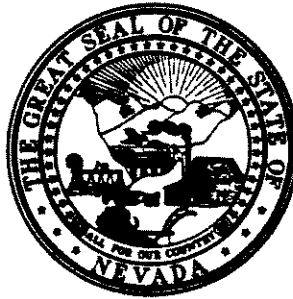


STUDY OF THE STATE'S LAWS CONCERNING PUBLIC LANDS



Bulletin No. 87-13

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

August 1986

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LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA**

August 1986

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SENATE CONCURRENT RESOLUTION—Directing the legislative commission to study the state's laws concerning public lands.

WHEREAS, Approximately 87 percent of the land in Nevada is public land; and

WHEREAS, The various provisions of Nevada's law concerning public lands were adopted at different times and a coordinated review of those provisions has not been attempted by the legislature in its recent sessions; and

WHEREAS, Controversy has arisen at several locations in the state from the use or proposed use of eminent domain for mining interests and from altercations concerning access to public and private lands; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the legislative commission is hereby directed to study the state's laws concerning public lands including, but not limited to:

1. The acquisition, management, disposal and planning for the use of public lands;
 2. Access to public and private lands; and
 3. The use of eminent domain in connection with mining, smelting and related activities;
- and be it further

RESOLVED, That the results of the study and any recommendations for legislation be reported to the 64th session of the legislature.

10  88

REPORT OF THE LEGISLATIVE COMMISSION TO THE MEMBERS OF THE
64TH SESSION OF THE NEVADA LEGISLATURE

This report is submitted in compliance with Senate Concurrent Resolution No. 47 of the 63rd session of the Nevada legislature. This resolution directs the legislative commission to study the state's laws concerning public lands.

The legislative commission assigned this study to the Nevada legislature's committee on public lands. The committee is composed of:

Senator Dean A. Rhoads, Chairman
Assemblyman David D. Nicholas, Vice Chairman
Senator James H. Bilbray
Senator John M. Vergiels
Assemblyman Virgil M. Getto
Assemblyman John W. Marvel
Clark County Commissioner Karen W. Hayes

In this report, the Nevada legislature's committee on public lands has attempted to present its findings and recommendations in a concise form. Only that information which bears directly upon the scope of the study and the committee's recommendations is included. All supporting documents, including minutes, letters and other research materials, are available and on file with the research library of the legislative counsel bureau.

This report is transmitted to the members of the 1987 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
August 1986

* * * * *

LEGISLATIVE COMMISSION

Assemblyman Louis W. Bergevin, Chairman
Assemblyman Bob L. Kerns, Vice Chairman

Senator James H. Bilbray	Assemblyman Robert M. Sader
Senator Helen A. Foley	Assemblyman James W. Schofield
Senator Lawrence E. Jacobsen	Assemblyman Danny L. Thompson
Senator Kenneth K. Redelsperger	Assemblyman Barbara A. Zimmer
Senator Sue Wagner	

SUMMARY OF RECOMMENDATIONS

The legislative commission directed the Nevada legislature's committee on public lands to conduct the study of the state's laws concerning public lands. The committee recommends for consideration of the 64th session of the Nevada legislature that:

1. Legislation be introduced to provide a general policy statement for the management and disposition of state lands in Nevada. (BDR 26-218)
2. Legislation be introduced to provide an appropriation for the purchase of easements to offer an incentive for private property owners to improve or grant access to public lands. (BDR S-217)
3. The current law in Nevada Revised Statutes 37.010, "Public purposes for which right of eminent domain may be exercised," which provides for the use of the power of eminent domain for mining purposes, be retained in its present form.
4. The Nevada legislature's committee on public lands include federal and state reclamation laws for mining operations as a topic for continued study.
5. The final report include, for reference purposes, information from committee research reports concerning state land laws, the access issue, and the eminent domain for mining law.

REPORT TO THE 64TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION FROM THE NEVADA
LEGISLATURE'S COMMITTEE ON PUBLIC LANDS
DIRECTED TO STUDY THE STATE'S LAWS
CONCERNING PUBLIC LANDS

I. INTRODUCTION

The 1985 legislature adopted Senate Concurrent Resolution No. 47 (File No. 132) which directed the legislative commission, under the auspices of the joint committee on natural resources, to study the state's laws concerning public lands. This study included the state's laws pertaining to:

1. The acquisition, management, disposal and planning for the use of public lands;
2. Access to public and private lands; and
3. The use of eminent domain in connection with mining, smelting and related activities.

The legislative commission assigned this study to the Nevada legislature's committee on public lands (Nevada Revised Statutes (NRS) 218.536, et seq.). The committee devoted a portion of its regular meetings to this study.

II. SUMMARY OF PUBLIC HEARINGS

The Nevada legislature's committee on public lands conducted public hearings on the study of the state's laws concerning public lands at the following meetings:

<u>Date</u>	<u>Nevada Location</u>
August 16, 1985	Reno
October 7, 1985	Elko
December 16, 1985	Las Vegas
February 7, 1986	Las Vegas
May 22, 1986	Reno

The committee received input for the study from the Nevada Mining Association; representatives of the division of state lands, department of conservation and natural resources; representatives of the departments of minerals and wildlife; research staff of the legislative counsel bureau; representatives of businesses and citizens' groups; and private citizens.

Most of the testimony at the public hearings pertained to the portion of the study which concerned the power of eminent domain for mining. The committee received very little

public testimony on the state's land laws and on the issue of access to private and public lands.

The committee conducted a work session on June 30, 1986, in Carson City, Nevada, to analyze the information, consider alternative courses of action, and adopt recommendations.

III. FINDINGS AND RECOMMENDATIONS

The committee reviewed several suggestions pertaining to the state's land laws, the access issue, and the eminent domain for mining law. The committee chose to adopt five of these recommendations. Two of these recommendations involve the introduction of legislation.

A. THE STATE'S LAND LAWS

The committee surveyed state lands officials from the 10 Western States in the conterminous United States to obtain copies of their state's federal enabling act, and constitutional and statutory provisions pertaining to the management and administration of state and public lands. All of the Western States responded, and reference documents and information were received from state lands officials in Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming.

The committee's review and analysis of the land laws among the Western States are provided in Appendix A. Based on its review and discussion, the committee decided that a general policy statement would be useful for Nevada's state land laws and that legislation should be introduced during the next legislative session to generate discussion of a policy statement.

The committee, therefore, recommends:

That legislation be introduced to provide a general policy statement for the management and disposition of state lands in Nevada.

B. THE ACCESS ISSUE

A previous legislative study concerning the issue of access to public and private lands was reported in Legislative Counsel Bureau Bulletin No. 81-11 entitled "Problems Of Access To Public Land" dated October 1980. The committee reviewed this study and sought additional information. The committee's "Update on Access Issues" is provided in Appendix B which includes subsequent reports from the division of state lands.

The committee also requested updated information concerning access issues from the department of wildlife. A copy of the letter from the director of the department of wildlife to the committee is provided in Appendix C.

The department of wildlife indicated that there has been little change in access problem areas throughout the state, and that "* * * there continues to be a lack of interest from most private property owners to improve or grant access to the general public." The committee agreed with the department that some monetary incentive may be necessary to resolve some problem areas.

The committee, therefore, recommends:

That legislation be introduced to provide an appropriation for the purchase of easements to offer an incentive for private property owners to improve or grant access to public lands.

C. EMINENT DOMAIN FOR MINING

The committee received extensive testimony on the issue of the power of eminent domain for mining purposes from private citizens and representatives of the Nevada Mining Association, mining companies and citizens' groups. The testimony and suggestions ranged from advocates who favored retention of Nevada's current law to opponents who favored complete repeal of the authority granted to mining operations for the use of the power of eminent domain.

The committee also conducted research on this issue and its report is provided in Appendix D. The committee found that Nevada's law providing for the right of eminent domain for mining has been in effect for more than 110 years. However, use of the law appears to be limited, and not excessive, since research materials indicate that less than 10 court cases in Nevada are related to the use of eminent domain for mining since this state law was enacted in 1875.

The committee, therefore, recommends:

That the current law in Nevada Revised Statutes (NRS) 37.010, "Public purposes for which right of eminent domain may be exercised," which provides for the use of the power of eminent domain for mining purposes be retained in its present form.

D. RECLAMATION LAWS

During testimony and discussion on the issue of eminent domain for mining, several individuals indicated that the state should look toward developing some type of reclamation

law for mining operations. However, adequate information was not readily available concerning the need and application of a state reclamation law, particularly since so much of the land area in Nevada is controlled by the Federal Government.

The committee, therefore, recommends:

That the Nevada legislature's committee on public lands include federal and state reclamation laws for mining operations as a topic for continued study.

E. BACKGROUND INFORMATION

The committee directed and reviewed extensive research on the topics involved in this study of the state's laws concerning public lands. The committee believes that the results of these research efforts should be readily available to the legislature and the public for future reference. This research also would be useful if further legislation is introduced on these topics in the next or subsequent sessions of the Nevada legislature.

The committee, therefore, recommends:

That the final report include, for reference purposes, information from committee research reports concerning state land laws, the access issue, and the eminent domain for mining law.

These research reports are found in Appendices A, B and D of this bulletin.

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APPENDIX A

Review of Land Laws Among the Western States



May 19, 1986

SCR 47 - Review of Land Laws Among the Western States

This paper provides a general review and comparison of the land laws among the 10 Western States and Nevada for the Nevada legislature's committee on public lands.

Senate Concurrent Resolution No. 47 (file No. 132, Statutes of Nevada, 1985) directed a study of:

- * * * the state's laws concerning public lands including, but not limited to:
 1. The acquisition, management, disposal and planning for the use of public lands; * * *

The purpose of this paper is to provide a point of reference and general information for this study by presenting a comparison of certain aspects of state land laws in the West.

INTRODUCTION

The information in this paper is based on materials received in response to the committee's letter dated December 12, 1985, to the appropriate state lands officials in the Western States. The letter requested these officials to send copies of their state's enabling act, and constitutional and statutory provisions pertaining to the management and administration of state and public lands. Responses were received from the 10 Western States in the conterminous United States. These states are Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming.

The documents received from the Western States are voluminous and indicative of the complexity and amount of detail involved in federal and state land laws. Therefore, the scope of the following review and comparisons necessarily is limited to certain aspects of state laws concerning the management, types, disposal and planning for the use of state lands.

MANAGEMENT

Two comparative aspects for the management of state lands include the organizational arrangements and general policy statements of each state.

Organizational Arrangements in the Western States

Nine of the 10 Western States have a board or commission of elected or appointed officials who exercise policymaking authority over the management and administration of state lands. The other state--New Mexico--has an elected commissioner of public lands who is limited by the state constitution to one 4-year term.

The state lands board or commission in six of the nine states is composed of certain elected officials. These officials generally include the governor, superintendent of public instruction, secretary of state, and in some states, the attorney general, state treasurer, auditor and/or other designated persons. Idaho, Montana, Washington and Wyoming have policymaking boards consisting primarily of five elected officials, while California and Oregon have a board or commission with three elected officials.

The three other states--Arizona, Colorado and Utah--have state land boards that generally consist of members who are appointed by the governor with the consent of the state senate. Arizona is somewhat unique among these states because it has a land commissioner who apparently sets general policy and who is appointed by the governor with the consent of the senate. However, the commissioner may sell state lands, and lease state lands for commercial purposes, only with the approval of the five-member Board of Appeals.

The policymaking body for state lands is created by the state constitution in six of the 10 Western States--Colorado, Idaho, Montana, New Mexico, Oregon and Wyoming. In the other four states--Arizona, California, Utah and Washington--the policymaking body is created by statute. These policymaking bodies generally have the power to authorize or approve the sale, lease, exchange or other disposition of state lands.

Attached is Enclosure 1 which provides a summary of the organizational arrangements for the management of state lands in the Western States. This summary includes the name and composition of the policymaking body, its authority, and the agency or official charged with day-to-day administration of the state's lands.

Organizational Arrangement in Nevada

In Nevada, the legislature, in effect, functions as the policymaking body for the management of state lands.

The administrative agency in Nevada is created by statute as the division of state lands in the department of conservation and natural resources [Nevada Revised Statutes (NRS)]

232.090]. The director of the department is appointed by the governor. The director has authority to appoint the administrator of the division of state lands, who is also ex officio state land registrar (NRS 232.110).

The division of state lands is mandated to acquire, hold and administer state lands except lands for highway purposes and university lands (NRS 321.001). Several statutes prohibit and strictly limit the authority of the division to sell, lease or exchange state lands (NRS 321.003(2), NRS 232.158 and NRS 322.007).

General Policy Statements in the Western States

Congressional enabling acts granted certain amounts of lands for certain purposes when the Western States were admitted to the Union. The laws in most of these states include some type of general policy statement which provides a standard or some guidance for the management and disposition of state lands.

Enclosure 2 provides a summary of the general policy statements of the 10 Western States concerning the management of state lands.

Five of the states--California, Colorado, Idaho, Montana and Wyoming--have policy statements which emphasize the maximization of revenue from the sale or use of the state's grant lands for the benefit of the schools or other institutions in the state. The policies of two states--Utah and Washington--specifically mention the management of state lands in the best interests of the state by use of multiple use/sustained yield principles or concepts. One state--Oregon--requires the management of state lands to obtain the greatest benefit for the people of the state consistent with the conservation of this resource. The final two states--Arizona and New Mexico--have detailed and restrictive federal enabling acts which contain specific language concerning the disposition of state grant lands.

Among the eight states that have their own policy statements, four states (Colorado, Idaho, Oregon and Wyoming) have such state-ments in their state constitution. All of these constitutional statements mention the maximization of revenue from state trust lands. The other four states (California, Montana, Utah and Washington) have statutory policy statements. The statements of three of these states include the multiple use concept of land management. California's general policy statement concerning school trust lands appears to be the most recent since it was adopted in 1984.

General Policy Statement in Nevada

Nevada apparently does not have a general policy statement in its laws to establish a standard for the management or disposition of state lands. Most of the provisions in Nevada's laws appear to be administrative rather than policy oriented.

Article 11, section 3, of the Nevada constitution, pledges certain public lands and the money derived from such lands for educational purposes. Senate Joint Resolution No. 21 (file No. 68, Statutes of Nevada, 1985) would amend this section of the constitution to clarify those state lands and proceeds which are pledged for educational purposes. However, this amendment would include no general policy. This amendment must be approved by the 1987 session of the Nevada legislature and ratified by the people in the 1988 general election.

The division of state lands is required to obtain "the best terms available" when authorized by the legislature to lease or sell state lands [NRS 321.003(2)]. However, a moratorium has been in effect since 1965 on the sale or exchange of state lands (NRS 232.158). Since 1965, some land sales have been authorized by specific legislative action.

The "Sagebrush Rebellion" law includes objectives for administering public lands but these provisions do not apply to existing state lands (NRS 321.596, et seq.). This law would apply to the unappropriated federal public lands when they would be transferred to the state to be managed under the multiple use concept.

TYPES OF STATE LANDS

State lands in the Western States refer primarily to the lands granted to the states by the Federal Government under the enabling act upon their admission to the Union, and under other federal laws during the 1800's. These lands and their proceeds generally are to be held in trust for the benefit of certain purposes. These purposes include the support of common schools, universities and colleges, public buildings, penitentiaries and other institutions.

Western States

Based on the materials provided, many of the Western States categorize and classify their state lands in accordance with the purposes provided in the enabling act or other federal laws. A few states provide specific types or classifications of state lands in their statutes.

Oregon, for example, lists the types of grant lands and includes provisions for submerged and submersible lands. Montana law establishes four classes of state land depending on its use, while Arizona provides 10 classifications ranging from agricultural to suitability for community site planning. The law in Washington defines public lands to include state lands held in trust for specific purposes as well as tidelands, shorelands, harbor areas and sovereign lands (lands beneath navigable waters). California law also makes distinctions between school, university, sovereign, and swamp and overflowed lands.

Nevada

According to the division of state lands, there are several categories of state lands in Nevada as follows:

1. University lands;
2. Lands held by the department of transportation;
3. Miscellaneous lands held by other state agencies under special legislative authority such as Colorado River Commission lands; and
4. Lands held by the division of state lands.

Lands held by the division of state lands include:

1. Agency lands assigned for administration to various state agencies for programs such as parks, wildlife lands and buildings;
2. Sovereign lands (lands beneath navigable waters); and
3. Unassigned lands such as federal grant lands, donated and acquired lands, and escheated lands.

DISPOSAL

The disposal and administration of state lands generally refers to the sale, lease or exchange of the lands. These laws in many of the Western States are lengthy and detailed. The following discussion is intended to highlight these laws rather than delve into specific details.

Sale Authority

All of the Western States have provisions in their enabling acts, constitutions and/or statutes governing the sale of state lands. These laws generally provide for sales at

public auctions to the highest bidder at fair market or appraised value, notice requirements, payment for improvements, payment plans and deferrals, prohibitions for speculative purposes, the issuance of certificates of title and patents, and other provisions.

As noted previously, most of the Western States have a board or commission of elected or appointed officials to determine policy or authorize the sale or disposition state lands.

Most of the states have general sale laws for state lands which may include special provisions for certain types of state lands. California has separate laws dealing with the sale of school, university, swamp and overflowed, and public lands generally.

In Nevada, chapter 321 of NRS provides for the control and sale of state lands. However, other statutes also apply. For example, NRS 154.150, et seq., pertains to the sale of escheated land by the state. In addition, NRS 232.158 places a moratorium on the sale or exchange of any state lands, except escheated lands, until authorized by the legislature.

Chapter 321 of NRS also has different provisions. The first part of the chapter contains various statutes concerning the sale and purchase of state lands. Other procedures are provided in NRS 321.335 for sales after April 1, 1957.

Leases

Provisions for leasing state lands vary widely among the 10 Western States. A few states have general leasing statutes, while other states have separate statutes for leasing on mineral, geothermal, oil and gas, and grazing and agricultural lands. The laws generally provide for the terms and conditions of the leases.

Chapter 322 of NRS deals with the lease of state lands in Nevada. The chapter includes separate sections for:

1. Leases for extraction of oil, coal, gas or geothermal resources; and
2. Other leases and easements. Any lease beyond 1 year must be approved by the legislature or the interim finance committee, as appropriate (NRS 322.007).

Exchange

Most of the Western States have statutes authorizing the exchange of state lands for federal and/or private lands. Most such statutes require exchanges to be based on equal

value or acreage. Some states--such as California, Idaho, Montana, Oregon and Utah--authorize exchanges of state lands to consolidate or compact state land holdings.

Nevada's statutes pertaining to land exchanges are found in chapter 323 of NRS. Again, NRS 232.158 imposes a moratorium on the exchange of state lands unless legislative approval is granted. In 1981, NRS 323.100 was adopted to authorize the exchange of state lands for private lands. The legislative intent of this law apparently is limited to the exchange of private lands in the Lake Tahoe Basin.

PLANNING

Based upon the materials provided, it appears that few Western States have planning programs related to state lands. Oregon has established statewide planning goals for land use planning, and Washington has developed a 10-year Forest Land Management Program. Arizona has statutes relating to state land planning for urban and community development. California law requires the state land commission to prepare and annually revise a master plan for its school lands to include a recreational element, a multiple use concept for land use planning, and provisions for beneficial uses of the lands.

Nevada statutes include a section entitled "State Planning Of Use Of Land"--NRS 321.640, et seq. However, these laws primarily relate to the involvement of state and local agencies in planning efforts for the use of federal lands.

CONCLUSION

This paper provides a general overview and comparison of the state land laws among the Western States and Nevada. It should be emphasized that the comparisons presented in this document are from a research point of view, and that legal recommendations for changes are not advocated or intended by this presentation. The purpose of this paper is to provide general information and to stimulate further inquiry or discussion.

ENCLOSURE 1

SUMMARY OF ORGANIZATIONAL ARRANGEMENTS FOR THE MANAGEMENT OF
STATE LANDS IN THE 10 WESTERN STATES

ARIZONA

Policymaking Body	State Land Commissioner - Appointed by Governor with consent of the Senate. Serves at the pleasure of the Governor.
Authority	Exercise and perform all powers and duties vested in or imposed by the State Land Department. Lease land owned by the state except for commercial purposes. Lease for commercial purposes and sell state land with the approval of the Board of Appeals.
Administration	State Land Department - Has charge and control of all lands owned by the state except for state institutions.
Approval Board	Board of Appeals - Five members appointed by the Governor with consent of the Senate for 6-year terms. Three members are to represent certain districts of the state and two members are at large. All members must be experienced in the classification and appraisal of all types of real estate.

(Source: Arizona Revised Statutes 37-131, 37-132 and 37-213.)

CALIFORNIA

Policymaking Body	State Lands Commission - Three members consisting of State Controller, Lieutenant Governor and Director of Finance.
Authority	To administer, sell, lease or dispose of public lands owned by the state or under its control including school lands, tide-lands, submerged lands, and so forth.
Administration	Division of State Lands in the Resources Agency.

(Source: Public Resources Code 6101, et seq.)

COLORADO

Policymaking Body State Board of Land Commissioners - Three members appointed by the Governor with the consent of the Senate.

Authority Has the direction, control and disposition of public lands of the state under regulations prescribed by law.

Administration Division of the Department of Natural Resources. Board has the authority to employ an office force. Staff includes an administrator, minerals director and deputy register.

(Source: Constitution, Article IX, Section 9; and Colorado Statutes 36-1-102.)

IDAHO

Policymaking Body State Board of Land Commissioners - Five members consisting of the Governor, Superintendent of Public Instruction, Secretary of State, Attorney General and State Auditor.

Authority Has the direction, control and disposition of the public lands of the state.

Administration Department of Lands with a director who is appointed by the Board.

(Source: Constitution, Article 9, Section 7; and Idaho Code 58-101, et seq.)

MONTANA

Policymaking Body Board of Land Commissioners - Five members consisting of the Governor, Superintendent of Public Instruction, Secretary of State, Attorney General, and Auditor.

Authority Direct, control, lease, exchange and sell school lands and lands granted for support and benefit of various state educational institutions as provided by law.

MONTANA (continued)

Administration Commissioner of State Lands in the Department of State Lands under the direction of the Board.

(Source: Constitution, Article X, Section 4; and Montana Code 77-1-201, et seq.)

NEW MEXICO

Policymaking Body Commissioner of Public Lands - Elected official who is limited by the Constitution to one 4-year term.

Authority Shall select, locate, classify and have direction, control, care and disposition of all public lands under provisions of acts of Congress and regulations provided by law.

Administration State Land Office - A Deputy Commissioner handles day-to-day administration.

(Source: Constitution, Article XIII, Section 2; and chapter 19 of New Mexico Statutes.)

OREGON

Policymaking Body State Land Board - Three members consisting of the Governor, Secretary of State and State Treasurer.

Authority The disposition and management of state lands with powers and duties as prescribed by law.

Administration Director, Division of State Lands, acting under the Board.

(Source: Constitution, Article XIII, Section 5; and Chapter 273 of Oregon Statutes.)

UTAH

Policymaking Body Board of State Lands - Nine members consisting of the State Superintendent of Public Instruction, a member knowledgeable in forestry and fire control, and seven representatives of certain districts in the state. The State Board of Education designates the Superintendent or other person. The Governor appoints all other members, with the advice and consent of the Senate, for a 4-year term.

Authority To serve as the policymaking body for the Division of State Lands in Utah's Department of Natural Resources.

Administration Director of the Division of State Lands.

(Source: Utah Statutes 65-1-1, et seq.)

WASHINGTON

Policymaking Body Board of Natural Resources - Five members consisting of the Governor, Commissioner of Public Lands, Superintendent of Public Instruction, Dean of the College of Agriculture at Washington State University, and Dean of the College of Forest Resources at the University of Washington.

Authority To establish policies and govern the Department of Natural Resources.

Administration Commissioner of Public Lands--an elected official--who heads the Department of Natural Resources. The state constitution makes the commissioner's office a discretionary elective office which could be abolished by the legislature.

(Source: Title 79 of the Revised Code of Washington and the 1984-1993 Forest Land Management Program.)

WYOMING

Policymaking Body Board of Land Commissioners - Five members consisting of the Governor, Secretary of

WYOMING (continued)

State, Superintendent of Public Instruction,
State Treasurer, and State Auditor.

Authority

Under the direction of the Legislature as
limited by the Constitution, the Board has
the direction, control, leasing and dis-
posal of state school grant lands and other
lands granted to the state.

Administration

Commissioner of Public Lands - Appointed
by the Governor with the consent of the
Senate for a 2-year term.

(Source: Constitution, Article 18, Section 3; and Wyoming
Statutes 36-3-101, et seq.)

ENCLOSURE 2

SUMMARY OF THE GENERAL POLICY STATEMENTS OF THE 10 WESTERN STATES CONCERNING THE MANAGEMENT OF STATE LANDS

ARIZONA

The enabling act contains specific language which requires granted lands to be held in trust, to be disposed of only in the manner provided by the act, and the income to be used only for the purposes of the grants. (Section 28 of Arizona's Enabling Act, June 20, 1910, 36 U.S. Stat. 557, 568-579.)

CALIFORNIA

The School Land Bank Act of 1984 acknowledges that past state policies have resulted in a significant depletion of the inventory of lands for school support. The remaining lands are to be managed and enhanced to provide an economic base for support of the public school system. All transactions are to be planned and implemented for revenue generating purposes and the primary criterion is to be fair market value. (Public Resources Code 8702.)

COLORADO

It is the duty of the State Board of Land Commissioners to provide for the location, protection, sale, or other disposition of all lands granted to the state under regulations prescribed by law; and in such a manner as will secure the maximum possible amount therefor. The General Assembly shall provide by law that grants to the state by Congress be judiciously located and carefully preserved and held in trust subject to disposal for the use and benefit of the purposes of the grants. (Constitution, Article IX, Section 10.)

IDAHO

It is the duty of the State Board of Land Commissioners to provide for the location, protection, sale or rental of all lands granted or acquired to the state under regulations prescribed by law and in a manner to secure the maximum long term financial return to the granted institution or to the state. (Constitution, Article 9, Section 8.)

MONTANA

The guiding rule and principle in the exercise of the Board of Land Commissioner's powers is that state lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state. The Board shall administer this trust to secure the

MONTANA (continued)

largest measure of legitimate and reasonable advantage to the state. (Montana Statutes 77-1-202.)

The board shall manage state lands under the multiple-use management concept as defined. (77-1-203)

The policy on the development of state lands is to seek the highest development of state-owned lands so they might be placed in their highest and best use to derive greater revenue for the support of the common schools and other institutions, and to benefit the economy of the local community and the state. (77-1-601)

NEW MEXICO

The enabling act contains specific language which requires granted lands to be held in trust, to be disposed of only in the manner provided by the act, and the income to be used only for the purposes of the grants. (Section 10 of New Mexico's Enabling Act, June 20, 1910, 36 U.S. Stat. 557.)

OREGON

The State Land Board shall manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of the state consistent with the conservation of this resource under sound techniques of land management. (Constitution, Article XIII, Section 5 (2).)

UTAH

The Board of State Lands shall determine state policy and advise the director on the direction, management and control of all state lands (except those lands designated for public purposes and public buildings). The Board shall establish comprehensive land management policies for state lands using multiple use--sustained yield principles consistent with school trust responsibilities. (Utah Statutes 65-1-14.)

WASHINGTON

All of the public lands granted to the state are held in trust for all the people. (Constitution, Article XVI.)

Basic standards of trust land management are established by the Legislature concerning multiple use and sustained yield, and

WASHINGTON (continued)

transfers of lands out of trust status (1984-1993 Forest Land Management Program, p. vii).

The department is directed to use the concept of multiple use management where it is in the best interests of the state and the general welfare of its citizens, consistent with trust provisions and compatible with activities necessary to fulfill the financial obligations of trust management. (Revised Code of Washington 79.68.)

WYOMING

The sale of all school grant lands shall be at public auction at such minimum prices as to realize the largest possible proceeds. The Legislature is to enact necessary laws for the sale, disposal, leasing or care of all lands granted to the state. (Constitution, Article 18, sections 3 and 4.)

BD/cw/5-13-86:M33-M35

APPENDIX B

Update on Access Issues



May 19, 1986

SCR 47 - Update on Access Issues

This paper provides updated information concerning the issue of access to public and private lands.

Senate Concurrent Resolution No. 47 (file No. 132, Statutes of Nevada, 1985) indicates that:

Controversy has arisen at several locations in the state
* * * from altercations concerning access to public and private lands.

The resolution directs a:

- * * * study of the state's laws concerning public lands including * * *
- 2. Access to public and private lands * * *

The purpose of this paper is to provide information concerning the recommendations which were implemented from a previous legislative study reported in Legislative Counsel Bureau Bulletin No. 81-11 entitled "Problem Of Access To Public Land" and dated October 1980. A copy of the recommendations is at Enclosure 1.

LEGISLATIVE RECOMMENDATIONS

The previous study recommended six legislative proposals to be considered by the 1981 session of the Nevada legislature. Four of these six proposals were enacted.

Recommendations Adopted

Assembly Bill 60 (chapter 538, Statutes of Nevada, 1981--Bill Draft Request [BDR] No. S-114) provided for the identification and purchase of routes of access to public lands. This act also made an appropriation of \$10,000 from the state general fund to the division of state lands of the department of conservation and natural resources to provide for the purchase of such routes identified by the state land registrar, division of state lands. An equal amount of matching money from a private source was required for such purchases.

Assembly Joint Resolution No. 10 (file No. 65, Statutes of Nevada, 1981--BDR No. 115) encouraged the Federal Government to build and maintain routes of access upon federal land.

Assembly Bill 13 (chapter 171, Statutes of Nevada, 1981--BDR No. 26-88) requires the state land registrar to reserve from sales of state land existing routes designated as necessary to public access to certain public lands. This act is found in Nevada Revised Statutes (NRS) 321.355, see Enclosure 2.

Assembly Bill 72 (chapter 63, Statutes of Nevada, 1981--BDR No. 3-70) amended NRS 41.510 to further restrict the liability of landowners who allow access to public lands over their private property. This act primarily added "crossing over to public land" as another purpose for which liability is restricted. A copy of NRS 41.510 is at Enclosure 3.

Also enclosed is a related article entitled "Recreational access to private land: Beyond the liability hurdle" by Ronald A. Kaiser and Brett A. Wright in the November-December 1985 issue of the Journal of Soil and Water Conservation. This article indicates that landowner apprehension about liability questions remains a stumbling block to public use of private land for recreational purposes. This situation exists despite the fact that 46 states, including Nevada, have statutes that provide landowners extensive liability protection when allowing gratuitous recreational use of private land by the public.

Recommendations Not Adopted

Two recommendations for legislation from the previous study were not adopted by the 1981 session of the Nevada legislature.

Assembly Bill 114 (BDR 14-71) would have provided a civil remedy for victims of crime involving personal property damage. This bill died in the assembly committee on judiciary without a hearing.

Assembly Bill 178 (BDR 45-72) would have given game wardens additional authority to enforce laws relating to personal property damage, illegal trespass and related matters. This bill died in the assembly committee on judiciary after its original action to "Amend and Do Pass" was rescinded due to problems with the authority of game wardens.

DIVISION OF STATE LANDS

The division of state lands conducted further studies concerning the problem of access to public lands as a result of

the previous legislative study. Enclosed are the following documents from the division of state lands which summarize its activities:

1. "Public Access Across Private Lands, Acquisition Priorities and Problems" dated February 1981 (Enclosure 4); and
2. "Summary of Action On The Access To Public Lands Problem In Chronological Order" compiled by the state land use planning agency, January 21, 1983 (Enclosure 5).

DEPARTMENT OF WILDLIFE

Several recommendations in the previous legislative study related to the encouragement of certain actions to be taken by the department of wildlife. The department was contacted to make a presentation to the committee to provide an update on access issues.

CONCLUSION

This paper summarizes the recommendations and actions taken concerning the access issue since the previous legislative study was conducted in 1980.

PROBLEM OF ACCESS TO PUBLIC LAND



Bulletin No. 81-11

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

October 1980

SUMMARY OF RECOMMENDATIONS

The legislative commission's subcommittee studying the problems of access to public land over privately owned land recommends for the consideration of the 61st session of the Nevada legislature:

1. Amend Nevada Revised Statutes (NRS) to require the state land registrar, in any future land sales by the state, to reserve rights-of-way necessary to provide public land access. (BDR 26-88)
2. The division of state lands is requested to develop a listing of up to 10 of the top priority private access corridors. These are to be considered for acquisition by the state legislature in 1981. (BDR 8-114)
3. The division of state lands is requested to prepare a comprehensive study to be submitted to the 1983 legislature. This study should inventory, identify, prioritize, coordinate, negotiate and outline funding sources for state acquisition of key access corridors around the state. The subcommittee recommends that the 1981 legislature approve the necessary budget request of the division of state lands to accomplish such a study.
4. A resolution should be adopted at the 1981 legislative session requesting increased cooperation by federal land managers. In some areas access to public lands is only as effective as provisions by such land managers to efficiently distribute persons over the public lands. Federal land managers and other public entities should be requested to develop programs whereby the adequate distribution of persons throughout public lands from points of access is assured. Routes and trails so developed should also be adequately maintained by the appropriate public land managers. (BDR 115)
5. Access acquisitions, studies and other proposals should be funded entirely out of the state's general fund.

6. Enact legislation to provide a civil remedy for victims of crime involving personal property damage. (BDR 14-71)
7. Enact legislation to give authority to game wardens to enforce, in addition to current responsibilities, laws relating to personal property damage, illegal trespass and related matters. (BDR 45-72)
8. Amend NRS 41.510 to specify that access to public lands is a use of private property which may be granted by a landowner without fear of personal liability. (BDR 3-70)
9. The Nevada department of wildlife is encouraged to develop a program similar to the "Operation Game Thief Program" in the State of New Mexico. Such a program could feature a "hotline" whereby reports may be made of observed violations of fish and game laws, trespass, gates left open, and damage to private property. The subcommittee recommends that the 1981 legislature approve the necessary budget request of the department of wildlife to develop such a program.
10. The Nevada department of wildlife is encouraged to enter into cooperative wildlife management area agreements (NRS 504.140) with private landowners when necessary to address access problems on private lands having significant wildlife values and high intensity use potential.
11. The Nevada department of wildlife should take the lead responsibility for preparation of uniform informational signs to direct the general public to and over public access corridors. These signs should be made available to private property owners who allow public access and to other governmental agencies for posting. The subcommittee recommends that the 1981 legislature approve the necessary budget item to develop such a program.

ENCLOSURE 2

NEVADA REVISED STATUTES

321.355 Rights of way reserved to state for public access to other land open for public use.

1. Before any state land may be leased, exchanged, sold or contracted for sale, the state land registrar, in consultation with the state multiple use advisory committee on federal lands and with counties and local governments, shall designate any existing routes over the land which he determines to be necessary for public access to any other land that is open to public use. If such a route is designated, the land must be conveyed with a right of way and all rights of access and abutter's rights for the route reserved in the name of the State of Nevada. Any right of way reserved pursuant to this subsection may, when necessary as determined by the state land registrar and otherwise approved as required by law, be used by a public utility.

2. After the land is conveyed, if the route is determined by the state land registrar, in consultation with the department of transportation and the state multiple use advisory committee on federal lands and with counties and local governments, to be no longer necessary for public access to other land which is open to public use, the state land registrar shall, subject to the provisions of subsections 3 and 4, release the right, title and interest of the state in and to the right of way to the purchaser or lessee of the land, his assigns or successors in interest.

3. Before releasing the state's interest in the right of way, the state land registrar shall cause to be published in some newspaper of general circulation in the county where the right of way is located a notice of intent to release that interest. The notice must be published at least 30 days before the proposed date for the release and must contain:

- (a) A description of the location of the right of way;
- (b) The date upon which the release is to be effective; and
- (c) The mailing address of the state land registrar to which persons may send protests against the proposed release.

4. The state land registrar may, or upon the receipt of a written protest against the proposed release shall, hold a public hearing. The hearing must be:

- (a) Held in the county in which the right of way is located; and
- (b) Advertised at least 30 days before the date of the hearing in a newspaper of general circulation in the county where the right of way is located.

(Added to NRS by 1981, 339)

ENCLOSURE 3

NEVADA REVISED STATUTES

**LIABILITY OF OWNERS, LESSEES AND OCCUPANTS OF
PREMISES TO PERSONS USING PREMISES FOR
CROSSING OVER TO PUBLIC LAND OR FOR
RECREATIONAL PURPOSES**

41.510 Imposition of liability for malicious acts, when consideration is given or other duty exists.

1. An owner, lessee or occupant of premises owes no duty to keep the premises safe for entry or use by others for crossing over to public land, hunting, fishing, trapping, camping, hiking, sightseeing, or for any other recreational purposes, or to give warning of any hazardous condition, activity or use of any structure on the premises to persons entering for those purposes, except as provided in subsection 3.

2. When an owner, lessee or occupant of premises gives permission to another to cross over to public land, hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities, upon his premises:

(a) He does not thereby extend any assurance that the premises are safe for that purpose, constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted, except as provided in subsection 3.

(b) That person does not thereby acquire any property rights in or rights of easement to the premises.

3. This section does not limit the liability which would otherwise exist for:

(a) Willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity.

(b) Injury suffered in any case where permission to cross over to public land, hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities, was granted for a consideration other than the consideration, if any, paid to the landowner by the state or any subdivision thereof.

(c) Injury caused by acts of persons to whom permission to cross over to public land, hunt, fish, trap, camp, hike, sightsee, or to participate in other recreational activities was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

4. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

(Added to NRS by 1963, 799; A 1971, 192; 1973, 898; 1981, 157)

ENCLOSURE 4

NEVADA DIVISION OF STATE LANDS

**PUBLIC ACCESS ACROSS PRIVATE LANDS
ACQUISITION PRIORITIES AND PROBLEMS**

FEBRUARY 1961

PUBLIC ACCESS ACROSS PRIVATE LANDS - ACQUISITION PRIORITIES AND PROBLEMS

BACKGROUND

Nevada is a vast state with vast expanses of public lands. Large areas of these public lands are available for unlimited access for a variety of activities. So much public land exists in Nevada - some 87% of the total area of the state - that it is hard to imagine that access to public land is a vital issue. While the private lands only comprise a small percent of the total land area in Nevada some of these lands are located and developed so that they are an effective barrier preventing access to some key public lands. Those public lands offering the highest values for hunting, fishing and other recreational activities are those lands which are most likely to be isolated and buffered by private lands. Public lands with the greatest recreational values are usually found in the mountain ranges and canyons which abound throughout the state. These same mountain ranges receive the precipitation and snowfall which can support irrigated agricultural activities at the base of the mountains and along the mouths of the canyons. This has created a situation where private lands developed for economic agricultural activities skirt and surround the public lands located in the mountains above the farms and ranches. These private lands, unless public access ways have been provided, can effectively restrict access to the public lands. When the population of Nevada was small the demand for public land use was less and access was generally allowed across the private lands.

The population of Nevada is now growing at an accelerated pace, and the demand for recreational areas has increased dramatically. This increased demand has led to greater confrontation between the private landowner and the urban resident seeking recreational opportunities. The result has been the increased closing of formerly open access routes across private lands. Abuse of private property by uninformed or careless recreationists has contributed greatly to the closure of access routes. As closures or restrictions increase because of problems confrontations between private land owners and non-local public land users increase.

LEGISLATIVE ACTION

The intensity of the issue has reached proportions which demands affirmative action. Towards this end the 1979 State Legislature encouraged efforts which could lead to resolution of problems. Assembly Concurrent Resolution #37 directed the legislative commission to study the problems of access to public land over privately owned land, property damage, incentives to landowners and other related problems and report the results to the legislature in 1981. A subcommittee called the Legislative Subcommittee Studying Problems of Access to Public Lands was formed as a result of ACR37.

In the course of their study the subcommittee developed various recommendations which would involve the Nevada Division of State Lands. Two of the recommendations dealt with proposed legislative action that could affect the Division following the 1981 Legislative Session. One of the recommendations, however, requested the Division to report to the 1981 legislature some of the top needed access corridors in the state. It was suggested that the access corridors be ranked in a priority sequence with some estimates of initial costs for acquisitions. The intent of the recommendation was to determine if it would be feasible to acquire some of the most needed access corridors during the period in which the Division would be making a more comprehensive study of the total access problem. These few acquisitions of obviously needed corridors would alleviate some of the most immediate and pressing access problems while a satisfactory statewide solution was being developed.

DETERMINATION OF ACCESS PRIORITIES

IDENTIFICATION OF PROBLEM AREAS

In pursuing the evaluation of access problem areas the Division first attempted to ascertain what previous studies had been done evaluating access needs. Two studies were found. One study was completed by the United States Forest Service Rights-of-Way Committee in 1975 (appendix A). This study was the result of increased problems relating to access to public lands in Elko County. A committee was set up by the Farm-Bureau office in coordination with the U.S. Forest Service. Membership on the committee included ranchers, other private land owners and members of the general public. The purpose of the study was to identify priority access routes for acquisition by the U.S. Forest Service in the Ruby Mountains and East Humboldt Range. Other portions of the Humboldt National Forest having access problems were not included. Many of the priority routes identified in the study have not been acquired and the list developed in 1975 still remains valid.

A second list of access problem areas was developed by the Nevada Department of Wildlife in October, 1979. This list covers the entire state. Many of the access problem areas identified in the 1975 Forest Service study in Elko County are also included on this list. (This list is contained in appendix B.)

The Ruby Mountain-East Humboldt Range areas of Elko County has the most significant access problem areas in Nevada. On November 19, 1979, the Legislative Subcommittee toured the key problem areas in the Ruby Mountains and East Humboldt Range to seek information on the access problem. A public meeting was held that evening in Elko to allow testimony on the access issue. Some of the problems mentioned by landowners concerning use of access corridors by the public included littering, pasture damage, open gates, vandalism, and overuse in areas. The landowners also expressed concern on liability to them for allowing access to public lands. The Nevada Division of State Lands participated in the tour and public meeting.

On September 12, 1980, the State Multiple Use Advisory Committee on Federal Lands included the access issue on their agenda. A panel representing various interests was assembled to discuss the issue of access in Nevada. The discussion was informative and resulted in a recommendation being adopted by the committee. This recommendation recognized that more responsible use of access by recreationists and the public in general, and a higher respect for private property rights, would help alleviate the confrontation existing between landowners and sportsmen. To this end the committee recommended that an education program be established to disseminate information on access and property rights. The Nevada Department of Wildlife has offered assistance in this project. Also recommended by the committee was the proposal that the coordinated resource management planning process be utilized to provide, through negotiation, the most acceptable and least costly method of solving access problems.

ACTION ON IDENTIFIED PROBLEM AREAS

The Division of State Lands in utilizing the previously developed lists of access problem areas has attempted to ascertain what action had taken place by other agencies in securing access routes for areas listed. Most of this effort was directed to the listing made in 1975 in the Elko County area since enough time had transpired to allow action on some of the corridors identified. It was found that the U.S. Forest Service had actually acquired some access rights and were in the process of acquiring others. Of the fifteen (15) routes identified access rights had been acquired along one route. The right-of-way acquired is most of the route serving Soldier Creek. A small segment still needs to be resolved.

The Forest Service is in the process of developing access rights on four (4) more routes (Secret Creek, Green Mountain, Long Canyon, and Rattlesnake, Cottonwood, and Smith Creeks).

The Forest Service is also conducting what they call a "932" study on three (3) of the routes identified. This study attempts to determine whether a public road existed at the time the lands were public. Essentially, this study involves a search of old records and maps to determine whether a former public use of a road can be established. If such public use on a route existing prior to the lands becoming private can be shown then the route can be declared by the courts as a public access way. Access problem areas currently under a "932" study in Humboldt National Forest include Cold Creek, Conrad and Thorpe Creeks, and Boulder Creek.

Current status of access routes listed on the Forest Service list of 1975 is as follows:

1. Ackler Creek - County graded a road for winter sports use, but found later they did not have easements. Some easements evidently can be acquired but since one landowner wants to subdivide his land, another property owner, not in favor of the subdivision, will not grant access. Dissatisfaction with past land exchange discussions with Forest Service also causing reluctance on part of the key property owner. This is a route of major importance.
2. Soldier Creek - Access has been acquired by Forest Service except for a small piece where owner changed his mind on granting access. Access and road to Soldier Creek exists and is available for public use.

3. Cold Creek - Forest Service doing a "932" study on this route.
4. Conrad and Thorpe Creeks - Forest Service doing "932" study on this route.
5. Seitz and Hennen Creeks - Access not acquired.
6. Boulder Creek - Forest Service doing a "932" study on this route.
7. Secret and Ross Creeks - Forest Service is in process of getting a road donated in Secret Creek area. Ross Creek access is still needed.
8. Echo and Lee Canyons - Access exists, however, it is not legal access.
9. Kleckner Creek - Important access need. Easement is needed.
10. Rattlesnake, Cottonwood, Smith Creeks - Forest Service is getting access from Bureau of Land Management.
11. Green Mountain - Road has been surveyed and owner may donate right-of-way.
12. Long Canyon - Forest Service has surveyed route, however, owner may wish to change road location.
13. Clover Valley - Access to large area can be made available pending negotiation between property owners and Forest Service.
14. Agee Creek - Access exists but is not legal.
- 14 a. Polar Star - Access available.

The list of problem areas identified by the Nevada Department of Wildlife prepared in late 1979 was not evaluated concerning actions that may have taken place since the list was formulated. It was felt the list was recent enough to have precluded substantial acquisition attempts and that authority was not widely exercised by any agency during the past year to resolve access needs. The Department of Wildlife list is statewide and contains a brief description of the problem for many of the listed routes. These descriptions were useful in developing a priority list.

PRIORITY CONSIDERATIONS

All the access problem areas identified on the lists developed by the Forest Service and Department of Wildlife were plotted on a map of Nevada. This provided a geographical basis for evaluating areas where access problems seem to be the most pronounced. Elko County and Washoe County have the most areas identified in the state. Those portions of the state which contained very large percentages of publicly owned land did not have many access problem areas. Where private land is more prevalent and population levels higher access becomes a greater problem.

In developing route priorities evaluations were made on the qualities and benefits that could be achieved if access across private lands were acquired. Some of the values considered were: (1) size of area that could be opened; (2) recreation opportunities available; (3) nearness of existing access routes; (4) demand for use of area; (5) length of access right-of-way needed; (6) number of ownerships involved; (7) feasibility of resolution; and (8) lack of action for acquisition or opening by any agency.

Based upon the above criteria, evaluation of ongoing action by other agencies, and expressions of needs and concerns by various agencies, user interests, and affected private landowners, the Division of State Lands recommends the following access problem areas to be considered high priority for action:

	<u>ACCESS NAME</u>	<u>(Map Number)</u>	<u>COUNTY</u>	<u>BASIS FOR RANKING</u>
1.	Ackler Creek	(1)	Elko	Access would open large area of the westside of the East Humboldt Range. Good hunting-fishing area. Large demand for recreation use in this very scenic area. Possible resolution through coordinated effort.
2.	Clover Valley	(13)	Elko	Access would open vast area of the eastside of the East Humboldt Range for hunting and other recreational pursuits. Long history of use prior to land exchange which helped close area. Possible resolution through coordinated effort.
3.	Ruby Guard Station to Lutts Creek	(46)	Elko	Would provide some access to a portion of the east side of the Ruby Mountains which does not have other access available. Excellent hunting area with large demand for use.
4.	Santa Rosa - Willow Creek	(37)	Humboldt	Located on the westside of the Santa Rosa Range. This access point would open a large area having excellent hunting and recreation opportunities. One ownership involved.

<u>ACCESS NAME</u>	<u>(Map Number)</u>	<u>COUNTY</u>	<u>BASIS FOR RANKING</u>
5. Kleckner Creek	(9)	Elko	Popular area east of Lee in the Ruby Mountains. Would open large area for hunting and other recreation. Access to other areas possible after reaching public land.
6. Santa Rosa - Cottonwood	(38)	Humboldt	Would open eastside of Santa Rosa Range to hunting and recreation. Access to area very limited at present time.
7. Skull Creek and Cowboy Rest Areas	(56)	Lander	Excellent hunting and fishing area in central part of state. Would open large area where access is badly needed.
8. Ross Creek	(7)	Elko	Would provide access to a large area on the west side of the Ruby Mountains near Secret Pass. Popular hunting area. Short length of access needed across one ownership.
9. Melody Mountain	(20)	Washoe	Would open a large area of the Granite Range. Good hunting area near Reno urban area.
10. Black Canyon	(17)	Washoe	Area very near Reno urban area which contains good recreational value. Could be very popular area.

The Division of State Lands selected some of the priority routes listed above as sample study areas to generate information on how access situations may be dealt with. The access problem areas studied were all in the Ruby Mountain - East Humboldt Range area of Elko County. These are: (1) Ackler Creek; (2) Clover Valley; (3) Kleckner Creek; and (4) Ross Creek.

The Division developed as much information as possible on each corridor prior to field work. Information gathered included ownership(s) involved, length of route needed, areas that may be served by the route, and values that could be realized such as hunting fishing, etc.

Following background research a field trip was scheduled to ascertain the actual conditions applicable to each corridor. Physical conditions such as road improvements, accessibility, other improvements, and desirability were evaluated, where possible, by field investigation. Also, and most important, discussion with those knowledgeable of the problems and concerns experienced by public use of the corridor was sought. It was felt that it would be more appropriate to determine what the problems and concerns of the private landowners were, rather than trying to apply preconceived "solutions" to the problem.

Results of the survey for the four sample access corridors evaluations follow. It should be noted by the reader that the survey is, at best, preliminary and shallow, however, the findings developed will provide some insight on the direction the state should consider on access acquisition.

1. Ackler Creek Access

The preferred access corridor follows an existing road that formerly was graded by the county and used by the public. Various property owners are involved along the 3+ mile long road. In discussions with the United States Forest Service and County of Elko it was determined that much of the problem centers around disagreements over land use between property owners. One property owner is interested in subdividing a portion of a larger ownership for recreation oriented home sites. The area to be subdivided is separated from a public road by the private property of which one of the owners is opposed to such land use. A grant of public access by the opposing property owner would allow consideration of a subdivision by the county.

Further discussion with the opposing property owner, however, indicated that while the possible subdivision is a concern other problems contribute to a reluctance to allow public access. Much of the private lands in the mountain areas are checkerboarded with public lands owned by the United States Forest Service. This checkerboard situation has created management problems both to the Forest Service and to the private landowners. Exchange discussions have taken place but have been discontinued because of apparent disagreements and stalemates.

Another possible consideration contributing to the access issue is potential value of the area for commercial recreation. This portion of the East Humboldt Range has been discussed at times as a location for a ski resort. Some of the lands that could be used for a resort are private lands which would probably command a higher value for resort purposes. The landowner who is discouraging resolution of access also owns some of the potential resort property in the mountains above the desired access route. A substantial offer for the property was reportedly made and refused.

The problem is further complicated because of abuses of private property suffered by private landowners when public access is permitted. The property owner in question indicated that the best way to eliminate damage to private property, such as littering, gates left open, off road vehicles, etc., by the public-at-large, is to prevent the public from gaining access across private lands. The intent is not to keep the public from public lands, but to prevent abuses by the public on the private lands.

A solution, under present circumstances, would appear to be remote. Considerable coordination and compromise must be accomplished by all concerned before suitable access can be acquired.

Because of the difficulties that have been encountered with this access road the Forest Service has recently considered redirecting their efforts to an adjacent road. This road is not as desirable as the primary route and still involves acquisition of access rights, however, resolution of the problems may be more likely. Results of the Forest Service to date on this route are not known but since this is a new proposal action has been probably limited.

2. Clover Valley

The access route most often considered for this area would extend south from the Angel Lake road along an existing rough road and intersect with an existing access corridor called the "Weeks Access". The route is about 8 miles long. All the private property involved is owned by a large landowner and is leased to one livestock operator. A solid block of Forest Service land is located at higher elevations above the private land.

Access across these private lands have become quite controversial in recent years. The lessee and the property owner are willing to work on elimination of the access problem. Again, it was found in discussions with the representative of the private property owner that public access through private land leads to public abuse of private property. The lessee does not want hunting or other use on the private lands, a problem frequently encountered. Protection from such public use would have to be provided in exchange for access rights across the private lands. There is also a feeling on the part of the private landowner that much of the access needed could actually be provided over much of the existing public lands - an arrangement which would require construction of a new road.

Resolution of this access problem would appear to be possible. Buying a right-of-way, however, will not solve the problem for all concerns. Protection of private property must be included in any solution developed. Fencing, gates, periodic restriction of use may be part of the solution. Authority to negotiate and make commitments would appear necessary before suitable agreements could be made.

3. Kleckner Creek

One property owner would be involved in this access problem area. About 2 miles of a well maintained dirt road is needed to provide unencumbered access to Forest Service lands located above the small town of Lee.

Conversation with the ranch manager indicated that the public is generally allowed access across the private lands when permission is requested. Problems have occurred in the past with unrestricted public use. Open gates, littering, off-road vehicle use, and hunting on private lands commonly occurred with uncontrolled access. The system they now use, the granting of access to those who ask, is effective for them. They know who and how many people are using the access route, especially during hunting season.

The manager said they have not been too greatly concerned about liability. Their major problems has been abuse of private property by the public.

The arrangement, at present, seems to work well for the private landowner and for the recreationist needing access across the private land, if permission for use is obtained. Acquisition of access rights by the public will probably be resisted by the private property owner, even if adequate protection of property rights was provided. The situation here points out the advantages the private owner has in controlling access across private lands. While retaining access rights the owner can effectively police the situation and have contact with those desiring to use the route. This reduces the likelihood of abuse to private property.

It would seem difficult to improve the situation for, or protect, the private property owner more through public acquisition of access rights. Acquisition of access rights would, therefore, be difficult and attempts could be fruitless. Negotiated arrangements to keep access available, similar to the existing situation, may have more merit than acquisition.

4. Ross Creek

The Ross Creek access route would require about 1½ miles of right-of-way across one private ownership. This route would open a portion of a long stretch of the Ruby Mountains where no legal access is now available. A dirt road used for ranching operations currently exists.

Attempts to contact the owner of the private property and discuss problems regarding public access were not successful. It was the opinion of the ranch manager that damage and inconsiderate use by the public in past years has created a reluctance on the part of the owner to allow access. The route is not available for public use now. Incentives which would allow the owner to reconsider allowing access are not known.

FINDINGS

Each access problem area is unique. Each problem will need to be dealt with individually. Solutions, or if complete solutions are not possible, adequate arrangements, must be developed on a site-by-site basis. Purchase of rights-of-way from the private property owner will not be a solution in many instances. The compensation received will probably not be enough to overcome additional management problems the private landowner will have to absorb if the public is granted unconditioned access across private land. Solutions, to be acceptable to the private landowner, must include measures to protect private property and alleviate the management problems that will occur.

The most important finding made concerning the access problem is that public access across private lands is restricted because of the actions of the public. In response to mistreatment of private property and disruption of ranch operations by a careless segment of the public the private landowner has restricted access. Education of public land users will help in many instances, however, there must be something positive provided to the private land owner which will relieve him of the burden, and protect him from the abuses, that may be caused by the few irresponsible users.

Estimates of costs for acquiring access rights-of-way are difficult to make, especially when there is no desire for the landowner to sell and condemnation is generally ruled out as an option. The cost of purchasing rights-of-way will likely be a very small part of the total cost of guaranteeing adequate access to the public land user while providing suitable protection to the private landowner. Improvement costs to accomplish this, such as fencing, gates, signing, etc., could be the most substantial part of many access arrangements. Considerations for financing access acquisitions should take into account the need for possible protective improvements. These necessary improvements could also involve public expenditures on private lands - a situation which would have to be handled with considerable caution.

RECOMMENDATIONS

1. A priority list of the most needed access corridors should be created by joint participation, where appropriate, of the Division of State Lands, Department of Wildlife, United States Forest Service, Bureau of Land Management, and local government. Representatives of sportsmen, environmental and livestock industry groups should also be active participants.
2. Priority considerations should include: (1) size of area that could be opened; (2) recreation and other use opportunities available; (3) closeness of other existing access routes; (4) demand for use of area; (5) length of access right-of-way needed; (6) number of ownerships involved; (7) feasibility of resolving problem; and (8) review of actions currently underway to provide access. Access routes currently made available for use with permission of landowner should be given a lower priority.
3. Each access problem area should be treated as a separate situation with each situation requiring unique treatment and response.
4. Access arrangements which include less than total right-of-way acquisition should be made where circumstances warrant. Agreements which could include certain restrictions on use, periods of use, and provision of public maintenance of private rights-of-way should be evaluated and considered where appropriate.
5. Continued actions by federal agencies to acquire access should be encouraged. Unilateral action by agencies, where such action may result in access being created, should not be discontinued.
6. Joint efforts should be pursued where access problems may involve the participation and action of various state, federal, and local agencies, and private interests.

7. The registrar of state lands should be given the authority to negotiate acquisitions and/or make arrangements for access with private landowners. Authority should include negotiation of necessary private property protective devices such as gates, cattle guards, and fencing where appropriate.
8. The Sum of \$30,000.00 to be used for access right-of-way acquisitions, access leases or other access arrangements, and related negotiated improvements should be placed in a special fund under the authority of the Interim Finance Committee to be released as appropriate to obtain suitable access.

APPENDIX A

United States Forest Service Rights-of-Way Committee
1975 Recommendations

<u>Map Number</u>	<u>Access Route</u>
1	Ackler Creek
2	Soldier Creek
3	Cold Creek
4	Conrad and Thorpe Creeks
5	Seitz and Hennan Creeks
6	Boulder Creek
7	Secret and Ross Creeks
8	Echo and Lee Canyons
9	Kleckner Creek
10	Rattlesnake, Cottonwood, and Smith Creeks
11	Green Mountain
12	Long Canyon
13	Clover Valley
14	Agee Creek
14(a)	Polar Star

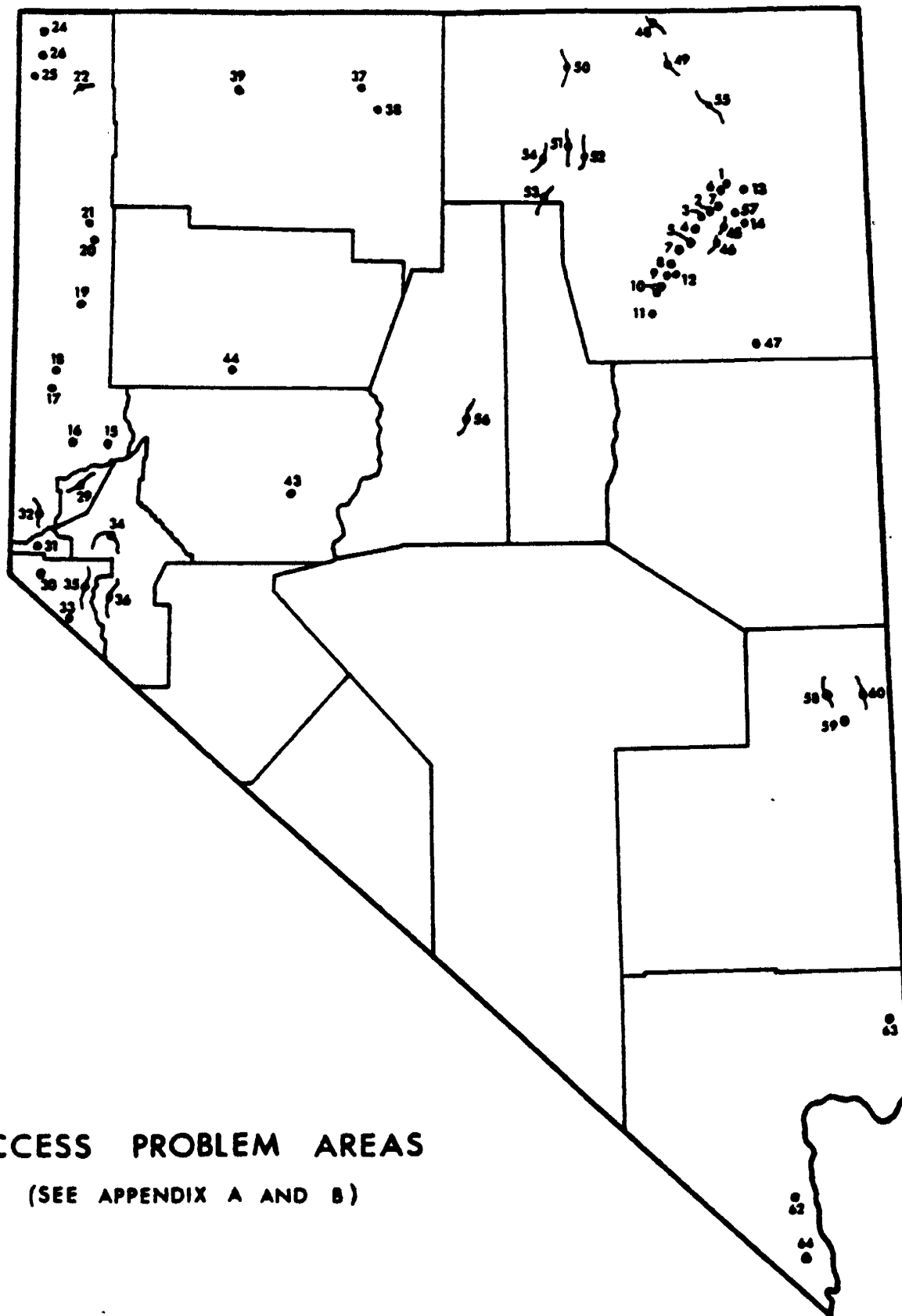
APPENDIX B

Public Access Problem Areas Nevada Department of Wildlife September, 1979

<u>Map Number</u>	<u>Area</u>	<u>County</u>
15	Fort Defiance-Pah Rah's	Washoe
16	Wilcox Ranch-Pah Rah's	Washoe
17	Black Canyon-Virginia Range	Washoe
18	Big Canyon-Virginia Range	Washoe
19	Rodeo Canyon-Fox Range	Washoe
20	Rock Creek-Granite Range	Washoe
21	Melody Mountain-Granite Range	Washoe
22	Bitner-Bitner Meadow	Washoe
(23)	Balley Mountain	Washoe
24	Colesman Creek	Washoe
25	Berry Brooks Ranch-Holy Lake	Washoe
(26)	Mosquito Ranch-New Years Lake	Washoe
(27)	Smoke Creek-Buffalo Hills	Washoe
(28)	Verdi Basin	Washoe
29	Flowery Range-Whole Area	Storey
30	Jacks Valley-Carson River	Douglas
31	Ash Canyon-Carson River	Douglas
32	Lakeview to Mt. Rose	Carson City-Washoe
33	Mud Lake	Douglas
34	North Pine Nut Range	Lyon
35	West Pine Nut Range	Douglas
36	South Pine Nut Range	Lyon
37	Santa Rosa Range-Willow Creek	Humboldt
38	Santa Rosa Range-Cottonwood	Humboldt
39	Pine Forest Range-Cherry Creek	Humboldt
(40)	Ashdown Mines	Humboldt
(41)	Disaster Peak-McDermitt Creek	Humboldt
(42)	Desatoya Range	Churchill
43	Clan Alpine-Horse Creek	Churchill
44	Humboldt Sink	Pershing

<u>Map Number</u>	<u>Area</u>	<u>County</u>
1, 6	Starr Valley	Elko
13, 14	Clover Valley	Elko
2, 3, 4, 5, 7	Secret Pass to Lamoille	Elko
7, 8, 9, 10, 11, 12	Lamoille Creek to Harrison Pass	Elko
45	Secret Pass to Ruby Guard Station	Elko
46	Ruby Guard Station to Lutts Creek	Elko
47	McDermitt Canyon	Elko
48	Bruneau River	Elko
49	Willow Creek Area	Elko
50	Lands Lying East of Petan Ranch	Elko
51	Jack Creek to Taylor Canyon	Elko
52	Taylor Canyon to North Fork	Elko
53	Beaver, Coyote and Little Jack Creeks	Elko
54	Mt. Blitzen Area	Elko
55	Snake Range	Elko
56	Skull Creek and Cowboy Rest Area	Lander
57	Pole Canyon Creek Area	Elko
58	Mt. Wilson Range	Lincoln
59	Parsnip Wash	Lincoln
60	White Rock Range	Lincoln
(61)	Sawmill Canyon	Lincoln
62	Eldorado Range-Knob Hill Area	Clark
63	Virgin Mountains-Key West Spring	Clark
64	Newberry Range-Christmas Tree Pass	Clark

() indicates not on map



ACCESS PROBLEM AREAS
(SEE APPENDIX A AND B)

ENCLOSURE 5

**SUMMARY OF ACTION ON THE ACCESS TO
PUBLIC LANDS PROBLEM IN CHRONOLOGICAL ORDER**

1979 Legislative Session -

State Legislature adopted Assembly Concurrent Resolution #37 which directed the legislative commission to study the problems of access to public land over privately owned land, property damage, incentives to landowners and other related problems and report the results to the legislature in 1981. A subcommittee called the Legislative Subcommittee Studying Problems of Access to Public Lands was formed as a result of ACR 37.

The ACR 37 subcommittee conducted five formal public hearings with one wrap-up work session. These meetings were held in Reno on September 20, 1979; Elko on November 19, 1979; Las Vegas on February 26, 1980; Wells and Elko on April 10, 1980; Carson City on June 24, 1980; and a wrap-up session in Carson City on July 24, 1980.

The Elko meeting was preceded by a tour of the Ruby Mountains and East Humboldt Range on November 19, 1979, to get a first hand view of access problem areas. Members of the Division of State Lands were present on that tour.

June 26, 1980 -

Letter sent to Jac Shaw, Administrator of the Division of State Lands, from Dean Rhoads, Chairman, Legislative Subcommittee Studying Problems of Access to Public Lands stating:

1. "The ACR 37 subcommittee will be recommending legislation to the 1981 session to add a new provision to Chapter 321 of NRS. This new section would require that the State Land Registrar, prior to any sale, exchange or other transfer of state owned lands, study and identify reasonable access corridors which should be retained by the State to allow continuation of access to public lands. The recommendations of the State Land Registrar are to be reviewed and commented on by the State Multiple Use Advisory Committee on Federal Lands prior to any such land conveyance."
2. "The recommendations of the ACR 37 subcommittee relating to the current access problems in the state include a proposal that the Division of State Lands prepare a comprehensive study in fiscal years 1981-82 and 1982-83, with a report back to the 1983 legislature, to identify, prioritize, coordinate, negotiate and outline potential sources of funding for state acquisition of key access corridors around the state. The recommendation to be included in the final report of the ACR 37 subcommittee will support approval of a budget item for the Division of State Lands to accomplish such a study. The Division of State Lands would be designated to have the lead responsibility with input from other state and federal agencies and the Multiple Use Advisory Committee. Local governments and local representatives should also be involved in this identification and inventory process. The Division of State Lands should give priority to corridors which will allow access to important and otherwise isolated public lands with hunting, fishing, scenic or other multiple use value. State Lands should also evaluate the environmental sensitivity of the areas identified and projected number of visitors if access were provided. Your office should give initial

priority to those access corridors which can be obtained for a reasonable cost with a minimum of capital expenditures. For example, requests by land owners for the complete fencing along both sides of an access corridor may be overly expensive at this time. It is envisioned that your office may require an additional staff person in order to accomplish such a study and this should be reflected in your budget request for the upcoming biennium. Your staff person should also be responsible for initial contacts with the affected private land owners to get a general idea of their willingness to sell, lease, donate or otherwise convey an access corridor to the State of Nevada in those key areas identified. Your office should also be prepared to identify the other various advantages available to private land owners in such a program, including the tax credit which is available for the conveyance of easements or rights-of-way to a governmental entity."

3. "Our subcommittee is also recommending that you report to the 1981 Legislature relating to perhaps as many as ten of the top needed access corridors in the state. You should rank these in a priority sequence and provide some initial cost estimates for their acquisition. It is our hope that you could accomplish some of this work through your on-going inventory of the lands of our state for the Sagebrush Rebellion. The Department of Wildlife has already compiled a list of needed access routes in the state and should be able to work with you in determining those which have the top priority. It is the desire of this subcommittee to see if we can purchase or otherwise acquire a few access corridors in the next two years while your office is working on a more comprehensive study of the entire state.

September 12, 1980 -

State Multiple Use Advisory Committee on Federal Lands listened to a discussion of the access to public lands problem. During the discussion it became apparent that much of the access problem was derived from abuse of private property by the public which caused private landowners to close off access across their lands. As a result of that discussion the committee approved Recommendation #80-6 which recommended that the coordinated resource management planning be used to provide access where feasible and that education of the public on responsible use of both public lands and private rights-of-way be stressed.

September, 1980 -

Study done by United State Forest Service Rights-of-Way Committee in 1975 was acquired by State Lands. The study identified access problem routes in the Ruby Mountains and East Humboldt Range. Fifteen (15) access problem routes were identified and, as of 1980, most were still a problem.

September, 1980 -

Study done by the Nevada Department of Wildlife in October, 1979, was acquired by State Lands. The entire state was included in the study. Over 60 problem areas were identified including those previously identified by the United States Forest Service.

October, 1980 -

Bulletin No. 81-11, Access to Public Lands submitted to the Legislative Commission. Included in the Bulletin is background information, identification of problem areas, access programs of other states, review of the public meetings of the subcommittees, findings and recommendations and suggested legislation.

October 29, 1980 -

Jerry Davis, USFS, Elko contacted by State Lands to determine status of the routes included in their 1975 study. Information for each of the fifteen (15) routes was updated. Davis mentioned that the USFS was conducting a "932" study on three of the routes identified. The study attempts to determine whether a public road existed at the time the now private lands were public. If such a road existed then that could be a basis for the courts to declare the route a public road. A USFS attorney in Ogden, Utah, was working on this.

November 4, 1980 -

Nevada Department of Wildlife contacted by State Lands concerning their priority access problems in the Ruby-East Humboldt Mountains. Four priority areas identified.

November 14, 1980 -

Elko County Manager contacted by State Lands on Ackler Creek access problem area. Additional information developed on area.

November 18, 1980 -

- 1. Discussion on Ackler Creek access problem between State Lands and the property owners involved (Don Sims). Past problems with USFS and need for exchange of lands mentioned as hinderances for opening access. Also another property owner is involved and a desire to subdivide some land was also mentioned.**
- 2. Discussion on Ross Creek access problem between State Lands and the foreman of Marble's ranch. Reasons for closure of access mentioned was vandalism and abuse of private property. No interest to open up access now. Efforts to talk with Peter Marble later were not successful.**
- 3. State Lands reviewed Kleckner Creek access problem location on Gund Ranch.**

November 21, 1980 -

State Lands discussed Ackler Creek access problem with USFS and the reasons why exchange considerations had failed. An impasse was created because of difference in values established and lands desired in exchange.

November 25, 1980 -

State Lands discussed Kleckner Creek access problem with Gund Ranch manager. They allow access usually when asked. This way they control access and reduce other problems normally experienced with uncontrolled access. Not interested in opening access.

November 25, 1980 -

State Lands discussed Weeks access problem with Southern Pacific Land Company official. They lease area involved to a rancher. Many of the problems of denying access comes from problems created previously by the public. Southern Pacific was willing to work out access but would likely require a new and lengthy road to be built from another area which would not affect their lease.

November, 1980 -

State Lands received a copy of a letter sent to all post offices in area by USFS requesting information on roads historically used for delivery of mail.

December 17, 1980 -

State Lands learned that a property owner with which discussion had previously taken place on Ackler Creek access route was no longer involved with the property.

February, 1981 -

Report developed by the Division of State Lands "Public Access Across Private Lands - Acquisition Priorities and Problems" presented to legislative committees. Report summarized access problems, methods used to determine access problem areas, action on identified problem areas, development of priorities, findings, and recommendations of the Division. Recommendations included development of a priority list, priority considerations; use of less than total right-of-way acquisition arrangements, use of joint efforts where appropriate, negotiation authority and funding.

1981 Legislative Session -

AB 60 adopted by legislature providing for the identification of and purchase of routes of access to public lands by the state land registrar; requiring the commitment of private matching money and making an appropriation of \$10,000 to be available until June 30, 1983, to use as matching money to acquire access routes.

June 23, 1981 -

State Lands submitted memo to Ed Stokke explaining the Division's proposed work plan for AB 60. The work plan proposed:

1. Establish a priority list of needed access routes;
2. Contact landowners and government agencies on priority routes to develop possible solutions;
3. Negotiate solutions with involved agencies, landowners and other groups;
4. Determine methods of financing acquisitions and/or improvements needed to obtain desired access.

January 15, 1982 -

Discussion between State Lands and Hugh Pangman, USFS, on what access problems existed in the Toiyabe National Forest. Some problems of access exist in the Carson Range between Topaz Lake and Verdi which they will be working on. The Forest Service will be working on a Forest Plan and access problems will be identified in that plan. Specific access problem areas could not be identified at that time.

January 15, 1982 -

On request of State Lands, Willie Molini, Nevada Department of Wildlife, agreed to assist in the updating of their 1979 access problem area list.

January 21, 1982 -

State Lands determined from the BLM that a mine claimant cannot restrict access over a non-patented claim unless that access interferes with the mining operation or creates a dangerous situation. BLM will enforce violations where access is restricted unnecessarily.

March 24, 1982 -

Interim priority list for access routes submitted to State Lands by Department of Wildlife. Eight priority routes listed (4 in Region 1 and 4 in Region 2; no routes identified in Southern Nevada). More comprehensive list to be submitted in late April.

April 6, 1982 -

Region III Supervisor, Department of Wildlife, Las Vegas, requested by State Lands to identify any access problem areas in southern Nevada.

April 12, 1982 -

Region III Supervisor indicated to State Lands that the wildlife specialist in Searchlight had identified some access problem areas.

April 19, 1982 -

State Lands visited four (4) access problem areas in Searchlight area with Department of Wildlife person. Places visited include: (1) Knob Hill near Nelson (four spots where access was denied or could be denied were found - locked cables across road were found on public land and were related to mining operations); (2) Techatticup Mine near Nelson (road blocked on public land near mining operation); (3) New York Mountain (locked cable prevents access to private land; however, road would provide access to very little public land if access was not blocked); and (4) Roman Wash (sign discouraging, but not preventing, access, placed on public land - access seems to be available as a second road into the area also exists).

April 20, 1982 -

State Lands talked to BLM, Las Vegas, about access restrictions in Searchlight area. Minerals person was aware of them and said they would ask that travel restrictions be removed on public land if they received complaint.

June 10, 1982 -

After research on land ownership, letter written by State Lands to wildlife biologist in Searchlight area summarizing findings from tour and research. If access problem persists it was suggested that a complaint be made to BLM to enforce regulations on access. BLM sent copy of letter.

July 7, 1982 -

State Lands participated in a field trip of the Winnemucca Ranch where access has been identified as a problem. A coordinated resource management planning group was formed with access listed as an issue to consider. It was found that access to most areas of public land in and around the ranch was allowed. One significant area of public land (Spanish Flat) was closed off to access where the access road crossed private land in Black Canyon. Vandalism was the primary reason for denial of access.

August 18, 1982 -

Subcommittee of coordinated resource management planning group formed to look into access problems on Winnemucca Ranch.

September 2, 1982 -

Discussion between State Lands and BLM disclosed that secondary vehicular access exists into the Spanish Flat area of the Winnemucca Ranch and that access is not prevented. The road is rough and is not convenient location-wise for those wishing to get to Spanish Flat.

October 26, 1982 -

Following a subcommittee meeting and a discussion at a full committee meeting at the Winnemucca Ranch it was determined that unless the vandalism problem can be solved then there was no interest in allowing greater public access to Spanish Flat than now exists.

January 20, 1983 -

Call to Don Quilici, Nevada Wildlife Federation, confirmed that wildlife groups do not have funds to match state funds to acquire access. Projects of raising money are not good. Wildlife people and sportsmen groups would be available to provide labor to install various improvements that could be needed to acquire access.

January 21, 1983 -

A call to Humboldt National Forest disclosed that since 1980 they have acquired access to Green Mountain; have reached agreement in a land exchange which will provide access to Secret Creek; expect land exchanges which will provide access to Gardner Creek, Ross Creek and Cold Creek; and are negotiating with one hold-out to get access into Long Canyon. The "932" studies have been completed without beneficial results.

Compiled by:
The State Land Use Planning Agency
January 21, 1983

APPENDIX C

Letter dated May 16, 1986, from the director of the
department of wildlife to the staff director of the
Nevada legislature's committee on public lands
concerning an update on access problems



STATE OF NEVADA
DEPARTMENT OF WILDLIFE

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P.O. Box 10678
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RICHARD M. BRYAN
Governor

WILLIAM A. MOLINI
Director

May 16, 1986

Mr. Brian Davie, Staff Director
Committee on Public Lands
Legislative Building
Capitol Complex
Carson City, NV 89710

Dear Brian:

In response to your letter of February 13, 1986 relative to an update on access problems which will be considered by the Committee on Public Lands at its next meeting, please find listed below a brief summary of the current status from our agency's perspective. I plan to be in attendance at the May 22, 1986 meeting to answer any questions relating to this issue and/or to provide more specific information.

Status of Bulletin No. 81-11 Recommendations

- #7 Legislation enacted in 1983 provided peace officer status for Department of Wildlife law enforcement personnel. Although our primary mission and major emphasis relates to Title 45 (wildlife laws) and Chapter 488, our agents do have the ability to enforce other state laws.
- #9 An operation Game Thief program has been developed as a result of 1981 legislative action but has not resulted in any significant alterations of land use access patterns. Experience to date suggests that most landowners utilizing the "hotline" for private property problems are not willing to file charges for minor violations.
- #10 With existing legislation relating to cooperative wildlife management areas in addition to legislation passed on conservation easements during the 1983 session, the means are in place to improve public access. These elements, however, have not resulted in any significant improvements or modifications.
- #11 Lead responsibility of signing access routes by the Department of Wildlife has been minimal because of a lack of adequate appropriated funding in addition to low requested demand by the private sector.

Mr. Brian Davie
May 16, 1986
Page 2

List of Access Problem Areas

A list of access problem areas by regional jurisdiction was provided by the Department on October 3, 1979 and appears in Appendix B of Bulletin No. 81-11. Based on recent input from the regions, the current status of access may be described as follows:

Region I: All of the problems areas listed on page 33 are considered static and unresolved with the exception of the Desatoya Range of Churchill County which has been resolved through a gentleman's agreement. Additional areas identified as having access problems in the area include the following:

<u>Creek/Canyon</u>	<u>Ownership</u>	<u>Public Land Blocked</u>
<u>Washoe/Storey</u>		
Truckee River	Sierra Pacific Southern Pacific	State
<u>Douglas</u>		
Carson River	Private (unknown)	State
<u>Carson City</u>		
Carson River	Private (unknown)	State
<u>Lyon</u>		
East Walker River	Private (unknown)	BLM
<u>Humboldt</u>		
Onion Reservoir	Private (Alder Creek Access)	BLM
Martin Creek	Private (unknown)	BLM
<u>Churchill</u>		
Edwards Creek	Private (unknown)	BLM

Mr. Brian Davie
May 16, 1986
Page 3

Region II: Those problems areas listed on pages 34 through 36 continue to be valid with some minor modifications (such as fee charges). No new areas have been identified.

Region III: Those areas identified for southern Nevada are relatively minor in comparison to the statewide perspective. Access problems identified for Clark County are occasional and relatively insignificant. No new problem areas were identified by regional personnel.

Recommendations for Legislation

Although several of the recommendations identified in Bulletin No. 81-11 have been implemented, there continues to be a lack of interest from most private property owners to improve or grant access to the general public. It appears that some type of substantive incentive such as the purchase of easements needs to be offered in most cases to resolve the problem. Legislation along with budget appropriations would be required to fully address this issue in terms of conflict resolution.

I hope the above information provides an adequate overview of the access problems in Nevada from our agency's point of view, and a basis from which to initiate discussions necessary to resolve this complex issue. If you need any additional information or clarification prior to the upcoming committee meeting, please advise.

Sincerely,



William A. Molini
Director

RPM:pw

cc: Regions

APPENDIX D

Report on Eminent Domain for Mining



May 19, 1986

SCR 47 - Eminent Domain for Mining

This paper provides information concerning Nevada's law which allows the use of the power of eminent domain for mining activities.

Senate Concurrent Resolution No. 47 (file No. 132, Statutes of Nevada, 1985) states that "controversy has arisen at several locations in the state from the use or proposed use of eminent domain for mining interests * * *". The resolution directs a study of the state's laws concerning public lands including:

3. The use of eminent domain in connection with mining, smelting and related activities * * *

The purpose of this document is to provide general background information about Nevada's law on eminent domain for mining including a comparison of the laws in the other Western States and evidence concerning the use of such laws.

NEVADA'S EMINENT DOMAIN LAW

Nevada's law providing for the right of eminent domain for mining has been in effect for more than 110 years. This law initially was approved March 1, 1875, under chapter LVII, Statutes of Nevada, 1875. This act declared the mining, milling, smelting, or other reduction of ores to be for the public use for which the right of eminent domain may be exercised. This act also stated:

The production and reduction of ores are of vital necessity to the people of this state; are pursuits in which all are interested and from which all derive a benefit * * *

The current version of Nevada's eminent domain law is found in Nevada Revised Statutes (NRS) 37.010 (see Enclosure 1). Paragraph 6 of NRS 37.010 provides for the exercise of the right of eminent domain for mining, smelting and related activities. In addition, NRS 37.010(6)(a) states that:

Mining and related activities * * * are recognized as the paramount interest of this state.

It appears that this "paramount interest" statement first surfaced in an 1887 act to encourage mining in chapter CIII,

Statutes of Nevada, 1887. However, this statement was not included in NRS 37.010 until the amendment in 1969 under Assembly Bill 198 (chapter 175, Statutes of Nevada, 1969).

Nevada's eminent domain statutes were amended recently to limit the right of eminent domain in a historic district. The 1981 Nevada legislature enacted Assembly Bill 112 (chapter 674, Statutes of Nevada, 1981, now found in NRS 37.038) which requires that any person, other than a government or public utility, must first obtain the approval of the board of county commissioners to take such action in a historic district. Chapter 384 of NRS allows counties to establish a historic district and creates the Comstock Historic District in portions of Lyon and Storey counties.

GENERAL BACKGROUND INFORMATION

Federal and state constitutional provisions limit the power of eminent domain and prohibit the taking of property for public use without due process of law and just compensation to the owner. For example, article 1, section 8, of Nevada's constitution, provides that:

No person shall * * * be deprived * * * of property, without due process of law; nor shall private property be taken for public use without just compensation having been first made, or secured * * *

The following two conditions generally are required to balance the citizen's right to private property and the government's right of appropriation by eminent domain:

1. The appropriation is for a declared or established public use; and
2. The appropriation is necessary to accomplish the public use.

The development of a comprehensive definition of public use primarily is a legislative function in the states. The judicial function is to interpret and apply the laws concerning the exercise of the power of eminent domain.

Two views of the concept of public use in relation to eminent domain have developed over the years. The first concept--known as the orthodox or narrow view--is that the direct use of the property by the government must be to provide essential public service. The second concept--known as the broad or liberal view--is the doctrine that public use applies to the social and economic benefit of the community.

The second, or liberal, view came into effect in the late 1800's and now predominates in the precedents established by case law.

As a result, the scope of uses for eminent domain is not uniform among the states. The legislative determination of public use depends on the economic and social motivations of the area.

LEGAL JUSTIFICATION

Nevada appears to have been the first state to allow the use of eminent domain for mining with enactment of the law in 1875. This law was challenged almost immediately and received judicial sanction by the Nevada supreme court in 1876 in the case of Dayton Gold and Silver Mining Company v. W. M. Seawell, 11 Nev. 394.. The decision in this case by Nevada Supreme Court Chief Justice Thomas Porter Hawley endorsed the liberal view and equated "public use" with "public utility, advantage or benefit."

The following rationale from the Dayton case is often cited as justification for providing the power of eminent domain to the mining industry:

Mining is the greatest of the industrial pursuits in this state. All other interests are subservient to it The mining and milling interests give employment to many men, and the benefits derived from this business are distributed as work, and sometimes more, among the laboring classes than the owners of the mines and mills.

The mines are fixed by the laws of nature, and are often found in places almost inaccessible. . . . Now it so happens, or at least, is liable to happen, that individuals, by securing title to the barren lands adjacent to the mines, mills, or works, have it within their power, by unreasonably refusing to part with their lands for a just and fair compensation which capital is always willing to give without litigation, to greatly embarrass if not entirely defeat the business of mining in such localities. In my opinion, the mineral wealth of this state ought not to be left undeveloped for the want of any quantity of land actually necessary to enable the owner or owners of mines to conduct and carry on the business of mining. (11 Nev. at 409.)

The State of Utah has an eminent domain law for mining which is similar to the law in Nevada. Utah's law received

federal constitutional sanction by the U.S. Supreme Court in the case of Strickley v. Highland Boy Gold Mining Co., 200 U.S. 522, in 1906.

However, state supreme court decisions in California and New Mexico generally are cited as authority to limit the application of the eminent domain power to the narrow or orthodox view which would not include use for mining activities. These cases are Sutter County v. Nichols, 152 Cal. 688, in 1908 and Gallup American Coal Co. v. Gallup Southwestern Coal Co., 39 NM 344, in 1935.

According to one research study, the highest court in every western mining state, except for California and New Mexico, has expressed approval of some form of right-of-way acquisition for mining.

COMPARISON WITH WESTERN STATES

Nevada and Utah generally are considered to have the most comprehensive laws which allow the use of eminent domain for rights-of-way, disposal of mine wastes, sites for smelters and mills, and other related activities.

The laws in Arizona, Idaho and Montana generally provide for the use of eminent domain for rights-of-way and disposal of mine and mill wastes and tailings.

Eminent domain for mining in Colorado, Oregon, Washington and Wyoming apparently is provided only for rights-of-way to mining operations, including ditches, flumes, pipelines, railroads, roads, tunnels and the like. California has no eminent domain provisions for mining or related activities.

The statutory references for the eminent domain laws from the Western States are as follows:

1. Arizona Revised Statutes 12-1111;
2. Colorado Revised Statutes 38-1-102;
3. Constitution of the State of Idaho, Article 1, Section 13, and Idaho Code 7-701;
4. Montana Code Annotated 70-30-101, et seq.;
5. Oregon Revised Statutes 772.405, et seq.;
6. Utah Code Annotated 78-34-1;
7. Revised Code of Washington Annotated 78.04.010, et seq.; and

8. Wyoming Statutes Annotated 30-1-128.

EVIDENCE OF USE

It does not appear that the mining industry in the West has made excessive use of the power of eminent domain.

One law review study in 1968 concluded as follows:

It is clear from the case law in the field that the eminent domain power, broadly granted in its initial form, has not been unduly exploited by the mining industry of the West. In the past seven decades, no more than two dozen condemnation actions have been initiated by mining operators, and all of those have been to appropriate a type of easement.

(Robert S. Campbell, Jr., "Condemnation Of Mining Properties - Reflections On The Substantive Power Of Eminent Domain," 14 Rocky Mountain Mineral Law Institute 231.)

A more recent study published in 1982 concluded as follows:

Although the eminent domain power is available to mining companies in most western states, it is still seldom used. The "two dozen condemnation actions" which one author researched in 1968, have not been substantially augmented over the ensuing thirteen years.

(Urban L. Roth, "'To Take Or Not To Take, That Is The Question': Acquisition Of Mining And Mine-Related Rights Through Eminent Domain" 27A Rocky Mountain Mineral Law Institute 739)

EVIDENCE OF USE IN NEVADA

The available research materials indicate that less than 10 court cases in Nevada are related to the use of eminent domain for mining since this state's law was enacted in 1875.

The following is a list of these cases cited from Nevada:

1. Dayton Gold and Silver Mining Company v. W. M. Seawell, 11 Nev. 394 (1876);
2. Overman Silver Mining Company v. Philip Corcoran, 15 Nev. 147 (1880);

3. Douglas v. Byrnes, 84 Fed. 45 (1893);
4. The Goldfield Consolidated Milling and Transportation Company v. The Old Sanstorm Annex Gold Mining Company, 38 Nev. 426 (1915);
5. E. J. Schrader v. Third Judicial District Court of the State of Nevada, 58 Nev. 188 (1937);
6. Standard Slag Co. v. Fifth Judicial District Court of the State of Nevada, 62 Nev. 113 (1943);
7. State ex rel Milchem v. Third Judicial District Court of the State of Nevada, 84 Nev. 541 (1968); and
8. N. L. Industries, Inc. v. Eisenman Chemical Company, 98 Nev. 253 (1982).

In addition, the Houston Oil and Minerals Corporation threatened and attempted to use the power of eminent domain in 1979 against Fred and Dorothy Immoor and other residents of Gold Hill in Storey County, Nevada. The First Judicial District Court of Nevada granted Houston Oil immediate occupancy of the Immoor's property in October 1979 on the basis of the eminent domain law. The Immoor's attorney appealed the case to the Nevada supreme court based on the constitutionality of the law. One of the major arguments against the law involved evidence to show that mining was no longer a "paramount interest" in this state. This case was settled out of court for an undisclosed amount before the supreme court could act on the appeal.

Statistics apparently are not available to indicate the number of situations which have occurred when the suggestion or threat of eminent domain by a mining company has caused property owners to transfer their land without court action.

During 1984, concerns about the possible use of eminent domain for mining were expressed and publicized by the residents of three communities in Nevada. These communities included Tuscarora in Elko County, Round Mountain in Nye County and Olinghouse Canyon in Washoe County. The concerns in these communities generally involved the effects of plans or considerations for mining activities in and around these communities.

This issue surfaced before the senate committee on natural resources during the 1985 session of the Nevada legislature. A memorandum from Glenn C. Miller to the senate committee dated April 3, 1985, recommended certain changes in Nevada's eminent domain law for mining to provide an opportunity for persons subject to eminent domain from a mining company to having a hearing before the county commission.

The above proposal and concerns apparently prompted the inclusion of the eminent domain law for mining in the study of the state's land laws under S.C.R. 47.

A recent controversy has developed in Silver City, Nevada, between the residents and a mining company which has plans for an open-pit gold and silver mine on the edge of the town. The eminent domain for mining law has not been mentioned in this case but many of the issues and concerns are similar to the other communities in Nevada discussed above. These concerns on the part of residents include the loss of property value; possible effects of dust, noise and machinery; the loss of aesthetic values and changes in their lifestyles.

CONCLUSION

This paper provides an overview of the history and use of the power of eminent domain for mining in Nevada and the Western States.

ENCLOSURE 1

NEVADA REVISED STATUTES

EMINENT DOMAIN

37.009

37.009 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Final judgment" means a judgment which cannot be directly attacked by appeal, motion for new trial or motion to vacate the judgment.
2. "Judgment" means the judgment determining the right to condemn property and fixing the amount of compensation to be paid by the plaintiff.

(Added to NRS by 1959, 596)

37.010 Public purposes for which right of eminent domain may be exercised. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public purposes:

1. Federal activities. All public purposes authorized by the Government of the United States.
2. State activities. Public buildings and grounds for the use of the state, the University of Nevada and all other public purposes authorized by the legislature.
3. County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.
4. Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.
5. Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.
6. Mining, smelting and related activities. Mining, smelting and related activities as follows:

(a) Mining and related activities, which are recognized as the paramount interest of this state.

(b) Roads, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places to facilitate the milling, smelting or other reduction of ores, or the working of mines, and for all mining purposes, outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water from mills, smelters, or other work for the reduction of ores from mines, mill dams, pipe lines, tanks or reservoirs for natural gas or oil, an occupancy in common by the owners or possessors of different mines, mills, smelters or other places for the reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke.

7. Byroads. Byroads leading from highways to residences and farms.

8. Public utilities. Lines for telegraph, telephone, electric light and electric power and sites for plants for electric light and power.

9. Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the state or college or university.

10. Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

11. Cemeteries, public parks. Cemeteries or public parks.

12. Pipe lines of beet sugar industry. Pipe lines to conduct any liquids connected with the manufacture of beet sugar.

13. Pipe lines for petroleum products, natural gas. Pipe lines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

14. Aviation. Airports, facilities for air navigation and aerial rights of way.

15. Monorails. Monorails and any other overhead or underground system used for public transportation.

16. Community antenna television companies. Community antenna television companies which have received a certificate of public convenience and necessity from the public service commission of Nevada, or, in counties having a population of 250,000 or more, companies which have been granted a franchise from the governing body of the jurisdictions in which they provide services, including the right to use the wires, conduits, cables or poles of any other public utility if:

(a) It creates no substantial detriment to the service provided by the utility;

(b) It causes no irreparable injury to the utility; and

(c) The public service commission of Nevada, after giving notice and

affording a hearing to all persons affected by the proposed exercise of the power of eminent domain, has found that it is in the public interest.

17. Redevelopment. The acquisition of property pursuant to NRS 279.382 to 279.680, inclusive.

[1911 CPA § 664; A 1921, 262; 1937, 351; 1931 NCL § 9153]—(NRS A 1961, 170; 1967, 868, 1228; 1969, 246; 1977, 652; 1983, 2008; 1985, 2080)

37.015 Necessary access for owners, occupants of ranges, grazing lands: Exercise of power of eminent domain. The State of Nevada or any political subdivision or district which possesses the power of eminent domain may, in addition to other uses for which the power may be exercised, exercise the power of eminent domain for the purpose of providing necessary access for the owners or occupants thereof to ranges and grazing lands.

(Added to NRS by 1969, 224)

37.020 Estates in property subject to condemnation.

1. The fee simple or lesser estate in real property, and any other property, are subject to be taken for public use from the owners thereof.

2. The right to take property under this chapter includes the right to acquire and take the fee to the whole of a particular parcel of land whenever the acquisition of the portion thereof actually needed would leave the remainder of such parcel in such irregular shape, uneconomical size, utility or condition as to be of little value or would give rise to claims or litigation concerning damages which, when added to the compensation for the portion taken, would equal or exceed the value of the parcel as a whole.

[1911 CPA § 665; RL § 5607; NCL § 9154]—(NRS A 1969, 1051)

37.030 Private property subject to condemnation. The private property which may be taken under this chapter includes:

1. All real property belonging to any person, company or corporation.

2. Lands belonging to the state, or to any county, or incorporated city or town, not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all purposes mentioned in NRS 37.010, and any and all structures and improvements thereon, and the

lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They shall also be subject to a limited use in common with the owner thereof, when necessary; but such uses of crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

[1911 CPA § 666; RL § 5608; NCL § 9155]

37.035 Monorails and other overhead or underground systems for public transportation: Acquisition of rights and easements on public streets by condemnation. In addition to property subject to condemnation pursuant to NRS 37.030, monorails and any other overhead or underground system used for public transportation may acquire, by condemnation, rights and easements across, over, under and along public streets and roadways, but such rights may not be exercised in such a manner as will permanently interfere with the existing use of such streets or roadways.

(Added to NRS by 1967, 869)

37.038 Conditions precedent to taking property within historic district.

1. Before any person, other than a government or public utility, may exercise the right of eminent domain to take any real property within a historic district organized under chapter 384 of NRS, he must first obtain the approval of the board of county commissioners of the county in which that real property is situated. This consent must not be withheld if the person seeking to exercise the right of eminent domain shows that:

(a) The property will be put to a public use;

(b) The property is necessary for that public use; and

(c) The intended public use will be of great public benefit to the immediate community or area in which the real property is situated and not significantly harmful to historic landmarks or features.

2. In any subsequent judicial proceeding to condemn that real property, the determinations of the board of county commissioners whether the property will be put to a public use and whether it is necessary for that use are prima facie evidence of those facts, respectively, unless the court specifically finds that the determinations were:

(a) Arbitrary and capricious; or

(b) Not supported by substantial evidence.

(Added to NRS by 1981, 1619)

37.040 Conditions precedent to entry of judgment of condemnation; findings. No judgment of condemnation shall be entered unless the court first finds that:

1. The use to which the property is to be applied is a public use.
 2. The property is necessary to such public use.
 3. If the property is already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.
- [1911 CPA § 667; RL § 5609; NCL § 9156]—(NRS A 1965, 994)

37.050 Parties may make location; may enter to make surveys; damages. Where land is required for public use, the person or corporation or its agents in charge of the use may survey and locate it. The land must be located in the manner most compatible with the greatest public good and the least private injury, and subject to this chapter. Upon written notice to the owner at least 10 days before entry, the person or corporation or his or its agents in charge of a public use may enter upon the land and make examinations, surveys and maps thereof, and the entry does not give rise to any cause of action in favor of the owners of the lands, except for actual damages sustained and all injuries resulting from negligence, wantonness or malice. The words "examinations" and "surveys" include, but are not limited to, archeological and other surveys necessary for the preparation of environmental impact and other precondemnation statements or supporting data.

[1911 CPA § 668; RL § 5610; NCL § 9157]—(NRS A 1977, 235)

37.060 Verified complaint filed in district court in county in which property is situated; notice of pending litigation; effect.

1. All proceedings under this chapter shall be brought in the district court for the county in which the property or some part thereof is situated. The complaint in such cases must be verified, and the party instituting any such proceedings shall file with the recorder of each county in which any of the property is situated a notice of the pendency of the action.

2. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not then recorded or docketed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceedings to the same extent and in the same manner as if he were a party therein. He may intervene in the manner provided by NRS 37.080.

[1911 CPA § 669; RL § 5611; NCL § 9158]—(NRS A 1965, 994)

APPENDIX E

Suggested Legislation

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SUMMARY---Establishes state's policy for use of state lands. (BDR 26-218)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to state lands; establishing a policy for their use; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 321 of NRS is hereby amended by adding thereto a new section to read as follows:

The legislature declares the policy of this state regarding the use of state lands to be that state lands must be used in the best interest of the citizens of this state, and to that end the lands may be used for recreational activities, the production of revenue and other public purposes. The state land registrar, in determining the best uses of state lands, shall give primary consideration to the principles of multiple use and sustained yield as those terms are defined in 43 U.S.C. § 1702, as it exists on January 1, 1987.

SUMMARY---Makes appropriation for purchase of easements and equipment to provide access to public lands. (BDR S-217)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Contains Appropriation.

AN ACT making an appropriation to the division of state lands of the state department of conservation and natural resources for the purchase of easements and equipment to provide access to public lands; and providing other matters properly relating thereto.

**THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:**

Section 1. 1. There is hereby appropriated from the state general fund to the division of state lands of the state department of conservation and natural resources the sum of \$100,000 for the purchase of easements and equipment such as cattle guards which are needed to provide access to public lands across private lands.

2. Any remaining balance of the appropriation made by this act must not be committed for expenditure after June 30, 1989, and reverts to the state general fund as soon as all payments of money committed have been made.