a part of the FMIRS system.

Sincerely,

Glen K. Griffith
Director

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

LEGISLATIVE COMMISSION (702) 885-5627
JAMES I. GIBSON, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
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ANDREW P. GROSE, *Research Director* (702) 885-5637

February 13, 1976

LCO 29 (Revised)

State departments' financial statements requested by Legislative Auditor

Mr. John R. Crossley
Chief Deputy Legislative Auditor
Audit Division
Legislative Counsel Bureau
Legislative Building
401 South Carson Street
Carson City, Nevada 89710

Dear John:

You have requested an opinion from the Legislative Counsel regarding financial statements for state departments which are requested by the Legislative Auditor during a postaudit. You are concerned with the type of information required to be included, the responsibility for preparation and the powers of the Legislative Auditor in regards to financial statements for a state department.

A legislative declaration concerning postauditing of state departments is set forth in NRS 218.767.

> 218.767 1. The intent of NRS 218.770 to 218.-890, inclusive, is to provide for the impartial postauditing of each agency of the state government for the purpose of furnishing the legislature with factual information necessary to the discharge of its constitutional duties and by which it may exercise its valid powers.

2. The legislature finds that:

(a) Adequate information is not readily available for each session through which the members of the legislature can determine the needs of the various agencies and departments of the state government, and the postauditing of each agency will furnish necessary information.

(b) The legislative session is not adequate time in which to audit each agency and the size and scope of government activity has grown to such an extent in recent years that auditing is a continuing process.

3. It is not the intent of the postaudit functions and duties of the legislative auditor authorized and imposed by law, nor shall it be so construed, to infringe upon nor deprive the executive or judicial branches of state government of any rights, powers or duties vested in or imposed upon them by the constitution of the State of Nevada.

Included within the provisions of NRS 218.770 to 218.890, inclusive, is a section which permits the Legislative Auditor to request financial statements from state departments. NRS 218.820 provides that:

218.820 Upon the request of the legislative auditor, every elective state officer in the state, every board or commission provided for by the laws of the state, every head of each and every department in the state, and every employee or agent thereof, acting by, for or on account of any such office, board, commission or officer receiving, paying or otherwise controlling any public funds in the State of Nevada, in whole or in part, whether the same may be funds provided by the State of Nevada, funds received from the Federal Government of the United States or any branch, bureau or agency thereof, or funds received from private or other source, shall submit to the legislative auditor a complete financial statement

> of each and every receipt of funds received by the office, officer, board, commission, person or agent, and of every expenditure of such receipts or any portion thereof for the period designated by the legislative auditor.

The latter section does not mandate definite action by the Legislative Auditor but, rather, authorizes him to request certain financial statements. After a request is made, the person upon whom the request has been made is then required to submit the financial statements.

In your inquiry you refer to the Fiscal and Accounting Procedures Law, NRS 353.291 to 353.319, inclusive, and specifically to subsection 1 of NRS 353.293 which provides that generally accepted accounting principles and fiscal procedures shall be applied except when in conflict with constitutional and statutory provisions.

You have also drawn attention to the fact that authoritative publications of the Committee on Governmental Accounting and Auditing of the American Institute of Certified Public Accountants and the National Committee on Governmental Accounting of the Municipal Officers Association have established 13 principles pertaining to generally accepted accounting principles for governmental entities. Principle 13 provides that financial statements indicating the current condition of budgetary and proprietary accounts should be prepared periodically to control financial operations. The financial statements mentioned in this principle include a balance sheet, a statement analyzing changes in fund balances or retained earnings and an operating statement.

It must be noted that the statement of policy contained in NRS 353.293, providing for generally accepted accounting principles and fiscal procedures, is applicable only if there is not a conflict with constitutional or statutory provisions. NRS 218.820 requires a complete financial

statement of each and every receipt of funds received by the office, officer, board, commission, person or agent, and of every expenditure of such receipts or portion thereof. This requirement appears to be narrower than that contained in NRS 353.293, especially when NRS 353.293 is further modified by the proposition that financial statements issued under generally accepted accounting principles and fiscal procedures should include a balance sheet, a statement analyzing changes in fund balances or retained earnings and an operating statement.

It would appear that the provisions of NRS 218.820 and 353.293 are in conflict and, as such, the Legislative Auditor can only request financial statements containing the type of information set forth in NRS 218.820.

The State Controller is responsible for implementing the Fiscal and Accounting Procedures Law. That office also maintains records of the various funds and is required by NRS 227.150, 227.170 and 227.180 to:

> 227.150 * * *
> 4. Keep fair, clear, distinct and separate accounts of all the revenues and incomes of the state, and also all the expenditures, disbursements and investments thereof, showing the particulars of every expenditure, disbursement and investment.
>
> 227.170 * * *
> 3. Keep a record of all appropriations and authorizations in a book provided for that purpose, in which book he shall enter the nature of the appropriation or authorization, referring to the statute authorizing the same, the amount appropriated or authorized, amounts credited by law, accounting debits and credits, the amounts paid therefrom each month, showing assets and expenses, and posting them to proper ledger accounts, with a yearly total of all payments and the balance remaining, and the amount, if any, reverting.

> 227.180 * * *
> 1. Keep accounts with the funds heretofore created and such other funds as may hereafter be created, or as he may deem advantageous to keep.
> 2. Credit the funds with the amount of money received, and shall charge them with the amount of warrants drawn.

The State Controller is required, pursuant to NRS 227.110, to issue an annual report concerning the state's finances and may also be required by a statute creating a specific fund to issue additional reports. For example, the State Controller must prepare quarterly a complete financial report of the state permanent school fund. NRS 387.013.

NRS 218.820 provides that the Legislative Auditor may request financial statements from:

> 218.820 * * * every elective state officer in the state, every board or commission provided for by the laws of the state, every head of each and every department in the state, and every employee or agent thereof, acting by, for or on account of such office, board, commission or officer receiving, paying or otherwise controlling any public funds in the State of Nevada * * *.

Thus, if a particular state department maintains its own records and accounts, the Legislative Auditor could request financial statements directly from such state department. The Legislative Auditor could, however, request that the State Controller furnish the financial statements of such state department. Such a request would be consistent with NRS 218.-820 because the State Controller has a duty, under NRS 227.150, 227.170 and 227.180, to maintain records of the revenues and incomes and of the expenditures and disbursements of the state and to maintain accounts of the various funds. The State Controller is a proper source from whom the Legislative Auditor could request financial statements. Where a particular state department does not maintain its own records and accounts, the State Controller would be the only source.

Regardless of whether the State Controller or a state department submits the financial statements to the Legislative Auditor, the information required to be submitted is only that information required pursuant to NRS 218.820, as previously discussed.

The Legislative Auditor may determine that financial statements should include a balance sheet, a statement analyzing changes in fund balances or retained earnings and an operating statement in order to provide for a uniform, adequate and efficient system of records and accounting. The Legislative Auditor may also determine that the responsibility of preparing a state department's financial statements should be provided for by statute.

The Legislative Auditor has certain powers and duties prescribed in NRS 218.770 which includes, among others, the following provisions:

> 218.770 * * *
> 3. To recommend such changes in the accounting system or systems and record or records of the state departments as in his opinion will augment or provide a uniform, adequate and efficient system of records and accounting.
> * * *
> 5. To determine whether all revenues or accounts due have been collected or properly accounted for and whether expenditures have been made in conformance with law and good business practice.
> * * *
> 9. To determine whether the accounting reports and statements issued by the agency under examination are an accurate reflection of the operations and financial condition.
> * * *
> 13. To make recommendations to the legislative commission for the enactment or amendment of statutes based upon the results of the performance of his postaudit duties.

The Legislative Auditor has a duty, when performing a post-audit, to determine whether all revenues and accounts are in conformance with law and good business practice and whether accounting reports and statements are an accurate reflection of the operational and financial condition of an agency or department. Subsections 5 and 9 of NRS 218.770. In the discharge of this duty the Legislative Auditor may recommend such changes in the accounting systems and records which will provide for a uniform, adequate and efficient system of accounts and records. Subsection 3 of NRS 218.770.

The Legislative Auditor may also recommend statutory changes based upon the results of postaudits. Subsection 13 of NRS 218.770. To alleviate any confusion which might exist under present statutory provisions, the Legislative Auditor should recommend amendments to NRS for consideration by the legislature at its next session. Any of the following alternate suggestions would provide for clarification of financial statements:

1. Amend the Fiscal and Accounting Procedures Law, NRS 353.291 to 353.319, inclusive, to provide for the type of information required to be included in financial statements and to designate who is responsible for preparing the financial statements.
2. Amend chapter 227 of NRS, relating to the State Controller, to provide for the type of information required to be included and to specifically designate the State Controller as the person responsible for preparing the financial statements.
3. Amend NRS 218.820 to provide that financial statements include a balance sheet, a statement analyzing changes in fund balances or retained earnings and an operating statement and to designate a specific office or officer as responsible for preparing the financial statements.

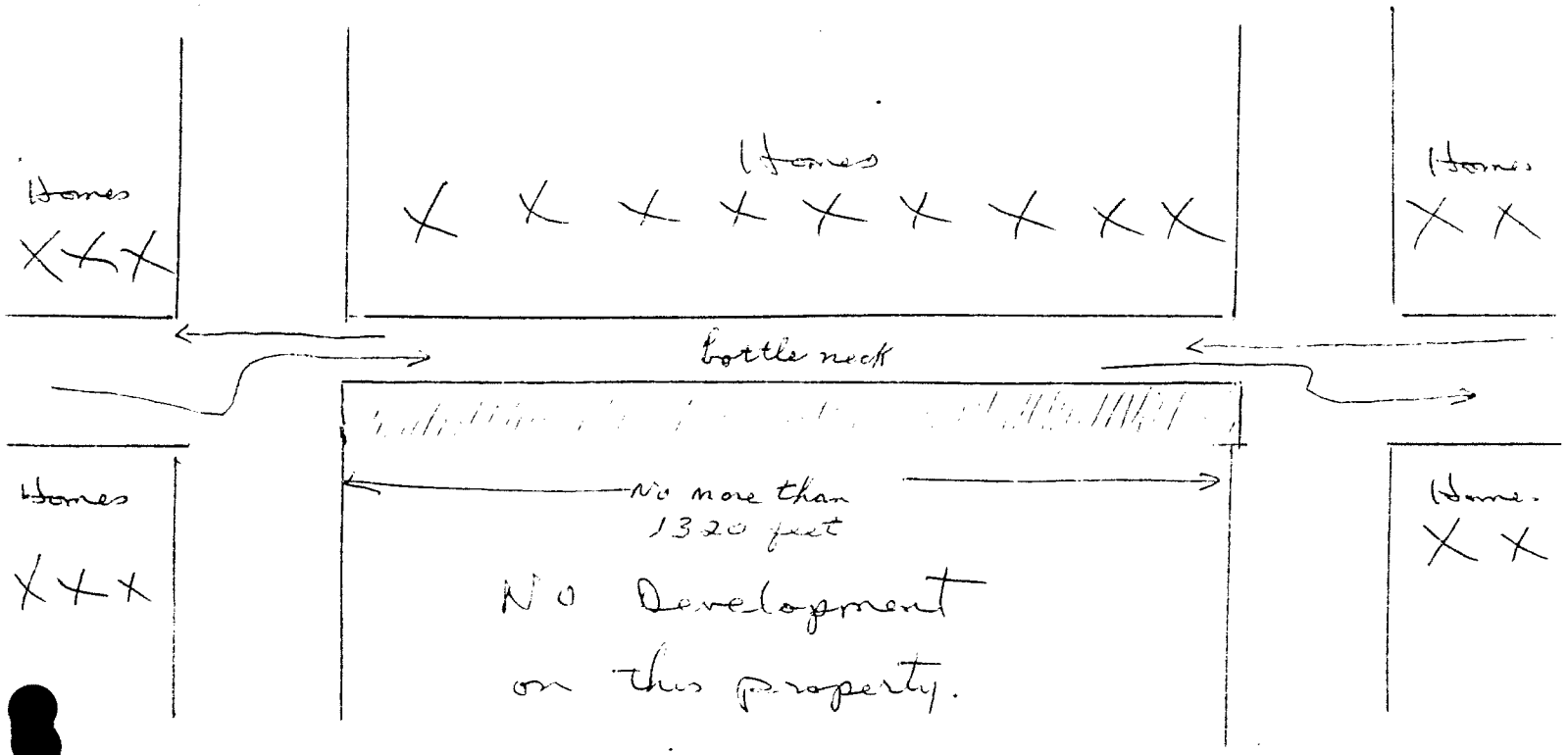
Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By R. Larry Petty
R. Larry Petty
Deputy Legislative Counsel

RLP:jll

SB 193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[LAND USE] CONSERVATION MANAGEMENT REGULATIONS

548.410 [Land Use] Conservation Management regulations: Petition; formulation of regulations; hearings; determination of whether referendum to be held.

1. The supervisors of any district may file petitions with the state conservation commission at any time to request it to formulate [Land Use] Conservation Management regulations applicable to the district.

2. The commission shall prescribe the form of the petition, which shall be, as nearly as practicable, in the form prescribed in this chapter for petitions to organize a district.

3. The state conservation commission shall have authority to formulate regulations, based upon the petition, [governing the use of lands] within a district [in the interest of] to [conserving] conserve renewable natural resources and [preventing] prevent and [controlling] control soil erosion and sedimentation through best management practices.

4. The commission shall conduct, after due notice, public meetings and public hearings within the district or districts concerned upon such regulations as it deems necessary to assist it in consideration thereof.

5. The commission shall determine, on the basis of information presented in the petition or brought out in public hearings, and on the basis of the number of petitioners in relation to the total number of occupiers of land lying within the district, whether it can render a reasonable determination of approval or denial of the petition without holding a referendum, or whether a referendum shall be held.

548.415 Proposed ordinance; notices of referendum; form of question; informalities not to invalidate referendum. If a referendum is to be held:

1. The proposed regulations shall be embodied in a proposed ordianance.

2. Copies of such proposed ordinance shall be available for the inspection of all eligible votors during the period between publication of such notice and the date of the referendum.

3. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance can be examined.

4. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. ....., prescribing [Land Use] Conservation Management regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ....., prescribing [Land Use] Conservation Management regulations for conservation of soil and prevention of erosion" shall be printed, with a square before each propositions as the votor may favor or oppose approval of such proposed ordinance.

5. The commission shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof.

6. All persons determined by the county clerk or clerks to be registered votors residing within the district are eligible to vote in such referendum.

7. No informalities in the conduct of such referendum or in any matters relating thereto invalidate the referendum or the result thereof if notice thereof was given substantially as provided in this chapter and the referendum was fairly conducted.

548.420 Approval of proposed ordinance; force and effect of [Land Use] Conservation Management regulations.

1. The commission shall not have authority to enact such proposed ordinance into law unless at least a majority of the votes cast in such referendum shall have been cast for approval of the proposed ordinance.

2. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the commission to enact such proposed ordinance into law.

3. [Land Use] Conservation Management regulations prescribed in ordinances adopted pursuant to the provisions of NRS 548.410 to 548.435, inclusive, by the commission shall have the force and effect of law in the conservation district and shall be binding and obligatory upon all occupiers of lands within such district.

548.425 Procedure for amendment, repeal of [Land Use] Conservation Management regulations.

1. Any occupier of land within such district may at any time file a petition with the commission asking that any or all of the [Land Use] Conservation Management regulations prescribed in any ordinance adopted by the commission under the provisions of NRS 548.410 to 548.435, inclusive, shall be amended, supplemented or repealed.

2. [Land Use] Conservation Management regulations prescribed in any ordinance adopted pursuant to the provisions of NRS 548.410 to 548.435, inclusive, shall not be amended, supplemented or repealed except in accordance with the procedure prescribed in NRS 548.410 to 548.435, inclusive, for adoption of [Land Use] Conservation Management regulations.

3. Referenda on adoption, amendment, supplementation or repeal of [Land Use] Conservation Management regulations shall not be held more often than once in 6 months.

548.430 What regulations may include. The regulations to be adopted by the commission under the provisions of NRS 548.410 to 548.435, inclusive, may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dikes, dams, ponds, ditches and other necessary structures.

2. Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, stripcropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation,

and reforestation.

3. Specification of cropping programs and tillage practices to be observed.

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.

5. Provisions for such other means, measures, operations, and programs as may assist conservation of renewable natural resources and prevent or control soil erosion and sedimentation in the conservation district, having due regard to the legislative findings set forth in NRS 548.095 to 548.110, inclusive.

548.435 Uniformity and availability of [Land Use] Conservation Management regulations.

1. The regulations shall be uniform throughout the territory comprising the conservation district, except that the commission may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type.

2. Copies of [Land Use] Conservation Management regulations adopted under the provisions of NRS 548.410 to 548.435, inclusive, shall be printed and made available to all occupiers of lands lying within the district.

548.440 Enforcement of [Land Use] Conservation Management regulations; Penalty; damages.

1. The commission or supervisors shall have authority to go upon any lands within the conservation district to determine whether [Land Use] Conservation Management regulations adopted under the provisions of NRS 548.410 to 548.435, inclusive, are being observed.

2. The commission is authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation.

548.445 Failure of land occupier to observe [Land Use] Conservation Management regulations: Petition by supervisors to district court to require performance.

1. Where the commission shall find that any of the provisions of [Land Use] Conservation Management regulations prescribed in an ordinance adopted in accordance with the provisions of NRS 548.410 to 548.435, inclusive, are not being observed on particular lands, and that such nonobservance tends to increase erosion on other lands and is interfering with the prevention or control of erosion on other lands within a conservation district, the commission may present to the district court having jurisdiction a petition, duly verified:

(a) Setting forth the adoption of the ordinance prescribing [Land Use] Conservation Management regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the conservation district; and

(b) Praying the court to require the defendant to perform the work, operations or avoidances within a reasonable time and to order that, if the defendant shall fail so to perform, the commission may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land.

2. In all cases where the person, in possession of lands, who shall fail to perform such work, operations or avoidances shall not be the owner, the owner of such lands shall be joined as a party defendant.

548.450 Service of process; appointment of master; hearing; order of court.

1. Upon the presentation of the petition, the court shall cause process to be issued against the defendant, and shall hear the case.

2. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a master to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

3. The court may dismiss the petition; or it may require the defendant to perform the work, operations or avoidances, and may provide that upon failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the commission may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5 percent per annum, from the occupier of such lands.

548.455 Court to retain jurisdiction until work completed; entry of judgement for costs and expenses; judgement as lien.

1. The court shall retain jurisdiction of the case until after the work has been completed.

2. Upon completion of such work pursuant to such order of the court, the commission may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgement therefor

with interest.

3. The court shall have jurisdiction to enter judgement for the amount of such costs and expenses, with interest at the rate of 5 percent per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

4. The commission shall have further authority to certify to the county recorder of the county or counties in which any of the lands of the conservation district are situated the amount of such judgement, which shall be a lien upon such lands, and shall be collected as general taxes upon real property collected. The procedure for collection of delinquent general taxes upon real property shall be applicable to the collection of such judgements. When such judgement shall be paid or collected, the proceeds shall be paid over to the commission.

548.460 Board of adjustment: Establishment. Where the commission shall adopt an ordinance prescribing [Land Use] Conservation Management regulations in accordance with the provisions of NRS 548.410 to 548.435, inclusive, they shall further provide by ordinance for the establishment of a board of adjustment.

548.465 Members of board of adjustment: Number; appointment; terms.

1. The board of adjustment shall consist of three members appointed by the state conservation commission, with the advice and approval of the supervisors of the district or districts for which the board has been established.

2. Each member shall be appointed for a term of 3 years, except that the members first appointed for terms of 1, 2 and 3 years respectively.

3. Members of the state conservation commission and the supervisors of the district or districts shall be ineligible to appoint as members of the board of adjustment during their tenure of such other office.

548.470 Vacancies in board of adjustment. Vacancies in the board of adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose office becomes vacant.

548.475 Removal of member of board of adjustment. A member of the board of adjustment shall be removed from office, upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason. The hearing shall be conducted jointly by the state conservation commission and the supervisors of the district or districts.

548.480 Compensation and expenses of members of board of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of $25 per day for time spent on the work of the board of adjustment, in addition to expenses, including travelling expenses, necessarily incurred in the discharge of their duties.

548.485 Chairman of board of adjustment.

1. The board of adjustment shall designate a chairman from among its members, and may, from time to time, change such designation.

2. The chairman or, in his absence, such other member of the board as he may designate to serve as acting chairman may administer oaths and compel the attendance of witnesses.

548.490 Meetings of the board of adjustment; quorum.

1. Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board may determine. All meetings of the board shall be open to the public.

2. Any two members of the board shall constitute a quorum.

548.495 Rules and records of board of adjustment

1. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to NRS 548.460.

2. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

548.500 Commission to pay expenses of board of adjustment. The commission shall pay the necessary administrative and other expenses of operation incurred by the board of adjustment, upon the certificate of the chairman of the board.

548.505 Petition for variance: Notice, hearing and order.

1. Any land occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the [Land Use] Conservation Management regulations prescribed by ordinance approved by the commission, and praying the board of adjustment to authorize a variance from the terms of the [Land Use] Conservation Management regulations in the application of such regulations to the lands occupied by the petitioner.

2. Copies of such petition shall be served by the petitioner upon the chairman of the state conservation commission.

3. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given.

4. The supervisors of the district or districts and the state conservation commission shall have the right to appear and be heard at the hearing.

5. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board of adjustment may appear in person, by agent or by attorney.

6. If, upon the facts presented at the hearing, the board of adjustment shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the [Land Use] Conservation Management regulations upon the lands of the petitioner,

the board shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship.

7. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the [Land Use] Conservation Management regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and so that the spirit of the [Land Use] Conservation Management regulations shall be observed, the public health, safety and welfare secured, and substantial justice done.

548.510 Review of order of board of adjustment by district court: Procedure.

1. Any petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought, the supervisors of the district or districts, the commission or any intervening party may obtain a review of such order in district court, by filing in such court a petition praying that the order of the board of adjustment be modified or set aside.

2. A copy of such petition shall forthwith be served upon the parties to the hearing before the board of adjustment, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered, and the findings, determination and order of the board of adjustment.

3. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it seems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified,

or setting aside, in whole or in part, the order of the board of adjustment.

4. No contention that has not been urged before the board of adjustment shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances.

5. The findings of the board of adjustment as to the facts, if supported by evidence, shall be conclusive.

6. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board of adjustment, the court may order such additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and the board of adjustment shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

7. The jurisdiction of the court shall be exclusive and its judgement and decree shall be final, except that the same shall be subject to review in the same manner as are other judgements or decrees of the court.

SENATE

TESTIMONY PRESENTED TO COMMITTEE ON
GOVERNMENT AFFAIRS - HEARING 16 FEBRUARY 1977

Mr. Demers has asked that I bring the following matters to your attention since he is unable to attend this hearing.

My name is Roger L. Steele of the Desert Research Institute. Part of my responsibility over the past two years or so have involved work with the legislature regarding environmental matters.

The purpose of this testimony is to present a case for uniform environmental policy throughout the State. Several recent occurrences over the past few months which are environmentally related will serve as examples which support the need for statewide environmental policy including rulemaking.

The first of these examples is illustrated by the recent actions of the Utah Air Conservation Committee which has been obliged to propose redesignation of air quality standards for the entire State under EPA PSAQD[1] rules. This action became necessary because of the recent formulation of a Utah energy policy.

As may be seen (pass out photograph - see Attachment 1) 42% of the land area of the State would become Class III or be allowed to degrade to Federal Secondary Standards. Moreover, much of the area borders Nevada. This is expected to have little, but none the less, some impact on air quality in Eastern Nevada.

The redesignation of Utah is believed to be necessary by the Utah authorities to allow development of the resources of the State.

The above example is cited to demonstrate that when Nevada considers redesignation, one could take the position that it is necessary to carry this out through one State commission that works closely with other commissions, and State agencies. It seems impractical to have county agencies also responsible for such redesignation since actions in one county will impact another. However, input from existing county agencies and boards would be necessary in the delineation of State environmental policy.

Another example is given in a letter Mr. Demers received from the Lawrence Berkeley Laboratory, which I am submitting for the record. (read letter - see Attachment 2). A similar letter was received from Assemblyman Charles Warren of California, Chairman of the Energy and Public Resources Committee.

Again, these letters serve to illustrate the need for uniform environmental policy and rulemaking on a statewide basis. Again, the view can be taken that <u>both</u> state and county agencies cannot make workable decisions regarding the siting of large energy production facilities since the environmental effects of such facilities can impact several counties.

The remaining examples are the Air Quality Maintenance Areas in Clark and Washoe Counties. Solutions to air quality problems in these counties can impact neighboring counties. An example is the impact of air pollution in Washoe, Carson, Douglas and Storey counties. Again, environmental policy and rulemaking should rest at the State level.

It is therefore recommended that the 59th Session of the Legislature take action with respect to environmental legislation that will place control of air, water and solid waste at the State level. This can be accomplished through existing county agencies that deal with environmental problems as well as through and with existing boards. Such boards and agencies could retain most of their existing powers, but new legislation would be required to implement the above statements.

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[1] Title 40 - Protection of Environment, Chapter 1, Environmental Protection Agency, Subchapter C - Air Programs [FRL 302-4] Part 52 - Approval and Promulgation of Implementation Plans, Prevention of Significant Air Quality Deterioration. <u>Federal Register</u>, Vol. 39, No. 235 - Thursday, December 5, 1974.

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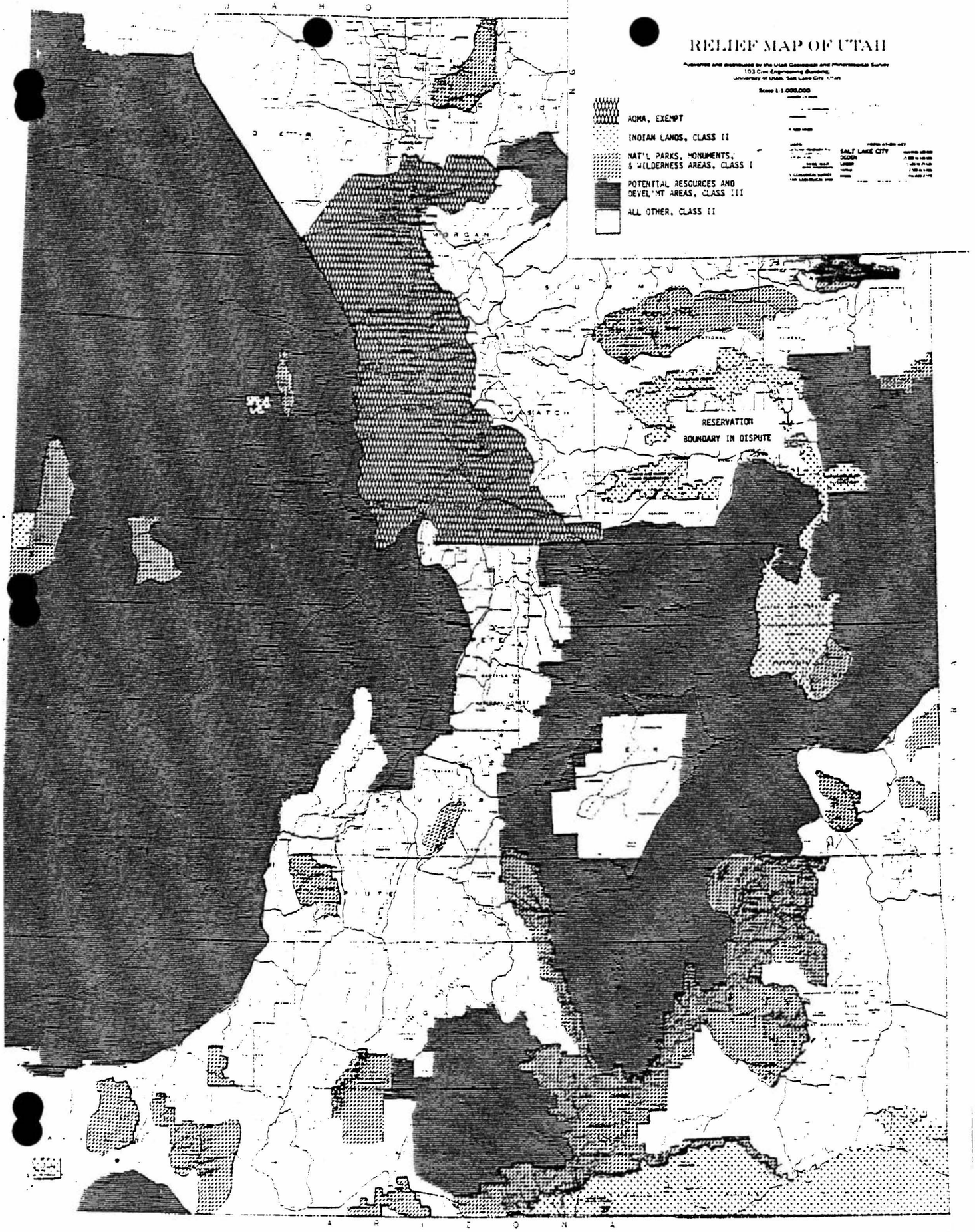

ATTACHMENT 1

Lawrence Berkeley Laboratory
University of California
Berkeley, California 94720
Telephone 415/843-2740

February 7, 1977

Assemblyman Daniel Demers
Nevada State Legislature
Legislative Building
401 S. Carson Street
Carson City, Nevada

Dear Assemblyman Demers:

Your name was suggested to me by Gene Walkama in a recent telephone conversation relative to the question of energy resource development in Nevada.

In our role as a regional ERDA Laboratory we are attempting to define and assess the energy futures for California and other western areas. In this regard we are currently conducting a study of water for energy for the Federal Water Resources Council in both California and Nevada. In addition, we have been discussing the possibility of developing a scenario for California in which some of the electricity generating facilities are sited in Nevada.

It is my understanding that you chaired an assembly study which addressed the question of future energy development in Nevada. Would you please forward any materials or documents that might describe your Committee's findings? We are particularly interested in learning about the state's viewpoint on this concept and about potential institutional incentives or constraints that might have been identified. Since the California utilities have had various difficulties and delays in siting facilities within the state, an expansion of out-of-state generating capacity might become an important issue in the future.

I look forward to receiving your perceptions on energy futures for the state of Nevada.

Cordially yours,

R.L. Ritschard
Energy Analysis Program
Energy & Environment Division

RLR:ns

ATTACHMENT 2

Senate Bill No. 153; January 27, 1977.

Recommended changes, additions, and deletions.

Page, Line

5, 33-35 [The oil and gas conservation commission is within the department and is entitled to necessary administrative and staff services through the office of the director.] NOTE: - Remove and transfer to the Department of Energy Conservation and Management.

83, 46-47 522.030 1. There is hereby created in the department of [natural resources] energy conservation and management the oil and gas conservation commission to be composed of the [state engineer] director of the department of energy conservation and management, the director...

86, 18 ... and energy resources [.]; however, data or information of a geological nature relating to energy resources shall be collected and stored by the Nevada Bureau of Mines and Geology.

88, 1 (b) [Six] One member who is a representative of the Nevada Bureau of Mines and Geology. (c) Five members who are representatives of the general public.

99, 16-17 ~~"geothermal resource" means heat or other associated geothermal~~ energy or associated minerals found beneath ....

February 16, 1977

Respectfully submitted

Vernon E. Scheid

Vernon E. Scheid

Testimony from Mr. Paul Gemmil
Regarding SB-153

My name is Paul Gemmil, Executive Secretary of the Nevada Mining Association. A 1930 graduate of Mackay School of Mines, continuously engaged in various phases of the mining industry where my experience has been primarily in small to medium size range of operations.

As a side line, I have pioneered in water development for ranch land in agriculture while promoting water-related recreation development in Lincoln County.

In this connection, I have operated as the water right engineer in all parts of Lincoln county, under the State Engineer, during a period of several years.

There are two areas of concern which I shall mention, Mineral Resources and Water Planning where I believe the State of Nevada needs to maintain a prominent and if necessary, aggressive posture. I say aggressive because of the overwhelming presence of Federal mandates and rule making that will affect and, yes, dictate how well Nevada citizens can maintain this quality of life, particularly in those areas comprosing of over 90% of our land area which is primarily dependent on basic industry, mineral production and agriculture.

First then, a look at how or why Nevada should maintain a strong mineral resource agency. Only the Governor's Advisory Mining Board with totally inadequate funding and no full time employee has tried to fill the need to speak for the State in an official capacity while in truth that board is a lay group only established to feed

F

information and concerns to the Governor for the small miner.

A few words cannot do justice to the need for a state run department of Mineral Resources to continuously monitor problems and defend Nevada's interest in encouraging mineral search, development and production.

It is the small miner that has historically been the "seed bed" from which the large volume producers of ore minerals grew.

Therefore, to cut my presentation short, you are each being handed a paper, written in 1972, titled "Legislation and the Small Miner". It is significant that the situation has not materially changed as to the concerns. But the day of reconing approaches without a State agency being in position to continuously monitor, and speak for Nevada. If you will read that 1972 paper in the knowledge that the same problems remain five years later, I believe this expresses my concern for the need of having a mineral resource agency.

Turning now to my second area of concern, the need for an aggressive department for water planning to defend rights of Nevada and its citizens. Here I must make it clear that my impression remains that the State Engineer has been doing an exhaustive study of Nevadas water resources. In practical terms these studies should be about as far as Nevada needs to go for a foundation on which to base a flexible program when needed. Experience shows that water will go to the user of maximum benefit. Agriculture in crop raising is about ruled out at $5.00 per acre foot, mining has well afforded

water at $30. to $80. per acre foot while domestic use can afford $250. per acre foot without a serious burden.

Planning, then should not be for shifting water use from any users with established water rights. Higher value use will be automatic and under the State Engineer's authority.

The need for planning comes from the need for defending Nevada and Nevada citizens in trying to assure reasonableness when we can now foresee a policy of non degredation being considered by Federal planning under conditions not causing any real problems in Nevada. It is a matter of record that the State Engineer has acted under his authority to correct certain pollution problems not covered by urban regulation.

E.P.A. - Water Planning Division Water Quality Management Directory was just handed us and you can see somebody will be busy.
Thank you -----

NEVADA MINING ASSOCIATION, INC.
SUITE 602 • ONE EAST FIRST STREET
RENO, NEVADA 89505

PAUL GEMMILL
EXECUTIVE SECRETARY

POST OFFICE BOX 2498
TELEPHONE 323-8575

April 19, 1972

LEGISLATION AND THE SMALL MINER
AIME PACIFIC SOUTHWEST MINERAL INDUSTRY CONFERENCE
by
PAUL GEMMILL

A definition of terms is appropriate before discussing the subject of "New Legislation and the Small Miner". New legislation includes Federal and State laws to control air pollution, water pollution, land disturbance, mine safety and environmental impact statements required of Federal agencies by the National Environmental Policy Act. Legislation is expected to be passed by Congress to establish policing personnel for lands under the jurisdiction of the Bureau of Land Management, which will possibly include legislation for licensing off-highway vehicles. Congress is expected to clear legislation for funding and requiring every state to establish a program of statewide land use planning embracing use of all lands, public and private. And, finally, there is the question of the type of legislation which will be passed by the Congress to amend the 1872 Mining Law and whether the new legislation will preserve the right of individuals to hold marketable title in a valuable mineral discovery, including obscure showings that lead to repeated exploration attempts before fruition. Continuing attempts to lock up large areas for study as potential wilderness classification must also be included under the heading of new laws that will affect all mining. So much for the broad range of what can be defined as "new legislation".

The definition of what contitutes a "small miner" can and does have different meanings in the minds of different people. He could be an independent contractor working for a medium to large company; the discoverer or owner of mineral ground, performing assessment work to retain title to his property while promoting exploration and living on option payments; or the producer marketing mineral products from his own or an absent owner's property under lease or contract. So, let us assume he is any legitimate person, group of persons, or corporation occupied in mining activity less than some arbitrary size based on the number of persons employed or on tonnage handled.

In Nevada, there are about 8 to 12 operations with over 100 employees; 25 to 50 operations with 10 to 100 employees, for an average of 40 employees; 100 to 200 operations with 0 to 10 employees for an average of 5 or more employees. The latter includes about 25 to 50 operations temporarily idle, but maintained on a standby basis. These figures are from cursory inspection of recent annual reports of the State of Nevada Mine Inspector. In addition, the definition of a "small miner" would have to include numerous holders of unpatented claims over various periods of time and performing minimum annual assessment work. This large unidentified group and the untold numbers of future private venturers will be most adversely affected, if not totally eliminated, when and if the full impact of the most restrictive legislation becomes law with full power of enforcement.

Mine safety regulations have already been imposed on everybody in the mining industry whether or not they employ anyone. Historically, an individual or partnership could operate under the same

curtain of personal responsibility permitted most recreationists. Actually, most of us think it is right that mine safety law should cover all operations, especially when insurance and public safety factors are involved. Nevertheless, society has encroached on the freedom of the individual in instances where only he runs the risk or could be the one to suffer loss.

Pollution regulations, particularly air pollution, have created many insurmountable problems for custom shipper, both large and small. Air pollution agencies will, no doubt, be overtaxed to keep track of the off-and-on small producer.

The State of Montana with one of the toughest proposed set of air quality standards (not yet signed by the Governor) has found an answer to policing small operators. The Department of State Lands is empowered to issue a form titled "Small Miner Exclusion Statement", under Section 20, Chapter 252, of the Laws of Montana 1971, which embodies an affidavit to be executed wherein the applicant pays no fee but declares himself to be a small miner - defined as "any person, firm or corporation engaged in the business of mining who does not remove from the earth during any 24-hour period material in excess of 100 tons in the aggregate (Section 3 of the Act)." He thereby swears not to pollute or contaminate any streams as a result of exploration, development or mining under his direction; to provide safety covers for mine workings, and that he will not conduct a mining operation which will disturb more than 5 acres of the earth's surface without being reclaimed. Failure to comply makes the operator subject to a fine of not less than $10 nor more than $100. It is noted that the form makes

no mention of air pollution, but it can probably be assumed that when Montana air pollution regulations become law, the "small miner" form will set forth stipulations for compliance. This method eliminates almost impossible and excessively expensive policing with resultant citation of multiple offenses. Perhaps other states will adopt similar methods of self-control after the cost to police small operators and balancing of such cost versus public benefit have been appraised.

The "Environmental Impact Statement", required by the Environmental Protection Agency from any involved government entity (such as B.L.M., the Forest Service, etc.) for projects requiring approval, including leases, permits, licenses and other activities in which Federal agencies participate in any manner, is already in effect. According to Regional Planner Kenneth F. Reinhart, regulations established by the Council on Environmental Quality "would indicate that nearly all actions we take must be considered for their possible impact on the environment." Instructions require input from many disciplines to draw up the impact statement. With the exception of actions locally considered to be of no importance or of minor adverse impact, all must go through a time-consuming process involving public hearings and repeated referrals to Washington. Ninety weeks (1-3/4 years) is about the minimum time, if no adverse action causes additional delay, required before a project can proceed. Picture a small miner trying to obtain clearance for a new or re-routed road on a forested mountain range!

Reduction of land disturbance due to the non-productive practice of digging location holes will be stopped if the recent Nevada

state statute is complied with. (I emphasize location holes, not holes for proving discovery). The statute referred to requires a $15 filing fee and map with survey tie for lode claims and $1 per acre filing fee for placer claims. Most exploration people are familiar with this statute. A number of the small miner-prospector group feel that the law is too tough. The law did apparently help to chase Merle I. Zweifel and his "wholesale" filing of claims out of Nevada. Mr. Zweifel has been convicted of fraudlent filings in a suit brought against him by Nevada's Attorney General Robert List. It seems clear to most of us that these Nevada actions tend to help, not hinder, the legitimate small miner-prospector. Confused County records and "floating", improperly marked mining claims are just as disruptive, if not more so, to the small miner than to anyone else.

I shall only touch briefly on the proposed reform of the 1872 Mining Law because that is the subject of another speaker. However, I will mention that the Administration proposals would quickly drive the prospector and unpatented claim holders off the public domain. An all-competitive bidding system for leasable minerals would prevent the small miner from acquiring leasable minerals that he has discovered because his discovery would have to be exposed to competition with larger and better financed operators. The proposed hard minerals bill for locatable minerals with its annual acreage rental fees as opposed to ownership of a marketable title, would eliminate the incentive to search for, find and spend years in exploration of a prospect to attract venture money. Good prospects attract repeated venturers. Prospectors who own unpatented claims preserve the results of various

venturers to promote and attract further exploration, perhaps living on option payments or other income until a success here and there keeps alive their incentive in an otherwise discouraging series of failures. The Administration's proposed fixed annual rental fee can be likened to a Nevada gaming casino that would impose a stiff entrance fee to a gambler for the privilege of risking his capital. Of course, the casino would attract no one. The reward to the prospector or exploration party is conditional. The attorney who takes a case on a contingency basis would not ordinarily expect to pay for the privilege of taking such a case.

It has been well-documented that for the most part, present profitable operations advanced in stages from small beginnings. It is axiomatic that measured reserves start from zero and in most metallics, much time and effort is entailed before measured reserves are established as marketable and, therefore, as "ore". There should be no conflict with the multiple use concept in preserving the right to acquire ownership of the discovery. Marketable tenure for the discoverer is the incentive, and the only incentive, that will keep the spirit alive.

Then what are the chances for survival of the small miner? With proposed laws in the present state of flux, this is hard to say. In the past, and even as recent as the 1950's, a remarkable resurgence of small beginnings grew to large operations spurred by the demand and resultant high price for tungsten, established and supported by the Government. High prices have repeatedly activated many Nevada mercury mines; now down because demand and price have been adversely affected

by repeated adverse publicity such as the "swordfish scare", air pollution, pesticides, etc.

Personally, I am optimistic that growing pressure for minerals will ultimately force reason to prevail over hysteria. The Atomic Energy Commission tried to retain government control on uranium production and when this failed, changed its policy to allow acquisition and development by private parties. As could be expected, results far surpassed expectations. The former president of Day Mines, Inc. said, "A miner is someone who capitalizes on hope." It is my observation that if you remove the "hope", there will be no substitute. At the present time, it looks as if prohibitions are being considered as substitutes for hope.

While a few large mines produce the bulk of our locatable minerals, they all started from small beginnings and future large production will come from the seed-bed of small miners, small mines and non-producing exploration efforts.

STATEMENT RE: SB 153 of League of Women Voters.
by
Daisy J. Talvitie, Pres.

The League of Women Voters has been aware for a number of years, of the problems that exist in present administrative structures for state programs handling conservation, natural resources, and environmental protection. For the last three sessions of the Legislature, we have supported measures for improvement and are delighted to see a comprehensive bill, S.B.153, that we feel offers solutions. While emphasizing our support of S.B.153, we do have some specific areas where we offer some additional recommendations.

On page 42, lines 8 through 18.

Three sessions ago, it was the League of Women Voters who organized and chaired a Task Force of some 15 citizens representing various organizations co-operating with 4 Legislators to develop the first bill introduced into this legislature that resulted in establishing the State Environmental Commission. It was the recommendation of the Task Force, at that time, that the Commission be entirely a citizen's board as opposed to the combined agency head-citizen concept. We have worked consistently toward that goal in a step by step progression. Today we particularly question the wisdom of having the administrators of other divisions, namely the fish and game division and the state forestry division, sitting on a board to adopt regulations to be implemented by another division within the department. It seems to us this places the administrator of the environmental protection division at a distinct disadvantage - a somewhat subordinate position - and that any conflicts between the divisions and input into the regulations could be better solved through co-ordination by the Director to whom all three are responsible. We suggest amending lines 8,9, and 10 by placing 2 additional citizen representation on the commission deleting the two administrators.

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In lines 15 and 16 - the language was originally written to read "members appointed by the governor who have a demonstrated knowledge and expertise in environmental matters". Somehow, in the continuous re-write of the statute through the years, some of the original wording has been lost. We recommend re-inserting the words "in environmental matters."

Lines 17 and 18. We recommend language to establish 3 year terms which should be staggered as is suggested in the Governor's report, Nevada Executive Branch, Boards and Commissions, page 10. This was also the recommendation of the original Task Force several years ago.

The League is particularly pleased to see the proposal to transfer the land use functions of the Colorado River Commission to a state lands division which shall also serve as a state land use planning agency and the addition of the Mohave lands to the responsibilities of the Advisory Group.

Turning to page 84. The League endorses the proposal to establish a Department of Energy Conservation and Management. We feel that energy is one of the most serious problems facing our nation today and, with our State having to rely almost entirely at the present time on energy import, it is urgent that we act now in a consolidating management and conservation of energy within one department. We are particularly concerned with the absolute necessity for energy conservation and we appreciate the emphasis given it in S.B.153. However, we do question whether or not the bill goes far enough. As we read it, we find the department gathering information, educating the public, making plans, encouraging, recommending, and advising. What we find lacking is an ability to implement and enforce plans and measures that would actually accomplish conservation. All the things in the bill are necessary components of an energy program, but much more is also needed.

Just to give a few examples - the authority to adopt and enforce performance standards in building design and construction - not just added insulation. So much can be done - For Instance, a survey of MGM in Las Vegas by energy consultants pointed to changes that could be made that would result in savings of $100,000 annually - and had there been emphasis on energy conservation prior to construction, even greater savings could probably have been accomplished. There should be authority to develop and enforce measures to reduce energy use in our existing public buildings, to reduce gasoline consumption by use of energy efficient automobiles by state agencies - controlled thermostats, etc - government setting the example for citizens to follow. We should enforce reduction in water consumption for water conservation is also energy conservation and there are immediate steps that can be taken such as requiring, in all new construction, the new shower heads that use only 1/2 as much water.

Summing up-

Consolidated responsibility coupled with accountability, the ability to do through adequate staff, the power to do, and the funds to do the job. When we view the proposed department in this light, we wonder if an advisary board is adequate and suggest that we should be thinking in terms of moving much faster to a department and board with real authority to handle the job - The need is <u>now</u> and <u>it is urgent!</u>

DEPARTMENT OF HUMAN RESOURCES
ENVIRONMENTAL PROTECTION SERVICES

Suggested Amendment to S.B. 153
February 16, 1977

Page 37, line 25, amend to read:

(d) To provide for the sanitary protection of water and food supplies [and the control of sewage disposal[.]] except with respect to the provisions of 445.080 to 445.70.

Reason - The Health Division permits and inspects the installation of septic tanks and leach fields; they believe the suggested wording is necessary to protect their authority in this activity.

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