

Name of Organization: Nevada Board of Agriculture  
Date and Time of Meeting : September 21 & September 22, 2010  
Place of Meeting: Nevada Department of Agriculture  
405 S. 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: (775) 353-3601

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Minutes

September 21, 2010

**A. Pledge of Allegiance**

**B. Introduction of Board members and guests**

Present Board Members:

Paul Anderson  
Dean Baker  
Grady Jones  
Ramona Morrison  
Paul Noe  
Alan Perazzo  
Jim Snyder  
Boyd Spratling  
Dave Stix, Jr.

Board Members Absent:

Martin Plaskett

Staff Members Present:

Tony Lesperance, Director  
Sandie Foley  
Katie Armstrong, DAG  
Holly Pecetti  
Anette Rink  
Scott Marsh  
Dave Walsh  
Phil LaRussa  
Mark Jensen  
Keith Forbes  
Blaine Northrop  
Ron Cerri  
Joann Mothershead

Guests:

Meghan Brown, NCA  
Mike Stremmer, Pershing Co. RAC  
Jeanne Higgins, USDA Forest Service  
Jack Armstrong, Retired NDOA  
Marty Owens, USDA-NASS  
Kelvin Hickenbottom, Water Resources  
Sam Monteleone, Water Resources  
Gerald Lent, Wildlife Commission  
Nancy Lesperance  
Doug Busselman, Nevada Farm Bureau  
Terri Frolli, USFS  
Scott Ledham

Jeanne Higgins introduced Terri Frolli and as a new member of their team with Forest Service. Jeanne said Terri is called our Capitol City Coordinator. She will be located in Carson City and her primary function is to serve as the liaison between state agencies, state legislature, county and Forest Service.

## **2. Board Business**

### **A. Approval of minutes from the June 15, 2010 and June 16, 2010 Board meeting.**

**Paul Anderson made a motion to approve the minutes. Ramona Morrison seconded the motion. Motion passed. Boyd Spratling abstained.**

### **B. NRS Status of Water for Beneficial Use.**

Mike Stremmer: I represent Pershing County, the Natural Resource Advisory Committee. I am the Chairman of that Board and a rancher in Pershing County and also with allotments in Lander and Churchill County.

A couple of years ago, I was in the Division of Water Resources office and talking to employees there. They explained to me that they were giving water rights to BLM in herd management areas for wildlife. In fact, one of them was my neighbor Mick Casey, just south of us in Churchill County in the Carson District.

I thought about it and said that isn't right. I went back to the District Office and asked if they had been filing them and they said, yes, water resources is issuing them to us in these herd management areas. We write in horses and its fine, there is no problem. I said they are not wildlife.

I went back to the Division of Water Resources and talked to some of the employees there. Anyways, we've never had any harsh words, in fact I invited Kelvin and Sam here because I think it is something we can work out and I want this issue resolved. The reason for that is the water rights are held as a private property interest in the State of Nevada and the Federal government leaves the water rights to the state to police. So state law is king, and State Engineer Jason King is the king on water rights. So that is how a rancher like me can point to BLM's Policy Management Act, Title Seven and say those now existing rights that are mentioned there are water rights. And when the BLM or I guess the Forest Service could be doing it too, when they are applying for those water rights for horses, in my mind, they are breaking state law.

So look through the outline that I put together, but I identified some of the problems that I have:

1. BLM is applying for water rights in herd management areas under the beneficial use of wildlife for free roaming wild horses and burros. There is no

declared beneficial use for free roaming wild horses and burros. The BLM has initially made them a special status species. They are either domestic livestock or are they wildlife. In fact, if you look at the CFR's (listed on page 1 and page 2), CFR 4100.0-5 says livestock or kind of livestock means species of domestic livestock- cattle, sheep, horses, burros, and goats (wild and free roaming horses and burros are not domestic).

Range improvement which under that same CFR, these are definitions. Range Improvement means restore, protect, and improve the conditions of the rangeland ecosystem to benefit livestock, wild horses, burros, and fish and wildlife. They have identified wild horses and burros different than livestock. They have identified them different than wildlife. They are neither livestock nor wildlife.

The Brand Department issues brand certificates on these horses when they do a gather. That's kind of like saying a caterpillar becomes a butterfly or a piece of timber becomes a piece of lumber. As that horse gets gathered off the range, it is not longer free roaming. And so it starts to change the definition of the horse. They become from a free roaming special status species to now they are subject to a whole bunch of other laws. They can be euthanized. A lot of different things can happen to those horses. They can be adopted out. And then they are subject to Brand law. And that is in CFR 4750.2-2; "the authorized officer shall make arrangements on behalf of an adopter for State inspection of brands, where applicable, of each animal to be transported across the State where the adoption center is located".

So what I saying, in essence, is that they are not wildlife for sure. NDOW does not claim any jurisdiction over them. I was told by the Wildlife Society in Washington, DC that absolutely, they are not wildlife. I talked to the Chairman of the Board of Wildlife; absolutely, they are not wildlife. So, my main thing is that they are not wildlife.

When they goes to Snow's feedlot in Fallon or Palomino Valley, what's the beneficial use of the water at those feedlots? It's not wildlife. I'll guarantee you Snow's feedlot is not wildlife; it will be livestock because they turn into livestock once they became captured. So that it is my argument.

2. Division of Water Resources is issuing permits for the wild horses to BLM. Division of Water Resources is not issuing permits for livestock underground if BLM protests the application. In the back of the stapled package distributed to the Board, there are two applications; (1) from Mike and Barbara Stremmer and (2) Jim Estil. Jim Estil is my neighbor; we're both in Pershing County. I take issue as Chairman of the Board, that the Division of Water Resources is doing the heavy lifting for the Federal government. The paycheck comes from the state and I want to see state law enforced. If you look at the NRS 533.495, there is a list of the reasons that the BLM should protest. One of those is if you don't have

a valid permit to graze there, then they can protest it. Now, in both Jim's and my case, we have valid grazing permits. But, what their issue is, they want us to sign a cooperative agreement saying that we will water wild horses.

How in the world can they make us break state law? There is no beneficial use. Not to mention, if you look at look CFR 4710.5 Closure to Livestock Grazing, "if necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, or to protect wild horses and burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock whether it be sheep or cattle. So by me signing this cooperative agreement, I would be in essence throwing away my water rights. The only right that I can stand on in everybody's mind is water rights. But what the state is telling me, Division of Water Resources, is that I need to sign all these cooperative agreements and throw my water rights away. I believe it is extortion by the BLM to get water rights because they do not have a valid beneficial use of the water. And that why I'd like to see the AG's office step up and do something about that because it is a protected private property right. I've included an Executive Order 12630 from President Ronald Regan. If they want to shut down my allotment because there are too many horses and they want to kick my cows off, then that is a taking and that whole Executive Order describes even a partial taking. So I think the water law is made to protect private property. The Constitution is also to protect private property. The state is to enforce those laws. I swore an oath being the Chairman and everybody on the committee swore that we are going to protect the Constitution of the United States. Part of the Constitution is life, liberty and property.

3. BLM is requiring the ranchers to sign a co-operative range improvement contract which forces the rancher to provide water for wildlife and free roaming wild horses and burros. For me to pump underground water and provide it for wildlife, I would have to get another beneficial use. I would have to get a separate certificate. They are trying to force us to do things they have no right to force us to do.

4. Horses take precedent over livestock grazing. This is why the water law is so important and must be enforced. If you sign a grazing permit, you are under contract to follow it. I think we need to use those CFR's to our advantage as well as the state water law to our advantage especially.

I have addressed some solutions:

1. State Engineer should refuse to issue the application to BLM based on the fact that under 43 CFR 4100.0-5, the definition of livestock and range improvement. The Department of Agriculture should seek the Attorney General to enforce the Nevada water law. I can tell you that the Winnemucca District is wanting to meet with me and get the solicitor to meet with me. I am not an

attorney. I would like to see the AG's office meet with a solicitor on these issues and I would like to be privy to that meeting. Our DA of Pershing County would also like to be there and our sheriff. That would be one of the solutions to get this straightened out. Right now they are holding us hostage. The Forest Service is holding water right users on the Forest Service side hostage and the BLM is starting to do that same approach. I'd like to nip it in the bud. I would like the state office, the Division of Water Resource to help us out.

2. Issue a letter a letter to the State Engineer Jason King that Free Roaming Wild Horses and Burros are not livestock and are not wildlife by BLM's own CFR4100.0-5. They become livestock after they are captured. Also, coordinate with NDOW on this issue. (Mike directed the Board's attention to the 3<sup>rd</sup> page of his handout and entitled "Solution #2". Mike said that is his rough version of his thoughts, but I will read it into the record):

Write a letter to Division of Water Resources explaining that the Free Roaming Wild Horses and Burros are a special status species that comes under the jurisdiction of the Department of Agriculture by Nevada brand law only after captured and reinforced by 43 CFR 4750.2-2. When the wild horse is captured and under the control of the BLM, it falls into the domestic livestock category. It then is under the jurisdiction of Nevada brand law. The holding facilities for the horses which are using water for them is declared livestock beneficial use, not wildlife. When the wild horse is captured, it has lost some of that "special" status. It is no longer "free roaming". When the adoption occurs, the title to the animal transfers to the person from the U. S. government. A Nevada state brand inspection is necessary to transport the animal and change title to the adopter in part. The wild horse has then lost most, but not all of its "special" status. When the horse is in its HMA, it is neither wildlife nor livestock by both the BLM's definitions of wildlife or domestic livestock. See 43 CFR 4100.0-5.

3. Vested water rights are being impaired. And I think that's where NRS 533.495 says if you are running enough cattle to use the range around that water, then you've got the range. Nobody else can have a livestock water right for that. And that's why the BLM is using wildlife instead of a livestock water right. So they have kind of painted themselves into a corner there.

4. The Division of Water Resources should grant underground water rights to the valid permit holder according to NRS 533.504. BLM does not have standing to protest according to state law or the CFR's 4120.3-9 and CFR 2400.0-2. In CFR 2400.0-2, nothing in these regulations is meant to affect applicable state laws governing the appropriation and use of water, regulation of hunting and fishing, or exercise of any police power. The Division of Water Resource polices the waters of Nevada. There is no federal law that supercedes Nevada's water law. That is key to remember. They have left that to the state. U. S. vs. New Mexico is a case where they proved that the federal government did not uphold the law

there when they withheld the public lands. So we can stand on that and we need to.

5. The BLM Cooperative Range Improvement Agreement is extortion. The BLM is forcing the ranchers into breaking state law. The Department of Agriculture and the Attorney General should step in on the ranchers' behalf. That's where the people that are elected to these offices need to stand up for the citizens. This is an election year. The water rights are a key issue. If you can pass this information along, that it is an issue, because the horse advocates want the cows off. It goes against the Department of Agriculture's Water Policy and it goes against property rights which I think everybody has sworn to uphold the Constitution and I've already gone over that.

6. The Department of Agriculture should make comments (and this is a different issue) on behalf of the Bell's for East Rye Patch allotment. Also, include comments on the issues of water rights and property rights in HMAs for the Resource Management Plan for Winnemucca District by October 25, 2010. Please include the economic impact by Tony Lesperance and Presidential Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property rights as well as the water policy by the Department of Agriculture. What's happening right now just to touch on Number 6, the Winnemucca BLM District Office is going through a new Resource Management Plan. They've got some pretty wild concepts. Basically, they are going to shut down certain allotments and the water rights, they don't want to worry about those. They don't think they are important. There are some people that are in Humboldt River ranch community that do not want to fence their private land, so the BLM is caving to those people. Anyway, it's a state law issue which our DA is getting involved in that.

Ramona Morrison: If a letter from the Department of Agriculture also would be beneficial in this instance to the State Engineer regarding where they get their authority to issue these water rights? I am troubled with it. I am presently going through files in our case, in detail, and have just gone through all the water adjudication records for the southern Monitor Valley Water Adjudication and I have a file box this big of federal reserve water rights where they filed on every bit of our water. In every instance, those water rights were denied because they couldn't prove title. I am looking at this, this is just a regurgitation of what they tried to do 20 years ago in our situation.

It might be worth a letter from the Department of Agriculture to ask where he is getting his authority to issue these water rights.

I think it is imperative that the Department of Agriculture as well as the AG's office, well we are required by state law to protect the issue, but the individual permittee is at a significant disadvantage to fight these issues because they're threatened with a cut in their permit or some other sort of management option that makes it impossible unless they have a great deal of fortitude to fight it. I think it is important to the state that in any

of these issues to kind of protect these individual guys that has a gun to his head from the federal agencies.

Director Lesperance: This Board did pass a water statement some time ago which is attached to Mike's presentation and there are about five points that this Board totally supported at that point in time. I think this Board based upon the Water Statement would support everything that Mr. Stremmer has brought forward today. I can't see any conflict in way shape or form.

Director Lesperance: As far as the BLM holding permittees hostage to water wild horses, this is absolutely nothing. This has been going on for a long time. We have discussed this numerous times that people have to stand up to BLM and tell them to go fly a kite and that they are not going to water their horses. And BLM has backed off every time, because they do not have a legal authority to make you water their horses. I'll give you a good example; Simplot is an organization that abides by the laws of the United States and the laws of Idaho and the laws of Nevada. In northeastern Nevada, in Pilot Valley, Simplot controls that allotment and they control 100% of the water. They voluntarily watered horses in the past in Pilot Valley during the winter period. They made the decision that because BLM was making demands on them, they made a decision two years ago that they would not water those horses. BLM tried to call their bluff. About fifty horses died of thirst. It's probably the ugliest way a horse can die. This year as you are well aware, to avoid that issue, the BLM gathered the estray horses in Pilot Valley at their expense. We shipped them to Fallon and they were recently sold as estray horses. I don't believe the problem with Simplot having to water horses will ever occur again because they simply said we are not going to do it. The results are that those horses get moved, one way or the other.

The thing that is actually critical is that the owners of water rights and everybody that has ranches in one form or another has water rights under their ownership and they must realize the power of state law over the Federal government. It is property by issue and anytime you succumb to the wishes of the Federal government, you sold part of your property rights. It's critical that individuals and organizations such as the Department of Agriculture stand up to what's in front of them and that's exactly why this Board passed this Water Policy Statement two years ago. And you all need to be aware of it and read it, some of you weren't here when it was passed, but this is the position of the Board of Agriculture and the Department of Agriculture. And, yes, I think we should write a letter to anybody and everybody and it should be a strongly worded letter and should very clearly identify the fact of what the situation is with water. We have every time we turn around, we have people infringing on the water rights of the state of Nevada. It's owned by the state and they are there for the use of the state, whether you're a rancher or whatever. It's mind boggling to me the situations that can come out of this. So, I think this Board has got to step up to this particular issue, because it is a constant erosion if we don't.

Dave Stix, Jr.: I wanted to point out of few things. There were a couple parts of the report that make me want to be very cautious before we move forward. In one part of

the report at the beginning, Mike, you are kind of taking the interpretation of domestic livestock and putting your own twist on it. I want to be very careful with....that's just an example...before we move forward, that this isn't an issue where there is an interpretation being made that we don't have the authority to interpret. But, one of the things, I have a concern with is, has a wrong taken place here? Has something taken place that is wrong in this situation? For instance, in the cooperative agreement, I found that Sections 12 & 13, that pertain to water and in both of those situations it states that yes, the United States in their cooperative agreement would like to have the water only if its applicable under state law.

And from what I understand, with our own experience with permits, that in this case it's not applicable because the state has control over the water. So, I am trying to figure out in my mind before we move forward, what wrong is being done because we have the same cooperative agreement in our permit which is north of Reno and before we move forward, what exactly wrong has been committed towards the industry?

Mike Stremmer: First of all it identified myself as Mike Stremmer and I did not write Black's Law Dictionary. I included it though as part of the evidence of defining domestic animals. And if you see where I underlined part two of that, and I copied this right out of Black's Law and just put it on the copy machine. Any animal that is statutorily so designated is a domestic animal. The state of Nevada has statutorily so designated them through [NRS] 569.008; the definition of livestock, under there I think its feral livestock which does not include wild or free roaming horses which are under the jurisdiction of the BLM. So, I didn't break the state law and I didn't break Black's Law Dictionary for the record.

Then on the cooperative agreement, you are agreeing to all of these things. There are 14 things there to agree on and I did not include number 14 because it says, "it is further agreed" and there is a big blank piece of paper. And that is where they can write down like you're going to this or going to do that. I said, "well, I'd like to say that I'm not going to agree to number 13. "Oh no, that's for us to write stuff, not you". So, you're agreeing to all these things. You're agreeing to number 12 and you're agreeing to number 13. What they are saying is that they don't need a water right for wild horses and burros. But, you've got to give them water. They do when they are at Snow's feedlot in Fallon. They do when they are in Palomino Valley, but they don't when they are on your ranch. Now, if you've got a reaper and maybe you don't have a horse management area on it, let's just say that someone does turn a bunch of these feral horses loose or they increase the herd management areas and you've signed this, then you are obligated to give them water by this contract. This is a contract. I also put in the 43 CFR 4120.3-5; the terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee. So if you sell your allotment, you've sold away part of your water right based on agreeing to that. Does that answer your question?

The wrong that has been done to the industry is to take a look at is, if there is no water right for the wild horses, why do we have to water them? If you look to Ormat which is

deals in geo-thermal, if they are just pulling out of my spring without temporary transfer of use which we have on here, the State Engineer would come down on them. But, if they have 5,000 head of horses on our allotment, it is not an issue. That's where the damage occurs to the industry, because once we get up to 300 head of horses and 300 head of cows on these three allotments, once we get up to 600 head of horses, we don't have 300 head of cows. I've included that CFR Closure to livestock grazing as well: 43 CFR 4710.5. So the CFR's are banking on you giving them the water and then they can close you down if it becomes an issue.

Dave Stix, Jr.: So, what you're saying Mike, is under the cooperative agreement that will force the BLM to turn over your water right?

Mike Stremmler: Right, exactly.

Dave Stix, Jr.: But that is not consistent with Nevada water law.

Mike Stremmler: I agree. And that's why I invited them. That's why I brought this up, because they are giving water rights to horses in HMA's, horse management areas, for horses under wildlife. Now, I know that this gentleman over here doesn't think of them as wildlife. And I talk to Scott Rein who is the commissioner and I know Ron Cerri talked to Ken Mayer and he was pretty upset about it too because they are not wildlife. But if they get a water right and they use up all your country, what's the best beneficial use of the water? It's where that cow can use that grass. It takes two things to make red meat; water and grass.

And so that is where the damage is appearing. When the Division of Water Resources starts giving, Mick Casey is my neighbor to the south, and they have filed on one of his springs and it is a HMA. So, I know for a fact that they've got a permit, they have not gone to certificate. They are permits, they have not gone to certificate. It puts a burden on the rancher. Most of the water rights in Nevada and most of the surface water rights are going to be a vested water right. And that's where the rancher can claim to because most of Nevada was ranch by 1905. We can prove a vested right. Eighty percent of the ranchers have not filed those vested rights. They still sit out there as a vested right, but until you assert the claim, the Division of Water Resources is not apt to acknowledge them. So, all this fits into the survival of agriculture in Nevada.

Dave Stix, Jr.: I'm not disagreeing with you there, but you started to ask a question earlier which I need to know; have permits been issued in the manner you've talked about? Has there been hearings where a case has gone before the hearing officer and these issues brought up, protests, all of that stuff? Or are we just assuming this is where it's going?

Mike Stremmler: There have been permits issued for a fact to the BLM in horse management areas. To my knowledge they have not been protested because what they'll do is find a spring like in Mick's country and Mick's had that ranch for maybe 15 years or something. There is a spring out there on that alkali flat in Dixie Valley and

they filed on it, because there were no other filings on it. Not on the vested water rights there, but it puts a cloud on that vested water right until it goes to adjudication. Adjudications can take 20 years to get done. By then he could be out of business because they quit gathering the horses. That's where I see the..... it's a black and white issue for me. It maybe gray for some people, but I look down the road and one of the biggest threats to my survival as a business. And in my situation, I would say and in Mick's situation, it's going to be the mustangs, because the advocacy groups and I think Boyd would agree, he was on the Wild Horse and Burro Committee, that's the biggest advocacy group in the world.

And then our Resource Management Plan for the Winnemucca District, they do have these issues in there. It's up for comment right now until the 25<sup>th</sup> of October, but it is one of their alternatives to make the rancher pump the water, just like Boyd was talking about, year round. So, like in our winter country, we would have to, we have pristine winter country actually and we would have to pump water there for the horses so they could be there 7 months before the cows get there. So, that's the real threat.

Dave Stix, Jr.: I have one more question for Mr. Stremler. Are there actual cases where the BLM is making ranchers, when they are off the permit after November, are there cases where the BLM is actually making the rancher pump the water for the horses?

Mike Stremler: In my case, speaking for myself personally, Nadine Thain who is now retired from the Winnemucca Bureau of BLM told me I had to. If you don't, there will be repercussions. And then she used one of these cooperative agreements against.....so that's when I started digging in to it.

Dave Stix, Jr.: So you got a personal case there?

Mike Stremler: I got a personal case. Jarad Sorenson up in Elko County, I went to a Bud Williams handling deal with him and the first time I ever met him, and he's talking about his allotment. He's got horses and he had private land and the BLM told him he could not fence his private land, because those horses have got to have water. And he said well, I met with the State Director and they said sue us because this is our stance. So there is a real threat out there to the rancher. Most people are scared of the federal government.

Ramona Morrison: I think the real answer Dave to your question is this: If we, the state, don't step in where it is clear black letter law and protect the water rights of the ranchers and protect the industry against our own oath of office, and we allow these guys to extort signatures out of people by signing cooperative agreements, the first time there is a dispute over that cooperative agreement down the road, drag that person into Federal District Court or where ever else they go, but it won't be state court and then they too are subject to administrative process, and the litigation that goes with it. And I think that at the end of the day, we have an obligation to try to protect our industry from unnecessary litigation which is sheer hell. I think this is black letter Nevada law.

Nevada law is the controlling issue here with regard to water as you are well aware because you sit on the water district, the Truckee River Water District. And so I think we have a significant obligation to protect the industry of Nevada from unnecessary litigation at the very least by nipping this thing in the bud on the front end.

Dave Stix, Jr: Well, Ramona, I appreciate your bringing that up and I want you to know from personal experience that decisions were made years ago that Truckee-Carson Irrigation District made that same position and today it's breaking us. They made the decision a long time ago even after U. S. vs. Nevada came out to protect water rights that didn't even belong to TCID. They belonged to the individual water right owner and today we are paying for it with still no end in sight. So, my concern is before we move down this road, are we intervening in something that is truly an industry wide issue? Okay. Because, I have to be honest with you, we're not dealing at all with three different permits in this state, this kind of pressure at all and are we being an advocate for a few individuals or are we truly being an advocate for the entire industry? Because this is a personal right issue and there is a process in all of this, and that is where I am trying to lead, there is a process in when you are wronged, you have a way to litigate it. Is that what we're going to do? We're going to help litigate a handful of people's issues with the BLM in this road we going down. I just want to be very clear on the direction that we go.

Ramona Morrison: I appreciate that. I think that is a valid question. My point is this: I agree that any rancher that is sitting on their rights is delusional frankly. That they are making a huge mistake and unfortunately. They have not filed on those waters, they have made not preventative steps on the front end. And I fully recognize that. By the same token, we of the state have the obligation to defend our water law. And, that's what's at issue here. And this has been a clear encroachment on Nevada water law. And unfortunately, it appears that the State Engineer's office is up to their eyeballs in it in terms of issuing permits. They did the same thing to us, they issued permits one right after the other. With regards to some of the questions about pumping water in some of these other cases, that were handled by the Fillini Case and the Fillini Case went clear up to the Ninth Circuit. That is often what happens, we get litigation, people prevail in litigation and quite often the federal agency ignores the precedent. And that is a real problem. So I think we have an obligation, our oath of office, our water policy, I think it kind of enforces itself. I'm not even sure it needs to be a Board decision, frankly.

Kelvin Hickenbottom: I am the Deputy State Engineer with the Division of Water Resources in Carson City.

I'm not sure really where to start because there are lot of issue here. I guess the first one that comes to my mind was when Mike said that we won't issue a permit because there is an agreement that has not been signed. If there is an agreement between the parties, that does not weigh on us to not grant a permit. It has nothing to do with us. If there is water at the source and it is available, it's between them to work out their issues whether or not it's between the BLM or anybody else, a private party. Truly, this is the

first time I've ever heard that we've actually told somebody that we weren't going to issue it because they didn't have an agreement with BLM.

Chairman Perazzo: You are allowing people to not sign those and you still issue a permit? That is what you're saying?

Kelvin Hickenbottom: Yeah, I mean that's the way I've been brought up through the system is that, you know, the agreement isn't binding on us unless it's an agreement with the Division of Water Resources and somebody else. If it's between two parties, it's not binding on the Division of Water Resources whether we issue the permit or not issue the permit. We issue the permit if it's in the public interest, if there is water at the source, if it's not going impact domestic wells. I mean that's generally the way we operate, because whether you think so or not, we do go by our statutes. We do recognize water rights, we do protect people's interests. Again, I bring up the point if people aren't filing their claims of vested rights on the springs, we have nothing to protect, because we don't know that it's out there. So, I mean I would encourage you, if you are going to do anything, have the individuals file on their claims; if it's pre-1905 for surface water, or pre-1939 for all ground waters. They really need to file those claims. Otherwise, we can't protect it. We don't know what to protect, if it isn't on file.

We'll investigate. If you have a complaint that somebody's running cattle on your property and they don't have a right to do it, then you should complain to us and we'll come out and investigate. And it would be the same way with the law of horses. I guess that's the biggest issue. I'm not sure when the Division of Water Resources determined when wild horses fell under wildlife. I think it fell under wildlife probably because we didn't have a classification for it. So it became a catch-all for watering wild horses as well as wildlife.

I was looking through the permits that we had issued for underground waters that included wildlife and wild horses. And the first one I came up with was in about 2003 and I think it included wildlife and wild horses and then it just got issued under wildlife because I was basically the State Engineer at the time. You know... he didn't quantify what water was being used, be it wild horses, or wildlife, or stock. So that was his mechanism to at least quantify what waters were out there being used. So, you know, I can't defend him. I can only tell you that's what I believe happened and that's why I believe that the wild horses were included in the wildlife. And if somebody knows different, you know, I'm willing to listen.

Ramona Morrison: On those, when you did need research on those, were there any protests on those water filings?

Kelvin Higgenbottom: No, I didn't look to see if there were protests.

Ramona Morrison: I would bet money there probably was.

Mike Stremmler: On the underground deal where we have to sign those agreements, I was told that by Sam Monteleone. This one protest was February 11<sup>th</sup> of Jim Estil's and for the record, is that protest going to be slapped down because there is water at the source with the well there? February 11, 2010 when will you act on that? And that was a specific question from him [Jim Estil] for you guys.

Kelvin Hickenbottom: When I last talked to you last Friday or Thursday, I did ask Sam about those applications. He said they were protested and I told Sam the same thing, I don't believe we should stop the application process because there isn't an agreement between two parties that we have nothing to do with that ...is you know....and we're in the middle of it. And that's my understanding and I, like I said, today is really the first time, because I didn't ask Sam that question....you know...or if I did, maybe I didn't state it in the same way. And I'm not the State Engineer so you know, Jason is the State Engineer and he makes the final decision. If he wants the agreement in place, that's something new to me. I don't know because I didn't discuss this him either, because again.....

Boyd Spratling: This may be a really elementary question, but I feel I need to ask this, a quick yes or no answer. Do we actually have to provide water adjudication for wildlife. Isn't it true that in Nevada state law, we cannot exclude wildlife in any development. If we had existing or vested stock water rights, we can't split anyway. So, is it necessary to provide special permits or water rights for wildlife?

Sam Monteleone: That's a spring right. For a spring right, that's true. Your statement is true for surface water, it doesn't apply to underground water. I also want to backtrack a little bit on what Mike said. I did and I may have said that. It makes it easier for us to write the permit if the cooperative agreement is signed. But, we can issue the permit, but our permit doesn't give you the right to go and divert the water. You have to satisfy all state, local and federal laws. So, to actually use the water, you do have to have permission of the BLM. So get it before or get it after.

Mike Stremmler: I respectfully disagree.

Ramona Morrison: Perhaps, we can put it on the agenda for an action item next meeting.

Dave Stix, Jr.: There are two things I want to point out that is important when we do come back and talk about that will truly help the industry.

- Our agency needs to ask the State Water Engineer do we need to go ahead and adjust or talk about the classification of the horse. That seems to me to be one of the key issues. Identify what really is a wild horse.
- Let's do some education to the people out there and make sure that they get their water rights up to date and apply for them and give them all the

information they need, here's where you can go, here's a list of water attorneys, here someone who will do it pro bono.

### **3. Director's Report**

#### **Fiscal:**

Director Lesperance: State Budget Director established a cap for each Department's state allocation for general funds this year at 90% of what it was the last year. In the case of Agriculture, our cap per year for the next two years will be \$1.9 million. For comparison, in 2008-09 fiscal year, we received \$3.5 million of general funds. Our general fund allocation will be 54% of what it was 2 years ago. The difficulty that it places us in is that most of the general fund allocation goes for salaries, primarily in the area of Animal and Plant industries, PARC and Administration.

So, when you use your funding for salaries, I'm not quite sure how this is going to work out. It presents some difficult situations. We worked pretty hard I think and fairly successful with the various divisions, especially fiscal, on how to come to grips with this problem. In the case of Plant Industry, we've been able to transfer several positions from general funds to fee funds and this has taken Plant Industry out of the danger zone of losing people. I think that they are pretty well protected.

For both Animal Industry and PARC, there is less flexibility with this, especially for PARC. We have tentatively recommended there that one retiring position will not be filled, and we will have to lay one person off. This reduces PARC down to 6 general funded positions. A few years ago, they had 12.

The situation with Animal Industry is also in similar difficulty, because their cooperative agreements with USDA continue to decline. And we are probably going to run into some difficult situations there depending how the final budget comes out.

One thing that the Board needs to remember, at this point in time, we have just simply submitted the Governor's recommendations. This budget is referred to as the GovRec Budget, which means this is the Governor's recommended budget that goes to the Legislature. I'm sure you're familiar with the process. They go through a lot of testimony and make their decisions. I don't think anyone is in a position to predict what the Legislature will do. You all the read the same newspapers that I read and they indicate the overdraft is upwards of \$3.0 billion. You have also read that more than half of that is based upon anticipation of new budgets being submitted. So, if you go back to the present budget that we have in place, we are only on half billion dollars overdrawn. This is something that I think we can actually live with and with the changes we are making across the board. I think there is a way through this. The problem is the Governor is making a 10% cut to all agencies. The University system has decided to not go along with the Governor's recommendation and their budget is a 4% improvement in funding rather than 10% reduction. We don't know the status of K

through 12 yet, but I can assure you that they are probably not going to agree to a 10% reduction either.

So, as the Legislature works through these things, the various Departments such as the Department of Agriculture, will face a difficult challenge to protect what we think we have based upon the Governor's Recommendation which is \$1.9 million. I suspect, regardless of how this comes out, we will not get \$1.9 million. I suspect the final figure will be somewhat less than that. I have told some of the staff on several occasions that I think that you had better be prepared for a significant reduction, because I do not believe mathematically that the position that the school district is going to take and the University, which are powerful organizations, I do not believe that they are going to be subjected to a full 10% cut which makes the other Departments carry a bigger load.

So, I think it is a difficult situation and as this unravels and we know where we're at, I'll be looking for Board members and producers and anybody else I can get my hands on to testify on our behalf. One of the things that we are looking at right now, at least 50% of the Legislature is going to be new this year, no matter what. And if we throw the bums out, like the newspaper said we're going to do, I suspect we have 75% new legislators in both the Assembly and the Senate. So, it behooves us to move as rapidly as possible. I'm making arrangements to have one or two major barbecues in Clark County sponsored by the Department and some cooperators immediately after the elections to try to get to know all of these new legislators as best we can and tell the story of agriculture.

And I want to tell that story time and time again because it just doesn't seem to ever get told correctly. And in a depressed economy, everyone has said that the only thing holding us together is mining, I keep reminding the people that agriculture is a \$2 billion industry to the state of Nevada. This is a real industry. Agriculture is the one segment of Nevada's economy which is alive and doing well. We are getting excellent prices for our crops and our livestock. We are in a good period of time. Agriculture is growing. This is a bright spot in Nevada's economy and this Legislature has to clearly understand just how important agriculture is to the state of Nevada. It is under attack from every angle possible. The water is being siphoned off. We're looking at Madeline Pickens turning the state of Nevada into a wild horse preserve. Lord only knows what the final answer is going to be, but if we don't stand up and protect agriculture at all areas and at every possible opportunity, we're going to lose the best, most vital industry this state has. It is renewable and that is what people have to understand. And they have to understand just how much money it produces. I will guarantee you if we turn the state of Nevada into a wild horse preserve, all the tourists in the world are not going to begin to cover what agriculture produces. It is absolutely critical to get the story told.

#### **Audit:**

As most of you are aware, we went through a very, very extensive audit of this Department. We had auditors in a permanent office here for almost a year. They made their recommendations. We met with them on numerous occasions and they are

making the final presentation for the combined legislative audit subcommittee later this month. I'm satisfied with everything the audit found. Most of the recommendations were taken care of before the audit was completed. I think we are in pretty good shape.

They made four recommendations:

- Align positions, to the extent possible with their proper program and revenue source.

When this Board appointed this Director in March, 2008, I had already told the Department that we were going to realign everybody back to the correct funding source so we can keep track of things. It was hodge podge, mix-up from sources of funding, personnel and everything else. It was impossible to make heads or tails out of it. So, I started the realignment process in 2008 and we've just about completed it. We still have a few alignments to take care of and we will get that done.

- Use available funding to perform required inspections and testing of fertilizer and antifreeze products in Nevada.

One thing I ran into after I'd been here for awhile, was that we had an agreement with the various organizations, EPA, etc., to test antifreeze and fertilizer would provide a chemical analysis and we would report annually to the Board on that information. In an attempt to make a report to the Board on that information, I found out early on that we got paid for doing chemical analysis of fertilizer and antifreeze, and in fact we were not doing that; we just collected the money.

I certainly raised some questions over that. We have some changes with a new chemist and now we are doing a chemical analysis of all fertilizer and antifreeze with the equipment we currently have. It looks like we'll be getting that done. So, probably at the end of this year, we can report to the Board. So I think that was a major step in the right direction.

- Track the cost of significant programs to ensure complete and accurate information is available for monitoring, reporting, and decision making.

I found that time allocations were not being reported on timesheets or often times purchases of various items were not coded to the correct source of funding. So we have initiated a process where time allocation is reported on timesheets down to at least a two hour segment. It's been a little rough on some people. They have not understood the importance yet, but with a little patience we'll get that accomplished. I think we are about 80% accomplished at this time. I am absolutely insistent that all purchases be recorded against the appropriate source of funding so that we have complete and accurate accountability as far as any budget is concerned.

- Utilize the state's accounting system to efficiently track the cost of significant programs.

I think we are doing a better job utilizing the state's programs. Some of them are difficult to master and some are difficult to understand. I'll tell you for a person who was never involved in state government, but somehow ended up in this position, it's the greatest learning experience I've ever been through. Learning the state system is what you have to work with in state government whether you like it or not is an amazing experience. State government does things differently than private industry.

### **Priorities of Government:**

We are obviously going to have a new governor here shortly and we are going to basically have a new legislature. But yet out of all of this comes a program called Priorities of Government (POG) that was hatched up this year. This program is basically a new way of reporting Departmental activity. It is a very complex program. It took a lot of time which we didn't have. Normally, something like this would have been done in the old days by the Director's office, because the Director would have had 3 or 4 people at his disposal to do this kind of program. Well, your current Director has absolutely nobody at his disposal except a part of Sandie Foley and because of the shortfall we're having in Fiscal, over half of Sandie's time is now in Fiscal. About all that Sandie does for me is the Board activity. I have nobody else to appoint to these different things such as this Priorities of Government. So, I went to the administrators and told them they would all have to do it for their individual divisions and we would have to work this thing out. It took a tremendous amount of time on everybody's part and it was something that was mandated by Budget.

I questioned the Budget office on numerous occasions as to why was it so necessary to do this in this very difficult period of time, when we didn't have enough people even to do the budget, but I am being assured that the end result of this is that we will be much more efficient and much better able to understand everything.

I asked Dawn Rafferty to take a leadership role along with Lon Beal and the rest of the administrators to give me an estimate of how many hours you had to put into the POG to date to make this thing work. Dawn estimated it took 1,500 manhours so far. I can guarantee you with our reduced staff, 70% of what it used to be, we did not have 1,500 hours to cough up on this budget.

A few other things I want to bring you up to date on:

The monies owed the Department by Nevada Livestock Marketing, (which we have all discussed in the past), have been turned over to collection. It will be an interesting struggle on where to go from here. Collection has it and has not been successful. The

Controller's office has turned it over to a private collection agency to do it. I guess Mr. Payne's retaliation was, 'you all got named in a lawsuit'. It was handed to me yesterday. The sheriff walked in and said, "this is for you". I guess this will go on indefinitely.

I have been down to Las Vegas quite a few times and things are going great down there. One of the visits, Katie and I both went down to appear in Federal Court. A former employee was demanding a settlement of \$10,000; we resolved it for \$1,000.

I was in Lamoille for Mark's camp up there with PARC group. I've always enjoyed going to that.

One thing that happened when I was in Elko. We had a little wreck in Grass Valley with an individual by the name of Dalton Wilson. The BLM has been trying to get him off his property for many, many years. They got a court order from Judge Reed, a federal judge in Reno, to basically remove Mr. Wilson from the property and all his belongings. I was aware of the case; they brought criminal charges against Mr. Wilson about two years ago. I testified in that court case under Judge Sandoval and he threw that whole case out. Apparently, the BLM wasn't satisfied that and they came back with a civil charge against him and got Judge Reed to go along with them.

The first word I got was that BLM had 3 horses in Battle Mountain and they needed an inspection certificate. The inspector asked the BLM for proof of ownership and they told the inspector that Dalton Wilson had given them the horses and that's all they had. By the fact that he had given them the horses, they considered that sufficient and the brand inspector went ahead and gave them the certificate to move the horses down to Palomino Valley. When I heard about this I said, "wait a minute, I've know Dalton Wilson for 40 years and in my wildest dreams he is not going to give BLM 3 horses". And in fact, he hadn't; they had never even talked to him. I talked with one of my inspectors and they had already moved the horses had been moved to Palomino Valley or the holding facility in Fallon.

I met with Ron Wenker and I told Mr. Wenker that I would treat the BLM just exactly as I would treat a rancher that lied to me on the brand certificate. We would no longer do business with him. They came as a shock to Mr. Wenker, because our presence is absolutely necessary for horse gathers. They cannot move those horses without a certificate. I said if the federal government is going to lie to the Brands Division then, that I as Director, do not choose to do deal with the government anymore in these gathers. I kind of just did it to see what his reaction would be. He spent a lot of time in my office. We kind of resolved the situation for the time being. He came out with joint news release which I thought was a step in the right direction. Any further news releases the BLM will have on horse gathers will point out that the Department of Agriculture's work on it is absolutely critical for it to be successful.

The third thing which I think which will probably be of interest to some of the ranchers is that I have a commitment that any animals gathered incorrectly will be returned to

proper ownership. Often times in these gathers, animals have been gathered [with the horses] in the past have been disposed of or a significant amount of money has been charged to the owners. I am pretty satisfied that animals that are gathered incorrectly and are branded appropriately will be returned without any questions asked even if the cow happens to be in the wrong area.

I had a couple of things happen since this report was written. Joe Fillini, the Fillini Family, most of you know, have an open range ranch about 25 miles past Warm Springs. The Fillinis like many ranchers have a big family and a lot of irons that are all family owned irons and everybody puts their own brands on a calf; so there are a lot of irons in the Fillini herd. A cow got hit by a person who was working out of Rachel about 5 years ago and the cow got killed and the individual driver of the vehicle got killed. The Fillinis did not file a claim on that cow which weighed about 700 lbs. I think they were a great more remorseful about the fact that the individual got killed.

There was a case that came out I guess sometimes afterwards. There was an apparently a lawsuit filed on behalf of this individual by his mother. They turned it over to their local lawyer in Tonopah. This individual [lawyer] kind of ..... a lot of things that brought this about that I clearly don't understand. Anyway, this individual lawyer did not show up at the court case in Pahrump and this irritated the judge and he awarded a \$2.5 million award to the family of the individual that was killed on the open range highway which is totally contrary to Nevada law. In this court case, the lawyer that represented the family listed 14 points that were points of negligence by the Fillinis for allowing this to happen. And the points, some of them included not having fluorescent ear tags on the cows that could be seen at night; another was not keeping the gates closed. On the open range it is kind of hard to understand what gates they are referring to, but I guess they felt any and all gates must be closed at all times which primarily are around water holes or the corrals; keep a cowboy on the highway at all times to keep the cattle off the highway.

Well, I looked at this and then it dawned on me, that this was not contested by this lawyer and the judge's ruling is final and these are final non-contested items in a law case that would basically eliminate grazing on the open range. I kind of got into the middle of it and before the day was over, (I was at the Fillinis), I ended up talking to 3 different lawyers. The way they are trying to recover the costs of the case, they are going after the lawyer for malpractice and trying to use his errors and omissions insurance to try and cover the award. Well, I said well that's fine, but in the meantime all these other findings remain and could come back to haunt us. And all it would take is for the BLM to look at this and say this is good. We're going to mandate that cows on the open range have fluorescent ear tags and that you people have a cowboy out there at all times to keep the cattle off the open range road.

And I came away in a state of shock and I had a few words with three lawyers that I thought were worth nothing. I don't know where we are going to go with this, but I think that the Department is going have to enter this case. I think this is a critical issue almost beyond my comprehension. I don't how many of you realize how much of

Nevada is open range. Parts of Highway 50 are fenced. Parts of Highway 95 are fenced. Vast amounts of other highways are not fenced and most access roads are not fenced. The amount of open range even in northeastern Nevada, in Elko County, is very, very significant. Anyone who sees this case and realize that if a person hits a cow on a highway and dies because of it, you already have a case on record where even though it was open range, they received an award for \$2.5 million dollars. The lawyers are always hungry and they will be more than happy to take cases like this on a contingency basis for a third of whatever and I think we've opened a can of worms here that is unbelievable. I don't know where this has going. I'm very, very concerned about it. I've talked to a lot of people. And all of this has just come about in the last two weeks when the fact came to light that this lawyer had really fumbled the ball in the hearing and this case became a fact. This is not on the record. It's not even part of my report, because it just happened. I view this as an extremely difficult situation to put Nevada livestock in.

I've got one other thing – just happened yesterday – kind of amusing. On Highway 50 as you leave Fallon and east on Highway 50 and you start up the hill at Mound House, Lynn Hetrick owns a piece of property on the south side of that highway. He has a water well there and wished to prove up on it and pump it. He has about 5 acres there and put a sprinkler system in and grew a great crop of grass. And we've always had horses on the Virginia Range that come down close to the golf course and I guess they were standing there looking across the 4-lane highway and looked at that green grass over there. Yesterday, 24 horses from the Virginia Range exited the Virginia Range and set up camp on Mr. Hetrick's pasture which created a great deal of commotion because promptly one of the horses got hit and killed. And for us one more time, the driver of the car was not killed.

I finally convinced Mr. Hetrick that he had some liability in this. He created an unfenced pasture across the road from there are horses. If somebody gets killed, he is going to be just a liable as we are. I finally got it through his head that we needed to do something. He blamed the State Engineer because his contention is this would not have ever happened if the State Engineer didn't make him pump the well to make him prove up.

The Director of NDOT promptly got some signs out there, because I expressed to her that she didn't want Mr. Hetrick involved in a lawsuit.

I have taken one other step and I need to bring you up-to-date of what I'm doing with these horses, because the population of horses on the open range continues to grow and more and more are migrating off of it. I authorized Daryl Peterson who has taken care of my problems with the Virginia Range horses to set up corrals on Hetrick's pasture and trap these 24 horses. My position is, so you all understand, any horse that I trap off the Virginia Range is promptly declared an estray horse, advertised and sold off. I have told all the ranchers to the east of the Virginia Range, that horses that get in their corrals, we'll do it the same way. I'm sure this going to create deal of apprehension for the advocates, but I have to do something. The state of Nevada is

responsible for those horses, the Department of Agriculture is responsible for those horses and it's just a matter of time before somebody gets killed and we will be in another monstrous lawsuit if that happens. So, as these horses come off, I am taking every step possible to put them in a corral and will declare them estray and I am going to sell them. I hope you understand the action that I am taking and I am going to stick with it. I have no choice. I have to do this. We've had over 100 accidents between horses and cars and to date no one has gotten killed. With no money, I have to take whatever steps possible to remove horses from the Virginia Range as rapidly as I can.

Boyd Spratling: The one issue in the Director's report that really concerns me is over the brand of wild gathered horses. I totally agree with defining what needs to be done on privately owned horses that are gathered by the BLM or are confiscated and we should absolutely have a procedure and legal process to deal with that. I am for private property ownership and defending those rights. But, making the leap from that to axe our brand inspections for gathered horses is an absolute mistake and it is inexcusable. I really believe that, for two years 2008 and 2009, we had no monies to gather horses in Nevada except in emergency situations. And nationwide that horse population ballooned a little more than 10,000 head in that period of time. Nevada probably suffered at least half of that increase, maybe more. We have a BLM currently that is willing to gather horses and fight the fight in court to gather horses and they had the monies to gather horses. I think it is absolutely inexcusable to impede, delay or cause a problem with gathering those horses. I mean that is something that puts the Department of Agriculture in the same category as the Cloud Foundation.

And I think ..... (unclear, coughing) is absolutely correct. Making the leap between that and the gathering of wild horses was a horrible, horrible mistake.

Director Lesperance: I might respond to that Dr. Spratling. I'm unaware of any horse gathering being delayed in any way shape or form. This occurred on a Thursday. The Reville gather was scheduled to occur the following Tuesday and in fact it did.

Boyd Spratling: Nothing happened untowards, but the potential for that, and in creating that controversy and standing is like saying, "okay, the Cloud foundation came in and protested a gather, but we were able to get through that protest and gather anyway which excuses the Cloud Foundation from doing a protest. I put this in that same category.

Director Lesperance: The only reason I took the action I took is because the BLM openly falsified and lied to one of my brand inspectors.

Boyd Spratling: That is absolutely fine. If they are lying to you, that needs to be dealt with. My issue is connecting that private property issue and lying to your agents or whatever, connecting that to the gathering of wild horses was a mistake.

Director Lesperance: Again, no gather got delayed. I just wished to.....

Boyd Spratling: But, the intent was...the intent was there and the possibility of delaying was there. So, either you were making a bluff or you were cheating in delaying the action.

Director Lesperance: I believe the things that I was able to accomplish puts the livestock industry in a better position. No animal will be gathered incorrectly. If it is, it will be returned at no cost to the producer. This has been an on going problem, time and time again.

Boyd Spratling: What if...what if the BLM said okay, we're going to shut down the gathers because of the controversy with the Brand Department? Then, what would be your answer to that situation?

Director Lesperance: I met with Mr. Wenker immediately after I took my action in my office with him and his Associate Director and told them what I was doing and that I would lift that by the following Monday morning. I just wanted to catch their attention that it was absolutely critical that they cooperate with the Brands Division.

Boyd Spratling: It was a bluff then?

Director Lesperance: Whether it be a gather or impounding livestock incorrectly which they have done and they have lied to one of my inspectors to accomplish that.

Boyd Spratling: I am actually on board that you're correcting that situation. But, linking that to a legal gather that was funded, and had the contractor in place, they had corrals, what if the BLM had said, okay, we will stop the Reville gather. What if?

Director Lesperance: That is the reason I met with Mr. Wenker on .....

Boyd Spratling and Director's Lesperance talking over each other. (Unable to understand).

Director Lesperance: Well, I will put it this way Dr. Spratling. I operate the way I operate and the Board has the complete authority to hire or fire the Director at any point in time. I stand on what I do.

Ramona Morrison: I would like to add to that because in those gathers, they have been gathering other people's livestock, charging livestock back to those people and sending them to collections if they didn't come and get their cattle and pick them up. And this thing has been such a mess with the BLM with regard to their ignoring Nevada law. I met with Wenker as well. I think it ended up being very productive at the end of the day. And I think down the road as long as there is a positive relationship between the Department and the BLM, it will help make sure that we don't have any further wrecks with these guys. I think that is the objective in the long run, but every time somebody gets their livestock stolen, inadvertently in one of these gathers, then those people have to go court to try to defend it. And that's a huge problem.

Dave Stix, Jr.: Just one quick one before I go to my main question. Were there any other Board members at the meeting that you had with the BLM?

Ramona Morrison: It was a last minute meeting.

Dave Stix, Jr.: I attended a meeting in Fallon where a committee was formed to discuss some NAC changes that had to do with brands. And, actually myself and the Chairman and before we were involved in this meeting, there was some discussion by the committee members to do away with horse brand inspections. It was worth a discussion and we had a lengthy one that day, representatives from Nevada Cattlemen's Association was there. It's a topic that's been around for a long time. Why are we doing it? And I think a very good explanation was given at that committee meeting why we should continue to inspect horses. And I'll be the first one to admit that probably the most important one, well, I'm not going to say most, it's a revenue generator for sure, but the number one issue was that there is not an issue with private property owners that are caught up in a gather out on the range. So that's the thing that popped in my mind when I read the letter that was issued to the Board members from Dr. Lesperance.

I agree with Boyd 100%. The first part of the letter was to the point. It's actually common knowledge nowadays that our people should not be engaging in any activity unless a proper court order is given. But, darn it, something went all to heck in that letter and it was the last paragraph. And Tony, in life today, you have defended that action. The thing that disturbs me and the thing that makes me wonder how we can have credibility with our sister agencies, whether it's the State Water Engineer or the BLM, is the fact that you made a comment to them that you've openly stated that you just wanted to see what their reaction would be. And I just want the rest of the Board members to think a minute, is that conduct becoming a Director of the Board of Agriculture?

You say it had a positive turnaround to it, but there are people out there in the ag industry that are asking.....the BLM doesn't have to do these gathers. In fact, it's been suggested here today by Mr. Stremmer at the break that there may be a day where the BLM through budgetary pressure may not gather horses at all. And this is an opportunity, the only way, that the industry has the ability to have these horses removed when they become overpopulated is by having the BLM remove them. The one we are talking about, correct me if I'm wrong, is the one that a lawsuit was filed and the judge ordered the roundup to continue. I mean, through all kinds of activist's protests, a judge ordered the BLM to continue the gather and we send out a document, this Department, and it reflects on all of us, this document that stated that we were going to suspend the brand inspection of gathers and now we find out that it was just to see what the reaction of the BLM would be.

Director Lesperance: I am not quite sure of that statement.

Dave Stix, Jr.: What's that Tony?

Director Lesperance: The BLM openly lied to an inspector on impounded horses. They did not have a court order from a court in anyway shape or form. They had a order from Judge Reed, the Ninth District Court issued a stay against any further action in this setup. Judge Reed ignored that stay, issued an order to proceed with the impoundment. The individual involved never had his day in court here. We raised the issue of ownership of those horses and the BLM clearly stated that Mr. Wilson gave them the horses. That is a bald faced lie.

Now, if you as a livestock operator did the same thing to me, I would be very reluctant to issue your brand certificate from that point on until we got it clearly resolved. And I made that point very clear to Mr. Wenker and his associate immediately thereafter and I said you've put me into a difficult position. There is nobody in this room that is more an advocate for than getting these horses off the public domain than me. You can go back and check the record. I gave a talk in Elko County in 1976 at Rotary in Elko and at that point in time said the state of Nevada will come back to rue the day that Wild Horses and Burro Act was passed because there will come a time when wild horses under government management will become overbearing to the state of Nevada. I don't care how many, we have never brought the AMO down nor will we ever bring the AMO down under the present set of circumstances. We now have more horses in captivity than we have on the public domain.

The cost of this program is becoming totally overbearing. I have given testimony in front of congress time and time again on this. I'll be happy to share that with you. The wild horse program is a sham. We are not on top of it and you're not going to get wild horses of your back under the present set of circumstances. And you've got people like Madeline Pickens running around and just bought a ranch in eastern Nevada which she intends to turn into a wild horse preserve. I am working with the BLM in that regard.

Dave Stix, Jr.: You know I have never found anybody whose passion has been more committed to this issue than Dr. Lesperance. And, I am not here to refute that one bit. What I'm reminded here is an old statement that was made, 'that passion make shipwreck of conscience'. And things were so going so well in that letter and your passion was overflowing in it, but it still had the something that causes controversy that made the industry in northern Nevada come completely unglued. And that was the statement to say that we're.....you were absolutely right ..... but, that issue right there, we should have been involved in all and not allowed anything without the proper paperwork. But, it spilled over into a separate area all together and now is a gather which the livestock needs to take place to keep these herds down. That was my only point.

Director Lesperance: And the gathered occurred. And I tell you, there is 11 more gathers scheduled between now and the first of the year.

Jim Snyder: I just want to be on the record as sharing the concerns of David and Boyd in this matter I think, among all the other issues, we have our credibility and our image to be concerned with here.

Chairman Perazzo: I would like to ask Dave or Boyd, how could we have handled this differently as far as the Board, as far as Tony, or how could we.....I felt like we've been brought more into the loop from the get go. Boyd, how could we have handled this differently?

Boyd Spratling: The thing is this stuff happens pretty rapidly as the Director has often pointed out that he has to make a decision as he goes along on a hour-by-hour, day-by-day basis. I think, in general, I don't know procedurally how we would have changed his decision making process or at least the time line for it and brought more Board members into it. The point being I stand fully behind the Director and dealing with private property issues and the compensation of 3- 5 horses. And where that has happened there, that's the problem there. That's to be decided in the courts. But I stand behind those property rights and our need to defend those. My issue is linking that and potential for causing a problem with horse gathers which are crucial to help the rangelands out there in the state of Nevada.

Dave Stix, Jr.: I am not here to tell Mr. Lesperance how he's supposed to be a Director or how he's supposed to act in these situations. I think there was very poor judgment put on this issue. I will end by saying this, that I think this requires, and this is the Director's report we all know that we are discussing here, and I don't want to belabor it because, but I think this is the kind....by the way, I'm going to be a year as a Board member. I just wanted everybody to know, there is a couple of things that I'm very, very unfamiliar with, well I'm familiar with it, but it doesn't happen here and that is (1) the budget process of the Board being involved in, (2) I have yet to sit on an evaluation of the Director. My main thing is that we bring this back to the right circumstances, we have a proper evaluation, we have a sit down, heart to heart with Tony of where his intentions are in the future with this Department. That's where I want to go from here.

Ramona Morrison: I think this whole situation happened in a fast and furious scenario. And I don't think that I'm speaking out of school because I got a call Monday morning after all this broke loose and after the letter was sent from Tony saying there is no way we hold up gathers on these situations, that that would be a mistake and after he slept on it for the weekend came to that conclusion. I think in all of these circumstances as you all have pointed out and recognized, these things are difficult to deal with at best. I think we need to remember that this Department has had numerous circumstances wherein the BLM has run roughshod over the Brand Division. And this Department is still liable for past gathers wherein people's livestock were confiscated without proper due process. And so I think Tony's care and consideration about that whether we agree with the general direction that he took or not. I think it was based on sound reasoning, because if we allow the BLM to conduct unlawful gathers in any way shape or form, impounds without proper due process, we become liable. I think his concern for that was justified based on their past actions that we have seen since 2002 in this

state. Just to remind everybody, in one gather the BLM showed up on one outfit with 50 armed agents and confiscated over 200 head of cattle, jammed cell phones, wouldn't allow the press in, blocked roads, told the sheriff to go take a hike, and convinced the Brand department to sign brand certificates. These are very serious things that have occurred in the past. So, in that context, I think Tony concerns for where they were going with these things and playing fast and loose with the truth, to the Brands department, I think was well justified.

Dean Baker: I was going to say Boyd is in northern Nevada with the railroad land, private land, taking a big part. The BLM has a very different aspect to dealing with them there. They don't quite deal with the total power they do in much of the rest of the state. All of us have the continual fear that there will be a cease in the gathering of wild horses. It will be used to do away the ranching industry and will do away with it in the end and that I appreciate what Tony has done.

Jim Snyder: Yeh, I want to back up to the fiscal budget, etc. I feel like I've been a little asleep at the switch here as far as the process. Are there any other activities related to the budget between now and the time the legislature meets? Are you involved in....

Director Lesperance: Yes, on a daily basis. I will be meeting with the Budget Director and his staff Thursday afternoon, go over our budget, make sure everybody's on the same page. There's a continual ebb and flow between the Budget, Executive Budget Office, Andrew Clinger's folks which is under the Governor and the Department. Until our budget is finalized, there is a daily exchange of emails between the Fiscal office and Budget. I get copies of all of those. I've tried to keep totally aware of what's going on and if I see something starting to get out of line, I will see Margi real fast and try to find out what I can do to help.

Once our budget is in place which probably would be roughly sometime in October, from the Executive standpoint, our hands are pretty well tied at that point in time. Then the Legislature takes their view of it. They have to balance the budget and you read the same newspapers I read, so you'll know what we're up against. Our budget is about \$12 million. \$1.9 million is going to come from general funds, all the rest comes from fees and other sources. If we were to lose 100% of our general fund becomes of legislative activity, would we survive? Yes, we would, but there would be parts of this Department that would be rather unhealthy. We create enough income from fees that we could probably make the necessary changes to basically have the Department survive.

With PARC probably not, would the diagnostic lab and Animal Disease survive, I don't know how it could. But, that would be the worse case scenario, but there's not much we can do past what we've done at this point in time because our budget is balanced as far as the Executive Budget goes, the Governor's budget. That doesn't mean that is what we will get, because the legislature will do what they have to do to make the big picture balance. So, however, we come out of there, then we have to make whatever adjustments we have to make. Will we get the \$1.9 million in general funds? I can tell

you right now, it would be an absolute miracle if we get the \$1.9 million. I am fully prepared for something less than that. So, we will have to make additional changes at that point in time.

Jim Snyder: Our current request is for the \$1.9 million?

Director Lesperance: Yes, and that's what we were allocated by Andrew Clinger who is head of Budget. Our budget has gone forward at this point in time based on that figure and everything is in tact with the exception of one position in PARC.

Jim Snyder: Do you see anything the Board can do to help the effort to....?

Director Lesperance: I think what the Board and the Department has to do is go every place we can go to tell the story of agriculture. I continually say agriculture is a \$2 billion a year industry. As you are very well aware of working where you work, who would have believed you would be an international player in lettuce? Unbelievable. This is the story we've got to tell. Agriculture is dynamic, it's growing, it's innovative, it's done things it's never done before. And we are a player in the economy in the state of Nevada. That story has to be told to the new Legislature and the new Governor.

Chairman Perazzo: I have just one question from your report, Dr. Lesperance, we're aware of what is happening with Nevada Livestock Marketing. In your last line of that [Director's Report], obviously, you haven't collected anything. In your last line it says, 'no additional permits for special sales will be allowed for Nevada Livestock Marketing until this matter is satisfactorily resolved'.

Director Lesperance: If he wants to have a special sale, I think he has to have a permit approved by us. I think the man owes us money, it our position that he owes us money, and I am rather reluctant to issue him a permit.

Chairman Perazzo: So, at this time, he is not having any special sales?

Director Lesperance: That's correct.

Dave Stix, Jr.: Tony, a couple questions on the Nevada Livestock issue. First of all, I want to make sure I was clear that I heard you, just recently in the last day or two, you were handed a lawsuit...yesterday, you were handed a lawsuit from Nevada Livestock Marketing, suing the Board...

Katie Armstrong: I want to clarify....it is in fact a petition asking the court to review the Board's interpretation of that particular statute. I don't have it on hand, but it's the one that Christine Munro wrote an opinion on. And I haven't researched it in depth.....it's just for a review of that statute.

Dave Stix, Jr: This is all centered around the collection of the fees for the special sales?

Katie Armstrong: Correct and the opinion of our office.

Dave Stix, Jr.: With that question answered in mind, it has come to my attention from the people of Nevada Livestock Marketing that there could be a potential negotiation in the future with the staff of the Department of Agriculture to resolve this. It has been my experience that it should be taken off the table right now until this is exercised and it's gone through its full.....so, I need you, if that's the case and if that's where the Department is going, do we need to be negotiating as long as this is pending?

Katie Armstrong: I don't know if there are negotiations ongoing. In my opinion and I briefly looked at the petition, I don't think it's correct the way they filed it. I think it's just to incorporate with my knowledge of issues for judicial review. I don't believe they can petition the decision that was made here. You can only petition contested agency decisions where there has been a hearing and that type of stuff. The decision that was made, there is no hearing provided for it and I don't necessarily, like I said with a quick analysis of the case, I don't think believe it will go very far, the way they filed it.

Director Lesperance: There have been no negotiations to the best of my knowledge and I assume I would be involved in them if there were. I did try to negotiate out of this early on and offered a significant reduction in the amount owed and it was rejected.

Dave Stix, Jr.: Remember my input is coming from that side of the aisle, but whenever, this may be different than a pro-attrition lawsuit, but once something like that is filed, for the parties to go privately and try come to a settlement isn't normal for the process. At that point the settlement has to involve the court and it's ..... I just wanted to make sure, if the Department is receiving invitation for some kind of settlement that we do not partake in it until this is settled. That's my concern.

Katie Armstrong: Sure, and because this is the normal lawsuit, I don't think it really has any bearing if a negotiation was reached. They would just withdraw their petition. Also, on petitions, there is a lengthy process.

Director Lesperance: Again, I made a comment to you Dave before, as a Director I have not entered any type negotiations once I received this document yesterday.

Dave Stix, Jr.: The next question involving this issue has to do with the NAC and the committee's work that was done. They are starting to get rumbles of this is going to be done, this part of the committee recommendations, that was going to be done, now it's not going to be done. I was under the impression at the last Board meeting, that we would have seen by now the hearings to start moving forward. And one of the items that was in there was taking special sales and putting them under the application which I understood required a change NAC to do that because special sales are out there by themselves as a separate....we're going to move them into being a part of the application of the sale yard's application to the state for permit.

Director Lesperance: Let me respond just briefly. The NAC process is part of my continuing education in state government. I did not realize how difficult it was and I've asked Joann to respond to that because we are trying to get this thing going and it has not been particularly easy. So, Joann, can you bring us up to date on where we are at.

Joann Mothershead: It has been submitted to LCB and we're just waiting to hear back from them. It's not in our ball court any longer. All the changes every agency wants to do, the NAC's, the NRS's and it was submitted the first part of August and I haven't heard back from them.

Dave Stix, Jr.: I'm learning too, so eventually....

Chairman Perazzo: Were you offered a timeline at all Joann?

Joann Mothershead: I was told that we might hear back within a month. It's been over 6 weeks now. I cannot tell you when we will hear from them.

#### **4. Division of Administration**

Margi Scheid: I have two items that may be of interest to you. When something is sent to collection, we go through the Controller's Office. I believe they have 3 different people out there who are doing the collections for us.

The other item is that historically you have other items go to collection. If we're lucky [we'll get] .90 cents on the dollar even though someone contracts with that collection agency doesn't mean that they hold by their agreement with the collection agency either. It's a step in the right direction I think to get some money back into the agency. Just because they gone to a collection agency, there is not guarantee that it's actually coming in.

Fiscal services for the last 2 – 3 months since you last met, it is business as usual. But our business as usual for the months of July, August and part of September is our busiest time of the year. Fiscal year '10 supposedly closed June 30<sup>th</sup>. That doesn't mean that everything just stops, that means that fiscal services has to finish paying all the bills that were incurred up to that day. We pay payroll, true up different budgets. There is a lot of stuff that goes on to closing. We did close all of our budgets. All the reports were transferred down to the Budget office and the Controller's office on time this year which was September 1<sup>st</sup>.

We have another report which is due September 10<sup>th</sup> which is called the Single Audit Report that deals with the reports of how we balance and reconcile any grants or cooperative agreements in our agency.

In July, we lost our emergency hire which was Judy Baughman, who did accounts receivable for me. Because of budgets cuts and everything, we could no longer hold on to her. So, it's been very difficult to run accounts receivable. It's kind of important that

we have somebody there and somebody doing that because that brings money into agency. Sandie Foley has been helpful in getting that money in to the bank what money does come in. We trying to redistribute some duties in my section to hopefully keep us running. It is very difficult and very hard.

Katie Jameson who was my account tech has really done an outstanding job. She had the most experience and knowledge on budget preparation from two years prior, so she is taking the lead on preparing the budget to be submitted of which we are going through the process now. The Governor will massage it in his own way I'm sure before it goes to the Legislature, but we have been working closely with the Budget office on that. We are working with the administrators also. We have a meeting next week with the budget people to explain why we did certain things, budget issues, and why we made a few changes and how we kept within our cap that we were issued.

## **5. Animal Industry**

### **A. USDA Foot and Mouth Disease Exercise CA/NV**

Dr. LaRussa: For those of you in the room, I posted on the board this year's trichomonosis outbreaks, traces, etc. The red dots mean infected herds and all the traceouts that we have to do associated with those infected herds. It's only halfway through the year. There are a couple of things that come to mind. One of which, that when we changed the rule that you had to be instead of 8 months of age, 12 months to require trichomonosis when coming from out of state, that 100% of the animals coming from out of state are now 11 months of age. You would be happy to know, none of them need trich tests. We are relying upon the owners to be concerned about their own herds, and certainly we're not going to stand out there and try to age every animal that comes in.

My presentation is on the table top exercise that we attended. This is on the national laboratory system. The table top exercise was held in Davis, CA. Response leaders from California, Nevada, Oregon, lab personnel from the U. S. National Veterinary Services Laboratory, Washington, D. C. Emergency Planners, etc., all met in an attempt to determine what is the capability of the laboratory system, in this instance for an outbreak of Foot and Mouth Disease.

There were several objectives and I'm not going to try to read them. Boyd, did you all get a copy of the printout, Paul Noe did you get a copy? Take a look at the 3 slides. The meeting lasted for one day and certainly as far as discussing all these issues, several things came to mind and that led to the lessons learned.

The first lesson learned: laboratory capacity.

We previously thought California, big, beautiful, [it has] all the wonderful laboratories in the world, they could handle the Foot and Mouth outbreak. The outbreaks scenario was around Fresno, CA. The laboratory capacity for the entire California lab system was to

test 2,000 animals per day. In 2003, I led a TB eradication effort in the Tulare-Fresno area and I tested 770,000 right there, 2,000 per day. The laboratory capacity, we're talking maybe 200-300 cows per day in Nevada which brings to the second point: laboratory accreditation.

Our laboratory lost the accreditation because we were not able to buy reagents and thus go through the testing scenario. We have personnel that were perfectly trained, we have the equipment, the only thing holding us up, we cannot get reagents because our laboratory accredited. The exercise value at the bottom, the value of this exercise when we were able to explain to them, we have a nice laboratory, it's beautiful, we have bench space, we could put additional machines, etc., we just need that approval for the laboratory accreditation. They said, 'we want to get you accredited'. The thing about eradication vs. prevention: that's what we're talking about in today's budget. When you're looking at the outbreak in California, there is a scenario run where it would cost, if there is a delay of 3 weeks of evaluating, it would cost about \$6 billion to eradicate.

Right now, when we are talking about the budgets here, that certainly Animal Industry and our laboratory as Tony has mentioned, are the general funded aspects of this entire department. If we loose the general fund dollars, the pittance of money that prevents that type of an aspect of hitting you is absolutely immense. We need all the support we can to make sure that we are able to first of all be accredited so we can run the tests and secondly have personnel there that can do it.

## **B. Animal Disease Traceability**

Holly Pecetti: I am here to just provide you an update with the Animal Disease Traceability Program previously known as NAIS. I think that at the last meeting Dr. LaRussa sort of introduced you to the Traceability Program, but essentially the Secretary of Agriculture announced in February, the Animal Disease Traceability Program. And that was followed by several listening sessions throughout the country that was open to the public, the producer community, livestock markets, manufacturers, packers, anybody that had an opinion, etc.

In that time, the system started to come along. The idea was the development of a program that would provide function to support disease surveillance. The emphasis now has to go on disease surveillance and the response to a potential or real disease. In addition, it has to qualify animals for interstate movement. Now, you have to think in a broad prospective here, this is all species. We're not talking just cattle here. And to improve the state's ability to respond to any kind of inquiry or investigation of a potential animal situation or poultry.

So that led to the purpose of the program and what it is going to apply to. It's going to apply to the livestock and poultry made in interstate commerce. And again, this also applies to folks who participate in exhibitions and shows. It not just on animals going to harvest. The program has to be administered by state and tribal nations and in this day, it is us and we have one Native American tribe that participates and that's the Duck

Valley Tribe on the Nevada – Idaho border. They do an excellent job up there. We work very closely with them and they have things very well in compliance.

All of this is to be implemented through the federal rulemaking process which brings us to the proposed rules. Not going to happen – maybe. It is anticipated that the first proposed rules of comment will be published in April of next year. Following the publication, there will be an opportunity for comment period of 60 – 90 days with the final rule being published anywhere from 12- 15 months after that. How much it's going to cost – I don't know.

Recently, there was a forum I attended in Denver at the end of August and it was sponsored by USDA, but it was actually organized by the US Animal Health Organization and National Institute for Animal Agriculture. As a result of that, all state animal health officials, truckers, packers, food inspectors, livestock marketing folks, anyone who was interested could come and attend. There were about 193 of us there and had opportunities to discuss things that affected their various business and put together a white paper. This white paper was put together by Scott Stewart who is the Managing Director of NIAA and if any of you are interested, I have an electronic link. It's a 64-page document. Scott did a great job in the time he had and is one of the better white papers around on this topic. It provides some of the details and the discussion points.

I am just going to highlight just a few in the next slide here and that just goes over what is anticipated that the proposed rules will include:

- Official identification by species
- Ability to maintain the records of tags issued and used
- Veterinarian Certificate of Inspection

Hopefully, at some point in time, all of us will be able to go to an electronic health certificate which will help greatly.

## **C. Laboratory Update**

### **1. Statistics FY09 and Y10**

### **2. Arbo-Virus Surveillance 2010**

Dr. Rink: As usual during this time of year, I would like to give you an overview of what's happened so far in terms of arbo-virus surveillance not only in Nevada necessarily but also in the western part of the United States.

You can see Nevada is probably in the western United States the only state that has a complete statewide surveillance of arbo-virus diseases. We were for about 6 – 7 years, the only state that actually did surveillance for not only West Nile Virus, but also St. Louis Encephalitis and Western Equine Encephalitis. We have had West Nile Virus since about 2003. We have had St. Louis and Western Equine Encephalitis for much

longer than that, probably for centuries. They were certainly here before the Nevada Territory became part of the United States.

We've not had a very heavy West Nile Virus here this year. We've had a lot more submissions for West Nile Virus testing this year, because I think overall the perception has been that this is our last year of federal funding, so people have taken the opportunity to get in as many samples as they can. Kudos to Jeff Knight and his troops, they have actually provided all the surveillance in the outlying counties. There are not a lot of counties in the state, like Washoe and Clark County and parts of Lyon County and Churchill County that have their own mosquito abatement district. The rest of the state, the surveillance was pretty much done as part of the \$80,000 agreement that was a pass-through from the State Health Division. Every time we find a positive pool in any of the outlying counties, we actually report all the results to the State Health Division usually on a weekly basis. If we find a positive, they get to know within 24 hours.

There haven't been any human cases of West Nile this year. So, we're lucky in that respect. But, again every time that we do find a positive mosquito pool particularly in urban areas and occupied areas, abatement usually follows. If you look down at Arizona, there are 24 counties that actually do have positive pools and Arizona is the leader again in human cases this year with in one county, Maricopa County, showing 71 cases. I think they also head the national statistics for West Nile Virus related deaths, which I think is 8 people at this point.

So, I'll just give you surveillance data for the entire year, 2010. And, that's probably going to continue to go up a little bit. We do see late cases in the fall. We probably are going to finish West Nile Virus surveillance in the northern part of the state within the next two weeks, but Clark County usually goes on until probably the end of November.

So, this is a graph that I also included in the Board package just to show you what our service areas are and what kind of sample volume we process on a monthly basis. We currently have 3 diagnosticians, that is including myself, and two microbiologists. We have an administrative assistant, who is just now currently not on general fund anymore here in the lab in Reno, and we have part time lab assistant in Elko. So, essentially this is the type of volume that we process with a small number of people.

Submissions are basically split out into individual areas, into serology, pathology, parasitology, molecular diagnostics, and bacteriology. The two peak months that you see here are a fluke. I didn't catch this when I put it into Excel. Actually, you can ignore the number 8 after the first forward slash – I don't know why that is in there, but essentially what you're looking is at the bottom of graph are the figures for July, 2008, and then September, November, and so forth. And then at the top of the graph you have May and June 2010 – that is how to read this. The big spikes that you see in there like August, 2008 for instance, we had a very heavy West Nile Virus submission that month and March of 2010, we had 3,000 brucellosis samples come in with average number of specimens processed between 2,500 and 3,000 samples per month. So these are our statistics for both fiscal years '09 and '10. You can see that there is about

a 15% decline from fiscal year '09 to fiscal year '10. A lot of that has to do with the downturn. Obviously, it's not only the livestock producer, but also the companion animal owner that perceives disease testing as a little bit of a discretionary spending item in the absence of actual clinical disease.

What you see here is a comparison of July and August for fiscal year '09 and '10 and '11. Those are the only numbers I currently have available. On each of these blocks, sorted again by service area, you have on the first three items there, the first three columns are July, for '09, '10, and '11 and then you have August, '09, '10, and '11. So, you can see that even though we have a spike in the molecular diagnostics in August of this year, again, this is the attempt to utilize the last penny that we are going to get from CDC for West Nile Surveillance. We've had a record number of submissions in August.

What I do want to bring to your attention too is that during the first two months of this year since we started charging for rabies, we've seen a reduction of 45% in rabies related submissions. That is mostly due to the fact that Clark County Animal Control Agencies have decided to go shopping for a better price. It's a little bit against what the NAC actually states. NAC 441.a basically says that all of the samples for rabies surveillance have to be submitted this laboratory. We are in a bit of a conflict of interest situation here in enforcing this, obviously because we are on the receiving end of the revenue. But, Clark County Animal Control officials have decided to go with one of the big national labs in Kansas because they process about 18,000 rabies samples a year. They buy their reagent at a fraction of what we pay for our reagents. So they can offer this quite a bit cheaper. So, rather than sending us the samples, they're sending \$3,200 a year out of state rather than pay us \$50.00 per sample which I guess is a rational economic decision, but it doesn't do anything to maintain critical infrastructure for the state.

### **3. Bighorn Sheep Scientific Publication**

The paper that I referenced during the last Board meeting is now in print and it's also online. This is about the unequivocal demonstration of bacterial transmission using green fluorescent tagged *Mannheimia* species of transmission from domestic sheep to the bighorn sheep. There is a group of people that basically maintain that *Mannheimia* species or *Pasteurella* species could not be transmitted between the two species and I hope that this issue is now that finally going to be laid to rest. They did a very nice study. They used very sound technology to actually demonstrate transmission. What it proved basically is that if you keep them separated, and in this instance it was 10 m, there is no transmission. What this indicates, is that there is no aerial transmission. The infection happens on physical contact only. That is not really anything new, but I think this is now finally putting the argument to rest.

The *Mannheimia haemolytica* strains that were tagged with this construct were basically double tagged and the green fluorescent protein is something that you normally find in jelly fish. That is why I show this specific background on this slide. This is the jelly fish, where the green protein gene originally comes from. This is a very unique gene in

nature. There is absolutely no question as to the fact that this organism was transmitted from domestic sheep to bighorn sheep was a genetically modified organism, there are no if's, and's and but's about that.

When you keep these animals separated, in this instance by 10 m, there is absolutely no risk of disease transmission. If you keep them at fence-line contact, there is disease transmission detectable or organism transmission detectable after in this instance 21 and 30 days respectively. And then if you have commingling the physical contact becomes more intense. The transmission of tagged organisms is probably going to be enhanced and that is why in this instance the deaths, and prior to death, clinical disease were visible within a very short time after commingling.

So, I guess the take home message from this is separation is the key, and again all of this really has already found consideration in the Best Management Practices. Spatial separation is the idea and is the ticket to keep both populations viable, and the industry viable. It also shows that these 2, 5, 9, and 15 mile corridors that are being enforced and recommended by federal agencies when it comes to actually allowing grazing of sheep on public land are really arbitrary and a knee-jerk reaction, because as little as 10 meters distance form the necessary distance. If you have a moving 10 m safety cordon of non-contact which can be facilitated by using guard dogs, sheepherders, etc., you essentially have implemented a legitimate safety program.

There was a question and answer period in which Dr. Rink answered questions from the Board.

Dean Baker: I gather that you've called and talked to people about the being unhappy with management of the way the Department of Ag is put together and the Director, I don't know much about it, so with the Board here, do you wish to explain anything? I mean that I know that it started or a part started during the Legislative session with the layoff of Phil or the questions on that. We as a Board have to deal with whether Tony stays or not and I gathered you've talked to some people, but I...you haven't talked to me. But you have things to present to the Board on that?

Anette Rink: You know that is a very interesting question and I will check with my lawyer on that. Because I will have to tell you that I have actually gone to legal counsel at this point. And since I am not willing to take a hostile work environment that the Director has created in this department, because I think it's wrong, he's not in compliance with state regulations. I think the knee-jerk reactions that were discussed here in front of this Board today are just a tiny tip of the iceberg. That is what you got to see because it got out in a letter. This goes on in this Department on a daily basis. And that is about all I'm willing to say in a public forum right now because as I said without legal counsel I'm not going to go any further than that. But I will tell you that I'm not going to take this lying down because I don't believe that this type of behavior should be condoned in this state, in a western democracy, and not in the 21<sup>st</sup> century. Thank you.

Dean Baker: One other question. With previous supervisors, what has been your situation?

Anette Rink: If you are trying to paint me into the corner of the troublemaker here Mr. Baker, I will have to tell you, the reason why I am the one who is speaking out is because probably I am the one who cares. And because probably I'm not a coward and I can find another job anytime and probably I'm going to have to do that next year because this is where this is heading because your Director is going to give away the farm. Yes, I had a conflict with Director Henderson, but I wasn't the only one. I was just the one who's carrying the banner on that one. And there are a lot of people that are still here that disagreed with how he was handling the situation.

And then Director Rise came along. There were some very, very serious problems with her too. And I can tell you one thing, if you think a Director whose hair appointment, or daily shopping trips to the shoe store are more important than dealing with crises, I am really surprised about what expectations this Board has about their Director. Is that my expectation? No. I think that if somebody has a crisis, it needs to be dealt with. This state has regulations, it has rules, and if I have a discussion with the Director and he tells me that he is the Director and he makes the law. I don't think you need to be a legal scholar to understand that you have a real problem in the Director's office.

Then yes, I not willing to take this laying down because I'm not that type of person. Thank you.

## **6. Livestock Identification Division**

### **Division Update**

Joann Mothershead: These are the stats for the fiscal year '10.

We looked at:

- 336,916 cattle in the field
- 197,000 at the sales yard
- 13,291 horses in the field
- 529 horses looked at the sale yard
  
- Money collected: 602,482.
- Licenses: 13,675
- Reporting and Transfer fees: 23,800
- Beef Council: 258,327 (to us was 24,000)
  
- Personnel Services, in-state travel and operating: 793,421
  
- Movement permits: 208 (up from 158 for fiscal year '09)
- Number of permit books requested: 263 (up from 213 in 2009)

- Number of permits requested: 2775 (up from 1695)
- Permits used: 712 (up from 630)
- Total number of permits returned: 738 to date (1,428 for fiscal year '09)
- Total animals permitted: 21,426 (last year '09 entire year 25,270)
- Livestock Head Tax: The 3<sup>rd</sup> notice was sent out August 9<sup>th</sup>.
- Total declarations sent out 5,864. The 3<sup>rd</sup> notice we sent out 1,500. We have not had a good return as far as people returning their notices.
- Revenue is up; we collected \$162,560 which is an increase of \$11,000.
- As of the first of September, we still have 1,049 declarations not returned.

The NAC changes were submitted to LCB on August 4<sup>th</sup>. This has been kind of a learning experience for me. I've never done this before. I didn't think it would take this long to get a return or an answer from LCB. Usually it's about a month.

Personnel changes: We lost inspectors in Henderson, Schurz, Las Vegas, and Winnemucca area as well as Lovelock. One of our inspectors passed away from his battle with cancer. We have done a Justification to Fill for 8 new positions. As soon as the position announcement is put on line, we'll generate a new list, however, I got a notice from Linda [Lesi] yesterday that says State Personnel wants us to hire from the existing list and there's not a whole lot to choose from on the existing list.

Jack Payne – Nevada Livestock Marketing issue is a highly emotional issue for this office. We have turned him over to collections.

Pilot Valley gather (Winecup-Gamble):

The BLM came to us the end of June and said they had money to gather horses in the horse-free management area and because it was a horse-free management area, they were ours. It cost them \$428.00 per head to gather the horses.

- Total number sold: 168
- Amount paid for horses: 30,280
- Trucking cost (5 loads): 5,049
- Commission, feed, insurance, dead fee: 10,927
- NDOA check: 19,352

## **10. Measurement Standards Division**

Dave Stix, Jr.: Advised Lon Beal, the Administrator of the Division, that he has received some calls from concerned producers that utilize small livestock scales. Some have concerns that perhaps their scales are outdated for inspections. The inspections aren't

being done in a timely manner and it's just..... I just wanted an explanation from you. Their concerns are we are paying for a service we're not getting done? So can you expand on that?

Lon Beal: Actually, we'll start with paying for services not being done. What they are paying for is a license fee. That's an annual license fee similar to a business license fee. We're not required to actually check these scales by statute. We do them by policy. Livestock scales have become expensive to us; they are extremely difficult for us. We don't have resources to be able to do them yearly. Several years ago, they went to every two years. Last year we had several circumstances that happened to us. We had OSHA that came down on us. That cost us approximately a month with all of our equipment. Before that we were down to one livestock rig that does the cattle scales. Then as we proceeded into the year, we had some mechanical difficulties with the equipment and then we had personnel issues.

We had one person retire right out of the blue in Elko. For safety reasons, we can't send one person out in the remote areas and that takes two people and that pulls us down. The other employee had some medical issues. Essentially, we lost about 4 months there. That is what we call north of I-80 corridor which we do every odd year or even year – every other year. So, we lost 4 months. And this will happen. I had made arrangements and most of these people I had talked to, my recommendation was that they hire a registered service agent and of course this would have to be registered with the State of Nevada. Most of them have done that.

Again, it's a share in the costs. Most of them have actually been checked, now it's a matter of getting them a seal and I made arrangements for them to get seals. This does satisfy our requirements. Essentially that is where we're at right now. Most of them are done. They are a few I haven't heard from. I am kind of waiting and trying to get a hold of them. It's this time a year, so sometimes it's reach these people. 2:28:27

Dave Stix, Jr.: To make sure I understood what you said, first of all the fees that we pay for the scales are more or less like a business license. We pay that fee, we're on file with you, this Department, that we have a scale. The actual checking of the scale accuracy which in layman's terms is what you're doing. So when that seal is put on, that tells the buyer that scale has been checked within the last two years. The heart of this issue is this agency is making sure that when a buyer goes out into the country or to any scale, it doesn't have to be cattle, we have truck scales, we assuring that that scale is correct to the person that is buying the product. And then what you're saying is that we don't necessarily have to do the inspection to make sure it's accurate, we can go to Murphy or any other accredited company, a lot of them work on the scales at the same time, the mechanics on them as well. They could actually certify the scale as long as you get the proper paperwork, you're cool with it and a sticker can go on even though our people didn't touch it. When I say our people, the Department of Ag.

Lon Beal: We're making an exception this year. Okay, we would prefer to check that scale. Let me add too, when our people go out to do these livestock scales, we don't do

this with other scales, we don't do this with other equipment, gas meters, or whatever. They will actually calibrate when they are out there if they are out of calibration. And the reason for that is because it is extremely difficult to get somebody out there. All of people are very capable of doing this. We don't want to charge people to come back, because if we have to come back, we do charge. So, essentially, while they're there they will fix scales, they won't necessarily fix the scales, but they will calibrate them and certify them and put the seal sticker on them.

Dave Stix, Jr.: I just want make sure the producer's out there know that (1) what the fee is for that they pay, (2) that's okay that if another agency comes and inspects the scale by the Department standard. And that is good enough to get a sticker.

Lon Beal: Like I say, this year we have made an exception to that. That exception has not been made .....

Dave Stix, Jr.: Because you're behind.

Lon Beal: Because we're behind. Correct. We would prefer not to do that, we would prefer to get out there once every two years. Now some of these people have an every 6 months requirement. Of course, the situation is that they call a registered service agency.. They would call a registered service agency every 6 months and then of course, we come every two years.

By policy we'd prefer to stick with this policy. If we get into a situation, we do need the situation to be flexible. Statute gives us that ability to be flexible. So that is what we're doing this year. When we send the license fees, we do have a letter that this is a license fee. We'll be back on schedule next year.

## **8. Plant Industry**

### **A. Division update**

Dawn Rafferty: My update will be short. Ed Foster will give the bulk of it. Most of my time lately and I'm sure you guys have talked about this earlier today has been spent on Priorities of Government which is a separate module in the budget system from the actual budget requests that will be put in. Lon has helped me tremendously with this and took the descriptive portion of POG.

And what the Priorities of Government system does is it kind of takes all the things the Department of Ag does and condenses them down to 22 activities. Each one of these activities then has funding source, performance measurements, populations served and the full time employees that go with each of those activities. Lon has kind of taken over that part of it and I moved over to Katie Jameson to do the budgetary, the financial part of it which in theory, this module is supposed to talk to the budget request that Katie's putting together.

It's a very interesting exercise for us to see how these are interacting with each other. I believe we are going to Carson day after tomorrow to have a discussion with Budget and some LCB members to try to start explaining to them how we put this together and how it's going to work for us. So, that is where the bulk of my time has spent since I last saw any of you in June.

I think the one thing that will impact us right now is Katie's coming over to work for Plant Industry. She will be managing a Speciality Crop Block Grant that we get from USDA through AMS. I don't know if any of you have heard the radio spots, but we did a huge publicity radio spot on it, Ed will talk a little bit more on this. We definitely need Katie at this point since we started it, I think we have gotten over a 100 responses and certainly personnel back in Plant Industry right now cannot deal with that. So, it's good to have Katie over in our side to help us with that.

Ed Foster continued with the Division update.

**D. Request permission from the Nevada Board of Agriculture to authorize a payment of \$2,272.81 to be paid from the Alfalfa Seed Research and Promotion Account. The funds will cover the Alfalfa Seed Advisory Board's 2010 / 2011 membership dues with the National Alfalfa and Forage Alliance.**

**Jim Snyder made the motion to pay them. Dean Baker seconded the motion. Motion passed.**

### **C. EPA third quarter 2010 update**

Chuck Moses presented the EPA third quarter 2010 update to the Board.

## **9. Resource Protection Division**

### **A. Division Update**

Mark Jensen, State Director for USDA Wildlife, PARC: We had our state conference in August. This state conference is a meeting that we have every 2 or 3 years. This year we had it up in Lamoille Canyon at the old Boy Scout camp. Again, this is a meeting where we get all our employees together, state and federal. We have speakers come in and speak to the group. We had Tony up and he was able to talk to the group a little bit. We also had representatives from our regional office in Fort Collins and also had national representatives from Riverdale, MD.

This is a meeting we do, mandatory trainings, firearms training, other continuing education for pesticides and variety of speakers. We had a good meeting.

Also, in August I attended the NDOW Commission meeting. That's the meeting where they, the Commission, goes through and approves the dollars. That's the \$3.00 big game application money that they end up approving and comes to us for predator

management to protect wildlife such as mule deer and bighorn sheep. The Commission did continue and approve a variety of projects; I've talked about those in the past. Approximately \$450,000 worth of projects that we will conduct on behalf of NDOW over this next year. That was approved by the Commission.

Tony mentioned our budget. This is of course a very serious concern to us. Again, our Division is over 95% funded through general funds. Tony mentioned that we used to have 12 wildlife specialists, trappers, out in the field, living, working amongst rural Nevada. We used to have 12, our budget was over \$900,000, now we're down to 8 employees, about \$536,000 is our current budget. So, we went from 12 to 8 in order to meet the Governor's budget. That was the only way that we could reach our new cap of \$458,671. The only way we can do that is we have 1 of our state mountain lion specialists retiring in January. We will not be able to fill that position and if the cuts take place, we will have to lay off 1 additional employee. So, I mean we'll go from 12 to 6. Tony's has outlined the difficulties of getting the general funds that we're going to need and as everybody is well aware of our program and the work that we do in rural Nevada. It is becoming very difficult if not impossible to continue to provide the services that we do.

#### **11. Department employee comments and suggestions to the Board of Agriculture.**

None

#### **12. Public Comments**

Jack Armstrong: A little mundane subject perhaps compared to all these horror stories. I would like to commend Tony, Director Lesperance, in his efforts to maintain some sort of Departmental history that can be on permanent status to recognize the past. I strongly encourage Tony, Board members, and the general public to support agriculture in this state and the Department through some kind of historical record that's really not available. I commend Tony for his efforts.

Dean Baker: I am always willing to say that I'm bullheaded, opinionated, old goat. But, issues are important and if Tony is also a bullheaded, opinionated, old goat that's one thing. People should not, we should not look at people and personalities. It is the issues that we deal with that are the important things. I make mistakes, all of us make mistakes, all of us do things that are wrong. But we need to look at the points and I don't know if Tony is.....I'm sure he isn't as opinionated, old goat as I am, but he has accomplished a great deal for the Department of Agriculture. Whether his tone of voice has been correct, I don't know. He has always been wonderful with me. But, anyway, when we look at things.....if somebody can't deal with the person....I am sure if they sit down with Tony long enough, they can argue that. They have to have to the ability to teach Tony or me or anybody else. Maybe, that's not the kind of things we should bring up, but I feel strongly that way.

Boyd Spratling: You know sitting through today's discussion, there are some real areas that concerns me. There is some discontent within the staff. And I think we've come up with several examples of where the Department maybe is in a situation where this is debatable what road we're going down. Are we inhibiting the commerce of agriculture? And so there are questions out there and there's obviously at least some discontent. And I think because of that, I think it would be appropriate that we should have an evaluation of the Director. It should be on annual basis. The only one I ever participated in was in December of the year I was appointed. So, I think that to air things out a little bit, I think that would be an appropriate thing.

Chairman Perazzo: Boyd, I think that is agreed upon. Ever since I've been on the Board, we did it in December as well. We didn't last year.

Director Lesperance: I went on record as requesting that the Board evaluate me on an annual basis. It was done on the first year, but wasn't done last year. I'm not sure it's my position to initiate the evaluation. If the Board wishes me to initiate the evaluation, then I will do so.

Chairman Perazzo: I don't know if you need to initiate it as much as can we have that on the agenda for December.

Sandie Foley: The evaluation has to be sent out to the Board members and then appoint one person to compile the information and come up with whatever scores or whatever comments you want to make. Then they come back to you, the Chairman.

Jim Snyder: Is there a standard form?

Sandie Foley: There is a form for Director's evaluation.

Chairman Perazzo: What we have done in the past is to send it to all the Board members and they send it back to me, then at the meeting we'll sit down and we'll talk about it. But I will just give you an overview of everybody's evaluation.

Hank Vogler: I'm not looking for seniority in this position, but Dr. Lesperance has been yelling forty-three years and it hasn't hurt me and I challenge anybody.....no matter, no matter how hard you work....you're always going to pick up some detractors. And, it seems like to me that if somebody would set down and write a list of things Dr. Lesperance has ever done that was adverse to agriculture, I would like to look at that list. Now maybe there have been some issues that he couldn't overcome because he didn't have the capacity to overcome it because he was being overruled by somebody further up the food chain. So, I don't know .... I just was astonished that..... we can't do a Rodney King here. I mean we have enough problems. We're no longer rearranging the deck chairs on the Titanic. We're playing the musical chairs and every time the music stops, there is one less chair. And if we do not get focused on our mission and that is to protect agriculture and quit cannibalizing ourselves, we're going to be the perfect medium for an urban legislature to say, "these guys can't even agree on lunch

amongst themselves, hell, let's just give rid of all of them", and then we'll have to go back from that position. And it won't be fun.

There was discussion amongst the Board members on how to facilitate the Director's evaluation in the best way possible and to include employees as well.

Director Lesperance: Let me make some comments that maybe will help this a little bit. Dave mentioned the lack of communications. There is lack of communications. Some Board members of this Board have routinely called me and several Board members have never called me. So communication is a two-way street. Am I concerned about what's going on in this Department? Yes, I am horribly concerned. One of the reasons I went to Las Vegas last week was specifically to meet with the Director of Personnel for the state.

Personnel is totally aware of this Department and the problems that it has had. But those problems pre-date me several years. The problem was discussed in detail and how to resolve this, how to eliminate these problems. The Director of Personnel said there is a technique which they have used once or twice. That is to bring in a competent individual that will evaluate the health of the Department; spending significant time just like it was an audit, like we just went through, spend maybe a month, camp here in the building, interviewing everybody from the Board members down to every single employee. And they make recommendations back to the Board. I have requested this.

This study can only authorized by the Governor of the state. I've been asked to go to the Governor and see if he will authorize it and I have every reason to believe he will. I would suggest this maybe an alternative to what you're talking about. Maybe not. But, this is where I'm at this situation at this point in time whether this is of interest to this Board or not. But I'm sufficiently concerned with the problems that exist. It's got to be resolved one way or the other. So, I've already taken this action and I'm waiting for the documents to come back from Personnel and then I will schedule a meeting with the Governor and authorize this study.

It is specifically to find out what the problems are, identify what they are and see if we can come up with some recommendations to correct them. Whether it's me or whether it's staff or whatever, but I am totally aware of the problems. I live here everyday. I deal with the staff everyday. I understand what some of the problems are. I don't understand what some of the problems are. I try to deal with it to the best of my ability. There are some I can't deal with. So, that is what I've have done.

Dean Baker: I think that sounds like a much better way than us just listening to people with problems.

Director Lesperance: Please understand I am suggesting this as a replacement for my evaluation, far from it. I am going to demand that the Board evaluate me. You didn't

last year. Maybe it was my fault, but I will request that the Board evaluate me before this year is over with.

Jim Snyder: What kind of .....I think that is an interesting idea. What kind of timeline are we looking at?

Director Lesperance: I think it can occur pretty rapidly. In talking with the Director of Personnel, she indicated it would take her a couple of day to put everything together, get back to me. I have to go to the Governor to request it. I pointed it out that if we are going to do this, we better do it pretty fast because it looks like to me we're shuffling Governors here pretty quick. The Governor is aware of it and I'm quite sure he will authorize this, and I think it could commence immediately thereafter. The individual that does it is prepared to start this audit. They call it an audit. It is an in-depth evaluation, individual by individual. I have to be interviewed, all administrators have to be interviewed, basically the entire staff; all 70 of us will be interviewed.

Jim Snyder: This could be very helpful.

Dean Baker: None of us could look at little things. It's obvious that I am opinionated because I am a longtime friend, but that's the kind of evaluation we need to make a wise decision and look at the whole thing.

Part of my problem is new directors and managers are tough things to come by. It isn't like throwing this out and finding the next one is worse. It takes them a while to learn what the state is like.

Director Lesperance: I would request that this be available prior to the December meeting. I do want to call your attention to one thing. This is a helluva difficult period of time. I've had to eliminate 30 some people. Do you think I enjoy that? I have cried tears time and again because I ruin people's lives. I don't enjoy this and I'm going to have to ruin some more people's lives. Whoever sits in this chair has got to make impossible decisions. Do you think for one second that wins me a popularity contest with this staff? I guarantee you it doesn't. I am destroying people's lives. If you loose your job at this point in time, the scenario is you're probably going to loose your house. You're going to loose everything because you cannot get a job. My God, you talk about a thankless position and somebody has to make these decisions. And there are going to be a lot more that have to be made this coming year. And it isn't going to be pleasant. I don't' think that's how you get to be the most popular kid on the block.

Paul Noe: I, for one, think the idea is very acceptable. I would make myself available to expedite the procedure whenever need be. Hopefully, we can get this done before the next meeting.

Ramona Morrison: I would like to just add some perspective, because I think it is very important that we do an honest and realistic evaluation of the Director. I think that's our job. We'd be remiss not to. But having been around for a few skirmishes, I think it's

very important.... it's very easy to get..... it's very hard as a Board member as a board member to discern what is actually is going on internally. And so I am much more comfortable, but otherwise you get involved in the business of slander. We get involved in the business of being convinced by the most convincing personality. And, unfortunately, I see this as having happened before and being similar in pattern and similar in the people involved. Now, I could be all wrong and Tony could just be messing up right and left and we need to know that. But, I feel much more comfortable having somebody from outside come in and have a look and have a thorough interview process and analysis of this situation. But, what I'm concerned about is we change horses in the Director's seat and the next Director is going to have the same exact problem. So, if we need to change Director's that is based on performance and other considerations, that's fine, but I think we also need to look more deeply internally in this Department and make sure there is not ongoing, chronic problem where in two years, we'll be doing it again.

Chairman Perazzo: I guess my sense is from the Board that we will move ahead with this evaluation from this independent person with I guess I'm sensing from the Board, correct if I'm wrong, but I'm sensing that we want that evaluation back so that we could, when we meet at the December meeting and do an evaluation and do an evaluation that we have that information on the Department.

Director Lesperance: I will call the Director of Personnel first thing in the morning and see if we can get this thing rolling and I will ask for her estimation of when the report would be available and the Board has requested that if possible, the report be available for the December meeting.

### **13. Date of next meeting**

December 14<sup>th</sup>, 2010 and December 15, 2010 were the dates settled upon by the Board.

**Jim Snyder made a motion to have the next Board meeting December 14<sup>th</sup> and December 15, 2010. Dave Stix, Jr. seconded the motion. Motion passed.**

### **14. Adjournment**

**Dave Stix made a motion to adjourn. Ramona seconded. Motion passed.**

Meeting was adjourned at 4:55 pm.

