

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**Eighty-Second Session
April 26, 2023**

The Committee on Natural Resources was called to order by Chair Lesley E. Cohen at 4:02 p.m. on Wednesday, April 26, 2023, in Room 3143 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, and to Room 130, Greenhaw Technical Arts Building, Great Basin College, 1500 College Parkway, Elko, 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Lesley E. Cohen, Chair
Assemblywoman Natha C. Anderson, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Tracy Brown-May
Assemblywoman Venicia Considine
Assemblyman Rich DeLong
Assemblywoman Bea Duran
Assemblyman Bert Gurr
Assemblywoman Alexis Hansen
Assemblywoman Selena La Rue Hatch
Assemblyman Howard Watts
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James Ohrenschall, Senate District No. 21



STAFF MEMBERS PRESENT:

Becky Peratt, Committee Policy Analyst
Erin Sturdivant, Committee Legal Counsel
Connie Barlow, Committee Manager
Nancy Davis, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Warren B. Hardy II, representing Clark County Regional Flood Control District
Steven C. Parrish, General Manager/Chief Engineer, Clark County Regional Flood Control District
Jeffrey S. Rogan, representing Clark County
Jarrod Horn, Intern for Senator James Ohrenschall
Michael DeLee, Private Citizen, Amargosa Valley, Nevada

Chair Cohen:

[Roll was called. Rules and protocol of the Committee were reviewed.] I will open the hearing on [Senate Bill 115 \(1st Reprint\)](#). I will note that this is Senator Flores's bill, but he is in his own committee right now. With that, please go ahead.

[Senate Bill 115 \(1st Reprint\)](#): Revises provisions relating to the mitigation of certain projects. (BDR 20-679)

Warren B. Hardy II, representing Clark County Regional Flood Control District:

Mr. Parrish, General Manager of the Clark County Regional Flood Control District, is in Las Vegas and will make some comments and then clean up after me. I want to thank Senator Flores for introducing [Senate Bill 115 \(1st Reprint\)](#). This bill is designed to bring *Nevada Revised Statutes* (NRS) into compliance with some things that are happening on this front on the federal level. Many years ago, the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers created a program that allowed for the creation of wetlands mitigation banks. In 1999 the Nevada Legislature, through [Senate Bill 217 of the 70th Session](#), allowed the use of wetlands mitigation banks in Nevada.

These mitigation banks allow permittees who are going to have impacts on wetlands or waters in the United States the ability to purchase mitigation credits from the bank that has been established. These funds are generally used by a third party which, in the current practice, is a for-profit corporation to do programs that offset the loss of certain aquatic resources and wetlands.

Under the authority of [S.B. 217 of the 70th Session](#), Clark County created the Clark County Wetlands Park mitigation bank and utilized that mitigation bank for this purpose for many years. That bank has subsequently expired. The funds are no longer able to be purchased there. Part of the reason for that is the federal government—the EPA and the Corps—

updated their regulations to allow in-lieu fee programs. The in-lieu fee programs are very similar to the mitigation bank programs, but with a couple of key differences. The first is that it allows the in-lieu fee programs to be adopted by governments and nonprofits. In our case, Clark County intends to create this in-lieu fee program which will take the public sector portion that goes to fund these for-profit companies out of the equation, so more money will go to offset the mitigation of these programs.

Senate Bill 115 (1st Reprint) is very simply to bring our statute into compliance with the newly permitted in-lieu fee program. It will be administered by Clark County. We had a question in the Senate about whether these credits could be purchased by the general public and used as an instrument of commerce. They cannot. These programs are exclusively for this purpose. The county will administer it. If the mitigation program happens to be in Henderson, they will work with Henderson; if it happens to be in Las Vegas, they will work with Las Vegas. All of the parties come together and collectively submit the application once it has been decided. With that, I would like to turn it over to Mr. Parrish to see if I missed anything and maybe put a little more meat on the bones in terms of how the program is used, and then we will be happy to answer questions. [Written testimony was submitted [Exhibit C.](#)]

Steven C. Parrish, General Manager/Chief Engineer, Clark County Regional Flood Control District:

Mr. Hardy summed it up pretty well. If it is okay, I would like to quickly go over how mitigation banks work so the Committee is aware of that, if you are not already. Whenever any type of development occurs, whether it is a flood control project, like the ones we do down in Las Vegas and Clark County, or it is a developer project like a subdivision or commercial center, if there is an existing wash to that site, that wash has to be studied to see if it is jurisdictional under the Clean Water Act (CWA); if it is considered the waters of the United States. If it is deemed jurisdictional, a CWA Section 404 permit is required by the Corps. As part of the Section 404 permitting process, any impact to that jurisdiction area must be mitigated. Currently, the Corps' preferred method of mitigation is through a mitigation bank. There are other types of mitigation such as in-kind, for example, but right now, the Corps prefers that you use a mitigation bank for your mitigation.

These banks are large-scale mitigation sites, they are approved by the Corps and also the EPA, in accordance with the CWA. A local, state government, or private developer can mitigate potential impacts to the waters of the United States through a purchase of credits from the wetlands mitigation bank. The bank then uses those funds from the sale of credits to complete the restoration, rehabilitation, or even the creation of wetland habitat in some other location that is within the watershed of where the impact is occurring.

The credits, as Mr. Hardy mentioned, are tightly controlled by the Corps through the Section 404 permitting process. They cannot be purchased and sold for profit, for example, by a private entity. Current existing NRS allows for the establishment of a mitigation bank. This bill will revise the statute to allow, in addition to the wetlands mitigation bank, an in-lieu fee type of mitigation. The process to establish an in-lieu fee program is nearly identical to the

process to establish a wetlands mitigation bank. It is really just two means to the same end. The main differences between the two programs are that the wetland mitigation bank is operated on a for-profit basis. Typically, there are companies across the country that will set up these mitigation banks and then sell those credits and do the restoration projects, but they will get profit off that work. That is how they operate their business. With an in-lieu fee program, it allows us to use a nonprofit agency or a state or local government to manage the program. In our case, we are going to ask Clark County to manage this in-lieu fee program for us. We have been working on this program with the Corps for about three years, trying to get it set up. We are getting close, but we need this change to the NRS to help us with that.

One other difference between the program and the mitigation bank is that the credits can be sold in advance to a public agency. That actually helps the bank. It helps the manager of that bank because a lump sum of funding could go to that bank, and we could sell the credits. The lump sum would go to the bank, then they could use that money for the restoration project that was developed as part of the establishment of the bank. One of the things this bill will do is clean up references to the federal regulations that govern the establishment of the mitigation programs to make those references current. To sum up, both types, the in-lieu fee and the mitigation banking, are acceptable methods to the Corps and EPA to mitigate impacts to the waters of the United States. We would ask for your support on this legislation, and we look forward to any questions you may have. Thank you.

Assemblyman Watts:

I appreciate the additional detail that was provided, particularly on how some of these mitigation programs work. I know that there is a variety, not just within this particular purview, but mitigation efforts and processes that are put into place. I want to make sure I understand what the bill is doing; I do think that it was summed up pretty well at the end. Essentially, it sounds like the number one thing we are doing is aligning state statute with federal law and what is permissible, and also making sure that our language does not conflict, in particular, with adding the in-lieu fee programs in addition to the mitigation banks as mitigation pathways because that is now clearly authorized by federal law. Is that correct?

Warren Hardy:

Assemblyman Watts is one hundred percent right. We are adding a tool to our state toolbox that is permitted by the federal government and is in the federal toolbox.

Assemblyman DeLong:

First, I have a comment. I think making this revision and aligning the state statute with Title 33 of the *Code of Federal Regulations* (CFR) and Title 40 of CFR makes a lot of sense to have a variety of mitigation options. The one question is, we are deleting the definition of "mitigation bank" in state statute. Are we losing something there? Do we still need that definition?

Warren Hardy:

It is my understanding that is a statutory construction issue. If you notice, they are moving some definitions to another section of law. I will ask Mr. Parrish to confirm that.

Steven Parrish:

As the bill is written, it still allows for mitigation banking and adds the in-lieu fee program as well. There were some definitions that were deleted; they were redundant. There were some things added in section 2, subsection 7 in terms of hydric soil and hydrophytic vegetation and that type of thing. There were some definitions deleted, but the "mitigation bank" is still available after the completion of the changes to NRS.

Assemblyman DeLong:

Yes, I did notice that hydric soils and wetlands were moved to section 2, subsection 7. But regarding the definition of a "mitigation bank"—

Chair Cohen:

We can ask our Legal Counsel about the definition.

Erin Sturdivant, Committee Legal Counsel:

A federal law defines "mitigation bank." To the extent that the bill refers to those specific sections of federal law, they are set forth in federal law.

Assemblywoman Considine:

Are there time frames in the federal law when this mitigation happens or with this in-lieu fee, from the time those credits are purchased to any restoration made, or the flip, if there are any time frames that it all needs to be done within?

Warren Hardy:

I will take a shot at this and then defer to Mr. Parrish. My understanding is that these federal regulations have been adopted as part of Title 33 CFR. We are now adopting them into the state statute. Both programs are currently available under federal law and regulation.

Assembly Considine:

Are you saying if there are any time frames, it would be under Title 33 CFR?

Warren Hardy:

Correct. Mr. Parrish can correct me if I am wrong.

Steven Parrish:

As part of the mitigation bank process, there is an instrument that is prepared to support that, which spells out any time frames that would be required in order to get the restoration projects done. There are also time frames in terms of how long they have to monitor that restoration project to make sure that it is viable. Those time frames are laid out within the documents themselves as the mitigation bank is approved by the Corps and EPA.

Assemblyman DeLong:

To respond to Assemblywoman Considine's question, there would be a permit that would be issued by the Corps under Section 404 that has specific requirements for having mitigation established as part of executing the permit.

Chair Cohen:

We spoke earlier today in my office about possible projects. I am always happy to talk about Pittman Wash. Can we talk about the process and how that would work? For these projects, we are going to be using the same watershed, right? We want the project to be within the same watershed. Las Vegas Valley is all considered the same watershed. We could possibly have a project on one end of the county, and you could end up doing the project for restoration on the other end of the county. What are some of the things that you are planning with this?

Steven Parrish:

It is a requirement of the Corps when we do one of these mitigation banks that the mitigation actually occurs within the watershed area of the impact. We are looking at a couple of different locations. One of them, as you mentioned, is the Pittman Wash. We are also looking at some projects along the Virgin River. When the Corps reviews our mitigation banking or in-lieu fee program documentation, they are asking us where these projects are going to be to make sure that they are close enough, in their view, within the watershed to offset the impact to the jurisdictional water.

Chair Cohen:

Can you tell us what some of the different projects are? What kind of restoration is being done?

Steven Parrish:

The Pittman Wash is one area that we are looking to do rehabilitation of the habitat. There is a section of Pittman Wash, it is about two miles long by Valle Verde Drive, that is planned to remain in its natural condition. There are no plans in the future to do any type of lining for flood control through that area; it is going to remain natural. The Friends of Pittman Wash and the City of Henderson also have been trying to improve these areas and remove invasive species. This plan is yet to be developed; we are still working on it. We will hire a consultant who will analyze what needs to be done within the Pittman Wash area to make it a better habitat for wetlands, for vegetation, and for animals and birds.

Chair Cohen:

Do we have any other questions? Seeing none, thank you both for the presentation. Is there anyone in support in Carson City?

Jeffrey S. Rogan, representing Clark County:

We are in support of this program. We think it is a great addition and provides greater flexibility to mitigate the impacts of development, whether, as was mentioned, by the Regional Flood Control District, or the development that happens every day, every month in Clark County. Having this in-lieu fee program provides us a mechanism that did not exist before, and we urge your support for S.B. 115 (R1).

Chair Cohen:

Seeing no one else in support, is there anyone on the phone? Hearing no one, is there anyone in opposition in Carson City, Elko, or Las Vegas? Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in neutral in Carson City, Las Vegas, or Elko? Seeing no one, is there anyone on the phone? Hearing no one, are there any closing remarks?

Warren Hardy:

Thank you for the hearing, and thank you, again, to Senator Flores for bringing this forward.

Chair Cohen:

With that, I will close the hearing on S.B. 115 (R1). We will take a short recess [at 4:24 p.m.].

I will call the meeting back to order [at 4:27 p.m.]. I will now open the hearing on Senate Bill 258 (1st Reprint).

Senate Bill 258 (1st Reprint): Revises provisions relating to water. (BDR 48-889)

Senator James Ohrenschall, Senate District No. 21:

I am proud to be a former member of this Committee. Thank you for hearing Senate Bill 258 (1st Reprint). It is a proposed change to Nevada water law. I would like to turn the presentation over to Jarrod Horn who is a student at the University of Nevada, Reno, (UNR) and an intern through UNR's Department of Legislative Affairs. He has been helping me with this bill. Then I would like to have Mr. DeLee provide testimony. I would then be happy to answer any questions.

Jarrod Horn, Intern for Senator James Ohrenschall:

I am a student at UNR in political science. I appreciate the opportunity to help present Senate Bill 258 (1st Reprint), which is one of many bills related to water to come before the Committee this session. Senator Ohrenschall decided to introduce S.B. 258 (R1) to provide certainty that renewable energy projects could be developed while maintaining certain statutory guidelines regarding notice and the right to protest said projects. It passed and received unanimous support on the Senate floor. With your permission, Madam Chair, I would like to turn the presentation over to Michael DeLee, who is joining via Zoom.

Michael DeLee, Private Citizen, Amargosa Valley, Nevada:

This is an important measure to facilitate projects for renewable energy. The projects are getting larger, and the construction times for these projects are going well over one year. That complicates permitting for these projects because one of the things that they need to prove is that they have water for construction. A great many of these projects do not use any water at all after they are built; it is primarily for dust control and road construction during the project itself. At the end of the project, the water needs to go back from wherever it was borrowed from. That becomes difficult when there is a lot of uncertainty involving the administration of water rights. There is a provision now for temporary change applications, but it does not really fit when projects go over one year because there needs to be permitting

and approval for funding. Banks like to make sure that projects will get built and not get hung up for lack of a permit. We have an important piece of legislation here that is going to make a good fit for that, and it is very appropriate. We did not need it before because this was not happening before. I appreciate your support and I am happy to answer any questions.

Senator Ohrenschall:

I think that Senate Bill 258 (1st Reprint), if it passes, will help develop these clean energy projects and provide certainty that they can start and they can finish and they can get built. I am happy to answer any questions.

Assemblywoman La Rue Hatch:

My question is about the process. Could you explain a little more why it is problematic for these projects to reapply for the permit? I would imagine there are many projects that go on, and have been going on, and they reapply every year. Could you walk us through why three years is more appropriate than one year?

Senator Ohrenschall:

As I understand the situation now, there is a lack of certainty for a lot of projects that need to get developed as to whether there will be enough water to complete the project. This window of a minimum of one year to a maximum of three years will provide that certainty. I think it will also be beneficial for other interested parties because if this passes into law and a renewable energy development company or developer wants to try to get this temporary water permit for a project of one to three years, it is going to be subject to everything that is in the law now in terms of notice and the right to protest. I think it is good for the development of a project, and it is good for all of the interested parties. If there is someone with an objection, he will have a right to be noticed and make that objection. Mr. Horn and Mr. DeLee, would either of you like to jump in with more information?

Michael DeLee:

Senator Ohrenschall is absolutely right. This is about reducing risk to enable a certainty of construction of renewable energy projects. Reducing the risk is part of the entitlement process to make sure that things are going to be funded and continue throughout the life of the project. One of the concerns is the statute, as it exists now, contemplates a one-year time frame for a temporary application. When it exceeds one year, it is not really appropriate to ask for something that was for one year and then come back and ask for it again because there is always the uncertainty that you are not going to get it. Additionally, that might be interpreted as trying to get around some publication provisions. There are people who are very concerned about these projects and would like their voices to be heard at all phases of the project, ensuring that these longer and bigger projects are going to be published and follow the water law under *Nevada Revised Statutes (NRS) 533.360*, for example, for the contents of the publication, like any other water right change application other than a temporary right. This protects the public that may have an interest in whether these are environmentally correct projects.

Assemblyman Watts:

I appreciate the more robust noticing and participation requirements that are envisioned for an extended temporary permit. My understanding is that there are frequently temporary changes that are renewed for more than one year. Following up on the question that my colleague asked, you mentioned risk. Are renewable energy projects not having their temporary permits renewed? Is there a problem with those not being renewed that requires an extension of time to three years?

Senator Ohrenschall:

The reason we went with one to three years was to provide certainty for development of these clean energy projects. As to that particular question, I do not know if anyone is here from the Office of the State Engineer who might be able to testify in neutral. The reason I am pursuing this is for not having the uncertainty as to whether it will be renewed or not, and trying to make sure these projects can go forward for clean energy.

Michael DeLee:

I was involved in an approximately 100-megawatt project in Nye County. One of the criteria that was expressed during the planning for that project was that the water rights involved for dust control needed to be water rights that were not from a temporary one-year permit and relying on a one-year extension. That was a discussion during the project. It was a concern that came up several times. The planners would say, Well it looks like we may have to approach this and clarify it. There was a previous effort to get this clarified. It did not get as far as we have today.

There have been a lot of additional projects announced since the announcement of large transmission projects to serve these. It is pushing everything forward. It is a priority now throughout the state, and it is going to be even more important that we have this. To date, I can tell you from my own personal experience how other projects have been constructed. A lot of that has to do with trucking water from existing sources, so you do not have to change the point of diversion of the source. There are very large projects in the south end of Nye County, for example, going on now. They are literally trucking water in from an existing source. That is not very economical if you can pump from a closer point of diversion. It is going to save a lot of emissions in the atmosphere and a lot of trucks rolling on the highway if you can avoid doing that. Another problem is the certainty of moving that water back to its original source when the project is done. If you do not have that certainty, you can end up with water that is stranded. We have also seen that; for example, an entity leased water for a period of five years, and during that lease, the administration rules for that particular basin were changed and that water got stranded there. The entity ended up having to purchase the water rights. We are looking for certainty for developers, certainty for the owner of the water rights, and predictability for a large renewable construction project.

Assemblyman Watts:

Thank you. I appreciate that. I still wonder if part of that might be communication or other issues because I understand the need for certainty. It sounds like on the front end of planning projects or proposing something, those concerns have been expressed, but it is unclear to me

if on the actual administration side, if there are any barriers to getting a one-year permit extended. I will also follow up with the state to make sure that my understanding of that is clear. The only other question I had is, Why is this envisioned as specifically being for renewable energy projects and not for other forms of temporary change applications?

Senator Ohrenschall:

This is limited to renewable energy projects as defined in NRS 701.080. I think back to a statement that Senator Reid said about Nevada having the potential to be the Saudi Arabia for solar. I think that little by little, we are seeing that. We are seeing more renewable energy projects get built, and more energy being produced that does not have a carbon footprint. I think this bill will help that become reality, what Senator Reid had envisioned so long ago. That is the goal of this bill.

Assemblyman Watts:

Thank you, and I completely share that goal. I am just wondering why it is envisioned for this, but not for other potential applications.

Senator Ohrenschall:

I am trying to solve the problem with renewable energy projects with S.B. 258 (R1).

Assemblywoman La Rue Hatch:

I do have some concerns when we are removing oversight on water, which is our most precious resource. My question is, If we put this in for renewable energy generation, are we now setting a precedent that next session we are going to come back and somebody else gets an exemption, and the next session, somebody else, and we just piecemeal this one by one as we are getting all these industry exemptions?

Senator Ohrenschall:

I appreciate the question, and I am certainly not an expert in the water law, but as I understand it, if Senate Bill 258 (1st Reprint) passes, there will be more oversight. If a renewable energy project wants to seek this temporary permit within a window from one year to three years, that will be subject to the notice provisions currently in statute, publication, and the right to protest if anybody feels this is not something that should happen. I understand that certainly does not happen with the permits that are less than one year. I think there will be more oversight, more notice, more certainty for someone developing the project, and more right to protest to be notified about that, if someone believes this is not something that should happen.

Chair Cohen:

Do we have any other questions? Seeing none, I will move on to support. Is there anyone in Carson City, Las Vegas, or Elko in support? Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in Carson City, Las Vegas, or Elko in opposition? Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in neutral in Carson City, Las Vegas, or Elko? Seeing no one, is there anyone on the phone? Hearing no one, do the presenters have closing remarks?

Jarrod Horn:

We appreciate the Committee's allowing us to bring this bill forward and present it. I personally appreciate your allowing me to come up and have this experience assisting with this presentation.

Senator Ohrenschall:

Thank you very much. Thank you for letting Mr. Horn present. This is his first chance of presenting a bill. It is a wonderful program UNR has, and one of my favorite former legislators is coordinating that program, Dr. Joiner. I appreciate the Committee's hearing this bill. I believe this bill will help promote clean energy certainty for those who want to develop clean energy in our state. Additionally, it will provide notice opportunity to protest for anyone who believes that this temporary transfer of a water right should not go forward. I believe this is good for the development of clean energy and good for the public. I hope the Committee would consider it. Thank you.

Chair Cohen:

Thank you, and thank you, Mr. DeLee, and especially thank you, Mr. Horn, for coming and presenting with us. We are very happy that you were able to present the bill. With that, I will close the hearing on Senate Bill 258 (1st Reprint), and I will go into public comment. Is there anyone in Carson City, Las Vegas, or Elko for public comment? Seeing no one, is there anyone on the phone? Hearing no one, I will close public comment. We do not have a hearing set for next week, but I am sure we will be setting one and, with that, we are adjourned [at 4:44 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblywoman Lesley E. Cohen, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is written testimony submitted by Warren B. Hardy II and Isaac Hardy, representing Clark County Regional Flood Control District, regarding Senate Bill 115 (1st Reprint).