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Subcommittee on Public Lands of the Joint Interim Standing Committee on Natural Resources

Eureka County Update and Requests

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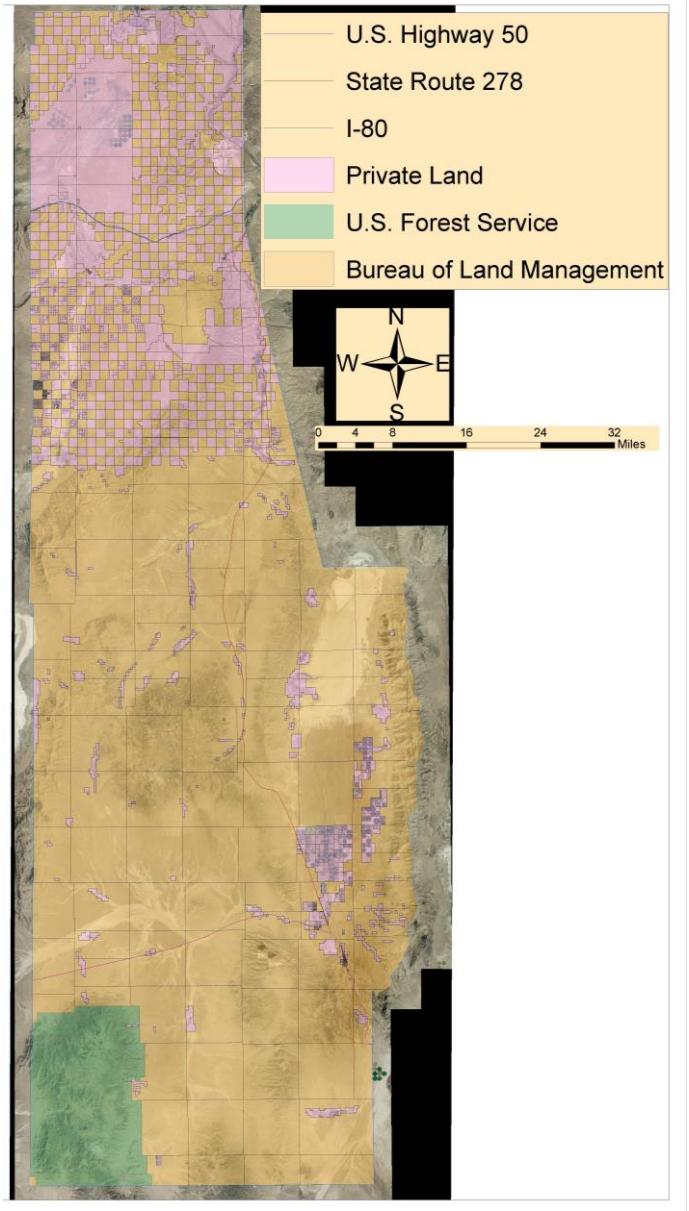

**Map created by Jake Tibbitts with publicly available data sources.*

BACKGROUND

Like Nevada as a whole, Eureka County is composed of a large federal land holding. Eighty-one percent of Eureka County's land area is made up of federally administered land, primarily Bureau of Land Management and Forest Service. Eureka County is primarily driven by mining, farming, and ranching. Nearly all of Eureka County's employment is in the natural resources sector and the community's viability is largely dependent on activities conducted on or in concert with federally managed lands.

OVERARCHING ISSUES

- Private land makes up only 13% of Eureka County's total land area. Dependency on federally administered land can limit and create uncertainty for our long-term socio-economic stability and viability but also provides many opportunities for coordination and partnership with diverse entities.
- Lack of effort by the federal land management agencies to adequately coordinate their land management activities and decisions with the local plans, policies, and desires of Eureka County works to undermine sound land management and often creates adversarial relationships between the agency, the County, and proponents of projects on public land within the County.
- Regulations, legislation, policies, or projects that (1) reduce access to public lands, (2) minimize sustainable multiple-use of public land and (2) increase our dependence on federal dollars undermine local efforts to bring socio-economic stability and balance.
- Government programs aimed at offsetting the economic limitations of large federal land holdings (e.g. PILT and SRS) do not address the impacts to the core social and economic values that we must overcome. Further, revenue derived from resource use and extraction from public lands is not always justly shared with affected counties in which the lands and resources are located.
- Eureka County is fully supportive of any project that comes into the County if it is done right and in a sustainable way—socially, environmentally, and economically. We work hard to ensure that any project will be done in a way that is not too disruptive to the current character, social climate, and natural resources of Eureka County.
- Non-participatory opposition to local, coordinated land planning and management is undermining application of good stewardship to Federal lands. Directed, malicious opposition by some groups is compromising the health, safety and welfare of local citizens throughout our county (and the west), reducing the overall socio-economic viability of the affected communities, and undermining coordinated resource management from diverse interests.

REQUESTED ACTIONS

1. **Empower, recognize, trust, and rely on locally led efforts to address public lands issues and projects.**

   Counties and conservation districts are well positioned to work across diverse interests and landowners and land users to make the compromises necessary for sustainable management of the public lands and resources local communities are so dependent on.

   The legislature has mandated planning and land use regulation at the local level through various statutes including NRS 278 and has specifically included mandates and empowerment for natural resources planning and use, which includes wildlife. NRS 278.020 empowers counties with regulation of improvement of land taking into account "potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment." NRS 278 has many other locations speaking towards and even mandating inclusion of conservation elements and policies related to natural resources and wildlife habitat in local land use plans. NRS 278.243 empowers a "city or county whose governing body has adopted a master plan pursuant to NRS 278.220" to "represent its own interests with respect to land and appurtenant resources that are located within the city or county and are affected by policies and activities involving the use of federal land."

   Also, each and every county in the state is covered by at least one conservation district (CD) (NRS 548). Every county and incorporated city has appointed supervisors on the CD covering their boundaries (NRS 548.283). In NRS 548.105 the legislature has already "hereby declared, as a matter of legislative determination, that persons in local communities are best able to provide basic leadership and direction for the planning and accomplishment of the conservation and development of renewable natural resources through organization and operation of conservation districts." The CDs are specifically identified in existing law to address identified issues on the "basis assets" of "renewable natural resources…being affected by the ever-increasing demands of farm and ranch operations and by changes in land use from agricultural to nonagricultural uses, such as, but not limited to, residential and commercial developments, highways and airports" (NRS 548.095) and "conservation, protection, and controlled development of these renewable natural resources are necessary at such rate and such levels of quality as will meet the needs of the people of this State" (NRS 548.095) and "that the consequences of failing to plan for and accomplish the conservation and controlled development of the renewable resources of the State of Nevada are to handicap economic development and cause degeneration of environmental conditions important to future generations" (NRS 548.100). The Legislature has declared in NRS 548.113 "that conservation districts may be recognized as having special expertise regarding local conditions, conservation of renewable natural resources and the coordination of local programs which makes conservation districts uniquely suitable to serve as cooperating agencies for the purpose of the National Environmental Policy Act…any other federal laws regarding land management, and to provide local government coordination for the purposes of the

Federal Land Policy and Management Act…and any other federal laws regarding land management." These existing mechanisms of conservation districts should be relied on and bolstered.

We welcome and value a strong working relationship with federal and state resource agencies and wish to continue work in a coordinated way with these agencies. This is the reason Eureka County requested and advocated for passage of SB 157 in the 2015 Session. SB 157 amended NRS 277 to create and enact the State and Local Government Cooperation Act (NRS 277.187 through 277.188). This Act has the stated purpose "to encourage communication, cooperation and coordinated working relationships between state agencies and local governments." It continues with requirements for state agencies and counties to inform each other of their respective plans that may affect the other's jurisdiction, solicit and consider comments on the plan and determine if the plan will be inconsistent or incompatible with the others plan, and consider whether consistency or compatibility can be reached. Counties and NDOW should commit to this process already in statute and work within the already established intent of "communication, cooperation and a coordinated working relationship."

Further, every county in the State has an Advisory Board to Manage Wildlife (NRS 501) with and mandate to "solicit and evaluate local opinion and advise the [Wildlife] Commission on matters relating to the management of wildlife." This advisement could extend to county commissions and county planning commissions, other state agencies, and federal agencies.

We wish to reiterate that we welcome and value a strong working relationship with state and federal land and resource management agencies and wish to work in a coordinated way to improve resource management and address impacts to land and resources. We commit to this effort to find common ground towards this goal and wish for the Legislature to empower this local focus and community self-determination.

2. **Engage federal agencies and local governments in understanding how proper government-to-government coordination is not only required by law but is necessary for relationship building and sustainable management of our federally administered land resources—economically, socially, and environmentally. Consider establishing State policy (1) outlining expected coordination by federal land management agencies with the State and its local governments and (2) requesting consistency to the maximum extent possible with State and local government plans, policies, proposals, and controls.**

Congress has mandated time and time again that federal agencies coordinate their decision making with state and local governments. This mandate is repeated in the National Environmental Policy Act, the National Forest Management Act, the Federal Land Policy and Management Act, the Rangeland Renewable Resources Act and in numerous BLM and USFS rules and regulations. However, since agency personnel often do not know, understand, or apply what is required through this coordination obligation there is a failure to reach consistency, confusion runs rampant, distrust abounds, and even hostility between federal agency staff and local government arises. We believe that federal agencies should enter to formal coordination protocols with local governments that include and describe in

detail the process for coordination with local governments at every stage of the agency planning and decision processes especially regarding how to address inconsistencies with local land use plans, policies and laws.

Although coordination includes collaboration and consultation, coordination by definition is *not* synonymous with collaboration or consultation. Coordination by definition is "of the same order or degree; equal in rank or importance" (Merriam-Webster Dictionary). Therefore, coordination implies active participation of the local government at a level higher than afforded the general public. Only a local governmental entity, elected by the people and accountable to it, is able to incorporate and legitimize the compromises necessary for sustainable management of the lands that the community is so dependent on. Regular, principled coordination is the only way to put to rest past conflicts and allay fears about community viability threats down the road in addition to reducing the need for appeal and judicial review of agency management decisions. In the end we believe that including and properly defining coordination will work now to build and strengthen the foundation for the long-term while making the necessary management decisions at the necessary scale—the local scale.

The coordination and consistency requirements are imperative in providing the healthy tension and balance that gives necessary recognition, consideration, and incorporation of State and local interests. Help from the State Legislature to "remind" the federal land management agencies of their obligations is extremely important to all of Nevada to achieve consistency to the maximum extent possible with our plans, policies, and desires. This also would help build strong working relationships.

Please consider establishing State policy (1) outlining expected coordination by federal land management agencies with the State and its local governments and (2) requesting consistency to the maximum extent possible with State and local government plans, policies, proposals, and controls.

We suggest amending NRS Chapter 328 (Federal Lands) with something like:

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.*

3. **Bring land management, including land use planning, close to home. Only support planning, legislation, regulation, and policies that maximize multiple-use of public lands while providing for the sustainability of these lands economically, socially, and environmentally.**

We believe that any planning process, legislation or regulation must include and describe in detail the process for coordination with local governments especially regarding how to address inconsistencies with local land use plans, policies and laws.

Bureau of Land Management (BLM) regulations and the Federal Land Policy and Management Act (FLPMA) require that BLM's land use planning occur at a local or regional scale. Many of BLM's recent resource management plan amendments (RMPAs) including for utility-scale solar and greater sage grouse unlawfully incorporate a scale of planning for hundreds of millions of acres in a single land use plan that diminishes state and local coordination and disenfranchises those most directly affected. We ask the subcommittee to join various counties' and other western states' efforts to push back on these efforts and help bring land use planning back to the local level.

4. **Ensure Greater Sage-Grouse and habitats are conserved and managed according to the State's Plan and in coordination with local government plans, policies, and actions - Keep GSG conservation and management as close to home as possible.**

Unfortunately, the Bureau of Land Management's most recent Draft Greater Sage Grouse Resource Management Plan Amendment still has many inconsistencies with and still does not find alignment with the State Plan. Please help ensure the Nevada Greater Sage-grouse Conservation Plan and associated Conservation Credit System (CCS) are the standard in which Greater Sage-grouse (GRSG) are

managed in Nevada. The Nevada Plan and CCS must be fully implemented on federally-administered lands to ensure its effectiveness or let us know where the State must make any adjustments.

5. **Oppose any legislation, regulation, or administrative action that would allow, without support of the affected local governments, government agencies acquiring private agricultural lands or water, or removing multiple-use from public lands, or otherwise limiting or restricting working lands, for special or set-aside land designations.**

With the initiatives to "protect" or "conserve" benchmark acreages of land and water (i.e., Public Lands Rule, "30 by 30" or America the Beautiful, AJR 3 from the 2021 Session), it is imperative to define the meaning behind those terms. The National Geographic Society notes that "Conservation is similar to preservation, but while both relate to the protection of nature, they strive to accomplish this task in different ways. Conservation seeks the sustainable use of nature by humans, for activities such as hunting, logging, or mining, while preservation means protecting nature from human use."[1] Conservation seeks to manage lands and resources to provide for the three legs of sustainability – economic, environmental, and social. Preservation strictly limits human access and management and strives to "let nature be." As stated by the National Parks Service, "Put simply, conservation seeks the proper use of nature, while preservation seeks the protection of nature from use."[2]

We urge use and understanding of "conservation" as outlined by the USDA Natural Resource Conservation Service (NRCS)[3] whereas:

- "'Conservation' is often used vaguely, is frequently confused with other ideas. Sometimes the word is applied to projects that are not conservation. On the other hand, we may limit it too strictly by thinking only of what it means in a particular situation.
- Conservation does not mean non-use … Resources, as we know, are things which people plan to use for satisfying their needs. Something that is conserved for no use would cease to be a resource. Thus conservation is always concerned with an aspect of use.
- Some people believe that this aspect is keeping use constant over time. Conservation does not only mean keeping use constant over time…In special cases conservation does keep the use of a resource constant at the present level...But conservation cannot be restricted to such special cases.
- Conservation is concerned with the WHEN of use. Conservation, then, may increase use of a resource above the present level, may keep it constant, or may slow down the decrease.
- Conservation may be achieved in several ways… by reducing present use, which means [to forego] some present returns in order to realize greater future returns; or…conserve resources by expending present effort or costs without reducing present use—sometimes

[1] National Geographic Society Encyclopedia Entries https://www.nationalgeographic.org/encyclopedia/conservation/
[2] https://www.nps.gov/teachers/classrooms/conservation-preservation-and-the-national-park-service.htm
[3] https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/econ/references/?cid=nrcs143_009757

even with increases in it. Sometimes [there is] a choice; sometimes only one is possible; sometimes [there is use of] both."

In working towards goals of conserving certain benchmark percentages of Nevada's lands and waters, there must be focus on these definitions of conservation which recognize the ecologic and socioeconomic reality that land and resource preservation will never provide the benefits to our society that true conservation – proper use – can and does.

There is a continuum between maximum resource use and preservation. We often see analyses look at multiple uses as being limited to two scenarios – use that is damaging to the resource or protection of the resource by limiting or eliminating use. Conservation efforts must recognize management that uses grazing, fuel management, timber harvest, or other management to provide resource benefits by using or managing the resource. It is important to not become stuck on the paradigm of resource protection in spite of use.

Top-down decrees and land-use restrictions such as many of those proposed in the "30 by 30" initiative alienate rural Nevadans and Americans who otherwise support healthy lands, waters, and wildlife. Rather than antagonize local and rural communities, work should be done with local and tribal governments and the private sectors with a local-driven focus built on proven models. Locally led conservation works if given the capacity. The focus must be on landscape conservation using incentives rather than heavy-handed regulation and set-aside restricted areas that are unsupported at the local levels.

Active and adaptive management of lands with a conservation bias instead of a protection bias has been shown to be better for healthy lands and waters and provides benefits to all resources and communities. As such, we subscribe to the ideal of Aldo Leopold and his view of conservation as distinct and often opposed to protectionism. As he wrote in the Sand County Almanac, "There is only one soil, one flora, one fauna, and one people, and hence only one conservation problem. Economic and esthetic land uses can and must be integrated…on the same acre." Leopold cautioned against "fixing the pump without fixing the well." We believe the same. For any natural resource issue to be solved, it must have economic solutions. Land "healing" or "restoration" must be attached to land "profitability" to work.

Working landscapes, actively and properly managed, are what will help us address the issues. Crucial to this vision is keeping private agricultural lands profitable. Much of the prime and invaluable wildlife and riparian habitat in the State is under private control. Many of these private agricultural lands are tied to ranching operations conducted on or in concert with federal administered lands. Anytime restrictions are placed upon the federally administered land, it only increases the possibility of land degradation on or subdivision of private lands—these restrictions do not solve the resource issues on a regional or global scale.

The biggest threat facing lands in the west are fire – both too much and too little. Many of our land health issues have arisen due to disruption of the historical fire cycles resulting in single-age, monotypic, non-diverse stands of vegetation such as decadent sagebrush and other woody species increases reducing herbaceous (grass and forb) diversity. Protected areas and hands off management results in either catastrophic fire or transition across an ecological threshold to a lower ecological state. These threats will never be reduced and will actually be increased by the addition of more acres to reserved or protected status.

There should instead be efforts to work with landowners and land users to incentivize conservation and focus on the 3 legs of the balanced sustainability stool - ecological, economic, and social. Many land protection initiatives like "30 by 30" or the recent Public Lands Rule create a lopsided stool that will eventually fall by putting too much emphasis in removing the management of man and recognizing economic uses as part of the solution.

Further, many scientists have increasingly discovered and shown that many areas we now call wilderness were managed and manipulated by human activities for thousands of years. Isolating dynamic, non-static ecosystems with hard boundaries in the name of protecting them simply does not work as is unfounded. Very recently, the paper by Ellis et al. (2021),[4] published in *Proceedings of the National Academic of Sciences of the United States of America* (PNAS), titled *People have shaped most of terrestrial nature for at least 12,000 years,* found that 72.5% of Earth's land has been shaped by human societies since as far back as 10,000 BC, including more than 95% of temperate lands. The paper also found that high biodiversity areas are compatible with, and in some cases a result of, people living in and managing these landscapes. The authors concluded, and we agree, "land use history confirms that empowering the environmental stewardship of Indigenous peoples and local communities will be critical to conserving biodiversity across the planet." Yet, many efforts to establish land "protections" seek to remove active influences of man with a false narrative of protecting remaining "untouched lands." Often, the rhetoric supporting this false narrative is also rampant.

Land users and managers operate at reduced capability in areas with mostly hands-off protection designations. They cannot implement sound management actions with respect to fire suppression, fuels reduction, recreational opportunity, livestock management, firewood cutting, mineral and energy exploration, and many other activities that when done right in a balanced way are clearly in the local, state, and national interest. Also, as Congress has passed laws to protect the environment, including the National Environmental Policy Act and the Federal Land Policy and Management Act, and as multiple-use on public lands has become more and more important to the American public, the outdated methods of set aside "protected" areas is out of touch with modern day realities.

[4] https://www.pnas.org/content/118/17/e2023483118. Also see https://www.newscientist.com/article/2274704-untouched-nature-was-almost-as-rare-12000-years-ago-as-it-is-now/.

We wish to be clear that we too want to address the issues identified as being "solved" through initiatives like the Public Lands Rule or "30 by 30." The way to do this is by working together with voluntary, incentive-based conservation measures that do not disenfranchise and offend rural communities and those dependent on and making a living from natural resource use.

6. **Provide funding support to the Attorney General's office to assist counties in the State to formally, and finally validate R.S. 2477 rights-of-way (i.e., Quiet Title Act) and/or seek Congressional action to assist in putting this issue to rest.**

Federal agencies continue to make it clear that they will not recognize current and historic rights-of-way on federal lands (i.e., R.S. 2477 rights-of-way) unless these rights-of-way are adjudicated in federal court (based on a recent 10th Circuit decision). This concerns us because the 10th Circuit decision that the federal agencies reference explicitly states, "this case does not involve ***county use or management*** of R.S. 2477 rights of way that ***do not conflict with a federal management regime*** on federal public lands...R.S. 2477 rights of way are in consistent use throughout the West and nothing herein purports to speak to or address the right to the continued existence and use of such roads as to which a conflict has not arisen." So, as long as there is no conflict with the "federal management regime" then there is no need for adjudication or determination of certain rights-of-way in any federal court and nothing should hold any county back from using and maintaining these roads. What we have found is that often, the federal agencies do not adequately, justifiably, and specifically state how certain rights-of-way that have been closed to travel conflict with their "management regime" narrowly defined through Federal law and regulation. The recent Greater Sage-Grouse Land Use Plan Amendments and recent Travel Management Plans of USFS have highlighted these issues that could have been avoided if title were validated and finalized.

If a final solution is not pursued now in Nevada, the controversy and arguing will continue to repeat over and over again, all at the expense of continued and historic access and multiple uses. SB 456 was passed in the 2015 Session that strengthened the provisions in NRS 405 to protect against travel restrictions and road closures. It also included direction to SLUPAC, NACO, and the Attorney General to "work cooperatively to develop, maintain and assist in the implementation of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road." SB 456 also urged the Attorney General "to take a leadership role in pursuing actions on behalf of the State and its counties in formalizing and finalizing title to accessory roads and public roads in this State…." SLUPAC has worked with NACO and the Attorney General on this effort, but this effort is hamstrung by lack of capacity. Formalizing and finalizing title to these rights-of-way is critical for the State and its local governments to have leverage and standing regarding issues of access to federally administered lands.

We ask that adequate funding be appropriated towards this effort and that this Subcommittee request a BDR seeking this appropriation. We request this Subcommittee support efforts to finalize title to all

accessory roads and public roads in Nevada to bring an end to ongoing controversy surrounding these adjudicated roads.

We do recognize the time and public resources required to go through a federal court adjudication of these roads can be excessive and the process cumbersome and protracted. We believe that resolution of this issue through Congress may also be a path to take. The Historic Routes Preservation Act (or similar) has sought to provide the clarity needed to move forward with a consistent and concise protocol to finally address RS 2477 rights of way in a manner beneficial to the State of Nevada, our counties, and other western states with clouded or unclear title on these important roads. The Subcommittee could also make 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.

7. **Work with federal land management agencies, primarily BLM, to review federal water rights filings to ensure agencies are not holding projects and uses hostage through assertion of water rights that would not be found valid if formally adjudicated through Nevada Water Law. Work to have federal policies removed which require water rights or water use in exchange for permits, leases, or other land improvements. Bolster State Engineer capacity to complete adjudications to settle these water rights issues.**

   There are dozens of filings by the federal agencies, primarily BLM, in our area for water rights. The Nevada law (NRS 533.503) that prohibits obtaining stockwatering rights by entities that do not hold a "legal or proprietary interest" in the livestock has reduced the filing by the agencies for stockwater rights. However, BLM has filed many Public Water Reserves (PWR 107 – based on Presidential Order 107 in 1926) ***and*** many vested claims asserting an appropriation and priority based on the Treaty of Guadalupe Hidalgo of 1848. Based on case law and other adjudications in Nevada, it is certain that most of these claims would be found invalid if adjudication were completed. Unfortunately, the State Engineer has not had the capacity to complete many adjudications.

   What has been occurring is BLM asserting their un-adjudicated claims as "rights" and requiring certain projects to develop mitigation outside of the involvement of the State Engineer and asserting seniority over other vested claims or permits (i.e., stockwater and irrigation) on federally administered lands precluding maintenance efforts and access of others of these waters. Often, BLM asserts that PWR 107 claims are for watering wild horses when these rights, if valid, are only for domestic and livestock watering purposes. Recent specific examples of this are with the General Moly Mt. Hope Project and livestock watering/wild horse conflicts in Antelope Valley.

   Federal agencies must also stop asserting rights on waters where it is obvious their claims would not stand if adjudicated.

Further, federal agencies, are following informal "policies" and attempting to acquire or extort water rights from private individuals for projects on USFS and BLM administered lands. Further, even when the federal agencies do not acquire a water right, they are requiring water for other uses regardless of there being an underlying water right for those particular uses. This has taken place in Nevada on livestock water rights and federal agencies have in effect placed moratoria on water development and improvement projects unless water rights or water use are signed over to them. As an example, the current BLM Cooperative Rangeland Improvement Agreement form (Form 4120-6) has language as follows:

> 12. Any water right acquired o n or after August 21, 1995 to use water on public lands associated with this improvement will be held in the name of the United States, if permitted under State Law. Co-application or joint ownership by permittees or lessees of water rights for purposes of livestock water will be allowed where State Law permits the practice.
>
> 13. Any water developed, improved, or impounded under this cooperative agreement will be available for wildlife and free roaming wild horse and burro use and other authorized public use to the extent that such use is consistent with the multiple-use management objectives for the area.

This is all occurring at the expense of rangeland resources, ranching operations, and economies. There is a need to protect those uses of federally administered lands that rely on privately held water rights by prohibiting federal agencies from extorting water rights in trade for a permit, lease, or other land improvement. Of course we recognize that wildlife and wild horses will drink from the water developments on federal managed land. This developed water benefits all animals on these lands. But to require the water to be available to wildlife and horses, especially groundwater through a pumped well (in which Nevada water law does not provide customary access like a spring under NRS 533.367) is nothing more than a federal water grab.

We ask the Subcommittee to:

i. 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 (or vacate) 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 Under Secretaries, at a minimum).

ii. 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.

8. **Ensure that tax revenues from mineral proceeds derived from taxes imposed by the State are justly shared with the County in which the non-renewable resource was extracted and where impacts exist. Oppose efforts to impose federal mineral leases and royalties (as opposed to current locatable claiming and no federal royalty).**

While times have been good for mining counties over the past few years, with the decline in gold prices around mid-2013 through 2015, we saw precipitous declines in mineral net-proceeds at levels similar to the late 1990s and early 2000s. Keep in mind that gold prices during this same time frame (late-1990s) was less than $400/oz. Current gold prices are testing record high and bouncing around $2300/oz. This highlights the volatility of mining and the proverbial "boom or bust." Eureka County is no stranger to this roller coaster. We have planned and budgeted in a way to minimize impacts to our necessary services and operations when gold prices drop. However, minerals proceeds during good times are the way in which we fund capital improvements to keep our communities strong and vibrant well into the future. We are concerned that changes to the mining taxing structure would result in our inability to fund necessary projects and improvements even when mining is booming. Currently, under the net-proceeds of minerals taxing scheme, 60% of all net-proceeds from Eureka County already accrue to the State in addition to any other "normal" state taxes on mining that other businesses pay. Simply, the State already receives 60% of the mineral net-proceeds generated in Eureka County.

There are also current pushes in Congress to amend the mining law and shift mining from a mineral location (claims) system to a mineral leasing system (similar to oil and gas) with a federal royalty imposed (currently, there is no federal royalty on minerals extracted from federally managed land). This is a dangerous proposition. Undoubtedly, a federal lease and royalty system would create a negative fiscal impact on the State and counties. A federal lease or royalty would decrease the amount collected through Net Proceeds of Minerals Tax. The federal government would simply divert funding

that is kept in the State and counties. Further, marginal mining projects would not be able to pencil to a profit if they had to pay for a federal lease – adding to the already tenuous boom and bust.

As mentioned, there are already marginal small mining projects in the State and Eureka County with the current taxing structure. Additional tax burdens could simply put small operations out of business. Potentially, only big business (large mines with large public service impacts) may survive. The State should be creating a culture of promoting small business and not creating survival only if you are a Titan. Right now, the bulk of the proposed mining projects coming on-line in or adjacent to Eureka County, are small and economically marginal. These marginal projects don't walk away with piles of proceeds. They make modest gains and provide innumerable direct, indirect, and induced benefits to local Nevada economies. Our experience is that these smaller mines become more invested in local communities and have more impetus for neighborly behavior and solid relationships with communities.

Any reductions in mining proceeds to counties, through the State or federal government, would almost guarantee that general citizens of these counties that are not at the current maximum tax levy will receive a local tax increase to make up the shortfall, by default, increasing taxes on general Nevada citizens, let alone mining.

9. **Support efforts to streamline permitting of activities on federally administered land at both the State and federal level while conserving natural resources and protecting local engagement.**

   A lot of permitting red tape can be reduced and should occur. However, this should not come at the expense of local government and citizen involvement. Permitting reform and streamlining efforts should only focus on what is truly overly bureaucratic, cumbersome, and redundant but should not result in "corner cutting" of necessary natural resource and community protection and local government coordination and consultation.

10. **Strongly oppose any effort that would allow permanent retirement of grazing permits on federally administered land.**

    Loss of grazing land has a direct and induced negative impact upon the economy and social glue of all rural Nevada that can and has been quantified. There have been efforts in Congress to pass legislation allowing for retirement of grazing permits. Further, many BLM RMP's in the West including the Sage Grouse RMPA has language to permit retirement of grazing permits.

    Our local ranchers face ever-increasing uncertainty as to the future of their livestock grazing permits on these lands administered by the BLM and U.S. Forest Service. Through no fault of their own, these families risk tremendous social and financial losses of their grazing permits due to being assailed with lawsuits by extreme special interest groups whose stated purpose is to eliminate livestock grazing from public lands. These lawsuits consume considerable agency resources, further delaying the required NEPA analyses and perpetuating the cycle of missed deadlines and litigation. Grazing permit

retirement authorizations magnify this already tenuous situation and opens ranching operations to the threat and intimidation of increased litigation intending to make "willing sellers" out of every ranching family on the range. Ranchers and our rural economies should be protected from such shakedowns.

The continued success and viability of our local livestock operations holds great implications for the landscapes and rural economies of the entire west. Failed operations lead to the fragmentation of private and public lands and the loss of wildlife habitat and socioeconomic stability. Communities like ours that depend on the continued presence of ranchers with permits to graze on federally administered lands are already experiencing the hardships that accompany the loss of grazing permits or reduction in permitted livestock numbers.

Livestock grazing does not equate to negative impact. Much recent sophisticated rangeland research has shown that proper livestock grazing actually helps reach certain objectives such as weed control, fire reduction and habitat improvement. It's not the cow, but the how. If grazing permit retirement authorization were to happen, these ecological benefits of livestock grazing would also become unavailable to the land management agencies. Resulting hazardous fuel buildup and decline in land condition would ensue.

11. **Pursue efforts with BLM, USFS, and grazing permittees to ensure that 1) management decisions are based upon the best rangeland science; 2) flexibility is built into grazing permits to allow for adaptive management as issues and concerns arise; and 3) that the quality and quantity of data collected can support all decisions made based on clear and measurable resource objectives.**

We continue to be concerned about unjustified and arbitrary restrictions of livestock grazing in certain areas due to perceived adverse impacts of livestock grazing. There are two illustrative examples of how we have experienced this happening. First, when a vegetation treatment takes place in a grazing allotment (i.e., fuels reduction or wildlife enhancement), these projects are usually small in area compared to the entire allotment. However, the entire allotment is often closed to grazing for two years or more to allow for vegetative objectives to be met. The problem is that the objectives stated are often so vague or arbitrary (i.e., immeasurable) that the closures continue for many more years because the objectives, according to BLM, are not met. Further, a small treatment (or burn) often takes place and the allotment is closed to grazing for two years and just before the two years of grazing closure are about up, another small treatment (or burn) occurs in the same allotment starting another grazing closure for two more years. Second, more and more allotments are receiving livestock grazing closures because of drought and/or during the hot months of the year because of subjective determinations of adverse impacts on vegetation, primarily riparian impacts. Our concern is that the monitoring data and background information going into making these restrictive decisions are often based on flawed and subjective observations and not based on current rangeland science.

There is a general misuse of and reliance on the US Drought Monitor (USDM) in justifying grazing restrictions. Borrowing from definitions from the Society for Range Management, the various BLM Drought Management EAs define drought as:

- A prolonged chronic shortage of water, as compared to the norm, often associated with high temperatures and winds during spring, summer, and fall.
- A period without precipitation during which the soil water content is reduced to such an extent that plants suffer from lack of water.

An area can be in drought because of lack of snow and streamflow but well-timed precipitation events often result in normal to above normal vegetation conditions. Simply put, the rangeland forage in many areas across the state is normal to above normal due to spring and summer rains and the second definition of drought (vegetation conditions) is not occurring. We have seen specific examples of ranchers being forced into so-called "voluntary" grazing reductions or Full Force and Effect decisions based on the area being in drought while the rangeland conditions on the ground do not support that conclusion.

In regards to forage availability and rangeland condition, timing of precipitation is much more important that total precipitation. Studies from University of Idaho concluded that precipitation in only two months, May and June, explained 72% of forage species (crested wheatgrass) annual variability and including April would explain nearly all of the variation (Shape, Sanders, and Rimbey 1992). Other perennial grasses would exhibit the same. This means that overall, the area may be in drought based simply on annual precipitation, but good storms at the right time of the year can provide ample and even excess forage. We have documented rainfall at the right times, in most of the right places, growing normal to above normal vegetation even while springs and streams are dry.

The USDM has the disclaimer "Additional indicators are often needed in the West, where winter snowfall in the mountains has a strong bearing on water supplies... [t]he U.S. Drought Monitor provides a consistent big-picture look at drought conditions in the United States. Although it is based on many types of data, including observations from local experts across the country, we don't recommend using it to infer specifics about local conditions." The technical reference for the USDM highlights that water supply indicators such as snowpack, streamflow, groundwater levels, and reservoir levels have heavy weightings in determining severity of drought. We are not disputing that we are often in drought conditions in Nevada. Often these drought conditions are driven by an overall lack of moisture, primarily snow, to recharge our springs, streams, and groundwater supplies. Again, it is imperative to consider that forage and rangeland health is primarily driven by late spring and early summer rain events, not snow.

A metric that has not been actively used when taking broad scale assessments of forage availability and rangeland condition is the Vegetation Drought Response Index (VegDRI) (http://vegdri.unl.edu/Home.aspx). In fact, the BLM Drought EAs state that the USDM will be used alone only to identify areas of water shortage. Yet, the EAs also state that the USDM and the Vegetation Drought Response Index (VegDRI) would be consulted in tandem to be the first step in "determine drought afflicted areas and vegetation condition as it pertains to drought stress" (p. 4). We contend that BLM is often purposefully choosing to overlook the VegDRI as the first step in determining where to focus site-specific monitoring because the vegetation conditions exhibited

according to VegDRI do not highlight severe or extreme drought as does the USDM. As previously mentioned, the USDM is primarily for making broad scale assessments on water supply and determining federal drought assistance. Any vegetation information going into the USDM is also "outweighed" by the other water specific indicators. According to the VegDRI references, "VegDRI maps are produced every two weeks and provide regional to sub-county scale information about drought's effects on vegetation….The VegDRI calculations integrate satellite-based observations of vegetation conditions, climate data, and other biophysical information such as land cover/land use type, soil characteristics, and ecological setting. The VegDRI maps that are produced deliver continuous geographic coverage over large areas, and have inherently finer spatial detail (1-km2 resolution) than other commonly available drought indicators such as the U.S. Drought Monitor." There is also a misuse of the US Drought Monitor in justifying grazing restrictions. An area can be in drought because of lack of snow and streamflow but well-timed precipitation events often result in normal vegetation conditions. These examples above place ranchers in the often untenable position of not being able to provide for the needs of their livestock at the right time of the year. Also, in some examples, these restrictions could be seen as a taking since the grazing season-of-use is not in line with the permitted use of the water right appurtenant to riparian areas.

We have found that under the above circumstances, any real resource burden is often shifted to private lands. Much of the prime and invaluable wildlife and riparian habitat in the State is under private control. Anytime grazing restrictions are placed upon the federally administered land, it only increases the possibility of land degradation on private lands—these restrictions do not solve the resource issues on a regional or global scale.

We ask the Subcommittee for assistance in exhorting federal land management agencies to quit misusing drought as an umbrella excuse to reduce grazing in situations where drought is truly not impacting rangeland conditions and to avoid unjustified, arbitrary and subjective grazing restrictions on federally administered lands. We ask the Subcommittee to assist with the following:

1) Help ensure agencies separate hydrologic and vegetative drought and do no 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.
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.

12. **Promote and support efforts to obtain and manage wild horse and burro herds at Appropriate Management Levels (AML). This would include supporting "The Path Forward for Management of BLM's Wild Horses & Burros" and the federal funding to reach AML while avoiding unconditional sale and lethal management.**

    Nevada's rangelands continues to take more than its fair share of the adverse impact of wild horse and burro population numbers that far exceed what the resources can sustain for healthy horses and healthy, working rangelands. We cannot continue on the path we are on. It is imperative that something be done now to conserve and restore the health of these rangelands negatively affected by excess horses.

    We request the Subcommittee take formal action to support "The Path Forward for Management of BLM's Wild Horses & Burros" and make a recommendation that both BLM and Congress move forward with providing the funding and capacity to fully implement it in order to achieve AML in 10 years.

    In the past, Eureka County Board of Commissioners has requested BLM be given the full-suite of tools authorized in the Wild and Free Roaming Horses and Burros Act of 1971, as amended. This would include unconditional sale and lethal management. Our local plans and policies call for implementing the Wild and Free Roaming Horses and Burros Act of 1971, as amended. BLM and Congress have lacked the fortitude to accept and work towards implementation of your most difficult but necessary recommendations - fully use all tools authorized under the Wild and Free Roaming Horses and Burros Act of 1971, as amended, and sell or humanely euthanize excess horses that are unadoptable.

    However, the Eureka County Board of Commissioners fully and firmly stands behind the "The Path Forward for Management of BLM's Wild Horses & Burros" and has formally and unanimously voted on at least three separate occasions to support the proposal. While we have policy stating support of full implementation of the Act, we have a strong bias towards solutions that bring excess horses to levels conducive to rangeland health without using unconditional sale and lethal management. We will always support management options which bring excess herd to AML in a timely way while avoiding unconditional sale and lethal management. "The Path Forward for Management of BLM's Wild Horses & Burros" is the only proposal we have seen that takes this approach and actually models the ability to reach AML.

13. **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.

One of the primary natural resource issues throughout much of the Great Basin is the vast encroachment of pinyon-juniper woodlands (P-J) into sagebrush ecological sites. Dr. Robin Tausch estimates that P-J have increased beyond areas of native occupation by 125 to 625 percent since 1860 in the Intermountain West and presently occupy nearly 45 million acres. This shift to P-J woodland dominance within sagebrush ecosystems has significant impacts on soil resources, plant community structure and composition, forage quality and quantity, water and nutrient cycles, wildlife habitat, biodiversity, and fire severity and frequency. It is argued that the geographic range inhabited by sage grouse has declined substantially in recent decades. Encroachment of P-J woodlands into sagebrush ecological sites has reduced available habitat for sage grouse and other wildlife species and forage for livestock and wild horses. The BLM, USFS, NRCS and NDOW have recognized the impact of P-J encroachment on wildlife habitat and rangeland health.

Pinion-juniper woodlands are a tremendous renewable resource available to Nevada and there are novel and innovative approaches and opportunities to use the biomass created in these encroaching and infilling P-J communities to create energy and other economic benefits ecological problem of P-J encroachment. Please 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.

CONCLUSION

The issues that we have highlighted above are not unique to just Eureka County. We welcome the opportunity to actively pursue solutions to these issues with you. Please do not hesitate to contact us if you have any questions or would like to discuss further.