



NEVADA LEGISLATURE
LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(Nevada Revised Statutes (Nevada Revised Statutes [NRS] 218E.510)

SUMMARY MINUTES AND ACTION REPORT

The fifth and final meeting and Work Session of the Nevada Legislature's Legislative Committee on Public Lands was held on Friday, August 24, 2012, at 9:00 a.m. in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. This meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/76th2011/committee/>. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's (LCB) Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Maggie Carlton, Chair
Senator Dean A. Rhoads, Vice Chair
Senator Don Gustavson (*alternate*)
Senator Mark A. Manendo
Senator David R. Parks
Assemblyman Paul Aizley
Assemblywoman Irene Bustamante Adams
Assemblyman Ira Hansen
Chris Giunchigliani, Clark County Commissioner

COMMITTEE MEMBER ABSENT:

Senator Greg Brower

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Dave Ziegler, Supervising Principal Research Analyst, Research Division
Daniel Yu, Principal Deputy Legislative Counsel
Natalie J. Pieretti, Senior Research Secretary, Research Division

OPENING REMARKS

- Chair Carlton called the meeting to order and directed the secretary to mark the members present.

PUBLIC COMMENT

- Debra W. Struhsacker, Environmental Permitting and Government Relations Consultant, Nevada Mineral Resources Alliance, conveyed strong support for the conservation of sage-grouse habitat, particularly emphasizing the importance of persuading the Bureau of Land Management (BLM), United States Department of the Interior (DOI), and the U.S. Fish and Wildlife Service (USFWS), DOI, to adopt and implement Governor Sandoval's Sage-grouse Advisory Committee's (GSGAC) *Strategic Plan for Conservation of Greater Sage-grouse in Nevada* (2012 State Plan). She pointed out that as of August 15, 2012, wildfire had consumed over 2 percent of the priority sage-grouse habitat in Nevada. Ms. Strusacker supported the recommendations of the GSGAC for combating wildfire and urged the Committee on Public Lands to assist in the implementation of the 2012 State Plan as soon as possible. (Please see [Exhibit B.](#))

Concluding her testimony, Ms. Strusacker voiced concern regarding an instructional memorandum (IM) issued by the BLM, which has since been rescinded, seeking to implement draconian land use restrictions. As an example, she pointed to the BLM's proposal to withdraw 14.7 million acres of priority sage-grouse habitat from mineral entry. Ms. Strusacker said the 2012 State Plan is proactive for the protection of sage-grouse habitat, while benefitting agriculture, the economy, and the mining industry. She thanked the Committee for its hard work and attention.

- Jeremy Drew, Resource Specialist, Resource Concepts, Inc. (RCI), Nevada Pinyon-Juniper Partnership (NPJP), expressed pleasure with the NPJP's inclusion in the Work Session Document (WSD), and offered to answer any questions, and expressed thanks and appreciation to the Committee. He noted the 2012 State Plan also included recommendations pertinent to pinyon-juniper woodlands.
- Douglas Busselman, Executive Vice President, Nevada Farm Bureau Federation (NFBF), expressed support for the recommendations of the 2012 State Plan, citing personal involvement since 2000 in sage-grouse conservation, when then-Governor Kenny Guinn's original Sage-grouse Conservation Team (SGCT) was appointed. He praised the 2012 State Plan, which enables the conservation work to be done in a balanced and meaningful fashion, emphasized that the NFBF believes the 2012 State Plan should be implemented, and encouraged the Committee on Public Lands to join in the process.
- Joe Johnson, Lobbyist, Toiyabe Chapter, Sierra Club, said the Sierra Club is committed to continuing its support in the efforts to fund various programs for the sage-grouse.

APPROVAL OF "SUMMARY MINUTES AND ACTION REPORT" OF THE MEETING HELD ON JUNE 19, 2012, IN ELY, NEVADA

- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE THE “SUMMARY MINUTES AND ACTION REPORT” OF THE JUNE 19, 2012, MEETING HELD IN ELY, NEVADA. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

PRESENTATION ON THE RECOMMENDATIONS OF THE GOVERNOR’S GREATER SAGE-GROUSE ADVISORY COMMITTEE

- Allen Biaggi, Principal, A. Biaggi & Associates, LLC, Minden, Nevada, and a member of the Governor’s GSGAC, appearing on behalf of Robert Crowell, Chair, Governor’s GSGAC, expressed gratitude to the Committee, and specifically Assemblyman Hansen for his research and information relating to the sage-grouse. He provided a background summary on the sage-grouse issue, referencing the November 2004 National Sage-Grouse Habitat Conservation Strategy released by the BLM; the USFWS’s 2010 decision to list the sage-grouse as “warranted but precluded” due to higher listing priorities; the amendment of land use management plans by both the BLM and the USFS beginning in 2011; and the March 2012 establishment of the Governor’s GSGAC, along with its tasks and recommendations. (Please see [Exhibit C](#).)

Continuing, Mr. Biaggi reported Governor Sandoval is reviewing the GSGAC recommendations with federal and State agencies and stakeholders, after which the Governor will finalize and implement the 2012 State Plan, and submit it to the USFWS with a request for endorsement. He added Governor Sandoval would also seek the approval of the BLM and the USFS, along with integration as an alternative in land use plans as well as interim management policy on public lands.

Mr. Biaggi stated that currently 280,436 acres of preliminary priority habitat has been burned, along with 50,732 acres of preliminary general habitat. He said the recommendations of the GSGAC are a roadmap for restoring sagebrush habitats and stabilizing and increasing sage-grouse populations, which would preclude a listing decision and maintain economic viability.

- Chair Carlton noted that the GSGAC did not include a representative of the Legislative Branch or the Committee on Public Lands, but the Committee recognizes the importance of the issues involved and will reach out to the Governor and his staff.
- Assemblyman Hansen related his concern that the State has no leverage to force the federal government to cooperate.
- In response to Assemblyman Hansen’s question regarding the GSGAC’s strategy to replace the IMs with the GSGAC’s recommendations, Mr. Biaggi replied the GSGAC’s approach is similar to what was done in the state of Wyoming, where the state’s plan was endorsed by the USFWS and the federal agencies, and is recognized as a

viable strategy for the protection of sagebrush habitats and sage-grouse as a species. He stated the GSGAC worked toward the goal of supplementing the IMs that have been put into place, and more critically, to supersede the IM that was issued in July 2012, subsequently removed, and then put back into place.

- Assemblyman Hansen expressed his disappointment that the Legislative Branch was not included as part of the GSGAC, and asked Mr. Biaggi what he perceived the Legislature's role to be in the future pertaining to the sage-grouse issue. Mr. Biaggi replied he shares the Committee's concerns and remarked he hopes the Executive Branch and the Legislature will work together in concert on the issues of funding and sage-grouse management.
- Responding to Commissioner Giunchigliani's inquiry regarding what has transpired during the 12 years since then-Governor Kenny Guinn's SGCT, Mr. Biaggi praised the efforts of the SGCT and noted the GSGAC relied heavily upon the SGCT's June 2004 *First Edition of the Greater Sage-grouse Conservation Plan for Nevada and Eastern California* (2004 State Plan) in developing the GSGAC's 2012 State Plan. He stated the issue is largely with the federal agencies, rather than the State, and the lack of regulatory mechanisms in their Land Use Management Plans (LUMP), which do not adequately recognize sage-grouse habitat. Mr. Biaggi further noted the State does not have a specific plan for federal lands, but that Governor Sandoval is moving forward with the 2012 State Plan, and will be pushing the federal agencies to adopt the recommendations in their LUMP revisions.
- In further discussion between Commissioner Giunchigliani and Mr. Biaggi on the topic of funding allocated by the Legislature for the protection of sage-grouse habitat, Mr. Biaggi reported sportsmen's dollars have been utilized. A Partners in Conservation program has been funded by the State, but primarily private dollars have been used. Mr. Biaggi agreed that the Clark County Multiple Species Habitat Conservation Plan of 2000 that was established for the desert tortoise could be a model for the sage-grouse. He replied the GSGAC shares the funding concerns.
- In response to a question from Commissioner Giunchigliani, Mr. Biaggi stated 28 percent of the State of Nevada is priority habitat, with just over 2 percent of that area having been burned in recent months. Mr. Biaggi said local conditions having to do with wildfire, pinyon-juniper encroachment, and invasive species play a great role in conservation of sage-grouse habitat.
- Senator Rhoads questioned the reported 1.9 percent of primary habitat destroyed by fire, pointing to the October 2011 wildfire and the two recent wildfires taking place in Elko County. He expressed his disappointment with the sunseting of the GSGAC, noting that there should be continued monitoring. Mr. Biaggi clarified the quoted percentages were from the Nevada Division of Forestry and represent a statewide loss of habitat. He said the sunseting of the GSGAC was to ensure that with only ten weeks to complete the work, it was done in a timely fashion, recognizing that September 2015 is rapidly approaching. Mr. Biaggi stated the 2012 State Plan recommends an oversight entity for

the future, in perpetuity, until the sage-grouse issue is resolved in the State. He said those requirements will be in Governor Sandoval's final report.

- Responding to Assemblywoman Bustamante Adams' question regarding a plan to continue dialog with other states with similar issues, Mr. Biaggi stated the problem of sage-grouse conservation involves 11 western states, and the GSGAC worked to achieve consistency and continuity with other states' plans.
- Chair Carlton commented the Committee looks forward to the development of, and the Legislature's participation with, the oversight entity in working toward solutions for the State in the 2013 Session.
- Joseph Guild, Chair, Federal Lands Committee, National Cattlemen's Beef Association, referencing paragraph 6.5 of the 2012 State Plan, stated that, while in his opinion the paragraph is improperly titled, the GSGAC recognized the importance of proper livestock grazing as a tool in mitigating damages caused by wildfire and improving sage-grouse habitat. He said wildfire is the biggest problem in Nevada, and timed grazing could help reduce fine fuel loads.
- Assemblyman Hansen commented that livestock grazing is heavily regulated on public land, and in his opinion, there is a correlation between the reduction of livestock on the public ranges and the increase in wildfires.
- Assemblyman Hansen directed the Committee's attention to the mounted sage-grouse roosters, taken in Elko County in 2011, which he brought for the Committee's viewing.

BRIEFING ON PROVISIONS AND IMPLEMENTATION OF THE FEDERAL EQUAL ACCESS TO JUSTICE ACT OF 1980 AS IT RELATES TO LITIGATION AFFECTING PUBLIC LANDS

- Dan Yu, Principal Deputy Legislative Counsel, Legal Division, LCB, provided a brief overview of the Equal Access to Justice Act (EAJA) of 1980, noting the EAJA is a federal statutory scheme authorizing the recovery of attorney's fees and costs in litigation involving the federal government and operating as a partial sovereign immunity waiver. He said there was a sunset provision for the expiration of the EAJA after three years; however, it was made permanent through a Congressional Act in 1985, and codified in the *United States Code*.

Mr. Yu reported the purpose of the EAJA is to provide a level playing field between individuals and the federal government in litigation, so that the person who sues the government is not placed at a competitive disadvantage. Historically, U.S. courts have not allowed recovery of attorney's fees unless there are statutory provisions in place. He stated the primary beneficiaries of the EAJA were expected to be small businesses, but through the evolution of the EAJA, it acts as a general provision against the federal government and is not limited only to small businesses.

Continuing, Mr. Yu said in the context of public lands, both environmental groups and private citizens who wish to compel or prohibit federal agencies to perform certain acts have more incentive to do so with the understanding that fees and costs are recoverable. He recounted the statutory requirements that must be met before the prevailing party is awarded a judgment for fees and costs under the EAJA. The applicant must: (1) meet deadlines for the application for fees and costs; (2) be the prevailing party; (3) provide a detailed itemization of the hours and rates involved and costs associated with the lawsuit and allegations that the federal government was not substantially justified in its legal reasoning or regulatory actions; (4) meet a net worth cap at the time of the filing of the lawsuit, with nonprofit organizations being exempt; and (5) demonstrate special circumstances and substantial justification. Mr. Yu commented the fees and costs that may be recovered under the EAJA would include reasonable expenses of expert witnesses and costs associated with the litigation. He said attorney's fees and expert witness fees are based on the prevailing market rate, and an enhancement may be awarded, if requested. Mr. Yu also stated that fees may be reduced should the prevailing party be found to have acted in an unreasonable manner.

Concerning EAJA funding, Mr. Yu reported if recovery of fees and costs is awarded against the federal government, the funds will typically come from the U.S. Department of Treasury's Judgment Fund, if there is a fee shifting statute. He said if there is no shifting statute for an action involving a particular agency, then the agency pays out of its own appropriated funds.

Concluding, Mr. Yu addressed the Government Litigation Savings Act (*H.R. 1996*) which would make significant amendments to the EAJA, including, among other amendments, limiting the award of attorney's fees and costs to prevailing parties who have a direct and personal interest in the outcome of the litigation or administrative proceeding, modifying the net worth requirement, and creating a searchable database. He said a similar bill in the Congress, Senate Bill 1061, is different in some ways.

- In responding to Commissioner Giunchigliani's questions, Mr. Yu replied, with the exception of the recovery amounts and the cap on attorney's fees, H.R. 1996 and S. 1061 are similar in nature. He clarified the net worth cap. In closing, Mr. Yu stated Wyoming Congresswoman Cynthia M. Lummis is the sponsor of H.R. 1996, and he will provide the Committee with information on sponsorship of S. 1061.
- Chair Carlton recessed the proceedings for a presentation recognizing the work of Vice Chair Rhoads during over thirty years of service as a Nevada State Legislator.

WORK SESSION

DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS RELATING TO:

- A. Energy
- B. Greater Sage-grouse
- C. Public Lands, Generally

- D. Grazing on Public Lands
- E. Pinyon-juniper Woodlands
- F. Water Resources and Water Supplies

(Please see [Exhibit D.](#))

CONSENT CALENDAR:

- Dave Ziegler, Supervising Principal Research Analyst, Research Division, LCB, explained the process of the Committee's work session and called attention to the consent calendar.

RECOMMENDATION NO. 1

Amend the statutes (such as NRS 704.787) to allow full implementation of the Hoover Power Allocation Act of 2011 (P.L. 112-72). (Jayne Harkins, P.E., Executive Director, Colorado River Commission [CRC] of Nevada)

- There was no discussion on Recommendation No. 1.

RECOMMENDATION NO. 8

Include a statement in the final report supporting streamlining of both State and federal permitting of activities on public lands, provided that such streamlining preserves necessary community and natural resource protections. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

- There was no discussion on Recommendation No. 8.

RECOMMENDATION NO. 9

Include a statement in the final report supporting: (a) full funding for the Payments in Lieu of Taxes (PILT) program; (b) reauthorization of the Secure Rural Schools and Community Self-Determination Act (SRS) of 2000; (c) no reduction in PILT payments based on SRS payments; and (d) a shift in emphasis for these programs toward management of rangelands and forests to earn revenue by creating jobs and producing receipts for revenue sharing. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

- There was no discussion on Recommendation No. 9.

RECOMMENDATION NO. 13

Send letters to the Nevada System of Higher Education, the USFS, and other parties as appropriate, supporting ongoing research concerning the control of cheatgrass and other annual grasses that contribute to the cheatgrass-fire cycle in Nevada. (Chair Carlton)

- Commissioner Giunchigliani requested that the annual grass found in southern Nevada, red brome, be added to the recommendation.
- Chair Carlton called for any objections or concerns related to Commissioner Giunchigliani's request, and when none was forthcoming, directed red brome be added to the recommendation.

- Commissioner Giunchigliani requested when the legislation is drafted for Recommendation No. 1, the effective date should be appropriately tailored. Chair Carlton stated she will confirm it is done correctly.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR PARKS MOVED TO APPROVE THE FOLLOWING ITEMS, INCLUDING THE AMENDMENT TO RECOMMENDATION NO. 13, FROM THE “WORK SESSION DOCUMENT” AS A CONSENT CALENDAR VOTE: RECOMMENDATION NOS. 1, 8, 9, AND 13. THE MOTION WAS SECONDED BY COMMISSIONER GIUNCHIGLIANI AND PASSED UNANIMOUSLY.

PROPOSED ACTIONS RELATING TO THE GREATER SAGE-GROUSE

2. **Send letters** to the United States Secretary of Agriculture and the U.S. Secretary of the Interior supporting the recommendations of the Governor’s Greater Sage-grouse Advisory Committee and emphasizing what is being done and what can be accomplished in Nevada to preclude the listing of the Greater Sage-grouse as an endangered species under the federal Endangered Species Act (ESA) of 1973. (Ron Cerri, Orovada, Nevada, and Joe Guild, National Cattlemen’s Beef Association, June 2012 meeting)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Upon the request of Commissioner Giunchigliani, staff was directed by Chair Carlton to include a reference to the NPJP letter of June 13, 2012, listed under Tab C of the WSD.

- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 2 WITH INCLUSION OF A REFERENCE TO THE NPJP LETTER UNDER TAB C OF THE WSD. THE MOTION WAS SECONDED BY ASSEMBLYMAN HANSEN AND PASSED UNANIMOUSLY.

3. **Send a letter** to Nevada’s agricultural producers, expressing the Committee’s support for their efforts to help preclude the listing of the sage-grouse and urging them to continue those efforts. (Ron Cerri, Orovada, Nevada, and Joe Guild, National Cattlemen’s Beef Association, June 2012 meeting)

- Dave Ziegler, previously identified, reviewed the recommendation.
- In response to Commissioner Giunchigliani’s inquiry regarding the listed contract with RCI to compile an online library, Mr. Ziegler stated that a contract is in place. Joseph Guild, previously identified, replied the Public Lands Council has contracted with RCI to do the study.

- In response to a question from Senator Manendo, Mr. Ziegler summarized testimony before the Committee regarding the maintenance of water troughs.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 3. THE MOTION WAS SECONDED BY SENATOR GUSTAVSON AND PASSED UNANIMOUSLY.

4. **Send a letter** to Nevada's Congressional delegation emphasizing the potential impacts of listing the sage-grouse on both the rural and urban parts of the State, and emphasizing what is being done to preclude the listing. (Ron Cerri, Orovada, Nevada, and Joe Guild, National Cattlemen's Beef Association, June 2012 meeting)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Chair Carlton asked whether Committee members would favor a resolution on this subject.
- Senator Gustavson, Senator Rhoads, Assemblyman Hansen, and Commissioner Giunchigliani expressed support for a resolution. Chair Carlton, Commissioner Giunchigliani, and Senator Rhoads discussed the organization of an advisory committee, which would include members of the Legislative Branch and would oversee the implementation of the sage-grouse plans, as well as sending a letter to the Governor requesting the inclusion of the Committee on Public Lands and the Legislature's standing committees on natural resources.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 4 AND THE PROPOSED RESOLUTION TO INCLUDE INVOLVEMENT OF THE SENATE COMMITTEE ON NATURAL RESOURCES, THE ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND MINING, AND THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS. THE MOTION WAS SECONDED BY ASSEMBLYMAN HANSEN AND PASSED UNANIMOUSLY.

PUBLIC LANDS, GENERALLY

5. **Include a statement in the final report** calling for more collaboration and cooperation in the management of the public lands. (Chair Carlton)

- Dave Ziegler, previously identified, reviewed the recommendation.
- In response to a question from Commissioner Giunchigliani, Mr. Ziegler agreed that the annual grass, red brome, could be included where appropriate in all recommendations, and summarized testimony before the Committee on “virtually automatic protests.” Chair Carlton and Commission Giunchigliani discussed the effect of the recommendation on exporting water from rural areas.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR RHOADS MOVED TO APPROVE RECOMMENDATION NO. 5. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

6. **Include a statement in the final report** supporting improved accountability and transparency in administration of the Equal Access to Justice Act (EAJA) of 1980, while respecting the intent of the EAJA, which is to create a level playing field on which individual citizens may question management decisions of federal agencies. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Chair Carlton expressed support for the recommendation.
- Commissioner Giunchigliani commented she does not support H.R. 1996 or S. 1061, but that better transparency is needed. Chair Carlton confirmed this recommendation is a reaffirmation in support of the EAJA, with improved transparency.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 6. THE MOTION WAS SECONDED BY SENATOR GUSTAVSON AND PASSED UNANIMOUSLY.

7. **Adopt a resolution** similar to Senate Joint Resolution No. 4 (File No. 32), *Statutes of Nevada*, of the 2011 Session, urging Congress to ensure public lands in Nevada remain open to multiple use and that Nevada and its local governments receive a portion of revenues from activities conducted on the public lands. (Central Nevada Regional Water Authority [CNRWA], July 9, 2012) (Please see [Exhibit E](#).)

AND

10. **Include a statement in the final report** supporting sharing of federal receipts from commercial activity on public lands among the federal government, the State of Nevada, and Nevada's counties.

- Dave Ziegler, previously identified, reviewed Recommendation No. 7 and noted that it is closely related to Recommendation No. 10.
- In response to a question from Chair Carlton, Mr. Ziegler reviewed the Congressional sponsors of revenue-sharing legislation in the current Congress.
- In response to a question from Commissioner Giunchigliani, Mr. Ziegler summarized the recent history of federal legislation on sharing revenues from geothermal energy generation.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 7 AND RECOMMENDATION NO. 10, AND WHERE APPROPRIATE, ADDING A REFERENCE TO OTHER SOURCES OF RENEWABLE ENERGY. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

11. **Send a letter** to the Forest Supervisor, Humboldt-Toiyabe National Forest, urging the USFS to revise its process for preparing and updating travel management plans for the National Forest. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

AND

Send a letter to the Director of the Nevada Office of the BLM, urging the BLM to work with local governments, the State of Nevada, and the users of the public lands to expedite verification of R.S. 2477 rights-of-way for access to private property.

- Dave Ziegler, previously identified, reviewed the recommendation.
- In response to Assemblyman Hansen's inquiry, Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County, said during the travel management planning process, the USFS closed R.S. 2477 rights-of-way shown on plats dating back to 1896. Citing recent case law on this subject, Mr. Tibbitts said Eureka County is attempting to have the federal land management agencies adequately justify how such roads conflict with their management regimes, and that the agencies can make administrative determinations on these matters.
- Commissioner Giunchigliani asked whether NRS provisions that deem rights-of-way as accessory roads conflict with R.S. 2477. Mr. Ziegler said the NRS essentially reinforces the R.S. 2477 rights-of-way as valid rights-of-way.

- There was discussion between Chair Carlton and Commissioner Giunchigliani regarding the term “open to public use.” Commissioner Giunchigliani pointed to the Gypsum Ridge conservation area in Clark County, and said that she does not wish to support a recommendation that would conflict with her position concerning roads in that area.
- Responding to Senator Parks’ question concerning meetings with representatives from the State of Utah over the R.S. 2477 roads, Wes Henderson, Deputy Director, Nevada Association of Counties (NACO), confirmed NACO held a workshop with a representative from Utah’s governor’s office who explained Utah’s rights-of-way process. He said Nye County sponsored a bill that was enacted during the 2011 Legislative Session, which clarifies the process for counties designating R.S. 2477 rights-of-way with the Nevada Department of Transportation. Mr. Henderson asserted Committee action on Recommendation No. 11 would be helpful.
- In response to Chair Carlton, Jake Tibbitts, previously identified, said Eureka County did not utilize the legislation enacted in 2011, having already completed documentation of the county’s historic rights-of-way.
- **MOTION BY ASSEMBLYMAN HANSEN TO APPROVE BOTH LETTERS. SECONDED BY SENATOR PARKS.**
- Prior to taking a vote, Commissioner Giunchigliani stated she will vote with the understanding it would not apply to development on Gypsum Ridge in southern Nevada. Chair Carlton concurred, stated that more investigation is needed, and if the road in question is impacted, she would not support the recommendation as well.

The Committee **APPROVED THE FOLLOWING ACTION:**

RECOMMENDATION NO. 11 WAS APPROVED WITH THE DISCLAIMER NOTED BY CHAIR CARLTON. THE MOTION PASSED UNANIMOUSLY.

- Chair Carlton requested verbatim minutes of Recommendation No. 11.

GRAZING ON PUBLIC LANDS

12. **Adopt a resolution** urging the BLM and the USFS to consider increasing livestock grazing under certain circumstances in order to prevent range fires. (Senator Dean Rhodes)
 - Dave Ziegler, previously identified, reviewed the recommendation.
 - Senator Rhoads spoke in support of the recommendation, saying the need is more apparent now than it was two years ago and Congressional action may be needed, since wildfires on land where cheatgrass is high are an issue throughout the western United States. Senator Rhoads pointed out that the action of livestock’s hooves helps with the success of reseeding.

- Discussion occurred between Senator Rhoads and Commissioner Giunchigliani regarding the time frame in which fallowed land is allowed to be grazed, and the effect on grazing fees. Senator Rhoads said the permittees, having paid up front for grazing, are reimbursed when the allotments are not grazed.
- Chair Carlton said her primary concern is the environment, and commented she would like to see the BLM and USFS work in an expedited fashion, especially when there is potential for wildfires and grazing can assist in controlling the cheatgrass fires.
- Assemblyman Aizley remarked he would like to see more emphasis on the scientific work conducted by the Nevada System of Higher Education (NSHE), and support from environmental and conservation groups.
- Patrick T. Sanderson, Carson City, Nevada, discussed how sheep are being utilized in Carson City for cheatgrass control and the prevention of wildfire.
- Assemblyman Hansen said in some cases the government pays the private owners of livestock to graze for the prevention of wildfires instead of allowing grazing by private owners who pay for the privilege. He supported Senator Rhoads' recommendation.
- Commissioner Giunchigliani supported Assemblyman Aizley's suggestion that the scientific basis should be included in the resolution. Chair Carlton commented she would like to have an expedited permitting adjustment scheme based on scientific criteria.
- Assemblyman Hansen advised a wildfire symposium of range scientists was held in 2008 at the University of Nevada, Reno (UNR), and a pamphlet that addresses the issue is available.
- The Committee **APPROVED THE FOLLOWING ACTION:**

**SENATOR RHOADS MOVED TO APPROVE RECOMMENDATION NO. 12.
THE MOTION WAS SECONDED BY ASSEMBLYMAN HANSEN AND
PASSED UNANIMOUSLY.**

14. **Send a letter** to the BLM and the USFS urging the agencies to work with grazing permittees to ensure that: (a) management decisions are based on the best rangeland science; (b) flexibility is included in grazing permits to allow for adaptive management as conditions change; and (c) the quality and quantity of data collected is adequate to support decisions based on measurable resource objectives. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)
- Dave Ziegler, previously identified, reviewed the recommendation.
 - Chair Carlton called for any questions or comments, taking into consideration Assemblyman Aizley's earlier comment concerning the need to emphasize the scientific work of NSHE.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR RHOADS MOVED TO APPROVE RECOMMENDATION NO. 14. THE MOTION WAS SECONDED BY ASSEMBLYMAN HANSEN AND PASSED UNANIMOUSLY.

15. **Include a statement in the final report** supporting streamlining the process for renewing grazing permits, providing both accountability and flexibility, extending the term of a grazing permit from 10 to 20 years when appropriate, and eliminating unwarranted delays in the renewal process. (Chair Carlton)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Discussion took place among Chair Carlton, Senator Rhoads, and Commissioner Giunchigliani regarding assessment of fees. Senator Rhoads stated fees are self-adjusting through the use of a formula that considers livestock prices, costs of production, and other factors.
- Chair Carlton asked for comments or objections to incorporating language within the statement pertaining to the review of fees.
- Commissioner Giunchigliani added the statement should also include determining what circumstances should allow for extending the term of grazing. Senator Rhoads agreed.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 15 WITH THE ADDITION OF LANGUAGE CALLING FOR A DETERMINATION OF APPROPRIATE CIRCUMSTANCES FOR EXTENDING THE TERM OF A GRAZING PERMIT AND A REVIEW OF GRAZING FEES. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

PINYON-JUNIPER WOODLANDS

16. **Adopt a resolution** expressing the Legislature's support for the Nevada Pinyon-Juniper Partnership (NPJP) and its mission of promoting proactive, sound management to achieve healthy ecosystems for stronger communities;

OR

Send a letter to the NPJP expressing the Committee's support for the Partnership and its mission. (NPJP, July 31, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.
 - Chair Carlton suggested a letter, as opposed to a resolution, could be prepared quickly under the control of the Committee.
 - Jeremy Drew, previously identified, stated the NPJP would be happy with the letter. On Recommendation No. 17, he said his preference would be to adopt the "and" option, since a letter would help the NPJP with immediate needs and a resolution would help in the future with federal partners.
 - In response to Commissioner Giunchigliani's question regarding the reauthorization of the federal Stewardship Contracting, Mr. Drew replied the contracts are up for reauthorization in 2013, and the NPJP finds the 10-year time frame is frequently insufficient to fully amortize the costs of projects requiring significant upfront capital.
17. **Adopt a resolution** expressing the desire and intent of the State of Nevada to establish a biomass industry, in order to expand efforts to restore Pinyon-juniper and sagebrush ecosystems at a landscape scale on the public lands for the benefit of economic stability, energy production, hydrologic function, rangeland health, and wildlife habitat;

AND/OR

Send a letter to the U.S. Secretary of the Interior, the U.S. Secretary of Agriculture, the Acting Director of the BLM, the Chief of the USFS, and Nevada's Congressional Delegation expressing the Committee's support for establishment of a biomass industry for this purpose. (NPJP, July 31, 2012, and Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE SENDING A LETTER UNDER RECOMMENDATION NO. 16, AND BOTH OPTIONS UNDER RECOMMENDATION NO. 17. THE MOTION WAS SECONDED BY SENATOR MANENDO AND PASSED UNANIMOUSLY.

WATER RESOURCES AND WATER SUPPLIES

18. **Include a statement in the final report** supporting legislative authority for and funding of drought monitoring, response planning, and mitigation measures resulting from the work of Nevada's Drought Response Committee. (Humboldt River Basin Water Authority [HRBWA], July 20, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.

- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 18. THE MOTION WAS SECONDED BY SENATOR RHOADS AND PASSED UNANIMOUSLY.

19. **Send a letter** to the chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance in support of restoration of funding to the Division of Water Resources (DWR), State Department of Conservation and Natural Resources (SDCNR), for processing the backlog of water rights applications and enhancing online data sources. (HRBWA, July 20, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.

- In response to Commissioner Giunchigliani's inquiry whether this recommendation ties to or reflects anything on Recommendation No. 21, Chair Carlton answered this recommendation is for staffing only.

- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 19. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

20. **Amend the statutes** (such as Chapter 519A of NRS) to require parties applying to Nevada's Division of Environmental Protection, SDCNR, for a waiver of mine reclamation requirements for pit lakes to demonstrate that they hold water rights covering pit lake evaporation, as a condition of approval of the waiver. (HRBWA, July 20, 2012);

AND/OR

Send a letter to the Nevada State Director of the BLM urging implementation of a policy requiring proponents of mining projects on BLM lands that would result in pit lakes to apply, at time of closure, for water rights to cover evaporative losses. (HRBWA, July 20, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Chair Carlton expressed concerns with the private lands component of this recommendation, and remarked the issue should be considered by the Senate Committee on Natural Resources and the Assembly Committee on Natural Resources, Agriculture, and Mining, so that a full discussion could take place in the legislative committees. Senator Rhoads agreed, and Chair Carlton stated she will confer with Senator Manendo on possible introduction and reference of a BDR.
- Assemblyman Aizley stated that, when the matter comes up for discussion, it will be helpful to have information on the ages, dimensions, locations, and numbers of pit lakes.
- There was no action taken on this recommendation.

21. **Amend the statutes** to require the State Engineer to consider the possible connection between surface water and groundwater systems when making a decision on a water right application. (CNRWA, July 9, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Jason King, P.E., State Engineer, Division of Water Resources, SDCNR, addressed the Committee and expressed his appreciation for the acknowledgement of backlog in his agency. He said what is proposed in the recommendation is something the State Engineer's office already does without it being in the statute. Mr. King stated his office looks at the hydrologic connections for every application, every water right is issued subject to any existing rights, and the State Engineer's office has denied applications for water rights on riverbanks and in other locations where they would have an impact on surface water. He expressed concerns for the particular wording and possible interpretation of any amendment of the statute, especially in the context of litigation.
- Steve Bradhurst, Executive Director, CNRWA, in supporting the recommendation, said that if the State Engineer's office is presently considering these things, there should not be a problem with codifying the idea in the NRS. He said this recommendation was an effort to make it clear in State law that surface waters and groundwater are connected.
- Chair Carlton expressed concerns regarding changing the State's water laws and possible unintended consequences.
- Responding to Commissioner Giunchigliani, Mr. Bradhurst provided a brief explanation of A.B. 377 (2009) and its legislative history.

- There was discussion between Commissioner Giunchigliani and Mr. King concerning the criteria in NRS 533.370 for approving or denying an application.
- Chair Carlton suggested no action be taken on this, but if something in the future arises, it is not prohibited from being brought forward at the next Legislative session.
- In response to Commissioner Giunchigliani, Wes Henderson, previously identified, replied NACO has finalized its legislative package for the 2013 Session, and does not normally propose legislation on water issues.

22. **Amend the statutes** (such as Chapter 533 of NRS) to require the State Engineer to adjudicate claims for vested water rights prior to acting on an application for a large appropriation of water within a basin with claims for vested water rights. (CNRWA, July 9, 2012)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Responding to Chair Carlton, Jason King, previously identified, said a State water plan has been in place since 2001.
- Mr. King shared his thoughts on the recommendation, expressing strong support for adjudication as it makes his job easier. He said his office has 1.5 positions in its adjudication staff, some western states have 60 to 80 positions, but even with sufficient staffing, the process is very lengthy. He said the recommendation could potentially stifle the beneficial use of water and the economy.
- Chair Carlton stressed the importance of taking the first step, and asked whether there was a way to deal with vested water rights without causing harm. Steve Bradhurst, previously identified, said the focus of the CNRWA is on basins with applications for significant amounts of groundwater. He commented those users with vested water rights have a very strong position but are being impacted by subsequent applications, and it becomes a question of whose interest is being protected by the State. Mr. Bradhurst suggested that an applicant for use of a large portion of water in a basin where there are claims for vested water rights should provide the money for the State Engineer to initiate adjudication of the basin and ensure there is a complete accounting of water rights in that particular basin.
- In response to Commissioner Giunchigliani's question, Mr. King explained the adjudication process. He said in an adjudication, the State Engineer investigates all claims of vested rights and issues a preliminary order of determination, which is then adjudicated in district court, resulting in a decree. He added that his office encourages persons to file claims for their pre-statutory rights even in the absence of an adjudication.
- Responding to Assemblyman Hansen, Mr. King reported there are 256 hydrographic basins in the State, and although some sources have been adjudicated, no basin has been fully adjudicated for both groundwater and surface water.

- Chair Carlton asked what harm may come to what has been accomplished over the years and whether there will be redoes and debates over previous rulings. Mr. King responded there would not be many redoes, however junior water right holders may be affected and may decide to protest or sue.
- Steve Bradhurst, previously identified, said State water law protects persons who have vested rights and that applicants for water rights also need to know whether an adjudication would affect their plans. He reiterated the applicants for new water rights should contribute funding for adjudication to protect their own interests.
- Mr. King continued by stating when there is an application to remove a large portion of water out of a basin where many creeks or spring sources exist, the State Engineer's office and the applicant would have knowledge of the vested claims already filed, and that additional claims would potentially come forward.
- Chair Carlton said the most significant issues to her are staffing and cost, and perhaps the Legislature should designate more staff and find a way to pay for that staff.
- Mr. King reported the State Engineer's office has reduced the backlog of applications from 3,000 in 2005, to 1,500, and much of the backlog consists of applications for surface water sources on which there are competing interests, which need to be adjudicated. He said additional funding would go to adjudication staff.
- Commissioner Giunchigliani, in reference to Recommendation No. 19, suggested the letter include support of staffing that supports a statewide water plan and includes necessary adjudication. She said the letter should be sent not only to the appropriate Legislative committees, but also to the Governor's office for budget considerations.
- Chair Carlton stated she is not sure there is a precedent for the Legislative Branch requesting an inclusion in the Executive Branch's budget, but considers this an important topic for the Executive Branch to be aware of in order to address it in the future.
- Mr. Bradhurst suggested the Committee on Public Lands provide a letter to the State Engineer's office requesting a focus on claims for vested water rights in the decision-making process, and setting aside a certain percentage of unappropriated water in the basin for the vested water rights.
- Commissioner Giunchigliani noted a precedent for letters to the Executive Branch for consideration. Chair Carlton said that may be the Committee's best course to follow.
- There was discussion among Assemblyman Aizley, Mr. King, and Mr. Bradhurst on the topics of groundwater basins, perennial yields, and water rights.
- Chair Carlton said that she is not comfortable with proposing something that amends the statute, but that it is important to address the issue.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO SEND LETTERS OF RECOMMENDATION TO THE EXECUTIVE BRANCH, THE SENATE COMMITTEE ON FINANCE, AND THE ASSEMBLY COMMITTEE ON WAYS AND MEANS IN SUPPORT OF STAFFING AND ASSISTANCE TO ALLOW THE STATE ENGINEER'S OFFICE TO PRIORITIZE THE CLAIMS FOR WATER RIGHTS. THE MOTION WAS SECONDED BY SENATOR RHOADS AND PASSED UNANIMOUSLY.

23. **Send a letter** to the Chief of the USFS and the Forest Supervisor, Humboldt-Toiyabe National Forest, urging no further delays in approving and investing in water-related range improvements, notwithstanding the USFS concerns with Nevada water law on stockwater rights. The letter should request the USFS to revise its policy requiring federal ownership of stockwater rights as a prerequisite to authorizing federal expenditures on livestock water improvements on the National Forest. (HRBWA, July 20, 2012)
- Dave Ziegler, previously identified, reviewed the recommendation.
 - Senator Rhoads commented extensive work went into S.B. 76 (2003) to stop the government from filing massive applications for water rights in Nevada, and the bill has been very effective.
 - Assemblyman Hansen noted individuals he spoke with were of the opinion the practices of the federal agencies are similar to blackmail; they owned water rights, but before being allowed to use the water rights on the public domain, the federal government demanded the water rights be turned over to the federal government. He continued if the water rights were not turned over, the agencies would refuse to allow the owner of the water right to make stockwater improvements. He said that the fact the BLM has adjusted its policies is a good sign, and expressed support for the recommendation.

- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HANSEN MOVED TO APPROVE RECOMMENDATION NO. 23. THE MOTION WAS SECONDED BY SENATOR GUSTAVSON AND PASSED BY A VOTE OF 6-3, WITH CHAIR CARLTON, SENATOR MANENDO, AND COMMISSIONER GIUNCHIGLIANI VOTING IN OPPOSITION.

24. **Send a letter** to the Director of the Nevada State Office of the BLM expressing concern about the management of the Shoshone Ponds Area of Critical Environmental Concern (ACEC) in Spring Valley in White Pine County and inviting the BLM to meet with the Chair and interested members of the Committee on Public Lands to review the management objectives. (Chair Carlton)

- Dave Ziegler, previously identified, reviewed the recommendation.
- Chair Carlton and Assemblyman Hansen commented on the members' visit to the ACEC.
- The Committee **APPROVED THE FOLLOWING ACTION:**

COMMISSIONER GIUNCHIGLIANI MOVED TO APPROVE RECOMMENDATION NO. 24. THE MOTION WAS SECONDED BY ASSEMBLYMAN HANSEN AND PASSED UNANIMOUSLY.

Senator Manendo commended Chair Carlton for her efforts during the Interim. He then cited recent newspaper articles regarding sheep dying of thirst under the care of UNR. Senator Manendo said he has reached out to officials at UNR for answers, and asked whether anyone on behalf of the State is monitoring the agricultural farms, who is responsible for oversight, and what fines have been issued in the present instance and in the past.

Chair Carlton said the staff can research the oversight of the agricultural farms and share their results with the committee.

PUBLIC COMMENT

- Chair Carlton called for public comment.
- Joseph Guild, previously identified, suggested regarding Recommendation No. 24 that the letter include a reminder to the relevant agencies that they are aware of the contrast between the two individual water sites. He said in his opinion there is a refusal by the BLM and NDOW to recognize the issues with the ponds.
- Wes Henderson, previously identified, thanked the Committee for the work it does and said public lands issues are very important to the counties and by extension to NACO. He looks forward to working with the Committee on Public Lands.

- Chair Carlton thanked the Committee members and stated she will request out-of-state travel to Washington, D.C. from the Legislative Commission, as she considers it important to discuss issues with the State Delegation and the different agencies, especially those issues pertaining to the sage-grouse.
- Meghan Brown, appearing on behalf of Congressman Mark Amodei, offered assistance in meeting with Congressman Amodei.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 2:07 p.m.

Respectfully submitted,

Natalie J. Pieretti
Senior Research Secretary

Dave Ziegler
Supervising Principal Research Analyst

APPROVED BY:

Assemblywoman Maggie Carlton, Chair

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Dave Ziegler, Supervising Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB), Carson City.

[Exhibit B](#) is a document dated August 15, 2012, and titled “2012 Fires Burned in PGH and PPH, Subdivided by State,” provided by Debra W. Struhsacker, Environmental Permitting and Government Relations Consultant, Nevada Mineral Resources Alliance.

[Exhibit C](#) is the August 24, 2012, written testimony of Allen Biaggi, Principal, A. Biaggi & Associates, LLC, Minden, Nevada, and a member of the Governor’s Greater Sage-grouse Advisory Committee.

[Exhibit D](#) is the Work Session Document provided by Dave Ziegler, LCB.

[Exhibit E](#) is Senate Joint Resolution No. 4, Committee on Nature Resources, File Number 32, provided by Dave Ziegler, LCB.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.