

Board of Agriculture Meeting
September 30, 2005
Reno, Nevada

Board Members Present:

Benny Romero
Deloyd Satterthwaite
Harvey Barnes
Georgo Botta
Dan Hettrick
Jim Johnson
Alan Perazzo
Susan Ray

Board Members Absent:

Marta Agee
David Cassinelli
Lawrence Waugh

Benny Romero, Chairman, called the meeting to order at 8:30 am.

1. BOARD BUSINESS

Introduction of Board Members, Guests and New Staff.

Each Board member introduced themselves. Guests included Dawn Lietz, Audit Section, Motor Carrier Division, Department of Motor Vehicles; Jim Weaver, Auditor, Department of Motor Vehicles; Martin Azevedo, Investigator, State Fire Marshal's Office; Doug Busselman, Nevada Farm Bureau; Jason Entsminger, Nevada Future Farmers of America.

A. Approval of minutes

The minutes of the last meeting were presented for approval.

Jim Johnson made a motion to approve the minutes as written. Harvey Barnes seconded the motion. Motion carried.

B. Goals and Objectives

Director Henderson advised Board members that the Department Goals and Objectives are included in the meeting packets for their information. He said that traditionally, the Board at their December meeting, reviews and updates the goals and objectives. He further stated that the goals and objectives are used in the evaluation process for the Director.

Deloyd Satterthwaite asked for clarification from Don Henderson how the short term objectives tie into the Director's evaluation. Don explained that these are the annual

objectives the Board would like to see accomplished and that is one of the criteria that is considered in the Director's evaluation.

C. Special Reports

1. Clarification on current enforcement policies relating to the use of dyed fuel in agricultural operations and in the transport of farm equipment and produce between agricultural properties. Dawn Lietz and Jim Weaver, Audit Division, Motor Carrier Division of the Department of Motor Vehicles. (ACTION)

Dawn thanked the Board for allowing her to come before them with her presentation to give the Department of Motor Vehicle's (DMV) perspective on the use of dyed diesel fuel. She commented that she was aware that this issue is a source of frustration for people in the agriculture industry.

Dawn said due to significant increases in the use of cardlock and retail sales, the DMV believed that a lot of untaxed dyed diesel fuel was being used on the public highways. The DMV felt it was important to get the information out to the general public on when it is acceptable to use dyed fuel and when it is not. Cardlock and retail sale facilities are prohibited from selling dyed fuels without having controlled access.

If an attendant can clearly see a violation wherein a customer is pumping dyed fuel instead of regular taxed fuel, he is bound to report it immediately. AB255 now puts a \$10,000 fine on a retailer for selling dyed fuel for on-road use.

Retailer's "controlled access" now includes a signed statement of acknowledgement and intended use between the seller and purchaser which includes: purchaser's name, address, a detailed description of the intended use by the purchaser disclosing the liability and the amount of penalty associated with the misuse of the dyed special fuel. The responsibility is put back on the supplier and retailer to ensure that the access to the dyed fuel pump is restricted to only those with an agreement on file.

Dawn said any person failing to provide controlled access is also subject to a \$10,000.00 fine; if you have a bulk tank, you have the responsibility to control access to make sure it's not getting out on the highway. The farm or ranch owner/operator has the responsibility to control access to any storage tank of his property. If you use a pick up truck solely for use on the farm/ranch, you can use dyed fuel. If that truck goes onto the highway, it is no longer considered farm use and you are responsible for the tax and the bulk tank is now subject to tax. A truck may cross a highway provided it is going from farmland to farmland. You can cross a right-of-way to another piece of land that is controlled by the rancher/farmer. You cannot haul livestock from your ranch to the slaughterhouse on dyed fuel.

Dawn said a diesel powered highway vehicle by Federal definition is a self propelled vehicle designated to carry a load over the public highways. The Internal Revenue Service (IRS) does not consider as diesel powered highway vehicles, specially designed

mobile machinery for non-transportation functions and vehicles specifically designed for off-highway transportation. This is another grey area that DMV runs into with construction companies and farmers. This is the special mobile equipment side. The key is that the vehicle has to be used for non-transportation functions. If the vehicle was designed to haul something, it is considered a transportation vehicle and doesn't fall within this special mobile machinery category.

Deloyd asked "are you saying that a harrow bed that hauls hay falls into that category?" Dawn responded that it would depend on how that vehicle specifically was designed. If it has highway tires on it and a typical diesel engine with a cab over, it is considered a highway vehicle. However, if it used only on the farm and used to transport hay from one side of your property to the other side of your property, then it is considered exempt from registration because it is considered a farm vehicle.

Jim Weaver said the IRS does specifically list tractors, swathers, self-propelled bailers, and like items as farm equipment. Reasonable use such as going from field to field, for example, is not going to get you into trouble, however, if you use your tractor-trailer that you use to haul hay, that is an considered an over-the-road rig and you can be cited.

Deloyd said I don't think there is a question about what is farm machinery and what isn't, the question is can you go out of your gate to your hayfield which is a mile down the road to pick up a load of hay to bring back to your barn; what are the rules? Dawn responded that as long as it is your field and your equipment that is operating, you are within the law. But, if you are driving from Fallon to Yerington, you will be cited. Basically, you are given the flexibility to go from your various points of entry on your property and use graveled roads or paved roads, but it is not designed for you to travel a long time on it.

Harvey Barnes noted that if you have a tractor-trailer that is fueled with dyed fuel and used on the farm, but perhaps one time it is necessary to drive the tractor-trailer on the highway and you put clear fuel in the tractor-trailer, the fuel will be tainted because of the residue. His question was whether a provision had been made for that owner to make a one-time trip with the vehicle? Dawn Lietz responded no, and that would be a good issue to bring up next legislative session.

Deloyd commented that he saw where AB 255 clarified many issues, but he felt it muddied the waters where agricultural/farmers were concerned. Dawn replied that nothing was changed with AB 255; these are federal laws, not state laws. All DMV did was clarify what the fines are and put the burden of responsibility on the distributor of that dyed fuel and to make certain that person is educated and informed on the law.

Doug Busselman, Nevada Farm Bureau, commented that two legislative sessions ago, industry was involved in working on an issue pertaining to hauling potatoes from the field to the packing shed. We made corrections in the state law at that time that alleviated some of the confusion and problems. He said he was glad this presentation is being recorded so we can use this as a tool to go back to the legislature next session and clarify these issues. Industry fixed this before, but it's obvious that it is not sinking in, so we

may have to go back and fix it again. He noted that even under the law that is being presented as the current law, there is a state process for agricultural abuse that is not even being talked about that we need to emphasize. Doug Busselman said we need to go into the legislative process and get some kind of clarification that state law matters someplace.

Dawn said in order to maintain highway funds and federal funding, we have to follow the guidelines the federal government has in place or we will jeopardize federal funding on all highway projects. Our responsibility is to make sure we are not in conflict with that.

Dawn said Section 4, of NRS 366.203 “says to the extent permitted by federal law, a person may operate or maintain on a highway in this State any special mobile equipment or farm equipment that contains dyed special fuel in the fuel tank of the special mobile equipment or farm equipment.” As used in this subsection: (a) “ Farm equipment” means any self-propelled machinery or motor vehicle that is designed solely for tilling soil or cultivating, harvesting or transporting crops or other agricultural products from a field or other area owned or leased by the operator of the farm equipment and in which the crops or agricultural products are grown, to a field, year, silo, cellar, shed or other facility which is: (1) Owned or leased by the operator of the farm equipment; and (2) Used to store or process the crops or agricultural products.

Dawn continued, the term includes tractor, baler or swather or any implement used to retrieve hay. Highway does not include a controlled-access highway as defined in NRS 484.041; controlled access is the interstate system.

Director Henderson commented that his observations are that what we are being told by Dawn is that there have been changes made to the Nevada statutes and since then there have been changes to the Federal law. Dawn responded by saying the federal laws haven’t really changed other than the penalties have increased to a Federal level II. Dawn asked if Don was referring to the incidentally operated – the ten-mile rule. Dawn said the ten mile rule does not allow you to operate ten miles over state and public highways if it is to transport goods.

Dawn said you cannot have a subcontractor come in, take product from one field, drive ten miles down the road with dyed fuel and pick up product from your other field; that’s not your equipment. Director Henderson asked if it is your equipment and your product and within 9.5 miles apart you, could travel down the highway? Jim Weaver said there is an exception; however, it cannot be a tractor-trailer rig. A baler, swather is okay; an over-the-road tractor-trailer with red fuel is not okay.

Harvey Barnes made a motion that the Board of Agriculture through Gina Session, Deputy Attorney General, as our representative from the Attorney General’s office look into the possibility of a permit that can be purchased for a one-time short trip permit to use dyed fuel and pursue that and see what we can come up with. Further to establish what our state statutes say and if they do conform to federal law. Deloyd Satterwaite seconded the motion. Vote taken. Motion carried.

2. Review of current fire code requirements relating to hay and fuel storage in agricultural operations. Presentation by Martin Azevedo, Investigator, State Fire Marshal's Office. (ACTION)

Martin told Board members that the Division has just switched over to new codes and is using the International Fire Code, 2003 edition.

He told Board members that the code says that hay and straw or similar agriculture products shall not be stored next to adjacent structures. Storage shall be limited to stacks of 100 tons each and separated by a minimum of 20 feet completely around.

Deloyd asked are you saying several stacks of 100 ton separated by 20 feet? Martin responded yes that was correct. You can have up to 500 tons as long as each stack does not exceed 100 ton and every stack is separated by 20 feet.

Martin told the Board that the farming and ranching industry in Nevada is an interesting area. The Fire Marshal's Office doesn't go into private homes; we only regulate commercial. The question is whether a farm or ranch is considered a commercial operation or is it considered residential? Martin said that is a very fine line there. If a farmer or rancher calls us and wants our opinion, then we will go on the property. We go to hay storage facilities because that is considered commercial.

Alan Perazzo asked if a rancher has insurance on his hay, where does the insurance company stand as far as following this code. Martin said that insurance companies are usually stricter than the code. They sometimes call the Fire Marshal's office to find out what the code is or will research it themselves.

Martin said a farmer/rancher can apply for variance with the State Fire Marshal's Office. If you can show that you are taking a safe direction in hay storage, you could be granted a variance.

Martin said one of the biggest issues he found while undergoing investigations and inspections is the separation of storage and fuels. He said you need to be careful how you store hazardous materials, gas, dyed fuel, fertilizer and propane. Martin said he is more than willing to come to your ranch and offer suggestions. The Fire Marshal's office has deputies located in Elko, Pahrump, Las Vegas, and Carson City.

Don Henderson asked, short of separation of fuels and hazardous materials, what other functions does the Fire Marshal's office provide relative to storage? Is there permitting requirements on fuel storage and design in an agriculture situation? Martin replied, yes, there are requirements and this is another a grey area with farmers and ranchers. For example, if a rancher or farmer wanted to put in a 500 gallon fuel tank, he is required to submit a drawing to the Fire Marshal's office. The drawing should show where the house is located, where the storage facility is located, where the hay storage is located, and

where farm equipment is kept. Martin said we will review your drawing and tell you if you're meeting code.

Doug Busselman suggested it would be a good idea for the Board to work at trying to iron out those grey areas with the Fire Marshal. Martin suggested a meeting with the Fire Marshal for resolution.

Doug Busselman said the Farm Bureau does have a policy pertaining to the fuel permitting process and the grey area that was described earlier. Doug said if the Board would be willing to direct the Department to pursue working with the State Fire Marshal's Office to explore where agricultural waivers might be gained, the Farm Bureau would be very appreciative and willing to work with the Department to iron out some of those problems. Doug said the whole concept of commercial is a moving target because we tend to believe that agriculture is supposed to be a commercial enterprise. Also, depending on the spirit of the people involved in the enforcement, the farm could be a commercial enterprise or it could be just a farm. Doug said he thought that it was important that we work out those problems and hopefully be able to gain some kind of waiver from the International Fire Codes to deal with some of the more practical situations that Nevada farmers and ranchers face. So, if the Board would approach the Fire Marshal's office, the Nevada Farm Bureau would be happy to work with the Board and the Department to try to alleviate those problems.

No action was required by the Board.

Director Henderson suggested a possible Memo of Understanding with the Fire Marshal's Office and the Department regarding some of the issues that were discussed.

D. Employee of the Quarter Award

Director Henderson advised the Board that Paul Frigo has been named the employee of the quarter. The director said Paul was an Agriculture Inspector from the Las Vegas office and also a U. S. D. A. certified egg grader, frozen poultry products inspector for the Clark County School District and a State Agricultural Inspector for produce complaints with the Las Vegas area.

Paul's agricultural background stems from a National Science Foundation Grant at the University of Wisconsin, where he assisted in research on yeast organisms associated with whey. He holds a Master's degree in Biology from Central Michigan University and a Ph.D in Environmental Science from the University of Wisconsin, Madison.

Susan Ray suggested that in the future, the Department implement a standard set of questions to be used to evaluate an employee that is nominated for an employee award. This would make the process more equitable. Don Henderson said he thought that was a good idea and would take the suggestion to his administrators.

2. Director's Report

A. Summary and overview of Department activities.

1. Letter to Jose Noriega, District Manager, Santa Rosa Ranger District written by Director Henderson on August 25, 2005, regarding the Final Environmental (FEIS) for the Martin Basin.

Don Henderson reviewed the content of this letter to the Board and said there were some indications that the input provided by the Department could result in a better final decision by the Forest Service. He concluded that "we are cautiously optimistic that the Forest Service would respond favorably" to the extensive input provided by the Department and the involved permittees.

2. Letter to Director Henderson and the Department of Agriculture from Clark County Emergency Management Office thanking the Department for our support and participation in Exercise Rotunda Thunda 2005.

Don Henderson brought the Board's attention to the letter from Jim O'Brien, Manager of the Department of Administrative Services, Office of Emergency Management for Clark County. Mr. O'Brien thanked Don and the Department for their participation in the Exercise Rotunda Thunda 2005. The Director was thanked for his leadership role as part of the planning team. The exercise was deemed a success.

3. Letter to Director Henderson and the Department of Agriculture from Jason Entsminger, Nevada Future Farmers of America Association thanking us for our hospitality at the June 23, 2005 Board meeting.

Don Henderson brought the Board's attention to the letter he received from Jason Entsminger, Nevada Future Farmers of America (FFA). In the letter Jason thanked Director Henderson and Board members for their hospitality during the June 23, 2005 Board meeting. Director Henderson expressed to Jason the appreciation of the Board and the Department for his letter and extended an on-going invitation to Jason and other members of the FFA to attend Board meetings.

4. Resolution adopted by the Board honoring Joe Marvel's induction into the Professional Rodeo Cowboy Association Hall of Fame.

The Director brought the Board's attention to the resolution adopted by the Board at the June 23, 2005 meeting regarding Joe Marvel's induction into the Professional Rodeo Cowboy Association Hall of Fame. A copy of the resolution was sent to Governor Guinn, Senators Reid and Ensign, Congressmen Gibbons and Porter, and Congresswoman Shelley Berkley.

5. Letter to Bob Abbey, retired Director of the Bureau of Land Management, from Director Henderson and the Nevada Department of Agriculture, expressing our gratitude for Mr. Abbey's outstanding leadership during his eight year tenure.

Director Henderson directed the Board's attention to the letter that was sent on behalf of the Board and the Department to Mr. Bob Abbey on his retirement and thanking him for his outstanding leadership during his tenure as the Nevada State Director of the Bureau of Land Management.

B. Review of current land transfer proposals possibly involving the Reno Livestock Events Center and the UNR Main Station and consideration of responses by the State Board of Agriculture. (ACTION)

Director Henderson addressed the board regarding the sale of 55 acres of University of Nevada land across from the University's Main Station in Reno. The Director distributed copies of an e-mail he recently sent to University Board of Regents expressing his concerns over the pending sale.

Issues addressed in the e-mail were the sale of the 55 acres coming in advance of the development of an Agricultural Research Plan which at some point may have required the use of those lands, the proposal to rescind Regent Policy 81-8, and the lack of willingness by University officials to address the needs of production agricultural research which is a major component of the mission of the land-grant university.

The Director expressed his concerns to the Board members that these and other lands held by the University will become a "cash cow" for UNR administration to use for campus growth and expansion, and a deliberate movement away from agricultural research.

Doug Busselman, Farm Bureau, said Washoe County wants to use the farm as a flood detention facility. Doug said the problem is when you are paving over, tarring and all the things to make a fairground, the next thing you know, you've reduced the value for flood control. Doug commented this is a very involved and complicated issue that hasn't gone the way he would like. Doug said that the industry needed to move this issue into an arena where we can make progress where none has been made before. When we play by the rules of the UNR administration, what happened last Friday (September 23, 2005) will occur again where we lost by one vote. Doug said he thought that decision made at that meeting set a precedent for future development of those agricultural properties. For all practical purposes, the resolution that the Regents had adopted in 1981 is a moot point from the Farm Bureau's perspective, because if you can go around it that quick, you can bypass it any time you want for any reason you want.

Doug told the Board that whatever help the Board can give in terms of working with industry, as we go forward on this issue, would be greatly appreciated.

Motion was made by Harvey Barnes to endorse the letter written by the Director. Susan Ray seconded the motion. Motion carried.

C. Review of Departmental progress on short-term Board objectives.

Don Henderson distributed a table which listed the short-term objectives for 2004 and the updated accomplishments. He told the Board that at the December Board meeting he will provide a more in-depth review of the short-term goals. He said the table he provided is informational only and in a draft form. He told the Board this information was going to be forwarded to his administrators for their review and input. The finalized version will be in your Board packets for the December meeting.

Don directed the Board's attention to *Item 1.b. - Increase penalties for reoccurring infractions of state laws and regulations*. He advised the Board that John O'Brien is working on summarizing existing agency penalties, putting the information into a format that would allow the Department to review various penalties across the agency and across divisions. Don said penalties were developed over the past 40 years and he wants to find the most effective approach and penalties and build uniformity across the Department statutes.

Don directed the Board's attention to *Item 4 – Take a leadership role in serving as liaison between Nevada Department of Wildlife (NDOW) and federal agencies to ensure the best available science is used in decisions relating to wildlife management and conservation*. Don said that another federal planning process that is underway is the update of the Winnemucca BLM district's resource management plan. They are going through public scoping and Gary McCuin is very involved. The Ely BLM district is also going through a similar process.

It was decided that a subcommittee will meet on Monday afternoon, December 5, 2005, to review the Department's Goals and Objectives. The updated goals and objectives will be presented to the Board at the December 6, 2005 meeting.

D. Coordination and arrangements for annual evaluation of Director.

The director distributed a Director's Evaluation form for Board members to complete in preparation for the Director's evaluation due at the December Board meeting. Chairman Benny Romero asked that the evaluation form be completed and submitted to him no later than November 15, 2005.

E. Board review and consideration to appeal BLM water right applications for wildlife by the Battle Mountain Field Office. (ACTION)

The Director brought the Board's attention to a letter from Walter Leberski regarding the Bureau of Land Management's application for water permits (10) in Lander County and (3) in Humboldt County for wildlife water. Protests have been filed by Henry Filipini

and Bill Hall. The Department was asked to consider joining in filing protests against these applications.

The Director advised the Board that the Department of Agriculture has filed protests against seven of the permits. This action is not precedence setting in that the Board has filed past administrative protests in response to water right applications filed by federal agencies. The Director asked the Board if they wish to withdraw the protests or continue? And, do you want the Board of Agriculture and/or the Department to protest the three remaining water right permits?

Harvey Barnes moved that we continue with the protests and that we include the three additional protests and that the Board goes on record as supporting the Department's position on these protests.

Deloyd Satterthwaite seconded the motion. A vote was taken and the motion passed.

3. DIVISION OF ADMINISTRATION

A. Nevada Employee Action and Timekeeping System (NEATS)

Rick Gimlin, Deputy Director, told the Board that NEATS is a system that allows employees to input their timesheets, personal information, and apply for state training, etc. Doug Perry, the Department's Administrative Services Officer III (ASO) is directing this project. Rick said the entire Department should be on-line by the end of December. Two locations left to rollout: Las Vegas in the middle October and Elko in November.

B. Critical Business Technology Assessment Program

This relates to an executive order that Governor Guinn issued last year. All agencies must have a critical application disaster recovery plan in place by February, 2006. CBTAP is a major component of this plan and has been completed. The next step is the disaster recovery plan and Rick plans to have this part in to the Department of Information Technology (DoIT) by the end of December.

Rick provided the Board with an update on the Legislative Council Bureau (LCB) audit. He said the Audit Division of LCB is working on their final draft which will be routed to LCB Internal Review. Rick said he anticipates meeting with LCB in October when the Department can review the final draft and provide comments.

4. DIVISION OF RESOURCE PROTECTION

Mark Jensen advised the Board the handout he distributed is a list of accomplishments for the state as well as the federal side. Mark said he has been here for just over a year and said he has talked to quite a few of the livestock producers and district supervisors. In general, we've had a really good year and Mark hopes that trend will continue.

Mark directed the Board's attention to the fourth item on his handout; met with Nevada Grazing Boards and secured \$85,700 in funding for the aerial hunting program. Mark said that he did get around to almost all of the grazing boards this last year. It was a good opportunity for him to meet with a lot of the livestock community and see what their thoughts are. He said that he did secure funding through the grazing boards to fly aircraft and assist in depredation issues.

He directed the Board's attention to the sixth item on his handout; a project for protection of sage grouse in Northern Nevada was completed in 2005. Mark said one of the projects completed this year was for sage grouse in conjunction with the Nevada Department of Wildlife (NDOW). It was four year project and looked at various aspects of sage grouse protection and the use of DRC-1339 eggs to control ravens. There will be a lot of good information coming out from that research.

Mark directed the Board's attention to item one under Valuing and Investing in People; implemented a management team strategy and began drafting a "Strategic Plan" for Nevada WS. Mark said this is one of his goals for 2006. He wants to use a management team strategy for the wildlife services program and get the field employee involved as well as district supervisors. Nevada's Wildlife Services has never had a strategic plan and that is something we're going to work on with employees.

Mark directed the Board's attention to item two on his handout; worked with Senator Ensign's office on Displaced Wildlife. Mark said this is one of the things he is concerned about in the 2006 federal budget. There has been a line item in the agriculture appropriation bill, through Senator Ensign's office, where Wildlife Services receives funding for displaced wildlife. Mark said as it stands right now, there is a house version of the agricultural appropriation bill and a senate version of the bill; both of those have been voted on and now it goes on to conference. But as those bills sit right now, there is no mention of the \$368,000 that had recently come to Nevada. Mark said Senator Ensign's office is aware of that, but if that doesn't get fixed, there will be a reduction in services, especially in the Las Vegas area.

5. DIVISION OF MEASUREMENTS STANDARDS

A. Update on the status of the gasoline vapor pressure requirement of the 38th parallel.

Vernon Miller advised the Board that he had a meeting in Reno on September 29, 2005, with Fuel Standards Environmental Coordination Committee which meets every quarter and talked about this issue. After discussion that took place at the March Board meeting, the Board and the Department decided to have additional meetings in Las Vegas and Reno to discuss technical issues. We had a meeting in Las Vegas on July 7th, 2005 and attendance was good. We had a huge outpouring of interest which was in contrast to previous workshops and hearings we've had. From that meeting, the Department

decided to hire (Desert Research Institute) DRI to do a proposal and look at all the technical issues for and against the change of NRS 590.

Vernon is trying to schedule time with Western States Petroleum Association (WSPA) and the automobile industry where we can get together and discuss the proposal as it was presented. WSPA had previously commented that they did not want the DRI to look at supply issues. The auto alliance commented that they didn't want DRI to make the recommendations, but instead have the Board make that recommendation since we have the authority to make changes to state regulations. Vernon plans to have this meeting scheduled during October. Vernon said he will e-mail anyone interested in attending when a date has been set.

Vernon added the study by DRI will cost approximately \$35,000 to \$40,000. He said he has local distributors in northern and southern Nevada who would like to contribute; as well as WSPA.

B. Status of Division's equipment purchases.

Vernon talked about equipment purchases for the Division. He said the one shot fund that Steve Grabski, Administrator, spoke about before has been transferred into this fiscal year's account. The specifications are completed for the LPG prover, the heavy truck and the trailer. Specifications for the medium new truck will be going to State Purchasing for bids. They have received two balances in the metrology lab that have been delivered and set up. They will be purchasing seven pickup trucks as soon as the state contract comes in for pickup trucks. These will be used for inspectors for northern and southern Nevada.

C. Status of the Measurement Standards License and Payment Software Program

Vernon said the Request for Proposal is currently at the Attorney General's Office for review and will be released for bid within the next couple of days. Bids should be returned before Thanksgiving and the vendor selected the first week of January. Vernon said we have had a DoIT employee, Barbara Middleton, working at our facility that is doing a great job coordinating and preparing all the program requirements for the assessment. Don Henderson clarified that \$225,000 was appropriated to develop a new software package to track functions and billings for Weights and Measures.

D. Capital improvement projects.

Vernon reported that the petroleum lab is fully operational and everyone is pleased with the new facility. An update on the Elko remodel; the architect has been directed to focus on the office portion of the building. This will allow occupancy of the staff. The rest of the project requires a construction manager.

Vernon said the preliminary work has just begun on construction plans for the Department's headquarters. Special permits have been applied for and the design

development stage is starting. The first estimate for the construction documents to be completed is by November, 2005.

6. DIVISION OF LIVESTOCK IDENTIFICATION

Director Henderson gave the Division's report in the absence of Jim Connelley. Don distributed handouts to the Board members. Included in the handouts were last year's statistics, 2005, on inspections.

It was noted from the handouts, that Gallagher's Livestock sale yard in Fallon closed on September 14, 2005 and that closure leaves only the Fallon Livestock Auction sale yard. As a result of the closing, the Brand Division will layoff one part time person who performed sale yard clerking duties.

Don continued with the report which addressed budget issues for the closed FY05 budget. Connelley reported salary savings of approximately \$64,000 and \$15,000 in operating expenses. There were revenue shortfalls of \$45,000 of which \$22,000 was in lower Head Tax receipts.

Jim Connelley reported fuel costs have had a severe impact on the Agriculture Enforcement budget. He expects that government will substantially raise the mileage reimbursement rate for individuals who use their personal vehicles. Don Henderson said the existing budget does not cover the level of increased fuel costs we are experiencing. Henderson said there is no state plan on how we are to deal with the higher fuel prices.

Legislatively mandated pay increases for employees will impact brands budget by \$30,000.

Connelley's report said all Agriculture Enforcement Officers will receive in-service training in Elko on October 4 & 5th. This training is required to maintain (Peace Officer Service Training) POST certification. This training includes defensive tactics, emergency vehicle operation and fire arms qualification.

The report continued that 8 new vehicles that were purchased with Homeland Security grants, and 2 funded under the approved state budget, will be put into service by October 5th. Jim's report said at that point all Division Enforcement personnel except one will have a new or nearly new vehicle.

Chairman Romero asked Don what the present budget is for Ag enforcement to operate. Henderson responded about \$25,000 plus an additional \$10,000 from Plant Industry. Rick Gimlin said adding all sources together, probably about \$40,000. He said they are using approximately \$3,000 in fuel costs each month right now from a budgeted amount for the year of \$10,000.

7. DIVISION OF PLANT INDUSTRY

B. Request to adopt permanent amendments to NAC 555.010 changing noxious weed list to a tiered system. Workshops and hearings were held on September 7 and 8, 2005. LCB File No. R029-05 (ACTION)

Dawn Rafferty advised members of the Board that an informational statement was in the Board packet regarding this amendment. Dawn told the Board members that there were no negative statements regarding making this a permanent regulation at the workshop and hearings that were held.

Dan Hettrick made a motion to adopt permanent amendments to NAC 555.010 changing the noxious weed list to a tiered system. Jim Johnson seconded the motion. Vote taken, motion passed.

C. Request to adopt amendment to NAC 555.035 adding curly dock (*Rumex crispus*) to the Paradise Valley District weed list. Workshops and hearing were held on August 14, 2005. LCB File No. R027-05 (ACTION)

Dawn said this is a request to adopt a temporary amendment as permanent adding curly dock (*Rumex crispus*) to the Paradise Valley District weed list. There were no negative comments on this during workshops and hearings.

Jim Johnson made a motion to adopt amendment. George Botta seconded the motion. Vote taken, motion passed.

E. Update on hiring Agriculturist II (Cooperative Weed Management Area/Weed Free Forage Coordinator) position for Weed Program. (INFORMATION)

Dawn advised the Board that this position was previously funded by the Forest Service. The Department has had the position for approximately three years. The people who have moved in to the position quickly move out of it because it is an annually funded position. Dawn advised that the Department did get funding for the position again this year. With the intent of hiring on that funding, Dawn said she interviewed. Dawn said if *Item G – Adoption of amendments to regulations that pertain to Chapter 586 of the NAC code (LCB File R087-05) to increase fees for registration of the pesticide and fertilizer products in Nevada* goes through today, this position will revert to a permanent position.

Pending the outcome of Item G today, Dawn said she would call and offer the position to Tina Kadrmaz who held the position previously.

F. Intent to draft policy regarding abatements and begin work on revision of State Weed Law. (INFORMATION)

Dawn advised the Board that the Department was given a \$100,000 appropriation this year by Legislature, compliments of Assemblyman Hettrick. She said the funding is dedicated to implementing weed abatements throughout the state in cooperation with the

involved counties. Dawn stated that this funding would allow the first weed abatements conducted in Nevada. Based on this situation, Dawn said they will need to put together policies and procedures for conducting abatements.

Dawn said the intent on this appropriation is to create a revolving fund. When the Department or a county does an abatement, a lien is placed on the property to recover the expenditure.

A. Request to adopt permanent amendments to NAC 587.220, fees for the analysis and testing of weeds. Workshop and hearings were held on Monday, September 26, 2005. Notices were sent to Alfalfa Seed Advisory Council, Onion & Garlic Advisory Board, Nevada Wildland Seed Association and Nevada Seed Growers in addition to required locations. (ACTION)

John O'Brien, Plant Industry Administrator, explained to the Board that this was a temporary regulation to increase fees and we are now asking the temporary regulation to become permanent. John said workshops and hearings were held and there were no major objections to the increase. We determined our new fees after comparing fees from a private lab, a state supported lab, and another state lab that was entirely funded by fees to arrive at an average.

Jim Johnson moved to adopt permanent amendments to NAC 587.220, fees for the analysis and testing of weeds. George Botta seconded the motion. Vote taken and the motion passed.

D. Request to adopt as permanent, temporary regulations pertaining to producer certificates. The revised regulation limits the Department's role to issuing producer certificates and regulating their use at the point of sale. (ACTION)

John O'Brien said this change is regarding our producer certification program. Revisions to NAC 587.300 to NAC 587.400 reflect the increasing role played by certified farmers' market associations in regulating their own markets. The revised regulation limits the Department's role to issuing producer certificates and regulating their use at the point of sale. An increase in the fee to obtain a producer certificate is also being proposed to recover the cost of inspecting new producers. There were no negative responses during workshop and hearings from industry.

During John's presentation, he pointed out changes in the language of the regulation that still need the approval of the Legislative Council Bureau.

Dan Hettrick made a motion to table this issue until the language is finalized. Harvey Barnes seconded the motion.

Vice Chairman, Deloyd Satterthwaite, called for discussion.

George Botta opened the discussion by asking John O'Brien if he needed this regulation passed by next summer and John indicated yes that he did. George commented that each time we have to go to LCB for a review process, it costs the Department money. This change in language should have been done one time. Don Henderson explained that once the Board approves the regulation, the Department submits the regulation to LCB and they codify it and put into the records. Don said it was his understanding that the Division was following correct procedure and as long as there is not change of intent, there should be no problem with codification of this regulation.

Harvey Barnes said he would like to withdraw his second to the motion to table this issue until the language is finalized.

Dan Hettrick said he would withdraw his motion and move to adopt NAC 576.300 with the proposed changes in language as presented to the Board. George Botta seconded the motion. Vote was taken and the motion passed.

G. Adoption of amendments to regulations that pertain to Chapter 586 of the Nevada Administrative Code (LCB File R087-05) to increase fees for registration of pesticide and fertilizer products in Nevada. (ACTION)

John O'Brien advised the Board that this is a proposed increase in pesticide and fertilizer fees. The Department is proposing to increase the pesticide fee from \$60.00 to \$100.00 and the fertilizer fee from \$40.00 to \$60.00. Last session, legislature added noxious weed control as a function for which pesticide registration fees can be used. Therefore, \$10.00 of the \$40.00 increase will go to noxious weed related items and primarily that would be to hire a weed analyst. We've had three employees in that position and could not keep them because it was grant funded position.

John O'Brien said another \$10.00 would be used to fund a chemist who is presently funded under an EPA grant and fund that position from pesticide registration fees as he works in the pesticide lab testing pesticides. This would boost our EPA grant in terms of funding. Other monies would help offset some of our fees and other costs associated with our pesticide program. Five dollars would be applied to the EPA regulatory program. Fifteen dollars would be put toward a reserve that would be set aside for purchase of replacement analytical laboratory equipment.

George Botta made a motion to adopt NAC 586.011 as written. Dan Hettrick seconded the motion. Vote taken, motion passed.

I. Las Vegas Office Report

John O'Brien commented this is the Las Vegas report submitted by Tom Smigel. John told the Board that Tom recently had surgery and is not certain when he will return to office.

J. EPA 3rd Quarter Report

John O'Brien commented that Chuck does an excellent report on the EPA program. The most significant item is the adoption of the fee increase because it ties into the EPA program. It was agreed by the Board that a presentation by Chuck Moses on the EPA program would be scheduled at the next Board meeting.

K. Update and possible request to go to workshop and hearing to adopt planting and harvest season regulations. (ACTION)

John O'Brien said the 1995 National Highway System Act, which regulates commercial motor carriers, exempts drivers carrying agricultural commodities and farm supplies from certain maximum driving time and on-duty times during the planting and harvest season as determined by the state and within a 100 mile radius from the source to distribution point.

John told the Board because the Department of Public Safety (DPS) regulates commercial carriers, the Department requested that DPS put this in their regulations. DPS refused and we then approached LCB and they advised us this should be DPS's responsibility as they enforce the National Highway System Act. John said he and Don Henderson met with the Director of DPS and Keith Munro, Deputy Chief of Staff and General Counsel to the Governor. The DPS said they will not put into their regulations and will not enforce a policy from Agriculture. Keith Munro suggested that Agriculture put into our own regulations and offered to approach LCB. Keith requested that John supply him with the language that would be suited to the regulation (a copy of the letter that was written to Keith Munro and dated September 20, 2005 with the proposed language was given to Board members as a handout). John reported it is unclear at this time where the language will go and in what chapter.

John is requesting the Board to adopt the language, as set out in the letter to Keith Munro, as part of the Department's regulations. We are asking permission to go to workshop and hearing to adopt planting and harvest season regulations.

Jim Johnson made a motion to go to workshop and hearing. George Botta seconded the motion. Vote taken, motion carried.

H. Entomology Report (INFORMATION)

Jeff Knight distributed handouts to Board members which included information regarding Mormon Cricket and Grasshopper Summaries for 2005; imported fire ants; pest alert for Cactus Moth.

Jeff said the Department finished the Mormon Cricket program about the first of September. The Department treated approximately 490,000 acres with Dimilin; almost

double the area from last year. The first time in Nevada, the Department did aerial baiting in the Diamond Valley area. Jeff said he received several comments from growers in that area that they felt it was very successful. It is more expensive than using Dimilin, but can be done later in the year to allow cricket suppression in high value areas.

Jeff noted that Forest Service land was baited this year in the Austin and Mountain City area. Jeff said the Department is going to get involved with the Forest Service and bring them on board for a full-fledged program this year. Lander County and the Battle Mountain area were the hot spots as far as crickets this year.

Jeff noted that the Department ended with 61,000 lbs. of bait. Reimbursement on the grasshopper program continues at a 66% rate and cricket treatment reimbursement rate at 100%. The Department has reimbursed approximately \$88,000.00 so far this year. Jeff said he plans to put in stronger requirements for reimbursement. It will designate specifically for crickets or grasshoppers and there will be pre-inspections that will clearly define the problem.

The Imported Fire Ant funding was reduced \$40,000.00 by USDA Plant and Pest Quarantine (PPQ). The UNLV campus was negative in both surveys this year after three years of treatment. We will continue to survey there; twice a year for the next year.

The Department did a biological release this year in the Pioche area for the control of Dalmation toadflax. The Department also received a grant to extend the saltcedar biological control program of \$115,000 over 4 years. We are now the supply state for the saltcedar leaf beetle. We've had at least two collections that have been done in Nevada where the beetles have been taken out and given to other states for release.

8. DIVISION OF ANIMAL INDUSTRY

Deloyd Satterthwaite thanked Dr. Anette Rink for the tour of Animal Industry's lab the preceding day.

Dr. Rink told the Board that Dr. Thain was in Chicago and unable to be at the meeting. He is attending a meeting of the National Assembly of State Animal Health Officials.

A. Animal disease update:

1. Bovine tuberculosis

Dr. Rink proceeded with an update on bovine tuberculosis. Minnesota recently announced two more herds have been identified which brings the total to four. The source of the infections is unknown. Minnesota will lose its TB-free status.

2. West Nile Virus

Dr. Rink said statewide, the lab tested a lot more samples this year than last year. We are finding a smaller percentage of mosquito pools infected and also birds which indicates

that this is our third year and we are already on a downward trend. It looks like last year could have been our peak year. We did not reach the numbers we anticipated after a year of increased precipitation.

3. BSE Canadian import rule and National BSE surveillance

Dr. Rink stated the program still continues mainly because of international pressure. The 450,000 samples that were supposed to be tested have been exceeded. So far, there has been only one American born cow that tested positive. The cow was born before the ruminant feed ban became effective. Nevada has decided not to participate in the R-Calf appeal. We would like to see the US import markets abroad opened up again. The infectious risk to the public is extremely small.

4. Johnes

Dr. Rink reported that Dr. Forbes has engaged several dairies to participate in Johnes surveillance. We have done both serology and fecal examinations in several dairies.

5. Trichomonosis

By the end of this year we will have regulations in place. Neighboring states are now pushing towards trichomonosis eradication. We are still seeing low numbers, however, in certain areas we have problems with trichomonosis. Ranchers that are very diligent about testing their bulls every year and then graze them on public lands and then have repeated problems are unhappy. We need a more concerted effort with industry support to address this problem.

6. Scrapie

Dr. Rink said the new scrapie regulations that are in place right now has mostly affected the 4-H participants. Nevada now requires every animal that goes to the county or state fair be registered with the Scrapie Program and have a scrapie identification. Also, every animal that gets sold from a premise in Nevada needs to be registered and have a scrapie identification.

B. Nevada Premise Registration for Animal ID.

The Nevada Premise Registration is underway. We have over 300 premises registered to date. Holly Pecetti is the animal ID coordinator.

9. PUBLIC COMMENTS

None

10. TRAVEL CLAIMS AND SALARY

Everyone has signed the travel sheet that was passed around. Travel claims will be complete and sent to each Board member.

11. DATE OF NEXT MEETING

The next Board meeting will be December 6 and 7, 2005 in Las Vegas.

12. ADJOURNMENT

Meeting adjourned at 3:00 pm.

These proceedings were recorded. Anyone wishing to listen to them in their entirety should contact the Department of Agriculture, 350 Capitol Hill Avenue, Reno, NV.

Don Henderson, Director