

February 23, 2020

To the Assembly Committee on Natural Resources:

We are writing asking you to oppose Assembly Bill 71.

The Nevada Public Records Act (NPRA) is one of the more robust government sunshine statutes in the country. It holds public agencies to a high standard when it comes to disclosure of public records in order to promote transparency and accountability. Access to public records is essential to allow the public and the press to conduct oversight of government activities and to promote the public good.

Assembly Bill 71 proposes to amend the Nevada Public Records Act to make all records maintained by the Nevada Division of Natural Heritage (NDNH) related to the location of a sensitive species confidential and exempt from public records requests. It also proposes a system where NDNH could chose to release records would be released to select, approved members of the public.

While this bill purports to protect sensitive species, in reality those species are vulnerable regardless of whether the exception is added to Nevada law. Location data for sensitive species is widely available on the internet. For example, the Nevada Department of Wildlife also maintains records of geospatial location data for sensitive species, and they have no such exemption from the public records law. Data about the location of sensitive species is freely available and easy to find.

While AB71 will not save imperiled species, but maintaining transparency will allow the public important access to information. For example, access to such records has proven an important component of conservationists 'campaigns to save sensitive species from threats and extinction.

It is hard to imagine that NDNH is not in fact pursuing this legislative change to shield itself from scrutiny and criticism. Public records have recently led to scrutiny of NDNH surrounding the controversial Tiehm's buckwheat issue and the proposed mine that groups like the Center for Biodiversity have contended would drive it to extinction. In particular, NDNH emails ended up in an article that ran in the *New York Times* and *Washington Post*, among other outlets. Public records accessed through the NPRA have revealed a culture of secrecy at NDNH, with staff joking that Tiehm's buckwheat is the "plant that shall not be named," in a seeming attempt to avoid ending up in a public records request. (*See attached.*) These may appear to be jokes but there clearly is some seriousness behind them or they would not come up time and again.

The concern that the bill is designed to shield agencies from criticism is compounded by the fact that it also gives the Department of Conservation and Natural Resources (DCNR) unfettered discretion to decide who has a “legitimate activity” related to the species. This opens the door to First Amendment viewpoint discrimination and DCNR preventing release of records to those entities with whom DCNR has political differences – for instance, environmental groups trying to get species listed under the Endangered Species Act or otherwise protect them from threats. Access to these records is essential for NGOs and government watchdogs to provide independent oversight of NDNH and DCNR while they advocate for sensitive species. This is exactly what the NPRA was designed to promote: transparency and government accountability.

It’s also telling that AB71 would allow the release of these records if the requestor is willing to pay a “reasonable fee.” If the release of the records endangers sensitive species as NDNH purports, why would the payment of a fee make it any less dangerous? Moreover, the NPRA already addresses the fees governmental entities are entitled to.

Finally, even if it were advisable to make species location information confidential and there weren’t other problems with the bill, AB71 is written too expansively. NDNH could interpret the language such that it would exempt the entirety of any records mentioning the location of a species might be exempt. The exemption could extend to a variety of vital records which the public needs access to. For instance, NDNH could claim that a fifty-page conservation status report that mentions the coordinates of a species might be exempt. Public agencies have historically applied exceptions to the default rule of access broadly and AB71 could be applied quite expansively to exempt records from public scrutiny.

Please support government transparency and reject Assembly Bill 71.

Sincerely,

Patrick Donnelly
Center for Biological Diversity

Maggie McLetchie
Nevada Open Government Coalition

Richard Karpel
Nevada Press Association

Holly Welborn
ACLU of Nevada

Christine Saunders
*Progressive Leadership Alliance of Nevada
(PLAN)*

Ainslee Archibald
Sunrise Movement Las Vegas

Kyle Roerink
Great Basin Water Network