MINUTES OF THE MEETING OF THE
LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.5363)
November 18, 2002
Carson City, Nevada

The ninth meeting of the Legislative Committee on Public Lands (*Nevada Revised Statutes* [NRS] 218.5363) during the 2001-2002 Legislative Interim was held on Monday, November 18, 2002, in the Legislative Building, Room 4100, 401 South Carson Street, Carson City and videoconferenced to the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda" for this meeting.

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Senator Dean A. Rhoads, Chairman
Assemblyman John W. Marvel, Vice Chairman
Senator Terry Care
Senator Mike McGinness (alternate)
Assemblyman and Eureka County Commissioner Peter J. Goicoechea
Former Assemblyman P.M. "Roy" Neighbors

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Tom Collins

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT IN CARSON CITY:

Linda Eissmann, Senior Research Analyst, Research Division
R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division
Christine Kuhl, Senior Research Secretary, Research Division

All place names mentioned in these minutes are in Nevada unless otherwise noted.

MEETING NOTICE AND AGENDA

Name of Organization:	Nevada's Legislative Committee on Public Lands (*Nevada Revised Statutes* 218.5363)
Date and Time of Meeting:	Monday, November 18, 2002 9:30 a.m.
Place of Meeting:	Legislative Building Room 4100 401 South Carson Street Carson City, Nevada

Note: Some members of the Committee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Grant Sawyer State Office Building
Room 4401

555 East Washington Avenue
Las Vegas, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks and Introductions

*II. Approval of the Minutes of the Meeting Held on August 16, 2002, in Elko, Nevada

*III. Reports to the Committee

A. Review of Activities of the Legislative Committee on Public Lands in Washington, D.C., on September 18 and 19, 2002
Senator Dean A. Rhoads, Chairman

B. Update on the Status of the "Clark County Conservation of Public Land and Natural Resources Act of 2002," S. 2612 of the 107th Congress, Second Session
Linda Eissmann, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB)

C. Overview of the Meeting of the Wild Horse and Burro Advisory Board of the Bureau of Land Management (BLM), United States Department of the Interior, held October 28 and 29, 2002, in Salt Lake City, Utah; and Briefing on the BLM's Wild Horse and Burro Management Program for Fiscal Year 2003
Larry Johnson, Former Advisory Board Member and Wildlife Representative
Robert V. Abbey, Nevada State Director, BLM

D. Discussion of Exploration and Development of Wind Energy in Nevada
Tim Carlson, Wind Energy Representative, Nevada Renewable Energy Task Force
Rich Hoops, Fluid Minerals Team Leader, BLM
Dave Pulliam, Wildlife Staff Biologist, Division of Wildlife, State Department of Conservation and Natural Resources

E. Briefing on the Status of the Checkerboard Pattern of Land Ownership in Northern Nevada
Steve Hartman, Vice President and Corporate Counsel, Nevada Land and Resource
Company

*IV. Continued Discussion about a Bill Draft Request Regarding Issuance of Stockwater Permits by the State Engineer (Nevada Revised Statutes 533.503)

V. Public Comment

*VI. Possible Work Session on Preceding Agenda Items

*Denotes items on which the Committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Christine Kuhl at (775) 684-6825 as soon as possible.
Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at: www.leg.state.nv.us.

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OPENING REMARKS AND INTRODUCTIONS

Chairman Rhoads called the meeting to order at 9:45 a.m., welcomed those in attendance, and noted a quorum was present. He requested the Committee Secretary call roll and those present sign-in on the attendance roster.

APPROVAL OF THE MINUTES OF THE MEETING HELD ON AUGUST 16, 2002, IN ELKO, NEVADA

ASSEMBLYMAN MARVEL MOVED TO APPROVE THE MINUTES OF THE MEETING HELD AUGUST 16, 2002, IN ELKO, NEVADA. THE MOTION WAS SECONDED BY SENATOR CARE AND PASSED UNANIMOUSLY BY ALL MEMBERS PRESENT.

REPORTS TO THE COMMITTEE

Update on the Status of the "Clark County Conservation of Public Land and Natural Resources Act of 2002," S. 2612 of the 107th Congress, Second Session

Linda Eissmann

Linda Eissmann, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City, explained that the Clark County Conservation of Public Land and Natural Resources Act of 2002, commonly known as the Clark County Wilderness Bill, was signed into law by President George W. Bush on November 6, 2002, and is now Public Law 107-282.

Continuing, Ms. Eissmann reminded the Committee that the United States Congress considered two very similar measures in this regard. One was S. 2612, introduced in the Senate by Nevada Senators Harry Reid (D) and John Ensign (R). The other was H.R. 5200, introduced by U.S. Congressman Jim Gibbons (R-Nevada) in the House of Representatives. When introduced, the measures were nearly identical with only a few differences.

Ms. Eissmann further explained that the House Bill, H.R. 5200, was eventually passed by the U.S. Congress and signed by the President. H.R. 5200 was amended in the House and passed by unanimous consent. Upon reaching the Senate, it was passed without amendment and by unanimous consent. She noted that a bill summary of H.R. 5200, including a map illustrating the newly designated Wilderness Areas and the new National Conservation Area (NCA), is contained in the packet of materials provided to Committee members (Exhibit A).

Turning to a discussion of the legislation, Ms. Eissmann first summarized an amendment made to the bill by the House of Representatives. She explained that at a Committee meeting earlier in the interim, Bennie Hodges of the Pershing County Water Conservation District presented an overview of the Humboldt Project Title Transfer. Mr. Hodges urged the Committee to support the transfer. Subsequently, the Committee spoke in support of the Humboldt Project during both of its trips to Washington, D.C., this interim, as the project was pending congressional approval as H.R. 5039. Ultimately, the Humboldt Project Title Conveyance was added to the Clark County Conservation of Public Lands and Natural Resources Act as an amendment by the House of Representatives, and was part of H.R. 5200 when it became Public Law. Therefore, with passage of this act, the Humboldt Project Title Conveyance was approved.

Next, Ms. Eissmann provided a summary of components of the act that are of specific interest to the Committee.

Title 1 provides for a boundary adjustment to the Red Rock Canyon NCA to include lands acquired for public ownership as a result of a land exchange directed under the legislation. As part of the land exchange, developable public lands in Clark County are transferred to the Howard Hughes Corporation and lands owned by the Howard Hughes Corporation are conveyed to the United States for inclusion in the Red Rock Canyon NCA. Some public lands adjacent to the lands conveyed to the Howard Hughes Corporation will be conveyed to Clark County for use as a park.

Title 2 is the wilderness component. It designates more than 440,000 acres of wilderness in 18 separate Wilderness Areas throughout Clark County, and releases 233,000 acres of Wilderness Study Areas (WSAs) back to multiple use, some of which could be developed. (Please note: The map contained in Exhibit A illustrates the Wilderness Areas in yellow.)

An important component of this section addresses water rights in Wilderness Areas. The measure declares that nothing in this act shall constitute any reservation by the United States of any water or water rights within the lands newly designated as Wilderness Area. This provision was requested by the State of Nevada, and was added to the bill. Therefore, there is

no reservation of water rights by the Federal Government within the Wilderness Areas.

Additionally, this section clarifies that the wilderness designations will: (1) not provide for buffer zones; (2) allow military overflights; and (3) allow for Native American cultural and religious uses.

Title 4 addresses amendments to the Southern Nevada Public Land Management Act of 1998 to provide for a new expenditure category. Ten percent of the funds generated through land sales under this act can now be used for conservation initiatives on federal land in Clark County. Title 4 also realigns the southern boundary of the Desert National Wildlife Refuge, which will result in expansion of the boundary of the City of North Las Vegas.

Title 6 establishes the Sloan Canyon NCA, making it the second NCA in Clark County (Red Rock Canyon NCA was the first). The purpose of the designation is to protect valuable petroglyphs and other resources in the area. (Please note: The map contained in Exhibit A illustrates the Sloan Canyon NCA in red.)

Title 8 is the Humboldt Project Title Conveyance. There had been some discussion over costs involved with the title transfer, and whether the State of Nevada would be required to cover these expenses. The state is not required to pay for the administrative, real estate transfer, or National Environmental Protection Act of 1969 (NEPA) requirement costs associated with the project. However, the state is responsible for restoration of the wetlands at the Argenta Marshes, including acquisition of necessary water rights and the costs associated with this responsibility.

Titles 3, 5, 7, and 9 address miscellaneous provisions such as transfers of administrative jurisdiction, conveyances, the Ivanpah utility corridor, and technical changes to the Mesquite Lands Act.

Chairman Rhoads, commented on the Clark County Conservation of Public Land and Natural Resources Act of 2002, and noted that the regional approach seemed to be the method by which Nevada's WSAs will be addressed. He noted that Lincoln, Nye, and White Pine Counties are currently working together to develop a bill to address the WSAs in that region.

Review of Activities of the Legislative Committee on Public Lands in Washington, D.C., on September 18 and 19, 2002

Chairman Rhoads

Chairman Rhoads provided an overview of the Committee's activities in Washington, D.C., on September 18 and 19, 2002. The members met with the following individuals:

- Senator Ensign and staff members;
- V.A. Stephens, Associate Director for Transportation, Energy, and Land Management, U.S. Council on Environmental Quality, Office of the President, and discussed problems with clean air and water, as well as the proposed power generation facility in Elko County;
- Eric Ciliberti, Associate Director, Intergovernmental Affairs, The White House, who stressed the importance of good communication between federal land management agencies and state and local governments. Chairman Rhoads characterized the current administration as "friendly" and willing to communicate;
- Kathleen Clarke, Director, Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), and William G. Myers, III, Solicitor, DOI, who explained that they are evaluating the Rangeland Reform '94 regulations and intend to implement substantive changes;
- Shelley Berkley, U.S. Congresswoman, (D-Nevada) and her staff members;
- John Peterson, U.S. Congressman (R-Pennsylvania), who introduced the Good Neighbor Act of 2002, which would provide for public/private land exchanges based on value, not acreage. Discussion also addressed management of wild horses on public lands in Nevada and the West in general. Congressman Peterson expressed his intent to encourage a television news program, such as *Nightline* or *20/20*, do a story on the topic in an effort to create public awareness of the costs associated with the issue;
- Senator Reid and his staff;
- Congressman Gibbons and his staff; and

- Mark Rey, Undersecretary of Natural Resources and Environment, U.S. Department of Agriculture (USDA) and other representatives of the USDA.

Overview of the Meeting of the Wild Horse and Burro Advisory Board of the Bureau of Land Management (BLM), United States Department of the Interior, held October 28 and 29, 2002, in Salt Lake City, Utah; and Briefing on the BLM's Wild Horse and Burro Management Program for Fiscal Year 2003

Larry Johnson

Larry Johnson, Former Advisory Board Member and Wildlife Representative to the BLM's Wild Horse and Burrow Advisory Board, Reno, explained that the primary goal of the Board is to reaffirm the need for BLM to establish appropriate management levels (AMLs) as a fundamental element for management of the National Wild Horse and Burro Program. He explained that the Board's strategic plan is a "couple" of years old and calls for the removal of a sufficient number of horses in an effort to reach AML by the end of 2004. Mr. Johnson further explained that a budget request to fund this undertaking was sent to Congress; however, the BLM budget for 2000 received only approximately 75 percent of the necessary funding. As a result, the budget was not sufficient to address Nevada's larger-than-estimated wild horse population and age demographics (more younger horses than anticipated). Consequently, the Board's goal of reaching AML by the end of 2004 will not be met. The Board is hopeful that the BLM will complete its Fiscal Year 2003 gather plan by January 2003, so the Board can reevaluate its strategic plan. Mr. Johnson noted that many herd management areas (HMAs) do not have a set AML, which in many cases allows animal rights activists to halt gathers in these areas.

Continuing, Mr. Johnson explained that the national adoption rate for wild horses in Fiscal Year 2001-2002 was approximately 8,500; however, approximately 13,500 adoptable horses were removed nationally. Consequently, the only alternative is to place these horses in long-term holding at a daily cost of $1.23 per animal.

In response to an inquiry posed by Chairman Rhoads, Mr. Johnson explained that nationally there are 5 long-term holding facilities containing approximately 9,000 horses. Short-term holding facilities currently house approximately 8,300 horses at a daily cost of $3.35 per animal.

Mr. Johnson was of the opinion that if the wild horse population in Nevada were reduced to AML (a "little" over 13,000), each HMA would be scheduled for a gather on approximately a 4-year cycle. If AML were achieved on a national level the program could be kept "in check" because the adoption market would exceed the amount of adoptable horses gathered. He noted that for the first time in approximately 15 years, the wild horse population in Nevada is less than 20,000.

In conclusion, Mr. Johnson explained that at its recent meeting, the Board called for the BLM to:

- Revise, in a timely manner, its current strategy to achieve AML, given consideration to emergency gathers as a result of fire or drought, and report to the Board at its next meeting.

- Enter into discussions with potential partners, such as the Wild Horse Foundation, to discuss marketing strategies for wild horses.

- Form an internal core team to review the strategic plan and submit it for signature by the BLM's Director by March 2003. The update should include contingencies and mechanisms to keep the program "on target."

- Within 60 days, issue a statement of commitment to the National Wild Horse and Burro Foundation, in the form of memorandum of understanding or cooperative agreement.

- Obtain a formal opinion from the Solicitor of the DOI to address placement of horses in long-term holding facilities outside of the United States.

- Continue to explore the potential for private partnerships to achieve all aspects of the program.

- Explore the need for an integrated program between the BLM and the U.S. Forest Service (USFS), USDA.

Meg Jensen

Meg Jensen, Deputy State Director, Resources, Lands, and Planning, BLM, Reno, provided what she characterized to be "good news" about the National Wild Horse and Burro Program. She informed those present that in the first two years of

implementation of the national strategy, BLM Nevada planned to remove 11,544 animals but actually removed 12,330 animals. As a result, BLM Nevada is approximately 800 animals ahead of the removal schedule. She explained that one reason for this statistic is the fact that unplanned, emergency gathers took place as a result of the current drought conditions.

Additionally, Ms. Jensen explained that 4,267 animals must be removed in 2003 in order to achieve the national strategy level. However, she anticipated the need to remove 4,726 animals to address plan gathers and serious drought conditions. Ms. Jensen noted that some operators have been requested to remove livestock in drought-stricken areas, as well.

With regard to funding, Ms. Jenson explained that BLM Nevada anticipates receiving one-half of the necessary funding for the year 2003 through the National Wild Horse and Burro Program. A request for supplemental funding has been sent to the Director of the BLM. Ms. Jensen noted that some discussions have occurred and the BLM is considering a request of Congress to allow for the authority to transfer funds from other BLM programs into the National Wild Horse and Burro Program. Further, Ms. Jensen noted that in the past, Robert V. Abbey, State Director, Nevada BLM, has been committed to the program and has internally transferred money to the program. She anticipated he would continue to be committed to doing everything within his power if other avenues provide no relief.

Discussion of Exploration and Development of Wind Energy in Nevada

Rich Hoops

Rich Hoops, Geothermal Program Team Leader, BLM, Reno, explained he recently assumed a position as a liaison to the Nevada Renewable Energy Task Force.

Before discussing the exploration and development of wind energy in Nevada, Mr. Hoops touched on the development of geothermal energy. He explained that in general, BLM policy encourages development of geothermal energy where appropriate. To this end, the BLM has worked with state and local governments and project developers to ensure projects are developed in an appropriate time frame. He also noted that the BLM views development of these resources as an opportunity to develop the economies of rural communities. Further, Mr. Hoops explained that leases for geothermal development on BLM lands in Nevada has nearly doubled in the past year. He noted that on BLM managed lands, Nevada has nine geothermal power generation facilities on-line with an installed capacity of 165 megawatts.

Turning to a discussion of wind energy, Mr. Hoops provided the following statistics to illustrate the "great potential" of this resource in Nevada:

- More than 42 percent of the State of Nevada has been classified by the U.S. Department of Energy (DOE) as "good" for wind energy potential.
- More than 25 percent of the State of Nevada (18 million acres) has been classified by the DOE as "excellent or outstanding" for wind energy potential. This is the commercial classification for wind energy.
- The BLM manages 9 million acres of the land classified as having commercial potential, and of this, 84 percent is available for development subject to a NEPA review.
- The USFS, manages 4 million acres of the land classified as having commercial potential.
- 2 million acres of the land classified as having commercial potential is in private ownership.
- 26,000 acres of the land classified as having commercial potential is owned by the State of Nevada.
- There are over 5 million acres of commercial grade BLM land within 10 miles of existing transmission lines and over 3 million acres within 25 miles of existing substations.

Mr. Hoops informed the Committee that maps are available that illustrate the following:

- wind classifications;
- Wilderness Areas, habitat for threatened or endangered species, or other classifications with potential to hinder development; and

- proximity to transmission lines and substations.

Additionally, Mr. Hoops explained that a national policy for wind development on BLM managed lands has been issued. In this regard, he provided a document titled "Instruction Memorandum No. 2003-020," dated October 16, 2002, from the Director of the BLM, addressed to "All Field Officials" (Exhibit B).

Mr. Hoops explained that development of wind energy would be a land function authorized as a right-of-way grant for one of the following:

1. Site specific wind energy testing and monitoring;

2. Wind energy site testing and monitoring facilities that encompass a site testing and monitoring project area; or

3. Commercial wind energy development facilities.

Mr. Hoops noted that there are approximately 23 sites in Nevada authorized for site investigation under the authorization outlined in Number 1.

Tim Carlson

Tim Carlson, Wind Energy Representative, Nevada Renewable Energy Task Force, Las Vegas, responded to two inquiries made by Assemblyman Marvel.

First, Mr. Carlson agreed that transmission is an issue of critical importance to the expansion of wind energy in Nevada. However, he noted that Nevada has a well-established mining industry and many mine sites have already developed the infrastructure necessary to move power. In the case of mine closures, it is possible to utilize the transmission lines to move power off, rather than to the sites. Mr. Carlson noted that he is currently working with the Rawhide Mine, located near Ruth, to develop wind energy in the area and utilize the existing transmission lines, which have the capacity to move 50 megawatts of power. He further noted that because the land is in private ownership, development of the wind resource is more feasible.

Second, Mr. Carlson explained that he is currently in negotiation with Nevada Power to purchase the 50 megawatts of power from the Ruth site. He noted that Nevada's energy providers must reach a 15 percent renewable energy portfolio standard by 2013, which has been an incentive for development of wind resources. Mr. Carlson urged the Committee members to ensure this portfolio standard is not reduced during the 2003 Legislative Session.

Assemblyman Marvel noted that development of renewable energy resources would reduce dependency on foreign oil. He inquired as to what the objections to wind energy are.

In response to Assemblyman Marvel, Mr. Carlson explained that the main objection to wind energy development is the esthetics of the units. However, he noted that in recent years the industry has designed better looking and more efficient machines.

Assemblyman Neighbors questioned why the development of wind energy at the Nevada Test Site was halted. Mr. Carlson explained that the U.S. Department of Defense (DOD) was responsible for stopping the project, which had been a two-year development process that had the full support of the DOE. Additionally, a power purchase agreement had been signed by Nevada Power and approved by the Public Utilities Commission of Nevada. The DOD protested the development because it could not have the site disturbed by the machines, but did not mention the issue two years earlier for "top secret" reasons. This revelation initiated a meeting between the Secretary of the Air Force and Senator Reid, who confirmed that the military must have the site. Parties are currently in negotiations for payment of the development costs; however, it appears a lawsuit is eminent. Mr. Carlson indicated he is hopeful that the project will be moved to an area called Table Mountain.

In conclusion, Mr. Carlson noted that an issue for development of renewable energy in Nevada is the fact that the power companies are considered to be close to insolvency, which is a problem when attempting to obtain bonds.

Dave Pulliam

Dave Pulliam, Wildlife Staff Biologist, Division of Wildlife, State Department of Conservation and Natural Resources (SDCNR), Carson City, explained that the Division has an "excellent" partnership with Nevada's mining industry and is working to develop a similar partnership with the renewable energy community. He noted that aspects that protect natural resources and reduce mitigation costs similar to those in place with the mining industry, such as annual permits and assessment fee requirements, would likely be a part of the relationship with the renewable energy industry.

Briefing on the Status of the Checkerboard Pattern of Land Ownership in Northern Nevada

Stephen D. Hartman

Stephen D. Hartman, Corporate Counsel and Executive Vice President of Corporate Development, Nevada Land and Resource Company, LLC, Carson City, provided a letter from himself to Senator Dean A. Rhoads, dated November 18, 2002, the subject of which is "Checkerboard Land Pattern – Consolidation" (Exhibit C).

Mr. Hartman addressed the process of consolidating 1.2 million acres along the Interstate 80 corridor and noted the importance of local government participation. Please refer to Exhibit C for complete details of his presentation.

Chairman Rhoads was of the opinion that the consolidation would benefit area residents and encouraged Mr. Hartman to seek the Committee's assistance if necessary.

Continued Discussion about a Bill Draft Request Regarding Issuance of Stockwater Permits by the State Engineer (Nevada Revised Statutes 533.503)

Chairman Rhoads

Chairman Rhoads explained that seven meetings had been held during the 2001-2002 Legislative Interim to address the topic of stockwater permits and noted that a resulting draft amendment to *Nevada Revised Statutes* (NRS) 533.503 would be discussed. He commented that following the Committee's August 16, 2002, meeting there was a public perception that the Committee's intent was to weaken Nevada's water laws. Chairman Rhoads clarified this is not the intent. Rather, the Committee is attempting to resolve an existing problem regarding the issuance of stockwater permits on lands managed by the Federal Government. He explained that if no action were taken, all future stockwater permits on federally managed public lands would be issued solely in the name of the Federal Government.

Chairman Rhoads requested R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division, LCB, review the draft amendment prior to discussion.

R. René Yeckley

R. René Yeckley, previously identified, reminded those present that at the Committee's August 16, 2002, LCB's Legal Division was directed to research changes to the bill draft proposed by representatives of the Humboldt River Basin Water Authority (HRBWA). Additionally, the Legal Division was directed to determine whether the requested changes were workable and constitutionally defensible so they could be considered for incorporation into the bill draft.

Continuing her presentation, Ms. Yeckley explained that the request has been completed and conclusions regarding the changes have been determined. Ms. Yeckley informed those present that before discussing the conclusions, she would review the suggested changes, which are included in the most current version of the bill draft. Additionally, Ms. Yeckley provided a document titled "Draft Amendment to NRS 533.503 ('The Stockwater Statute')," and noted it could be used as a reference during her discussion (Exhibit D).

<u>Summary of Changes</u>

Ms. Yeckley explained that prior to incorporation of the HRBWA recommendations, the proposed language for the bill prohibited the State Engineer from issuing stockwater permits on the public grazing lands, unless the applicant for such a permit, or in the case of a joint permit, at least one of the applicants is legally entitled to place the livestock on the public grazing lands AND either: (1) owns, leases or otherwise possesses a legal or proprietary interest in the livestock for which the permit is sought; OR (2) has received from such a person authorization to possess physical custody of the livestock and to care for, control, and maintain the livestock. She directed attention to page 2 of Exhibit D, subparagraphs (1) and (2) of paragraph (a) of subsection 1 of section 1 and noted they are labeled as the "The proprietary interest requirement," explaining she would refer to the provision as such throughout her presentation.

Continuing, Ms. Yeckley observed that at the Committee's August 16, 2002, meeting, representatives from the HRBWA requested three specific changes be made to the bill draft, as follows:

1. Require an applicant for a stockwater permit to have an adjudicated grazing allotment;

2. Delete the specific language concerning forage banks; and

3. Amend the definition of "public grazing lands" to indicate that the Federal Government manages, rather than owns, the public grazing lands.

Request Number 1

With regard to change number one (require an applicant for a stockwater permit to have an adjudicated grazing allotment), Ms. Yeckley explained that the Legal Division worked closely with representatives of the HRBWA and the Office of the Attorney General to craft the language on pages 2 and 3, in paragraphs (c) and (d) of subsection 1 of section 1 of Exhibit D, labeled "The forage requirement." This language provides that one of the conditions for obtaining a stockwater permit is that the forage serving the beneficial use of the water is not encumbered by an adjudicated grazing preference that belongs to a person who is not an applicant for the stockwater permit. Ms. Yeckley was of the opinion that the intent behind this provision is to protect an existing grazer's right to graze on the public grazing lands and to prevent an interloper from interfering with those rights by filing for stockwater rights ahead of an existing grazer.

Continuing discussion of request number one, Ms. Yeckley testified that to illustrate how this provision works, it would be helpful if she first explained what a grazing preference is and then provide a few examples of how this provision might apply depending upon who is applying for the stockwater permit. For purposes of this discussion, noted Ms. Yeckley, she would not consider the proprietary interest requirement.

Ms. Yeckley went on to explain that a grazing preference is basically "a superior or priority position against others for the purpose of receiving a grazing permit or grazing lease. This priority is attached to base property owned or controlled by the permitee or lessee." She noted that many of these preferences were determined or adjudicated around the time of the Taylor Grazing Act and have been passed along with the base property to which it is attached and new grazing preferences are also determined, adjudicated, or readjudicated. Further, a grazing permit is "the document authorizing use of public lands within an established grazing district."

Continuing her explanation, Ms. Yeckley noted that a grazing preference and the grazing permit are almost inextricably linked together. In most cases, although not every case, a person who has a grazing permit will also have a grazing preference. Further, a person who has a grazing permit will also be legally entitled to place the livestock on the public grazing lands. Therefore, generally, if a person applies for a stockwater permit and he has a grazing permit and a grazing preference, he will be able to obtain a sole stockwater permit if the Federal Government does not protest, or he may obtain a joint stockwater permit, if the Federal Government does protest and insists on a joint permit.

In her next example, explained Ms. Yeckley, the Federal Government is the stockwater applicant. If the Federal Government applies for a stockwater permit, as the court held in the "stockwater case," (*United States v. State Engineer*, 117 Nev. Adv. Op. No. 49 [2001]) the Federal Government is legally entitled to place the livestock on the public grazing lands. Therefore, if there is an existing grazing preference encumbering the forage at issue, the Federal Government may obtain a joint permit with the person who has that grazing preference. If there is no such grazing preference, the Federal Government may obtain a sole stockwater permit. Additionally, there may be no grazing preference where the land has been withdrawn from public use, otherwise reserved by Congress, or obtained through a purchase or exchange, or the grazing preference has been revoked or cancelled.

In her final example, Ms. Yeckley explained that if a person, other than the Federal Government, applies for a stockwater permit and he does not have a grazing permit, he would not be legally entitled to place the livestock on the public grazing lands. Therefore, that person could obtain, at most, a joint stockwater permit with a person who does satisfy the requirements for a stockwater permit. Thus, if there is a grazing preference, the person may apply with the holder of the grazing preference. If there is no grazing preference, the person may apply with the Federal Government.

Following these examples, Ms. Yeckley explained that depending upon the specific facts and circumstances, the provision makes it possible for a person or the Federal Government to obtain a sole stockwater permit or a joint stockwater permit. She noted that representatives of BLM have repeatedly testified before the Committee that the BLM would be satisfied with this result of joint stockwater permits.

Request Number 2

Next, Ms. Yeckley touched on the HRBWA's second requested change (delete the specific language concerning forage banks). She directed attention to pages 4 and 5 of Exhibit D and noted that the deleted language is labeled "Specific language concerning forage banks proposed by the HRBWA to be deleted" and is indicated by brackets and a strikethrough.

Request Number 3

Ms. Yeckley next addressed the HRBWA's third request (amend the definition of "public grazing lands" to indicate that the

Federal Government manages, rather than owns, the public grazing lands). She noted that these amendments have been made on page 5, in subsection 4 of section 1 of Exhibit D and indicate that the lands at issue are managed by the agencies of the Federal Government and do not include any private lands.

Concluding her summary of the changes, Ms. Yeckley directed attention to page 2 of Exhibit D, specifically at paragraph (b) of subsection 1 of section 1 and explained this provision concerns joint permittees and their required agreements to contribute to certain developments. She noted that the first change is the addition of the language "to the extent authorized by law," which is a technical change that was added to avoid any possible conflicts with other laws, particularly federal law. The second change is the addition of the language "means for putting to beneficial use," which was proposed by the HRBWA presumably for consistency with Nevada's other statutes and how they typically refer to the beneficial use of water.

Legal Defensibility of Each Option

Ms. Yeckley informed those present that, as requested, the Legal Division researched and analyzed the changes suggested by the HRBWA. She revealed that the Legal Division has concluded that an argument can be made that the bill draft, as it exists (Exhibit D), may be legally defensible. However, she further explained that the Legal Division recommends the Committee choose either the proprietary interest requirement that was analyzed by Justice Becker in her concurring and dissenting opinion or the requirement that the forage not be encumbered by a grazing preference, which was proposed by representatives of the HRBWA. She further revealed that it is the opinion of the Legal Division that the cumulative effect of including both requirements in the bill draft makes it less constitutionally defensible than if only one of the two were chosen.

Continuing her analysis, Ms. Yeckley explained that if the bill draft includes either the proprietary interest requirement or the forage requirement, it is the opinion of the Legal Division that arguments can be made that either requirement is legally defensible. Because the forage requirement appears to leave more flexibility for the Federal Government to manage the lands, including more flexibility to obtain stockwater permits for forage banks, it is the Legal Division's opinion that of the possible requirements discussed in Ms. Yeckley's presentation, the forage requirement may be the most legally defensible. She reiterated statements made at past Committee meetings that the Legal Division cannot predict with certainty how a court would rule if the bill draft were enacted with such a requirement and legally challenged. However, the Legal Division does believe that an argument can be made that such a bill draft is legally defensible. She noted it is her understanding that the HRBWA will urge the Committee to select only the forage requirement.

In conclusion, Ms. Yeckley offered to answer questions and reminded the Committee that C. Wayne Howle, Supervising Senior Deputy Attorney General, Office of the Attorney General, Carson City, and Hugh Ricci, State Engineer, Division of Water Resources, SDCNR, Carson City, were present.

Following Ms. Yeckley's presentation, the following discussion ensued.

C. Wayne Howle, previously identified, commented that he agreed with Ms. Yeckley's analysis and did not have any further comments; however, he offered to answer any questions the Committee had.

Chairman Rhoads questioned if it would be easier to defend the proprietary interest section or the forage requirement. Mr. Howle agreed with Ms. Yeckley that both are defensible, but would be less defensible if they were included together.

In response to questions posed by Senator Care, Ms. Yeckley provided the following information:

- The procedure for protesting a decision of the State Engineer is not addressed in this bill draft; however, she was of the belief that such a procedure already exists in statute.

- It is an existing concern that some individuals do not want to obtain permits with the Federal Government. However, there does not appear to be anything that can be done to address this concern because if the Federal Government protests, they would have to be made a party in a joint permit.

- The deletion of the section on page 4 (Exhibit D) titled "Specific language concerning forage banks proposed by HRBWA to be deleted," is the result of a Committee policy decision made at the August 16, 2002, meeting. She noted that if the Committee were to keep the "forage requirement," there would still be flexibility for the Federal Government to obtain permits for forage banks.

Responding to Chairman Rhoads, Ms. Yeckley agreed that, in theory, the proposed language is a three-way system because it is possible to obtain a permit in one of three ways: (1) the livestock operator individually; (2) the Federal Government individually; or (3) both parties jointly.

Hugh Ricci, previously identified, questioned who would be the "keeper" of the document demonstrating who holds the

"adjudicated grazing preference" referenced in "The forage requirement" (Exhibit D). He also questioned if it is possible for someone to hold a grazing preference but not the grazing permit.

In response to Mr. Ricci, Assemblyman Goicoechea clarified that a grazing preference and a grazing permit are one in the same. Continuing, he spoke in favor of attaching a stockwater permit to the land, not to a proprietary interest in livestock.

Chairman Rhoads expressed concern about being too broad with the language.

Assemblyman Goicoechea reiterated his position that stockwater applicants must be tied to already-established grazing preferences and the forage.

Discussion ensued with regard to the constitutionality of the proposed language. Mr. Howle emphasized that he cannot predict what the outcome would be if the statute were passed and challenged in court.

Reiterating comments made earlier in the meeting, Chairman Rhoads noted that the BLM is in the process of reevaluating Rangeland Reform '94 regulations, and explained that this issue might be resolved as a result. Further, Chairman Rhoads explained that the bill draft will be debated during the 2003 Legislative Session and called for a motion on the item, as currently drafted.

ASSEMBLYMAN GOICOECHEA MOVED TO RECOMMEND THE COMMITTEE SUBMIT THE LANGUAGE CONTAINED IN "EXHIBIT D" AS A BILL DRAFT REQUEST. ASSEMBLYMAN MARVEL SECONDED THE MOTION, WHICH WAS PASSED UNANIMOUSLY BY ALL MEMBERS PRESENT.

PUBLIC COMMENT

No public comment was provided.

Exhibit E is the "Attendance Record" for this meeting.

Respectfully submitted,

Christine Kuhl
Senior Research Secretary

Linda Eissmann
Senior Research Analyst

APPROVED BY:

_____
Chairman Dean A. Rhoads

Date: _____

LIST OF EXHIBITS

Exhibit A, provided by Linda Eissmann, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City, is a packet of information as listed in the Memorandum contained therein.

Exhibit B, provided by Rich Hoops, Fluid Minerals Team Leader, Bureau of Land Management (BLM), United States Department of the Interior, Reno, is "Instruction Memorandum No. 2003-020," dated October 16, 2002, from the Director of the BLM, addressed to "All Field Officials."

Exhibit C, provided by Stephen D. Hartman, Corporate Counsel and Executive Vice President of Corporate Development, Nevada Land and Resource Company, LLC, Carson City, is a letter from Mr. Harman to Senator Dean A. Rhoads, dated November 18, 2002, the subject of which is "Checkerboard Land Pattern – Consolidation."

Exhibit D, provided by R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division, LCB, Carson City, is a document titled "Draft Amendment to NRS 533.503 ("The Stockwater Statute")."

Exhibit E is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.

LIST OF ACRONYMS

AML(s)	Appropriate Management Level(s)
BLM	Bureau of Land Management, United States Department of the Interior
DOD	United States Department of Defense
DOE	United States Department of Energy
DOI	United States Department of the Interior
HMA	Herd Management Area
HRBWA	Humboldt River Basin Water Authority
LCB	Legislative Counsel Bureau
NCA	National Conservation Area
NEPA	National Environmental Protection Act of 1969
NRS	*Nevada Revised Statutes*
SDCNR	State Department of Conservation and Natural Resources
USDA	United States Department of Agriculture
USFS	United States Forest Service, United States Department of Agriculture
WSA(s)	Wilderness Study Area(s)