

Dear Legislative Committee on Public Lands members:

Eureka County is pleased to see many of the County's recommendations make the work session document for your meeting next week. The Eureka County Board of Commissioners met today and voted to provide the Committee with the attached which prioritizes Eureka County's proposals for action based on the requests provided to the Committee in July. We ask for the Committee's consideration of these other requests that did not make the work session document.

Please do not hesitate to contact me if you have any questions.

Sincerely,

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Priority proposals for action by the Legislative Committee on Public Lands are below, ordered by priority. The background information and justification for the requests are in Eureka County's white paper, "July 2020 Interim Legislative Committee on Public Lands - Eureka County Update and Requests."

Amend NRS 241 to provide for better opportunity for engagement with federal agencies on NEPA processes by implementing an Open Meeting Law process for deliberative and pre-decisional non-public cooperating agency meetings (to also achieve consistency with the federal Freedom of Information Act Exemption 5)

NRS 241.015(3) "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present, whether in person or by means of electronic communication:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

(3) To receive training regarding the legal obligations of the public body, including, without limitation, training conducted by an attorney employed or retained by the public body, the Office of the Attorney General or the Commission on Ethics, if at the gathering the members do not deliberate toward a decision or action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(4) To participate as a formal cooperating agency for the purpose of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. to receive from and transmit information to a respective federal agency on matters that are predecisional and deliberative, consistent with the Freedom of Information Act of 1967, 5 U.S.C. § 552(b)(5) et seq.

Amend NRS to establish State policy (1) requiring coordination by federal land management agencies with the State and its local governments and (2) requiring consistency to the maximum extent possible with State and local government plans, policies, proposals, and controls.

Amend NRS Chapter 328:

1. *The Legislature hereby declares the public policy of this State is for federal agencies to coordinate all their land use planning and management actions which affect any land or resources in this State with any relevant State agency and local government, including conservation districts, and that such coordination should result in efforts to achieve consistency, to the maximum extent possible, with State and local plans, policies, procedures, and controls.*
2. *The Legislature hereby declares the public policy of this State is for federal agencies to develop formal coordination and consistency protocols with State agencies and local governments which should, at a minimum, include the following:*
 - a. *Early notification (prior to public notice) to the State agency or local government of all actions or plans of the federal agency that will affect the State or local citizens.*
 - b. *Opportunity for meaningful input by the State agency or local government with substantial weight and meaning applied by the federal agency to the input.*
 - c. *Federal agency be apprised of the State agency or local government policies, plans, and controls.*
 - d. *Federal agency solicit State agency or local government interpretation of these policies, plans, and controls.*
 - e. *Federal agency adequately consider the State agency or local government policies, plans, or controls when working on federal agency policies, plans, or management actions.*
 - f. *Federal agency, through all practicable effort, make federal agency policies, plans, or actions consistent with the State agency or local government policies, plans, and controls.*
 - g. *When inconsistencies arise, federal agency should meet with State agency or local government in order to work towards consistency.*
 - h. *When consistency cannot be reached, federal agency must specifically justify and explain in writing why consistency could not be reached and any proposed effort to work towards consistency.*
3. *The Legislature hereby declares the Land Use Planning Advisory Council [NRS 321.740 through 321.755] as a forum for assistance to federal agencies and local governments in developing coordination and consistency protocols in accordance with subsection 2.*

Federal Water Rights Filings and Claims under Public Water Reserves 107 (PWR 107)

Send three letters:

1. Send a letter to BLM and US Forest Service request of them to do what is right and review all of their water rights filings statewide and withdraw those vested claims that are questionable or unjustified. Include in the letter a request of the federal agencies to rescind and abandon their policies requiring water rights or water use in exchange for permits, leases, or other land improvements. BLM specifically should be requested to review all of their PWR 107 claims statewide and withdraw those that do not meet the primary purpose or minimal need of PWR 107. A copy of the letter should go to the national leadership of both agencies (Secretaries and Undersecretaries, at a minimum).

2. Send a letter to the State Engineer regarding adjudications with claimed PWRs 107 and request the State Engineer do more analysis on important factors than just water flows to determine the validity of PWR 107 claims. Note in the letter that a determination on the validity of any claimed PWR 107 is not just simply a reservation of an amount of water. Valid PWRs are land reservations reserving either the 40 acre land subdivision in which the PWR spring lies, in cases of surveyed land, or one-quarter of a mile of land around every PWR spring, in cases of unsurveyed land. The approach by the State Engineer in making determinations on PWRs through simple flow rate analysis has major implications on the multiple-uses of public land and in effect locks up thousands of acres of public land from many multiple uses including non-metalliferous mining, oil and gas exploration and development, rights of way, and range improvements, among other uses. Note that the State Engineer must complete the necessary field work or evidence review to justify whether-or-not PWRs are valid. There must be field investigations and a thorough investigation of the other pre-existing water rights that exist on many of the same water sources. Further, there must be a review and analyses of General Land Office (GLO) records, BLM Master Title Plats and other Plat maps, existing rights and infrastructure recorded through deeds, etc. to justifiably conclude that either the 40 acre land subdivision in which the PWR spring lies, in cases of surveyed land, or one-quarter of a mile of land around every PWR spring, in cases of unsurveyed land, were actually “vacant” or “unappropriated” as required in the 1926 Executive Order. Such analyses would find many claimed PWRs do not meet this standard.

Actions on RS 2477 Roads

Send two letters:

1. A letter to the Governor, Attorney General, Chair of the Assembly Committee on Ways and Means, and the Chair of the Senate Committee on Finance of the 2021 Legislative Session seeking funds to implement Senate Bill 456 (Chapter 452, Statutes of Nevada 2015), which urges the Attorney General (AG) to take a leadership role in pursuing actions on behalf of the State and counties in formalizing and finalizing title to accessory roads and public roads. The bill further authorizes the AG to participate as a party in a quiet title action regarding such roads under certain circumstances and in cooperation with or on behalf of the county or counties in which the road lies.
2. A letter to the Congressional Delegation seeking a Congressional solution to RS 2477 title like The Historic Routes Preservation Act proposed in past Congresses (or similar) to provide direction on a consistent and concise protocol to finally address RS 2477 rights of way outside of Quiet Title Act litigation in a manner beneficial to the State of Nevada, our counties, and other western states with clouded or unclear title on these important roads.

Grazing

Send a letter to BLM and US Forest Service exhorting them to avoid unjustified, arbitrary and subjective grazing restrictions with the following points of consideration:

- 1) Ensure agencies separate hydrologic and vegetative drought and do not rely on USDM for drought determinations regarding vegetation. Instead, properly use VegDRI and incorporate other indices such as those being researched by DRI and Dr. Justin Huntington (e.g., EDDI).
- 2) Federal agencies in coordination with grazing permittees must ensure that management decisions are based upon the best rangeland science, that flexibility is built into grazing permits

to allow for adaptive management as issues and concerns arise, and that that quality and quantity of data collected can support all decisions made;

- 3) Before imposing grazing restrictions or seeking changes in livestock stocking rates or seasons of permitted use, federal agencies in coordination with grazing permittees must identify and implement all economically and technically feasible livestock distribution, forage production enhancement, weed control programs, prescribed grazing systems, off-site water development by the water rights holder, shrub and pinyon/juniper control, livestock salting/supplementing plans, and establishment of riparian pastures and herding; and
- 4) Federal agencies in coordination with grazing permittees must assure that all grazing management actions and strategies fully consider impact on property rights of inholders and adjacent private land owners and consider the potential impacts of such actions on grazing animal health and productivity.

Position Statements

Include the following as position statements in the Committee's final report:

- Support of the full-suite of tools authorized in the Wild and Free Roaming Horses and Burros Act of 1971, as amended. However, support the "The Path Forward for Management of BLM's Wild Horses & Burros" (and associated appropriations) which proposes solutions that bring excess horses to levels conducive to rangeland health without using unconditional sale and lethal management.
- Ensure that the Nevada Greater Sage-grouse Conservation Plan and associated Conservation Credit System (CCS) are the standard in which Greater Sage-grouse (GSG) are managed in Nevada on all lands, private or public. The Nevada Plan and CCS must be fully implemented on federally-administered lands to ensure its effectiveness. Implementation of the Bureau of Land Management's most recent Resource Management Plan Amendment, which sought alignment with the State Plan, should be supported and defended.
- Tax revenues from mineral proceeds derived from taxes imposed by the State should be justly shared with the County in which the non-renewable resource was extracted and where impacts exist.
- Opposition to efforts to impose federal mineral leases and royalties (as opposed to current locatable claiming and no federal royalty).
- Federal receipts from all commercial activities on public land should be shared with the State and counties in which the lands are located.
- Support of a surgical approach that would transfer federal lands already identified in a public process as suitable for disposal and lands already under a lease to public and private agencies.
- Opposition to permanent retirement of grazing permits does not take place in order to ensure land management flexibility in managing habitat and hazardous fuels and long-term socioeconomic stability of rural Nevada communities.
- Support expansion of current efforts by a diverse group of agencies and individuals (e.g., Nevada P-J Partnership) to implement landscape scale projects utilizing pinyon-juniper woodland biomass in a way that benefits energy production, rangeland health, wildlife habitat, hydrologic function, and economic stability.