Legislative Committee on Public Lands

Legislative Counsel Bureau

Bulletin No. 95-11

January 1995

LEGISLATIVE COMMITTEE ON PUBLIC LANDS

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Appendices

ACRONYMS USED IN TEXT OF REPORT

BDR	Bill Draft Request
BLM	United States Bureau of Land Management
BOR	United States Bureau of Reclamation
EIS	Environmental Impact Statement
GCVTC	Grand Canyon Visibility Transport Commission
LCB	Legislative Counsel Bureau
NRS	*Nevada Revised Statutes*
RR 94	*Rangeland Reform '94*
USFS	United States Forest Service
USF&WS	United States Fish and Wildlife Service

SUMMARY OF RECOMMENDATIONS TO THE NEVADA LEGISLATURE

NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS

Following are the recommendations of Nevada's Legislative Committee on Public Lands (NRS 218.5363) to the 1995 Session of the Nevada Legislature:

1. Express support for land exchanges involving the BLM and the Colorado River Commission that will result in more land for Laughlin. (BDR R-1081)

2. Express support for the mining industry in this state and opposition to extensive and unreasonable reform of existing mining laws. (BDR R-1082)

3. Express support for the livestock industry in this state and opposition to extensive and unreasonable reform of existing rangeland management regulations. (BDR R-1083)

4. Express support for the inclusion of economic considerations in the re-authorization of the federal Endangered Species Act. (BDR R-1084)

5. Approve the following measures:

   a. BDR 19-427, which creates the Constitutional Defense Council;

   b. BDR R-428, concurrent resolution, which claims state sovereignty over all powers not granted to the Federal Government in the *U.S. Constitution*;

   c. BDR 17-945, which creates the permanent legislative committee on federal mandates; and

   d. BDR 17-946, which creates the position of auditor of federal mandates and other encroachments on state sovereignty.

6. Approve Senate Joint Resolution No. 27 of the 1993 Session. This resolution proposes amending the ordinance to the *Nevada Constitution* to remove the public lands disclaimer clause.

REPORT TO THE 68TH SESSION OF THE NEVADA LEGISLATURE BY NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS

INTRODUCTION

The Committee on Public Lands is a permanent committee of the Nevada Legislature authorized by *Nevada Revised Statutes* 218.5363 (Appendix A). Created in 1983, the committee is charged with reviewing proposed and existing laws and regulations affecting the 61 million acres of federally controlled land in this state. The committee also provides a forum for the discussion of public lands matters with federal and state officials, representatives of special interest organizations, and other concerned individuals.

Committee Members and Staff

The Legislative Commission appointed the following members to the committee:

Senator Dean A. Rhoads, Chairman
Assemblyman John W. Marvel, Vice Chairman
Senator Mark A. James
Senator Mike McGinness
Assemblyman P. M. Roy Neighbors
Assemblyman John P. Regan
Clark County Commissioner Karen W. Hayes

Support for the committee was provided by the following Legislative Counsel Bureau (LCB) staff members:

Dana R. Bennett, Staff Director (Research Division)
Jan K. Needham, Legal Counsel (Legal Division)
J. Randall Stephenson, Legal Counsel (Legal Division)
Philene E. O'Keefe, Secretary (Research Division)

Hearings and Recommendations

The committee met seven times, in various locations around Nevada, from September 1993 through December 1994 and traveled to Washington, D.C., to meet with federal officials involved in public lands issues.

This report reviews public lands legislation approved during the 1993 Session and discusses the major topics considered by the Public Lands Committee during the 1993-1994 interim period. The committee received extensive testimony and supporting materials in addition to the information found in this report. All minutes of meetings and their corresponding exhibits are on file in LCB's Research Library.

Additionally, this document outlines actions that resulted in letters and resolutions from the committee. Finally, the report reviews the six recommendations adopted by the members for presentation to the 1995 Nevada Legislature.

PUBLIC LANDS LEGISLATION OF THE 67TH SESSION OF THE NEVADA LEGISLATURE

Numerous bills involving public lands topics were considered by the 1993 Session of the Nevada Legislature. This section of the report summarizes some of the approved public lands bills and resolutions.

Public Lands Committee Bills

Nevada's Legislative Committee on Public Lands recommended to the 1993 Session 13 measures, which were discussed and modified during the legislative process. Issues addressed included the authority of the committee, legal action on behalf of state agencies, wildlife reports, access across public lands, mine dewatering, multiple use of public lands, and expansion of public lands. Further discussion of the recommendations may be found in the committee's report to the 1993 Legislature, published as LCB Bulletin No. 93-16.

Following are summaries of the nine recommendations that were approved.

- Senate Bill 235 (Chapter 436, *Statutes of Nevada 1993*) defines accessory road to mean any way over public land established between 1866 and 1976, for which the general use or enjoyment before 1976 is not established, and that provides access to private property. The bill provides that these roads are to remain open, but that local governments have no duty to maintain them and are not liable for damages suffered as a result of their use. The roads may be maintained by their users. Procedures are provided for temporary or permanent closure of an accessory road.

  The bill declares that it is in the best interests of the State of Nevada to keep accessory roads open and available for use. If an agency of the United States attempts to close a road or exact a fee for its use, the Attorney General may bring an action for declaratory judgment to keep the road open or to obtain just compensation for land owners who may be affected.

- Senate Bill 236 (Chapter 435, *Statutes of Nevada 1993*) grants immunity from liability to the state and its counties for damages suffered by people from the use of minor county roads. The bill also allows the user of a minor county road to file a map of the road with the county recorder, revises the requirements for designating and indexing these roads, and relieves counties of the responsibility for including these roads on the map of their road systems.

- Senate Bill 256 (Chapter 487, *Statutes of Nevada 1993*) requires an independent contractor hired to represent the state in any court proceeding to identify in all pleadings the specific state agency represented.

- Senate Joint Resolution No. 12 (File No. 66, *Statutes of Nevada 1993*) urges federal agencies to recognize the rights of users of roads established on rights-of-way over public lands to provide access to private property.

- Senate Joint Resolution No. 13 (File No. 52, *Statutes of Nevada 1993*) urges Congress, the BLM, and the USFS to expedite the establishment of programs to control the fertility of wild horses and burros and encourages the timely establishment of a national center for these animals in northern Nevada. The resolution also urges that the Federal Government provide adequate funding for the operation of such a program and center.

- Senate Joint Resolution No. 15 (File No. 187, *Statutes of Nevada 1993*) urges Congress to require that the determination of a species as being threatened or endangered be made in a timely manner. The measure states that time should be allowed for the evaluation and possible mitigation of the economic impact on development and growth because of the determination. Of particular importance are the local economies in the geographic area where the species is located. The measure urges Congress to require the Secretary of Interior to consider the economic impact of plans for the recovery of the species.

- Senate Joint Resolution No. 17 (File No. 54, *Statutes of Nevada 1993*) urges Congress to reject any unreasonable increase in grazing fees on public lands.

- Senate Joint Resolution No. 18 (File No. 103, *Statutes of Nevada 1993*) urges the USF&WS to complete the final recovery plan for the Lahontan cutthroat trout as soon as possible after the public comment period. The resolution further urges that this agency be directed to cooperate and coordinate with parties affected by the recovery plan, use scientific research developed in the Great Basin and Intermountain West, and include in the final plan a mechanism for the delisting of each trout subbasin population that meets reasonable recovery criteria. Additionally, the Secretary of Interior and the Secretary of Agriculture are urged to implement the plan as soon as possible.

Other Public Lands Legislation

The 1993 Legislature addressed several additional public lands topics through measures introduced by individual legislators and pertinent committees. One of these topics concerned access to and through public lands. In addition to the

access bills originating with the Public Lands Committee, the following measure was passed:

- Assembly Bill 176 (Chapter 446, *Statutes of Nevada 1993*), which affects the concerns of people prevented from traveling to public land by revising the provisions regarding roads made public by prescriptive use. The measure stipulates that five or more state residents may petition a board of county commissioners to hold a public hearing concerning the opening, reopening, or closing of a public road within the county. The bill provides specific standards to determine whether a road is, indeed, a public road. Furthermore, A.B. 176 requires that the board's decision affecting the road in question be based on specific findings, such as the resulting public benefit, possible impairment of the environment, and reduction in the value of public or private property.

  The measure protects the county, its officers, or employees from legal action related to damage suffered by a person solely as a result of the unmaintained condition of roads made public under these provisions.

The 1993 Legislature also commented on the continuing burden of federal ownership and acquisition of land in Nevada. Because such a small amount of Nevada land is in private ownership (less than 13 percent), the expansion of growing cities is stunted and the development of an adequate property tax base is suppressed.

- Senate Joint Resolution No. 14 (File No. 53, *Statutes of Nevada 1993*) urges the United States Congress to monitor and limit the acquisition of private land in Nevada by the Federal Government and to promote the transfer of appropriate federal lands to private ownership.

- Senate Joint Resolution No. 27 (File No. 189, *Statutes of Nevada 1993*) addresses the original, 129-year-old provision that gave control of so much of Nevada's land to the Federal Government. This resolution proposes to amend the ordinance of the *Constitution of the United States of America* by the 1864 language that disclaims the right and title of the state to the unappropriated public lands within Nevada and places that land at the disposition of the Federal Government.

  The resolution urges Congress to consent to this amendment upon its approval and ratification by the voters of Nevada. However, the resolution provides that the amendment to the constitution, if approved by the voters, is effective upon a legal determination that Congressional consent is not necessary.

  A similar resolution was approved by the 1991 Legislature, but that measure did not provide for voter approval of the concept. If the 1993 resolution is

approved in identical form by the 1995 Legislature, it will be submitted to the voters for their approval or disapproval at the 1996 General Election.

Although the Nevada Legislature has always been concerned about the disproportionate amount of land controlled by the Federal Government, it also recognizes the desire of the state's residents to preserve and protect Nevada's unique areas for public use and enjoyment. The 1993 Legislature passed measures designed to help protect two of Nevada's most beautiful and favorite recreation areas: Lake Tahoe and Red Rock Canyon.

- To assist in the protection of Lake Tahoe, the Legislature approved Senate Bill 139 (Chapter 355, *Statutes of Nevada 1993*), which directs the Division of State Lands to establish a program to mitigate the detrimental effects of land coverage in the Lake Tahoe Basin. The measure authorizes the division to acquire property, eliminate conditions on the land that are detrimental to the environment, and terminate rights to place land coverage on the property.

  The program established through S.B. 139 is similar to the land acquisition program administered through the Division of State Lands with funding from the statewide bond approved in 1985. Financing for the current program is provided from revenue obtained by the Tahoe Regional Planning Agency when approving projects in the Basin. As of September 1992, the agency was holding $794,000 in funds for purchases of property and land coverage in the Nevada portion of the Basin.

- To protect the Red Rock Canyon area from encroaching development, Senate Bill 544 (Chapter 639, *Statutes of Nevada 1993*) requires the governing body of any city or county whose territory includes all or part of this National Conservation Area to prohibit in that area any use other than recreation. Additionally, the excavation or extraction of any substance and the erection of any structure must be prohibited. Such activities may be permitted within the boundaries of a mining claim only to the extent allowed by the Federal Government.

  Pending the adoption of ordinances complying with this measure, such activities are prohibited unless a permit is first obtained from Nevada's Division of Environmental Protection. The bill prohibits the division from issuing such a permit if the proposed activity would be detrimental to the environment outside the Red Rock Canyon National Conservation Area or would preclude the designation of the area as wilderness.

The state itself owns less than 1 percent of Nevada's land; therefore, state lands are a small aspect of the entire public lands issue. Two bills affecting state lands were passed during the 1993 Session.

- Assembly Bill 430 (Chapter 459, *Statutes of Nevada 1993*) establishes new fees for the use of state lands and navigable bodies of water. The measure specifies that the proceeds of the fees, other than those which must be credited to the State Permanent School Fund pursuant to the *Constitution of the State of Nevada*, must be used to support the activities of the State Land Registrar and the Division of State Lands.

- Senate Bill 130 (Chapter 98, *Statutes of Nevada 1993*) removes an obsolete reference to legislative authorization for the sale or lease of state land.

  In 1965, a moratorium was placed on the sale of state land. The 1989 Legislature lifted the restrictions and established a process to sell state land which included the requirements that the land be sold at fair market value plus costs and the transaction receive legislative approval. Senate Bill 130 clarifies the 1989 legislation and streamlines the process by removing the requirement for legislative authorization.

SUMMARY OF INTERIM ACTIVITIES

Nevada's Legislative Committee on Public Lands reviews many public lands topics that involve ongoing activities, programs, and problems that are subject to administrative and congressional action. The committee was actively involved in a number of issues during the 1993-1994 interim period.

This section lists the issues considered by the committee and discusses actions taken at each meeting.

Issues

The committee considered numerous public lands topics of interest to Nevada's residents. Formal presentations and public testimony informed the members and audience of these issues. In response, the members provided recommendations, when appropriate, to federal officials and Nevada's Congressional Delegation.

The following is a list of the many issues discussed by the committee during the 1993-1994 interim period:

- Abandoned mines;
- Bureau of Land Management's Customer Service Plan;
- Desert tortoise;
- Elk Management Study;
- Endangered Species Act;
- Exploration for minerals;
- Fallon Naval Air Station;
- Grand Canyon Visibility Transport Commission;

- Grazing fees;
- Great Basin Heritage Center;
- Groom Range Land Withdrawal;
- Lahontan cutthroat trout;
- Logging in the Tahoe Basin;
- Military issues;
- Mining reform;
- Nevada Plan for Public Lands;
- North Las Vegas/Galena Land Transfer Proposal;
- Public/private land exchanges;
- *Rangeland Reform '94*;
- Red Rock Canyon National Conservation Area;
- Santini-Burton lands;
- *Special Nevada Report*;
- State involvement in management of federal lands in Nevada;
- State lands;
- *Stateline Draft Resource Management Plan/Environmental Impact Statement*;
- The taking of private property by government without just compensation;
- Wilderness;
- Wilderness reserved water rights;
- Wild horses; and
- Wildlife management.

In-State Meetings

The Public Lands Committee met six times throughout Nevada. Following are summaries of the committee's deliberations at each of these meetings.

Organizational Meeting

The members met in Carson City on September 27, 1993, to elect a chairman (Senator Rhoads) and a vice-chairman (Assemblyman Marvel), approve their work plan for the interim (see Appendix B), and discuss some of the current issues concerning public lands in Nevada.

One of the major topics of discussion at this first meeting was the publication of *Rangeland Reform '94*. This document details the changes to livestock grazing on public lands proposed by Secretary of Interior Bruce Babbitt. The proposal is implemented by amendments to existing regulations promulgated by the Departments of Interior and Agriculture and is supported by a draft environmental impact statement. The regulations were published in the *Federal Register* on August 13, 1993; public comment was solicited for both the regulations and the draft EIS. At the time this report was written, the departments were still evaluating the comments received, and final decisions had not been rendered.

The committee received extensive testimony on RR 94 throughout the interim. At this first meeting, comments about the topic were received from the BLM, USFS, Nevada Farm Bureau, Nevada Cattlemen's Association, and Nevada's Divisions of State Lands and Wildlife.

Other reports to the members concerned public lands measures adopted by the 1993 Nevada Legislature, ongoing BLM and USFS management activities, threatened and endangered species in Nevada, public lands legislation pending in Congress, mining reform, and state lands issues.

Another subject that generated substantial discussion was the clause in the ordinance to the *Nevada Constitution* stating that Nevada disclaims its title to unappropriated lands within the state's borders. The members reviewed Senate Joint Resolution No. 27, which was approved by the 1993 Session as a first step toward removing the disclaimer clause, and discussed other states' constitutions that include the same language.

The members voted to:

- Approve a committee resolution urging that the U.S. House of Representatives support the U.S. Senate's 1-year moratorium on grazing fee increases; that Congress initiate a study designed to establish a fair and workable formula and regulations for grazing on public lands; and that such formula be established in statute so that the fee is predictable each year and cannot be changed arbitrarily. (Copies of the resolution and a response to it are attached in Appendix C.)

Second Meeting

The committee held a formal meeting in Elko on November 8, 1993, and toured Barrick Goldstrike Mine in Carlin on November 9, 1993.

Rangeland Reform '94 was, again, the major topic of discussion. In particular, the members considered the Reid Amendment, which was attached to the Department of Interior appropriations bill and proposed a substantial increase in the fees charged for grazing livestock on public lands. Additional testimony was submitted by BLM.

The committee also accepted two opinions prepared by the Legal Division of the Legislative Counsel Bureau. One of the legal opinions (Appendix D) addresses federal authority over public lands in this state and the constitutionality of A.B. 733 from the 1993 Session. The other (Appendix E) concerns the authority of the Secretary of Interior to promulgate the regulations proposed under RR 94 and the legality of the penalties contained within those rules.

Several reports were presented to provide the members with an overview of mining in Nevada and the potential effects of changes to federal mining laws proposed by certain members of Congress. Participants in this discussion included BLM; the Nevada Mining Association; the Women's Mining Coalition; and Nevada's Divisions of Environmental Protection, Minerals, and Wildlife.

Major actions of the committee included the following:

- Approval of committee resolution 93-3 opposing the amendment to H.R. 2520, a Congressional measure concerning grazing fees. (Copies of the resolution and a response to it are attached in Appendix F.)

- Approval of committee letters to U.S. Senators Harry Reid (D-Nevada) and Richard H. Bryan (D-Nevada) expressing opposition to Senator Reid's amendment to H.R. 2520. (Copies of the letters are attached in Appendix G.)

- Approval of committee letter to John P. Comeaux, Director of the Department of Administration, requesting additional funds for the Division of State Lands. (Copy of the letter is attached in Appendix H.)

- Approval of committee resolution 93-2 urging the Director of BLM to place the Great Basin Heritage Center in White Pine County (Nevada). (Copies of the resolution and a response to it are attached in Appendix I.)

Third Meeting

Las Vegas was the site of the committee's meeting on January 13, 1994. Topics discussed included the Nevada Plan for Public Land, the Sagebrush Rebellion begun in 1979, the desert tortoise habitat conservation plan, the proposed expansion of the Red Rock Canyon National Conservation Area, the Grand Canyon Visibility Transport Commission, and other issues of interest to Southern Nevada.

No major actions were taken at this meeting.

Fourth Meeting

The members gathered in Laughlin on March 11, 1994. Following a brief meeting, Laughlin's Town Manager conducted a tour of the area.

Presentations to the committee addressed grazing reform, BLM's proposed amendment to the *Stateline Resource Management Plan*, recovery of the desert tortoise, involvement of Nevada's Division of Wildlife in public lands issues, and

the land withdrawal proposed by the U.S. Air Force at Groom Range in Lincoln County.

The committee voted for the following:

- Approval of a committee letter to the GCVTC requesting that the commission consider certain points while evaluating its options. (Copy of the letter is attached in Appendix J.)

Fifth Meeting

On June 1, 1994, the committee convened in Fallon. Primary topics included grazing and mining reform proposals. The following organizations spoke to the members about grazing: BLM, USFS, Nevada's Division of State Lands, Nevada Cattlemen's Association, and the Sierra Club. Aspects of mining reform were discussed by representatives from Nevada's Division of Minerals; the Nevada Mining Association; Pegasus Gold, Inc.; the Women's Mining Coalition; and the Office of Congresswoman Barbara Vucanovich.

Other subjects reviewed by the members included reserved water rights for wilderness, the status of the adoption of policies by Nevada's Attorney General to avoid the taking of private property by state agencies, the Fallon Naval Air Station, the state's involvement in the management of federally-controlled lands, and continuing BLM activities.

This meeting was particularly detailed and lengthy. Comprehensive reports were submitted, and public testimony was extensive.

Major actions of the committee included the following:

- Approval of a committee letter to Peter G. Morros, Director of the State Department of Conservation and Natural Resources (with copies to Governor Robert J. Miller; Mr. Comeaux; Senator William J. Raggio, Chairman of the Senate Committee on Finance; and Assemblyman Morse Arberry, Jr., Chairman of the Assembly Committee on Ways and Means), requesting that two additional planner positions in the Division of State Lands be approved. (Copy of the letter is attached in Appendix K.)

- Approval of three committee letters providing the committee's response to RR 94. (Copies of the letters are attached in Appendix L.)

- Approval of a committee resolution to Congress and the Secretaries of Agriculture and Interior urging the implementation of recommendations from the

National Resource Council relating to rangeland health. (Copies of the resolution and a response are attached in Appendix M.)

- Approval of a letter to BLM providing the committee's comments to the agency's EIS on RR 94. (Copy of the letter is attached in Appendix N.)

- Approval of a committee letter to U.S. Senator J. Bennett Johnston (D-Louisiana), as Chairman of the Senate-House Conference Committee on Mining, expressing the committee's concerns about the "Chairman's Mark." In addition, approval was granted for a committee letter to U.S. Representative Barbara Vucanovich (R-Nevada) commending her support for Nevada's mining industry. (Copies of the letters are attached in Appendix O.)

- Approval of a committee letter to the Public Broadcasting Station's television show, *Frontline*, protesting its special on mining in the United States. Additionally, the members approved the submission of a committee letter to U.S. Senator Frank H. Murkowski (R-Alaska) commending him on his timely and intelligent rebuttal to the *Frontline* mining program and a letter to *American City & County* protesting an anti-mining editorial. (Copies of the letters and a response are attached in Appendix P.)

Work Session

The members determined their recommendations for the 1995 Session of the Nevada Legislature at a formal work session held in Reno on September 26, 1994. The meeting began with reports from various federal agencies about some of their projects in this state.

The committee then conducted its work session. Information on the approved recommendations may be found in the section of this report titled "Discussion of Recommendations," beginning on page 15.

Other actions taken by the members at this meeting consisted of the following:

- Approval of a committee letter to other states that were required to surrender title to unappropriated public lands, either through congressional enabling acts or as part of their constitutions, requesting them to take action to remove those clauses. (Copy of the letter is attached in Appendix Q.)

- Approval of committee letters to Nevada's Attorney General, Frankie Sue Del Papa, and C. Wayne Howle, Senior Deputy Attorney General, congratulating Mr. Howle for his work on the takings issue. (Copies of the letters are attached in Appendix R.)

Final Meeting

The committee's last meeting during the interim period was held in Las Vegas on December 5, 1994. The main purpose of this gathering was to thoroughly examine the activities of the GCVTC and their potential effects on Nevada's economy. The members also reviewed BLM's decision concerning the Air Force's request to withdraw land near the Groom Range in Lincoln County, Nevada, and examined the Federal Government's policy of retaining and managing public lands.

Based on these discussions, the committee voted to take the following actions:

- Send a committee letter to each member of Nevada's Congressional Delegation, requesting that they monitor the activities of the GCVTC and any related information to ensure that Nevada is not adversely affected. (Copy of the letter is attached as Appendix S.)

- Send a committee letter to the BLM State Director, requesting an explanation of the BLM decisions not to process the Air Force request as an amendment to the existing Environmental Impact Statement on the Groom Range and not to consider off-site mitigation for the loss of the public land. (Copy of the letter is attached as Appendix T.)

- Send a committee letter to each member of Nevada's Congressional Delegation, requesting that they urge federal land management agencies to identify and dispose of certain public lands, as currently allowed under the Federal Land Policy Management Act of 1976. (Copy of the letter is attached as Appendix U.)

Washington, D.C., Visit

Over the past several years, Nevada's Legislative Committee on Public Lands has developed important relationships with several representatives from the Federal Government's congressional and executive branches. Normally, the members of the Public Lands Committee travel to Washington, D.C., twice during the interim to meet with these and other officials about public lands issues of importance to Nevada.

During this interim, the Public Lands Committee met in Washington, D.C., on October 12 and 13, 1993. In addition to Nevada's Congressional Delegation, the members met with the following officials:

- Jim Baca, Director, BLM;
- Dan Beard, Chief, United States BOR;
- Dean Boe, Deputy Director of Range Management, USFS;
- David Brooks, Staff Counsel to the Senate Subcommittee on Public Lands, National Parks and Forests;

- Tom Follrath, Special Assistant to the Deputy Director, USF&WS;
- Dave Fredley, Assistant Director of Minerals and Geology, USFS;
- Marcia L. Hale, Assistant to the President and Director of Intergovernmental Affairs;
- Steve G. Holloway, Vice President, Independence Mining Company;
- Nancy Kaufman, Deputy Assistant Director, Endangered Species, USF&WS;
- John A. Knebel, President, American Mining Congress;
- Keith R. Knoblock, Vice President, American Mining Congress;
- Dennis Lassuy, Legislative Specialist, USF&WS;
- Henry E. Masterson, Regional Supply and Services Officer (Sacramento, California), BOR;
- United States Representative Richard W. Pombo (R-California);
- William E. Rinne, Regional Environmental Officer (Boulder, Colorado), BOR;
- F. Dale Robertson, Chief, USFS;
- Maitland Sharpe, Director, Izaak Walton League of America;
- Richard Smith, Deputy Director, USF&WS;
- B. J. Thornberry, Deputy Assistant Secretary, BLM;
- Christopher Topik, National Endangered Plant Program Manager (Wildlife, Fish, and Rare Plants), USFS;
- Mark Trautwein, Consultant on Environment, Energy and Public Lands for the House Committee on Natural Resources;
- Lisa Vehmas, Staff Counsel to the Senate Subcommittee on Public Lands, National Parks and Forests; and

Issue papers were prepared by committee staff as resource documents for the members' use during this meeting. This material reflects the major topics discussed with the various federal officials. Following is a list of the papers, copies of which may be found in Appendix V:

- "BLM Wilderness";
- "Grazing Fees and Range Management";
- "Mining Reform";
- "Public-Private Land Transfers";
- "Rights-Of-Way on Public Lands";
- "Threatened and Endangered Species";
- "Water Issues'";
- "Wetlands Management";
- "Wild Horses."

No formal actions were taken by the committee during this meeting.

DISCUSSION OF RECOMMENDATIONS

At its work session in Reno, the Public Lands Committee considered eight recommendations for action by the 1995 Session of the Nevada Legislature. The members voted to proceed with six of the suggestions.

This section provides background information for each of the approved recommendations. Copies of the corresponding BDRs are found in Appendix X of this report.

Laughlin, Nevada

Nevada's Legislative Committee on Public Lands has maintained a continuing interest in the growth of Laughlin, one of the state's newer communities, whose development has been constrained by the vast amounts of public land surrounding it. During their meeting in Laughlin, the members were informed that the town board was working with BLM and the Colorado River Commission to acquire, through the land exchange process, 640 acres. This land would be an important addition to the area available for residential development and, as such, contribute to the local tax base.

Therefore, the Public Lands Committee recommends that the 1995 Session of the Nevada Legislature:

> **Express support for future land exchanges involving the Bureau of Land Management and the Colorado River Commission that will result in more land for Laughlin.** (BDR R-1081)

Mining

For several sessions, the United States Congress has entertained proposals to change the Mining Law of 1872. This past Congress, however, came closest to radically altering many of the procedures governing hard-rock mining on public lands. Although no amendments to existing laws were ultimately passed, the threat of such action has resulted in a chilling effect on minerals exploration in Nevada. Because mining has been important to this state, historically and currently, the Public Lands Committee was aggressive in its support of the industry and its opposition to radical reforms during this interim period (see the committee letters in Appendices O and P).

All indications are that Congress will return to this issue when it convenes in 1995. The Public Lands Committee will continue to be diligent in its monitoring of any proposed actions and encourages its legislative colleagues to reiterate their support for this valuable part of Nevada's economy.

Therefore, the Public Lands Committee recommends that the 1995 Session of the Nevada Legislature:

Express support for the mining industry in this state and opposition to extensive and unreasonable reform of existing mining laws. (BDR R-1082)

Livestock Grazing

As this report has noted, the Public Lands Committee actively participated in the debate over Secretary Babbitt's proposal to change the management of public rangelands. In addition to their many formal actions, the members voted to authorize the chairman, Senator Rhoads, to participate in other meetings on this topic as necessary. Consequently, the committee has been well-versed in this particular issue.

The members are concerned that Secretary Babbitt's proposal would seriously damage the ranching industry in this state. Because so many Nevada communities depend on local ranches for economic and social support, the adverse effect of radical management changes to these rural areas cannot be underestimated. The Public Lands Committee has been vocal in its support of Nevada's ranchers (see the committee's comments in Appendices C, F through H, and L through N) and will continue to comment on the Federal Government's attempts to curtail livestock grazing on public lands.

Therefore, the Public Lands Committee recommends that the 1995 Session of the Nevada Legislature:

Express support for the livestock industry in this state and opposition to extensive and unreasonable reform of existing rangeland management regulations. (BDR R-1083)

Endangered Species Act

The Endangered Species Act of 1973 was scheduled to be re-authorized by the U.S. Congress in 1994; however, no action was taken. It is expected to be considered in 1995.

As written, the Act does not require, at the time a species is being studied as an addition to the threatened or endangered lists, any consideration of the economic impacts upon an area should the species be listed. The situations involving the spotted owl in the Pacific Northwest and the desert tortoise in Southern Nevada are clear indications that such a consideration is necessary and important.

Therefore, the Public Lands Committee recommends that the 1995 Session of the Nevada Legislature:

Express support for the inclusion of economic considerations in the re-authorization of the federal Endangered Species Act. (BDR R-1084)

State Sovereignty

The Public Lands Committee has been consistent in its support of state sovereignty since the Sagebrush Rebellion began with the passage of A.B. 413 by the Nevada Legislature in 1979. Recently, the concept has gained vocal advocates among Nevadans and other people throughout the country who are tired of unnecessary and unwarranted Federal Government interference in their lives and businesses. Many of these people spoke eloquently to the committee about their concerns.

Some states, such as Colorado, California, and Arizona, have already approved legislation to assert their authority and combat excessive federal demands, particularly those that are not accompanied by the funds needed for implementation. The time has come for states to assist their citizens in standing up to a Federal Government that is clearly exceeding its constitutional authority.

Therefore, the Public Lands Committee strongly recommends that the 1995 Session of the Nevada Legislature:

Approve the following measures:

- **BDR 427, which creates the Constitutional Defense Council;**
- **BDR R-428, a concurrent resolution claiming state sovereignty over all powers not granted to the Federal Government in the *U.S. Constitution*;**
- **BDR 945, which creates a permanent legislative committee on federal mandates; and**
- **BDR 946, which creates the position of auditor of federal mandates and other encroachments on state sovereignty.**

Disclaimer Clause

The 1993 Session of the Nevada Legislature approved Senate Joint Resolution No. 27, which proposes to amend the ordinance to the *Nevada Constitution* to

remove the clause by which the state disclaimed all right and title to its unappropriated public lands. If approved by the 1995 Session and by the voters at the 1996 General Election, the resolution will become effective.

Although all states created after 1789 were to be added to the Union on an equal basis with the original states, numerous states, including Nevada, were required to agree to this disclaimer as a condition of statehood. The action of taking the disclaimer out of the state constitution will not end public land conflicts between the Federal Government and the state, but it is a step that must be taken if Nevada is to assert its right, as granted by the *United States Constitution*, to self-government.

Therefore, the Public Lands Committee recommends that the 1995 Session of the Nevada Legislature:

Approve Senate Joint Resolution No. 27 of the 1993 Session.

CONCLUDING REMARKS

Nevada's Legislative Committee on Public Lands spent much of the interim working on numerous public lands topics and problems at the federal, state, and local government levels. These issues have concerned Nevadans for many years and are not quickly or easily resolved; however, the forum provided by the committee allows Nevada residents to comment about the many diverse aspects of living in a public lands state.

This report discusses the meetings and actions of the Public Lands Committee during the 1993-94 interim period. Because the issues monitored by the committee are ongoing, the committee may be required to meet before the next interim period begins to review federal actions affecting public land in Nevada. At such meetings, the committee may choose to recommend additional legislative proposals.

The members of the committee wish to thank the organizations and individuals who participated in this interim's hearings. The committee appreciated the important assistance provided by the many talented people who testified at the meetings.

APPENDIX A

Nevada Revised Statutes 218.5363

218.5363 Establishment; membership; chairman; vacancies.

1. There is hereby established a legislative committee on public lands consisting of three members of the senate, three members of the assembly and one elected officer representing the governing body of a local political subdivision, appointed by the legislative commission with appropriate regard for their experience with and knowledge of matters relating to public lands. The members who are state legislators must be appointed to provide representation from the various geographical regions of the state.

2. The members of the committee shall select a chairman from one house of the legislature and a vice chairman from the other. After the initial selection of a chairman and a vice chairman, each such officer shall hold office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the chairmanship or vice chairmanship, the members of the committee shall select a replacement for the remainder of the unexpired term.

3. Any member of the committee who is not a candidate for reelection or who is defeated for reelection continues to serve until the convening of the next session of the legislature.

4. Vacancies on the committee must be filled in the same manner as original appointments.

(Added to NRS by 1979, 5; A 1983, 209; 1985, 589)

APPENDIX B

Approved Budget and Proposed Work Plan

NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.536, *et seq.*)

APPROVED BUDGET AND PROPOSED WORK PLAN
July 1, 1993 through December 31, 1994

This document outlines the approved budget and proposed work plan for the Nevada Legislature's Committee on Public Lands for the 1993-1994 interim period.

APPROVED COMMITTEE BUDGET

On August 31, 1993, the Legislative Commission approved the committee's budget request. The approved budget for the Public Lands Committee totals $37,000.

The major categories of the budget are as follows:

Legislator Salaries	$11,700
Travel:	
In-State meetings	8,400
Out-of-State meetings	16,200
Operating Expenses:	
Supplies	200
Printing and copying	500
Total Budget	$37,000

This budget allows for the six legislative members of the committee to attend seven meetings throughout Nevada and two meetings in Washington, D.C. The salary and expenses of the seventh member of the committee--the local government representative--are paid by her local political subdivision (Subsection 3 of NRS 218.5365). The committee planned the same number of meetings for the last interim.

By comparison, the committee's budget for the 1991-1992 biennium totaled $36,556, of which $23,771 was actually expended.

The budget request for this biennium does not reflect any major changes from previous budgets. The total requested is slightly higher than the amount requested last interim to accommodate the costs of airfare from Nevada to Washington, D.C., and of attending meetings in remote locations throughout Nevada. In addition, the request includes the increase in per diem amounts which was authorized by the 1993 Nevada Legislature in Assembly Bill 20.

PROPOSED WORK PLAN

The following sections outline the tentative work plan for the Nevada Legislature's Committee on Public Lands during the 1993-1994 interim period.

In-State Meetings

Seven 1-day meetings throughout the state are projected and budgeted. Certain meetings may last 2 days due to tours or other activities, but this contingency was not included in the budget. The meetings will be held in Carson City, Elko, Fallon, Las Vegas, Laughlin, Panaca, and Reno.

Out-of-State Meetings

The committee optimizes its effectiveness by visiting members of the United States Congress and executive branch in Washington, D.C., annually. These productive meetings provide committee members with insight on Federal policies and key contacts on public lands issues, an opportunity to educate Federal officials on the public lands perspective in Nevada, and greater rapport with the members and staff of Nevada's congressional delegation.

Two committee trips to Washington, D.C., are projected for six legislators and two staff members, each lasting 4 days and 3 nights. Consistent with previous policy of the Legislative Commission, travel costs for the committee's staff are included in the budget for these out-of-state trips.

Proposed Timetable of Meetings

DATE	PLACE	TOPIC
September 27, 1993	Carson City, NV	Organizational meeting. General update on issues.
October 13-14, 1993	Washington, D.C.	Meetings with Congressional and other Federal officials.
November 5, 1993	Elko, NV	General meeting. Update on mining issues.
January 21, 1994	Las Vegas, NV	General meeting. Update on Southern Nevada issues.
March 11, 1994	Laughlin, NV	General meeting. Update on Laughlin issues.

April 12-13, 1994	Washington, D.C.	Meetings with Congressional and other Federal officials.
May 20, 1994	Fallon, NV	General meeting. Update on military issues.
August 19, 1994	Panaca, NV	General meeting. Update on recreational issues.
September 30, 1994	Reno, NV	Work session. Final report and recommendations.

Issues

I. ***Bills from the 1993 Nevada Legislature***

A. Senate Bill 235 (Chapter 436) provides a definition of the term "accessory road" and clarifies the rights of certain users of accessory roads.

B. Senate Bill 236 (Chapter 435) grants governmental immunity with respect to minor county roads and revises the requirements for designating and indexing minor county roads.

D. Senate Bill 544 (Chapter 639) prohibits certain activities within the Red Rock Canyon National Conservation Area.

E. Assembly Bill 176 (Chapter 446) revises provisions relating to roads made public by prescriptive use.

F. Assembly Bill 618 (Chapter 496) relinquishes state claims to certain portions of the beds and banks of the Truckee River within the Pyramid Lake Indian Reservation and to certain land under and surrounding Pyramid Lake.

II. ***Resolutions from the 1993 Nevada Legislature***

A. Senate Concurrent Resolution No. 20 (File No. 43) designates May 10 through May 16, 1993, as Public Lands Week.

B. Senate Joint Resolution No. 12 (File No. 66) urges the Federal Government to recognize the rights of users of roads which were established on certain rights of way over public lands and which provide access to private property.

C. Senate Joint Resolution No. 13 (File No. 52) urges the U.S. Congress, Bureau of Land Management, and Forest Service to expedite the creation of certain programs for managing the population of wild horses and burros on public lands.

D. Senate Joint Resolution No. 14 (File No. 53) urges Congress to limit the acquisition of privately owned land and to return public land to private ownership.

E. Senate Joint Resolution No. 15 (File No. 187) urges Congress to require the consideration of certain economic factors in the development of recovery plans for endangered or threatened species of wildlife.

F. Senate Joint Resolution No. 17 (File No. 54) urges Congress to reject any unreasonable increase of the fees for grazing livestock on public lands.

G. Senate Joint Resolution No. 18 (File No. 103) urges the U.S. Fish and Wildlife Service and Secretaries of Agriculture and Interior to expedite a recovery plan for the Lahontan cutthroat trout in Nevada.

H. Senate Joint Resolution No. 27 (File No. 189) proposes to amend the ordinance of *The Constitution of the State of Nevada* to repeal the disclaimer of interest of the state in unappropriated public lands.

III. *Ongoing Programs and Review of Specific Proposals*

A. Federal budget proposals affecting public lands

- Monitor revenue sharing or transfer programs such as grazing receipts, mineral royalties, and payments in lieu of taxes (PILT).
- Monitor proposed increases in grazing and mining fees.

B. Land transfers/exchanges

- Monitor and assist as necessary in local government and other land transfer/exchange proposals.

C. Military activities and land and airspace proposals

- Monitor and review military land and airspace withdrawal proposals affecting the state.
- Monitor congressional proposals relating to military land and airspace.

D. Mining and reclamation

- Monitor the minerals industry and development in Nevada.
- Monitor and review implementation of the state mining reclamation law and regulations.
- Monitor implementation of the state's abandoned mines program.
- Monitor and review Federal proposals to substantially alter the Mining Law of 1872.

E. Rangeland management

- Monitor and review Federal proposals and activities.

F. Riparian management

- Review Federal proposals and activities relating to riparian areas in the state.

G. Wilderness

- Monitor BLM wilderness review process, areas, and recommendations.

H. Wild horses and burros

- Monitor BLM policies and activities on wild horse and burro management.
- Review activities of Nevada's Commission for the Preservation of Wild Horses.

I. Wildlife

- Monitor wildlife management issues, such as endangered species designations and the depredation program.

J. Other topics of interest

- Fire management and rehabilitation on Federal lands.
- Federal policies and regulations on land use.

- Resource management plans and environmental impact statements for selected projects.

- Other public lands issues.

APPENDIX C

Committee Resolution 93-1, Concerning Livestock Grazing

RESOLUTION 93-1

NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

WHEREAS, Livestock grazing was one of Nevada's first industries and continues to be the economic base of many of the state's rural communities; and

WHEREAS, Most Nevada ranchers are dependent on utilizing public lands to operate a viable business because almost 87 percent of this state's land is controlled by the Federal Government; and

WHEREAS, Ranchers are a vital part of the daily management of public lands, as the Federal Government does not have the funding to provide an adequate number of agency personnel to manage the vast areas of public lands in the West; and

WHEREAS, Livestock grazing on public lands benefits many other users of the public lands, such as wildlife, recreationists, and tourists; and

WHEREAS, Most Nevada ranchers are required to obtain grazing permits from the United States Bureau of Land Management (BLM) or the U.S. Forest Service (USFS); and

WHEREAS, A stable, predictable, and fair fee formula for grazing permits is vital to the continuation of the livestock industry in Nevada; and

WHEREAS, The current fee formula is set by Presidential Executive Order, which may be changed at any time and without warning; and

WHEREAS, The health of Nevada ranches is also dependent on fair and reasonable regulations governing grazing on public lands; and

WHEREAS, BLM and USFS have proposed new rules and a fee formula in *Rangeland Reform '94* and the Advance Notices of Proposed Rulemaking published in the *Federal Register* on August 13, 1993; and

WHEREAS, The proposals were developed without the input of people who are familiar with the unique situation of Nevada ranchers who operate in the Great Basin; and

WHEREAS, If enacted, these proposals would adversely affect numerous ranches, the rural communities that support them, and the public lands on which they operate; and

WHEREAS, The U.S. Senate recently voted in favor of a 1-year moratorium on any increase in grazing fees; and

WHEREAS, The 1993 Nevada Legislature approved Senate Joint Resolution No. 17 that urges Congress to reject any unreasonable increase in grazing fees; now, therefore, be it

RESOLVED, BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS, That the U.S. House of Representatives is hereby urged to join the U.S. Senate in placing a 1-year moratorium on an increase in grazing fees; and be it further

RESOLVED, That Congress is also urged to require that the 1-year period be used to thoroughly and objectively study the economic and social effects of the proposed grazing fee formula and regulations; and be it further

RESOLVED, That the Committee requests that the study develop Congressional legislation to establish a fair and workable grazing fee formula in statute so that the fee is predictable each year and the formula cannot be changed arbitrarily; and be it further

RESOLVED, That the Committee also requests that such legislation establish fair and reasonable rules governing livestock grazing on public lands, which take into consideration all aspects of the industry, including the benefits from ranching enjoyed by wildlife, other users of public lands, and rural communities; and be it further

RESOLVED, That a copy of this resolution be transmitted to the Secretaries of Agriculture and Interior, the Director of BLM, the Chief of USFS, the Vice President of the U.S. as the presiding officer of the Senate, the Speaker of the House of Representatives, and each member of the Nevada Congressional Delegation.

APPENDIX D

Legal Opinion Regarding

Assembly Bill 733 of the 1993 Session

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November 5, 1993

Assemblyman Roy Neighbors
P.O. Box 1631
Tonopah, Nevada 89049

Dear Mr. Neighbors:

During hearings which were conducted this past session concerning Assembly Bill No. 733, an amendment to A.B. 733 was proposed which would prohibit certain actions taken by federal officers in relation to public lands. You have asked whether this proposed amendment, if enacted, would be constitutional. It is the opinion of this office that the proposed amendment would be constitutionally invalid. I will first address the extent of federal authority over public lands, then discuss the proposed amendment to A.B. 733.

Federal Authority over Public Lands

The principal source of federal power to regulate and manage public lands is the Property Clause of the United States Constitution. This clause provides that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. Under this clause, Congress exercises power both of proprietor and legislature over the public domain, and may determine all needful rules respecting public lands. As such, it has been held that the power over public lands entrusted to Congress pursuant to this clause is without limitation, Kleppe v. New Mexico, 426 U.S. 529 (1976), and the exercise of that power may not be curtailed by state legislation. Denee v. Ankeny, 246 U.S. 208 (1918) and Itcaina v. Marble, 56 Nev. 420 (1936). When Congress exercises its exclusive right to control and dispose of the public lands of the United States, neither a state nor any state agency has any power to interfere. United States v. Montgomery, 155 F.Supp. 633 (1957). The United States Supreme Court and various federal courts have expanded these holdings to the extent that the power over federally owned public land entrusted to Congress by the Property Clause of the United States Constitution is substantially without limitation. *See,* California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987) and State of Nevada v. United States, 512 F.Supp. 166 (1981). The basic import of these holdings is that Congress may adopt any regulations concerning

EXHIBIT D

(O)-1578D

public land so long as the regulations do not violate some specific provision of the United States Constitution.

Despite the expansive reading by the courts of the power of Congress over public lands pursuant to the Property Clause, the states are allowed, to a limited extent, to regulate areas in the federal public domain. States may enact quarantine rules and measures to prevent breaches of the peace, or prescribe other reasonable police regulations so long as the regulations are not arbitrary or inconsistent with applicable congressional enactments. *See,* McKelvey v. United States, 260 U.S. 353 (1922); In re Calvo, 50 Nev. 125, 253 P. 671 (1927); Hagood v. Heckers, 182 Colo. 337, 513 P.2d 208 (1973) and AGO 43 (7-21-1931). The United States does not in every case acquire exclusive jurisdiction when it receives title to lands located within a state. Acquisition by the United States of title to lands within the boundaries of a state is not sufficient in itself to exclude the state from exercising any legislative authority, including its taxing and police power, in relation to property and activities of individuals and corporations within the state. It must appear that the state, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise before exclusive jurisdiction is acquired by the United States. State v. Cline, 322 P.2d 208 (C.C.A. Okl. 1958). However, where Congress acts under the Property Clause by providing rules and regulations for public land, any state law which conflicts with federal law is superseded and must recede. *See,* Bilderback v. United States, 558 F.Supp. 903 (1982); United States v. Brown, 431 F.Supp. 56 (1976) and Ansolabehere v. Laborde, 73 Nev. 93, 310 P.2d 842 (1957). Consent or cession of a state is not required when Congress acts pursuant to its plenary authority to regulate public lands. State of Nevada v. Watkins, 914 F.2d 1552 (1990). Therefore, even though the State of Nevada may have a limited amount of concurrent jurisdiction over federal public lands under its taxing and police power, any state laws passed which conflict with existing federal laws are superseded under the Supremacy Clause of the Constitution.

The proponents of A.B. 733 premise their argument in support of the bill in part upon the theory that the United States may not acquire title to land within a state unless the land was purchased with the consent of the legislature of the state in accordance with the provisions of Article I, Section 8, Clause 17 of the United States Constitution. As the federal public lands in Nevada were never acquired in this manner, the proponents of A.B. 733 argue that the Federal Government has unconstitutionally acquired title to the public lands in Nevada and therefore any federal law pertaining to the public lands has no effect. This argument would likely be rejected in court. The United States Supreme Court has long recognized that the United States, at the discretion of Congress, may acquire and hold real property in any state, whenever such property is needed for the use of the government in the execution of any of its powers, whether for arsenals, fortifications, light-houses, custom-houses, barracks or hospitals, or for any other of the many public purposes for which such property is used. Van Brocklin v.

Anderson, 117 U.S. 151 (1886). Although the mode in which the United States may acquire property is not prescribed by the Constitution, Re Will of Fox, 52 N.Y. 530, aff'd, 94 U.S. 315 (1873), it has been held that the provisions of Article I, Section 8, Clause 17 of the Constitution are not restrictive of the power of the United States to acquire lands for other governmental purposes and functions, and those large bodies of public lands used for forest, parks, ranges, wildlife sanctuaries, flood control and other such purposes are not covered by this clause. Collins v. Yosemite Park & Curry Co., 304 U.S. 518 (1938). It has also been held that exclusive jurisdiction over land located within the boundary of a state may be obtained by excepting the land from jurisdiction of the state upon admission of the state into the union, by cession from the state to the Federal Government, and pursuant to Article I, Section 8, Clause 17 of the Constitution. State v. Cline, 322 P.2d 208 (C.C.A. Okl. 1958); Richardson v. Turner, 16 Utah 2d. 371, 401 P.2d 443 (1965). Based upon these authorities, it is clear that the United States may acquire property located within a state by means and for purposes other than those provided for in Article I, Section 8, Clause 17 of the Constitution. This clause simply establishes the exclusive jurisdiction of the United States over property which is acquired in the manner provided therein. This clause does not dictate the only method by which the United States may gain title to property located within a state.

The Federal Government owns much of the property located within the State of Nevada as a result of the formation of the constitution of the State of Nevada in 1864. In the ordinance immediately preceding the preamble to the constitution, the people of the Territory of Nevada forever disclaimed "all right and title to the unappropriated public lands lying within said territory," and provided that those lands should remain at the "sole and entire disposition of the United States * * *." The provisions of the 1864 act of Congress enabling the people of Nevada to form a constitution and state government (13 United States Statutes at Large, pp. 30-32) required that the members of the constitutional convention pass this disclaimer ordinance. Specifically, section 4 of that act states that "the members of the convention * * * shall provide, by ordinance irrevocable, *without the consent of the United States and the people of said state* * * * that the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States * * *." (Emphasis added.)

Given the adverse effect that such a requirement in an enabling act had upon the people of a territory when seeking admission to the Union, the authority of Congress to exact a disclaimer of public lands located within a territory and the subsequent power of Congress to pass laws respecting those lands was questioned by the United States Supreme Court in Pollard's Lessee v. Hagan, 3 How. 212 (1845). In Pollard's Lessee the Court appeared to be prepared to limit the authority of Congress concerning public lands acquired by territorial cession

when it held that: (1) the shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States; (2) the new states have the same rights, sovereignty and jurisdiction over this subject as the original states; and (3) the right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof conferred no power to grant land in Alabama which was located below the usual high water-mark at the time Alabama was admitted to the Union. However, subsequent decisions by the Court, although affirming the holding in Pollard's Lessee that the states retain title to and jurisdiction over the shores and underlying soils of the navigable waters located within their respective borders, have held that Congress may embrace in an enabling act conditions relating to matters wholly within its sphere of powers, such as regulations of interstate commerce, discourse with Indian tribes and disposition of public lands. Coyle v. Oklahoma, 221 U.S. 559 (1911). More specifically, the Court in Stearns v. Minnesota, 179 U.S. 223 (1900), noted that "[a] State and the nation are competent to enter into an agreement of such a nature with one another," and the validity of such an agreement is "a matter of history." Stearns at 245. More recently, the Court has stated that the case of Pollard's Lessee v. Hagan, *supra,* and cases that followed it (*see, e.g.,* United States v. California, 332 U.S. 19 (1947) and United States v. Holt State Bank, 270 U.S. 49 (1926)), involved only the shores of and lands beneath navigable waters, and "cannot be accepted as limiting the broad powers of the United States * * * to regulate government lands under Art. IV, § 3, of the Constitution." Arizona v. California, 373 U.S. 546, at 597 (1963). Finally, in State of Nevada v. United States, 512 F.Supp. 166 (1981), the court held that implicit in the acts of admission of a state to the Union is that the public domain passes to the United States, and regulations dealing with the care and disposition of public lands within the boundaries of a new state may properly be embraced in its act of admission, as "within the sphere of the plain power of Congress." Id. at 172. The court went on to follow the holding in Kleppe v. New Mexico, *supra,* stating that "Art. IV, § 3, cl. 2, of the Constitution entrusts Congress with power over the public land without limitations, [and] it is not for the courts to say how that trust shall be administered, but for Congress to determine." Id. at 172.

Given the weight of authority which has developed since Pollard's Lessee v. Hagan was decided, and the subsequent limitation of the holding in that case, it is clear that Congressional power to prescribe rules and regulations concerning public lands entrusted to it is firmly entrenched, and ample authority exists upon which to invalidate state laws which either conflict with federal laws concerning public lands or which stand as an obstacle to the accomplishment of the full purposes and objectives of Congress.

Constitutionality of A.B. 733

The proposed amendment to A.B. 733 reads in pertinent part as follows:

> **Sec. 2.** An officer, agent or employee of the federal government who performs any act outside the scope of his specific authority lawfully delegated with respect to the use, management or disposal of any of the public lands, is guilty of a gross misdemeanor.
>
> **Sec. 3.** A person aggrieved by a violation of section 2 of this act has a private action against the violator and is entitled to recover treble the amount of his actual damages, plus his costs and attorney's fees.

The provisions of the proposed amendment to A.B. 733 concerning civil liability are in direct conflict with the Federal Tort Claims Act, 28 U.S.C.A. §§ 2671 to 2680, inclusive, and are therefore superseded by federal law. *See,* Bilderback v. United States and Ansolabahere v. Laborde, *supra.* The provisions of 28 U.S.C.A. § 2674 state "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances * * *." The remedies provided under these sections are exclusive for injuries to persons or property arising from tortious acts of federal employees acting within scope of their employment. 28 U.S.C.A. § 2679; Arbour v. Jenkins, 903 F.2d 416 (1990). Section 2680 further provides that there is no federal liability under the Federal Tort Claims Act for "[a]ny claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, *whether or not such statute or regulation be valid,* or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, *whether or not the discretion involved be abused.*" (Emphasis added.) Therefore, to the extent that the proposed amendment to A.B. 733 is intended to broaden the liability of federal officers and employees, it would be held invalid as conflicting with existing federal law. *See,* Itcaina v. Marble, *supra.* Moreover, absolute immunity is extended to public officers even for mistakes in judgment, *see,* Robinson v. Egnor, 699 F.Supp. 1207 (1988), and the only prerequisite for the application of doctrine that government officers and employees are immune from tort liability for acts committed in performance of official duties is that the action taken must be within the outer perimeter of the executive officer's line of duty. Chafin v. Pratt, 358 F.2d 349, cert. den. 385 U.S. 878 (1966).

The proposed amendment to A.B.733 also presents a question of federal immunity from violations of state criminal laws. As a general corollary to the supremacy of federal law over state law, the activities of the Federal Government are free from regulation by any state. Mayo v. United States, 319 U.S. 441 (1943).

More importantly, a state court has no jurisdiction of a criminal prosecution against a federal officer for an act in violation of a state statute, done as part of the officer's duty under valid federal authority. *See,* Ohio v. Thomas, 173 U.S. 276 (1899) and Commonwealth of Kentucky v. Long, 837 F.2d 727 (6th Cir. 1988). The doctrine of federal immunity from state control has equal application to actions and suits relating to or affecting public lands. *See,* Carr v. United States, 98 U.S. 433 (1878) and Utah Power & Light Co. v. United States, 230 F. 328 (1915), mod. on other grounds, 242 F. 924 (1917). A federal officer's exercise of authority does not in and of itself place the officer beyond the reach of state criminal process. The question is whether the officer's conduct was necessary and proper under the circumstances and whether the officer employed means which he could not honestly consider reasonable in discharging his duties. The officer is not required to show that his action was in fact necessary or in retrospect justifiable, but only that he reasonably thought it to be. Clifton v. Cox, 549 F.2d 722 (9th Cir. 1977). Based upon these authorities, the state courts in Nevada would not have jurisdiction to prosecute a federal officer or employee for violating the proposed amendment to A.B. 733 if enacted into law. Even if jurisdiction were found to exist, in order to avoid criminal prosecution the officer or employee would only have to show that he reasonably thought his actions were necessary in discharging his duties.

If the proposed amendment to A.B. 733 were passed, any civil or criminal suit commenced pursuant to it would likely be removed to federal court. The provisions of 28 U.S.C.A. § 1442 authorize any officer of the United States or any agency thereof, or any person acting under him, for any act under color of such office, to remove any civil action or criminal prosecution commenced in a state court to the district court of the United States for the district in which the state court proceeding is pending. The right of removal created under this section is absolute whenever a suit in state court is based upon any act committed under color of federal office, regardless of whether suit could originally have been brought in federal court. Willingham v. Morgan, 395 U.S. 402 (1969). The underlying purpose of this section is to ensure that federal officers or agents will not be forced to answer for conduct assertedly within their duty in any court except a federal court, and to ensure that the validity of the defense of official immunity will be tried in the appropriate forum. *See,* Willingham v. Morgan, id. and United States v. Penney, 320 F.Supp. 1396 (1970). Therefore, even if the proposed amendment to A.B. 733 survived constitutional attack, any civil or criminal action brought would in all likelihood be removed to federal court.

In addition, state laws which are "hostile" to federal interests concerning public lands or which interfere with or otherwise handicap the efforts of federal agencies to carry out a national purpose have been held invalid. *See,* North Dakota v. United States, 460 U.S. 300 (1983); United States v. Little Lake Misere Land Co., 412 U.S. 580 (1973) and James Stewart & Co. v. Sardrakula, 309 U.S. 94 (1940). This concept was borrowed by the court from the area of labor

relations, stating that "incompatible doctrines of local law must give way to principles of federal labor law." International Union v. Hoosier Cardinal Corp., 383 U.S. 696, at 701 (1966). At least one state court has held that state legislation which is "manifestly hostile" to the exercise of rights granted by a federal statute cannot stand. Fullerton v. Lamm, 177 Ore. 655, 163 P.2d 941 (1946). Based upon these authorities, the civil and criminal provisions of A.B. 733 would be held invalid as "hostile" to federal interests. As the provisions specifically apply to federal officers, agents and employees, and would create potential liability for *any* action taken relating to the management of public lands which is outside the scope of lawfully delegated authority, the provisions would restrict the ability of federal agencies to perform their functions and duties. Before taking any action, questions would arise as to whether the action is "outside" the scope of lawfully delegated authority. Such questions would have a chilling effect on any potential agency action. As such, the provisions are certainly "hostile" to federal interests concerning public lands and would handicap and interfere with the efforts of federal agencies to carry out the provisions of federal laws enacted for the purpose of regulating public lands. Accordingly, the proposed amendment would be held invalid on that basis.

Finally, this office is in agreement with the concurring opinion of Justice Renquist in United States v. Little Lake Misere Land Co., *supra,* in which he stated that the "doctrine of intergovernmental immunity enunciated in McCulloch v. Maryland, 4 Wheat. 316, 4 L.Ed. 579 (1819), however it may have evolved from that decision, requires at least that the United States be immune from discriminatory treatment by a State which in some manner interferes with the exercise of federal laws." This prohibition against discriminatory treatment has been reiterated to a certain extent by the Ninth Circuit in Clifton v. Cox, 549 F.2d 722 (1977), wherein the court stated that "[o]ne of the basic tenets in the application of the Supremacy Clause is that the states have no power to determine the extent of federal authority. To rule otherwise would allow a state to punish the exercise of federal authority under the guise of questioning the right of federal officials to act." Id. at 730. As written, the proposed amendment to A.B. 733 singles out federal officers and employees for discriminatory treatment by subjecting them to criminal and civil liability under state law when they act outside the scope of their lawfully delegated authority in relation to public lands. As such, the amendment interferes with the exercise of federal laws and therefore would be held invalid.

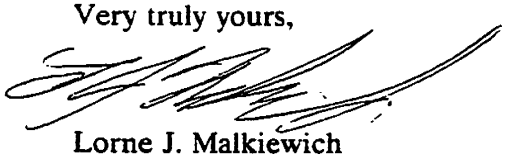
Conclusion

It is the opinion of this office that the proposed amendment to A.B. 733, if enacted, would be constitutionally invalid. Federal authority to acquire and govern public lands within a state is extensive, and ample bases exist upon which a court could invalidate state laws which are either in direct conflict with existing federal laws or which are hostile to or interfere with the exercise of federal

authority and control of public lands. The provisions of the amendment which impose civil liability upon federal officers, agents and employees are in direct conflict with the Federal Tort Claims Act and therefore are superseded by federal law. The extent of federal immunity from criminal liability under state law is also extensive, and the state courts in Nevada would not have jurisdiction to hear any action for criminal violation of the proposed amendment. If a prosecution were attempted in state court, the federal officer or employee against whom the action is brought would have an absolute right to have the matter removed to federal court. Finally, the proposed amendment is certainly hostile to and interferes with the exercise of federal authority and control over public lands, and singles out federal officers and employees for discriminatory treatment under state law. As such, the proposed amendment to A.B. 733 would be held invalid.

Please contact our office if you have any questions concerning this or any other matter.

Very truly yours,



Lorne J. Malkiewich
Legislative Counsel

APPENDIX E

Legal Opinion Regarding

Rangeland Reform '94

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
Fax No.: (702) 687-5962

JOHN R. CROSSLEY, *Director*
(702) 687-6800

LEGISLATIVE COMMISSION (702) 687-6800
JOSEPH E. DINI, JR., *Assemblyman, Chairman*
John R. Crossley, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

November 5, 1993

Senator Dean A. Rhoads
P.O. Box 8
Tuscarora, Nevada 89834

Dear Senator Rhoads:

The Secretary of the Interior has proposed regulations governing the management of public land reforms described as "Rangeland Reform '94." You have asked if the provisions contained in "Rangeland Reform '94" conflict with federal law or exceed the authority of the agencies adopting the program. You have also asked if it is constitutional to provide a double punishment of both a criminal conviction and revocation of a grazing permit. It is the opinion of this office that, with the few exceptions discussed below, the provisions of "Rangeland Reform '94" do not conflict with federal law and do not exceed the authority of the agencies adopting the program, and that a double punishment of both a criminal conviction and revocation of a grazing permit does not place a grazing permittee in double jeopardy or unlawfully discriminate against grazing permittees.

Federal Authority to Enact "Rangeland Reform '94"

In general, it has long been held that Congress may lawfully delegate the power to make regulations concerning the public domain, Van Lear v. Eisele, 126 F. 823 (C.C. Ark. 1903), and that the Department of the Interior has plenary authority over the administration of public lands, including mineral lands, and broad authority to issue regulations concerning such lands. Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963). However, regulations adopted by an executive agency must be consistent with law, may not be extended so as to alter, amend or defeat a law already enacted by Congress, Morrill v. James, 106 U.S. 466 (1882), and must be disregarded or annulled if plainly and palpably inconsistent with the law for the enforcement of which they are provided. Boske v. Commingore, 177 U.S. 459 (1900) and Anchor v. Howe, 50 F. 366 (C.C. Idaho 1892). Based on these authorities, any regulations adopted to effectuate the proposed provisions of "Rangeland Reform '94" which are inconsistent with the provisions of the Taylor Grazing Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act or any other provision of federal law relating to public lands would be held invalid.

EXHIBIT E

(O)-1578D

After a review of the applicable provisions of federal law relating to public lands, this office has not found, with the few exceptions discussed below, any provisions of "Rangeland Reform '94" which are inconsistent with federal law concerning public lands. The provisions of Title 43 of the United States Code concerning public lands contain numerous sections which delegate to the Secretary of the Interior the authority to adopt regulations concerning public lands. The provisions of 43 U.S.C. § 1201 state that "[t]he Secretary of the Interior, or such officer as he may designate, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specifically provided for." Section 2 of the Taylor Grazing Act (43 U.S.C. § 315a) provides "[t]he Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of section 315 of this title, and he shall make such rules and regulations and establish such service * * * and do any and all things necessary to accomplish the purposes of this subchapter * * *." The provisions of 43 U.S.C. § 1733 state that "[t]he Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon." Section 1740 of Title 43 further provides that "[t]he Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands * * *." These authorities provide a broad basis for the promulgation of regulations by the Secretary of the Interior, and are cited by the Secretary at page 43221 of the Federal Register (8/13/93) as authority for the adoption and amendment of the regulations pertaining to "Rangeland Reform '94."

Despite this broad authority to adopt regulations, certain provisions of "Rangeland Reform '94" may be in conflict with various provisions of federal law relating to the public lands. It is stated on page 15 of "Rangeland Reform '94" that the BLM proposes that the public hold title to all future permanent range improvements constructed on public lands. The BLM further proposes that it will "recognize" the financial interests of permittees and other contributors in the improvement, and that this proposed policy will not affect existing range improvements. This proposed policy may be in conflict with the the provisions of section 4 of the Taylor Grazing Act (43 U.S.C. § 315c), depending upon the manner in which the BLM in administers the provisions of its policy. The provisions of section 4 of the Taylor Grazing Act authorize the construction of fences, wells, reservoirs, and other improvements necessary for the care and management of permitted livestock, provided the permittee complies with the provisions of the law of the state in which the grazing district is located with respect to the cost and maintenance of partition fences. If it is the intent of the BLM to hinder or even preclude further construction of improvements within grazing districts, the policy would be in direct conflict with the provisions of section 4 of the Taylor Grazing Act and would therefore be invalid. *See,* Morrill v. James, *supra.* Although the provisions of section 4 do not specifically address the issue of title to improvements made within a grazing

district, the stated purpose of the Taylor Grazing Act is "to promote the highest use of the public lands pending its final disposal * * *." 43 U.S.C. § 315. It is questionable whether the policy of retaining title to all future permanent range improvements on public lands would accomplish this purpose. If this policy is determined to be contrary to the stated purpose of the Taylor Grazing Act, it could be held invalid on this basis as well.

This analysis of the provisions concerning the construction of improvements also applies to the development of water rights by the BLM. The BLM states on pages 15 and 16 of "Rangeland Reform '94" that, because of past problems of allowing grazing permittees to file for and hold sole title to water for stockwatering developments, the BLM now intends to assert its claim and exercise its right to water developed on the public lands. The BLM further states this policy will not affect ownership or rights currently held in a range improvement permit or a state certificate of water right. However, the provisions of section 4 of the Taylor Grazing Act specifically include the development of "wells, reservoirs and other improvements necessary to the care and management of permitted livestock * * *." 43 U.S.C. § 315c. As such wells, reservoirs and "other improvements" would probably include the development of surface and underground water rights, the BLM's proposed policy of retaining title to these rights in the future may be contrary to the policy of section 4 of the Taylor Grazing Act, which is to encourage the development of such rights.

The BLM states on page 9 of "Rangeland Reform '94" that it intends to impose surcharges for "second party grazing use" associated with base property and management leases, and that, under certain circumstances, these proposed surcharges on subleasing could be as much as 70 percent of the annual grazing fee. This surcharge would be in addition to the annual grazing fee. Although the Secretaries of Agriculture and the Interior are required under Executive Order No. 12548, 51 F.R. 5985, to establish fees for domestic livestock grazing on public rangelands, Executive Order No. 12548 also provides that "[t]he annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee * * *." It appears that the intended purpose of this part of Executive Order No. 12548 is to place a limitation on permissible increases in annual grazing fees. If a surcharge of 70 percent of the annual grazing fee were in fact imposed by the BLM, it would be contrary to the stated limitation and intent of Executive Order No. 12548. As such, the surcharge could be held invalid under Morrill v. James, *supra.*

The provisions of 43 U.S.C. § 1901(b) clearly state that "[t]he Congress * * * hereby establishes and reaffirms a national policy and commitment to * * * manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for *all* rangeland values * * * [and to] charge a fee for public grazing use which is *equitable* and reflects the concerns addressed in paragraph (a)(5) [of this section] * * *." (Emphasis added.) Paragraph (a)(5) of 43 U.S.C. § 1901 provides that "[t]he Congress hereby finds and declares that * * * *to prevent economic*

disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the cost of production * * *." (Emphasis added.) Based on these authorities, the BLM may only impose fees which are equitable and prevent economic disruption in the western livestock industry. It is difficult to argue that the collection of a 70 percent surcharge on subleasing would be equitable or that it would not be disruptive to the western livestock industry. As this would be contrary to the express policies of the Public Rangelands Improvement Act, the BLM could be exceeding its lawfully delegated authority by imposing the surcharges for subleasing which may equal 70 percent of the annual grazing fee.

Constitutional Validity of Providing Both a Criminal Conviction and the Revocation of a Grazing Permit

The Fourteenth Amendment to the Constitution guarantees to every person within the jurisdiction of a state the equal protection of the laws. This requires that in the administration of criminal justice no person be subjected to a greater or different punishment for an offense than that to which others of the same class are subjected. Truax v. Corrigan, 257 U.S. 312 (1921). However, a regulation may not be overturned merely because one segment of a related class suffers economic losses not shared by others. *See*, Air Transport Association of America v. Federal Energy Office, 382 F.Supp. 437 (1974) and Mt. Airy Refining Co. v. Schlesinger, 481 F.Supp. 257 (1979). Therefore, even though a grazing permittee stands to lose more if he were convicted of a crime which is also the basis for revocation or suspension of his permit, the economically disparate impact upon the permittee would not of itself be sufficient to invalidate the revocation proceeding or the regulation upon which the proceeding is based.

It has been held that a criminal prosecution is not unconstitutional simply because the same act charged was previously the basis on which an administrative agency revoked a business or medical license. *See*, Emory v. Texas State Bd. of Medical Examiners, 748 F.2d 1023 (1984) and State v. Allen, 243 La. 698, 146 So. 2d 407 (1962). As the revocation of a grazing permit is similar to the revocation of a business license or a license to engage in a particular profession, it would likely be held that the revocation of a grazing permit in addition to a criminal prosecution for the same act which formed the basis for the revocation of the grazing permit would not be held unconstitutional. The prohibition against double jeopardy contained in article 1, § 8 of the constitution of the State of Nevada does not apply in civil actions. Brown v. Evans, 17 Fed. 912 (D. Nev. 1883). As the revocation of a grazing permit would presumably take place during an administrative proceeding which is civil in nature, a criminal prosecution for the same act would not be barred on the basis of double jeopardy.

Conclusion

In conclusion, it is the opinion of this office that, with the exception of the provisions of "Rangeland Reform '94" concerning range improvement ownership and the imposition of surcharges for subleasing, the provisions of "Rangeland Reform '94" do not conflict with federal law or exceed the authority of the agencies adopting the program, and that it is constitutional to provide a double punishment of both a criminal conviction and the revocation of a grazing permit.

Should you have any questions concerning this or any other matter, please contact this office.

Very truly yours,

Lorne J. Malkiewich
Legislative Counsel

By _____
J. Randall Stephenson
Deputy Legislative Counsel

APPENDIX F

Committee Resolution 93-3,

"Opposing the Amendment Proposed by U.S. Senator Harry Reid

to H.R. 2520, the Interior Appropriations Bill"

NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

RESOLUTION NO. 93-3

OPPOSING THE AMENDMENT PROPOSED
BY UNITED STATES SENATOR HARRY REID
TO H.R. 2520,
THE INTERIOR APPROPRIATIONS BILL

WHEREAS, The United States Congress is currently considering H.R. 2520, which makes appropriations for the support of the U.S. Department of Interior for the next fiscal year; and

WHEREAS, The Senate-House Conference Committee recommended the adoption of an amendment proposed by Senator Harry Reid; and

WHEREAS, This amendment raises the fees charged for grazing livestock on public lands and includes significant changes in the management of public rangelands; and

WHEREAS, These proposals, as embodied in the Reid Amendment, would Alter one of Nevada's most important industries and significantly impact the state's rural communities, yet none of the proposals have been subjected to public review and comment; and

WHEREAS, The section of the amendment that would give the U.S. Bureau of Land Management undue and unnecessary authority and control over water rights in the western states is particularly troublesome; and

WHEREAS, Water is one of the most precious resources in Nevada, a state in which the Federal Government already has disproportionate control as it owns around 87 percent of the state's land; and

WHEREAS, Many other sections of the amendment are also disturbing; and

WHEREAS, Interior Secretary Bruce Babbitt's proposal to address, by the inclusion of a statement in the legislative record, the concerns expressed about the water rights provision is not sufficient; now therefore, be it

RESOLVED, By the Nevada Legislature's Committee on Public Lands, that the U.S. Senate is urged to reject the Reid Amendment as it is currently written; and be it further

RESOLVED, That the Senate is urged to reject the proposal to address water rights concerns simply by making a statement in the legislative record. Such a provision must be included in the bill itself; and be it further

RESOLVED, That Congress is urged to reconvene the Conference Committee to draft a new amendment that does not include drastic changes that have not been submitted to the regular hearing process; and be it further

RESOLVED, That copies of this resolution be transmitted to the Vice President of the United States as the Presiding Officer of the Senate; Senator Harry Reid; Senator Richard H. Bryan; the Speaker of the House of Representatives; and Representatives James H. Bilbray and Barbara Vucanovich.

APPENDIX G

Committee Letters to U.S. Senators Richard H. Bryan and Harry Reid

and Response from Senator Reid

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

November 8, 1993

The Honorable Richard H. Bryan
United States Senator
364 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Bryan:

Enclosed with this letter is a copy of a resolution unanimously adopted by the Nevada Legislature's Committee on Public Lands at its meeting today in Elko, Nevada. This resolution expresses the committee's opposition to the "Reid amendment" to H.R. 2520 currently being considered by the U.S. Senate.

This committee had postponed formally expressing its opinion on the amendment with the hope that a more reasonable proposal would be negotiated. However, it is clear that such a proposal is not forthcoming.

The amendment, as it is written, contains provisions to which this committee strongly objects. In particular, the language addressing water rights is absolutely unacceptable.

Consequently, this committee adopted Resolution No. 93-3, which opposes the Reid amendment as currently written. We urge you to reconsider your support for that amendment.

Please call if I can answer any questions.

Sincerely,

Senator Dean A. Rhoads, Chairman
Nevada Legislature's Committee
on Public Lands

DAR/gj:PLL1
Enc.

(O)-807

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

November 8, 1993

The Honorable Harry Reid
United States Senator
324 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reid:

Enclosed with this letter is a copy of Resolution No. 93-3, unanimously adopted by the Nevada Legislature's Committee on Public Lands at its meeting today in Elko, Nevada. This resolution expresses the committee's opposition to the compromise amendment offered by you to H.R. 2520, the Interior appropriations bill.

Up to this time, the committee did not express a formal opinion on the amendment, hoping that a more reasonable compromise would be proposed. Hearing none, the committee has concluded that this amendment, which embodies significant policy changes, is not in the best interest of the State of Nevada.

Many of the provisions in the amendment are complex and must be submitted to the public through the proper hearing process. The committee is particularly concerned about the section that addresses water rights and agrees that Interior Secretary Bruce Babbitt's offer to include certain language in the legislative record is not sufficient to address these concerns. Such a provision should be included in the bill itself, not simply inserted into the legislative record.

As always, this committee stands ready to work with you and other interested parties to craft a more reasonable solution to this difficult issue.

Sincerely,

Dean A. Rhoads, Chairman
Nevada Legislature's Committee on
Public Lands

DAR/gj:PLL9
Enc.

(O)-807

HARRY REID
NEVADA

United States Senate

WASHINGTON, DC 20510-2803

November 29, 1993

Mr. Dana R. Bennett
Staff Director
Committee on Public Lands
State of Nevada
Legislative Counsel Bureau
Capitol Complex
Carson City, Nevada 89710

Dear ~~Mr. Bennett:~~ Dana

Thank you for sending me the Nevada Legislature's Committee on Public Lands resolution regarding reform of the federal grazing regulations and fees. I appreciate this opportunity to address your concerns.

I took on this issue because I believe the patience of the American public has come to an end. The current federal grazing fee is $1.86 per Animal Unit Month (AUM) while the average fee charged for private land in the west is over $10 per AUM. Over the last three years, while the private land rate has increased, the federal fee has actually decreased. The current fee recovers less than half the costs the government incurs in administering the grazing program.

When the Clinton Administration originally moved to reform the grazing program, Congress responded by enacting an amendment to the Interior Appropriations bill imposing a moratorium on the expenditure of funds for grazing reform. I was a cosponsor of this amendment not because I wanted to just pay lip service to the need for sensible reform, but because I believed Congress should be involved in the process. I followed up on my promise to work with the Secretary of the Interior and other members willing to confront this issue in good faith and brokered the compromise introduced as an amendment to the Interior Appropriations bill.

My proposal was a modest one. It called for a slight increase in the grazing fee and some, but not all, of Secretary Babbitt's range management reforms. This included allowing the Bureau of Land Management and the Forest Service to administer grazing on federal lands under their respective jurisdictions based on the same regulations. I did not accept a number of Secretary Babbitt's proposed reforms because they would have had an adverse impact on the value of a federal permit and imperiled ranchers who had secured loans against that value.

The modest reforms I proposed were not new; they have been the subject of numerous hearings by Secretary Babbitt throughout the West. Many have been in place in the Forest Service for nearly a century. The compromise, in the form of an amendment, was attached to the Interior Appropriations bill and approved by a vote of 317 to 109 in the House. In the Senate, however, a filibuster by a minority of Senators was successful in preventing the amendment from reaching the floor for a vote.

If Secretary Babbitt follows through with his original plan, ranchers can expect new grazing fees that are far higher than those proposed by me and a range management policy set by administrative fiat. I do not know how that will be more equitable than my proposal. The Secretary plans to hold additional hearings next year. Congress will also likely revisit the issue. I except that what eventually emerges will be quite similar to the compromise I proposed.

I regret that we do not agree on this issue, and hope this does not dissuade you from sharing your thoughts with me in the future.

With all best wishes,

Sincerely,

HARRY REID
United States Senator

HMR:ppa

APPENDIX H

Committee Letter to John P. Comeaux, Director,

Department of Administration,

Regarding the Division of State Lands

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

November 18, 1993

John P. Comeaux, Director
Department of Administration
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Comeaux:

As you know, the Federal Government has proposed sweeping changes in the management of public rangelands. These proposals, including the imposition of higher grazing fees, threaten the livelihoods of numerous Nevada ranchers. If ranchers are forced out of business, the economies of many of Nevada's rural communities will be seriously damaged, which would have major repercussions on state and local government revenues.

The Western Governors' Association (WGA) and numerous other organizations, including the Nevada Legislature's Committee on Public Lands (*Nevada Revised Statutes* 218.536, *et. seq.*), are actively working to soften the blow that these reforms will have on the Western states. Nevada's Governor Robert J. Miller, Chairman of the WGA, has designated Pamela B. Wilcox, Administrator of the Division of State Lands, as Nevada's representative for the WGA working group addressing this issue.

Following public encouragement from this committee, Ms. Wilcox requested an additional $3,000 to fund out-of-state travel for this assignment. The committee believes that Ms. Wilcox's participation is vitally important for the protection of Nevada ranchers; consequently, the Public Lands Committee strongly supports this effort and urges your office to expeditiously process the request. The members pledge to urge our colleagues on the Interim Finance Committee to approve the additional funding.

Thank you for your prompt attention to this matter.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

PLLS

(O)-807

APPENDIX I

Committee Resolution 93-2,

"Urging Placement of the Great Basin Heritage Center

in White Pine County, Nevada"

and Response from the

U.S. Department of Interior

NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

RESOLUTION 93-2

URGING PLACEMENT OF THE GREAT BASIN HERITAGE CENTER IN WHITE PINE COUNTY, NEVADA

WHEREAS, The Great Basin National Park was established in White Pine County, Nevada, in 1986; and

WHEREAS, The Congressional legislation creating the park (PL 99-556) authorizes and encourages the United States Secretary of Interior to enter into cooperative agreements with other Federal, State, and local public agencies to provide for the interpretation of the Great Basin physiographic region; and

WHEREAS, The establishment of a Great Basin Heritage Center in White Pine County would, in part, implement the Congressional mandate to interpret the Great Basin region for the public; and

WHEREAS, A central facility would encourage visitors to explore the entire region by providing: (1) a public educational center with exhibits, lectures, and programs that demonstrate the relationships of natural and cultural systems; (2) a regional repository and conservation center for artifacts and scientific specimens; (3) a research center, consisting of archives and laboratory facilities for scholarly and public-interest research in cultural and natural resources of the Great Basin; and (4) a visitor orientation center for the numerous cultural and natural resource sites in the region; and

WHEREAS, The Great Basin Heritage Center would be modeled after existing multi-agency visitor centers and Bureau of Land Management regional Heritage Centers, such as the Anasazi Heritage Center in Dolores, Colorado; and the Oregon Trail Heritage Center in Baker City, Oregon; and

WHEREAS, White Pine County, Nevada, is the logical location for the Great Basin Heritage Center because of its position within the Great Basin; the location of the Great Basin National Park within the county; the interest demonstrated by the county's residents in the area's natural and cultural heritage, as exemplified by the much-acclaimed annual Great Basin Natural Resource and Cultural Heritage Fair; the willingness of the City of Ely to utilize historic buildings for the Heritage Center; and the enthusiasm in the county for this particular project; and

WHEREAS, Establishment of the Heritage Center in White Pine County would provide an important economic opportunity for the residents of one of Nevada's most rural and isolated counties, where over 97 percent of the land is controlled by the Federal Government; and

WHEREAS, Funding has been obtained to develop a comprehensive travel and tourism plan to demonstrate the importance of the Great Basin Heritage Center; and

WHEREAS, The planning and implementation of this project would be conducted by an intergovernmental team that would include representatives from

Federal and State agencies operating programs in the area and would provide opportunities and incentives for nongovernmental organizations and the public to participate; and

WHEREAS, The White Pine County Economic Diversification Council, the City Council of Ely, and Board of Commissioners for White Pine County adopted resolutions supporting the establishment of the Great Basin Heritage Center in White Pine County for the benefit of the city, the county, and their many visitors; now, therefore, be it

RESOLVED, BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS, That the establishment of the Great Basin Heritage Center in White Pine County is an important project for the area and is supported by the committee; and be it also

RESOLVED, That the many people and organizations who are working diligently to establish the Great Basin Heritage Center in White Pine County are applauded, and all pertinent Federal, State, and Local government agencies are urged to cooperate fully to ensure the success of this effort; and be it also

RESOLVED, That the U.S. Secretary of Interior is hereby urged to designate White Pine County as the location of the Great Basin Heritage Center; and be it also

RESOLVED, The copies of this resolution be transmitted to the U.S. Secretary of Interior; the Director of the Bureau of Land Management; the Director of the National Park Service; the Assistant to the President and Director of Intergovernmental Affairs; Senators Richard H. Bryan and Harry Reid; Representatives James H. Bilbray and Barbara Vucanovich; the Governor of the State of Nevada; the Board of Commissioners for White Pine County; the City Council of Ely; and the White Pine County Economic Diversification Council.

Adopted November 8, 1993

United States Department of the Interior
NATIONAL PARK SERVICE
GREAT BASIN NATIONAL PARK
BAKER, NEVADA 89311

IN REPLY REFER TO:

A38

January 27, 1994

Dana R. Bennett, Staff Director
Committee on Public Lands
Nevada Legislature
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Bennett:

Thank you for your letter to Director Kennedy regarding the Committee on Public Lands' support for placing a Great Basin Heritage Center in White Pine County, Nevada. The Director has referred your letter to this office for reply.

We agree that the development of a Great Basin Heritage Center would have a positive effect on visitors to White Pine County and would increase the awareness for the natural resources and cultural heritage of the Great Basin physiographic region.

Great Basin National Park has participated in the Great Basin Natural Resource and Cultural Heritage Fair in the past. This community educational effort has been a success due, in part, to the participation of numerous agencies. We look forward to continuing our support of undertakings such as this, that will better serve the public and offer expanded opportunities for quality visitor services in the communities surrounding Great Basin National Park. The educational aspects of establishing an environmental learning center in conjunction with a Heritage Center have the potential to promote a deeper understanding of the Great Basin region's cultural and historical features. The concept of maximizing local participation in coordination with other agencies makes this proposal a valuable endeavor that has the power to produce positive effects in providing responsible stewardship for the Great Basin region.

We appreciate your informing us of the Committee's resolution and wish you success in its completion.

Sincerely,

Richard R Callison for

Albert J. Hendricks
Superintendent

APPENDIX J

Committee Letter to the

Grand Canyon Visibility Transport Commission

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

March 11, 1994

Grand Canyon Visibility Transport Commission
600 17th Street, Suite 1705 S. Tower
Denver, CO 80202

To whom it may concern:

Recently, Nevada's Legislative Committee on Public Lands became aware of proposed air emission management and evaluation criteria options being considered to provide cleaner air over the Grand Canyon and other national parks, monuments, and wilderness areas. While the members of this committee agree that a clear vista is valuable for the enjoyment of these beautiful areas, we are concerned that such a goal may be pursued without diligent attention to the effects it would have on economic development and growth in nearby areas.

Consequently, the Public Lands Committee requests that the commission consider the following important points while evaluating the various options:

- Each of the options being considered must undergo a vigorous cost-benefit analysis to ensure that the final choice will achieve the desired goal without unduly restricting surrounding areas.

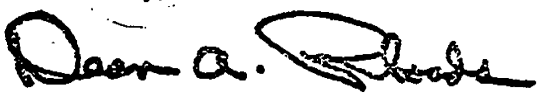
- Equal or greater attention should be given to emissions management options that concentrate on the areas where the problems originate. For the Grand Canyon, the Southwest area, including Mexico, has a much greater effect on the air over the Grand Canyon than does Nevada.

- States that meet the existing requirements under the Clean Air Act, such as Nevada, should not be penalized for enjoying growth and expanding economies.

Please maintain this committee on the commission's mailing list so that the members may be fully informed of the commission's progress. Do not hesitate to contact me if there are any questions or concerns about this letter.

Thank you for your attention.

Sincerely,



Senator Dean A. Rhoads,
Chairman, Nevada's Legislative
Committee on Public Lands

DAR/pok:PLL13
cc: Governor Robert J. Miller
Nevada's Congressional Delegation

APPENDIX K

Committee Letter to Peter G. Morros, Director,

State Department of Conservation and Natural Resources,

Regarding the Division of State Lands

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

June 1, 1994

Peter G. Morros
Director
State Department of Conservation and Natural Resources
123 W. Nye Lane
Carson City, Nevada 89710

Dear Mr. Morros:

Eleven years ago, the Nevada Legislature recognized the importance of a state plan for the management of federally-controlled lands in this state. Since that time, the Legislative Committee on Public Lands (*Nevada Revised Statutes* [NRS] 218.5363) has become concerned that this plan may not be receiving adequate attention from State Government.

In 1983, the Legislature approved Senate Bill 40, which requires the Division of State Lands, acting as the State Land Use Planning Agency, to "prepare, in cooperation with appropriate state agencies and local governments throughout the state, plans or policy statements concerning the acquisition and use of lands in Nevada which are under federal management." This requirement was codified in NRS 321.7355 and is still in effect.

The Division prepared and issued the *Nevada Statewide Policy Plan For Public Lands.* As then-Governor Richard H. Bryan explained in his transmittal letter, the document consists of "locally-adopted plans [which] should be used as guidelines for all levels of government in Nevada to determine the best use and management for our vast public land resource."

When the legislation was passed and the plans were developed, legislators and others interested in public lands issues assumed that the Division would continue to work with the counties and other local governments to implement and refine the work begun in 1983. However, it has come to this committee's attention that the Division does not have a state planner assigned to handle federal land management issues. In fact, the Division now has fewer planners than it did in 1983.

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As you know, the Federal Government controls the vast majority of land in this state, creating a difficult and complex situation in our counties. It could be argued that more aggressive state involvement in the management of federally-controlled lands may have prevented much of the frustration and anger county commissions and city councils are currently experiencing with federal lands issues. Because Nevada's local governments are closely governed by the state, more effort needs to be made at the state level to manage federal lands and to assist local governments with the complexity of this issue.

Therefore, Nevada's Legislative Committee on Public Lands strongly urges you to reconsider the request from the Administrator of the Division of State Lands for an additional planner whose full-time responsibilities will involve participation in the management of federally-controlled lands and assistance to local governments with federal lands issues. Once the Division's request is submitted with the rest of the budget to the Governor and the 1995 Legislature, the members of this committee will encourage their colleagues to support the staff addition and strive to ensure the position survives the budget process.

Please do not hesitate to contact me should you have any questions or concerns about this issue. The members of Nevada's Legislative Committee on Public Lands look forward to your reconsideration of this important planning position.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL23

CC: Robert J. Miller, Governor, State of Nevada
John P. Comeaux, Director, Department of Administration
Pamela B. Wilcox, Administrator, Division of State Lands
Senator William J. Raggio, Chairman, Senate Committee on Finance
Assemblyman Morse Arberry, Jr., Chairman, Assembly Committee on Ways and Means

APPENDIX L

Committee's Responses to *Rangeland Reform '94*

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN JOHN W. MARVEL, Vice Chairman
SENATOR MARK A. JAMES
SENATOR MIKE MCGINNESS
ASSEMBLYMAN P. M. ROY NEIGHBORS
ASSEMBLYMAN JOHN B. REGAN
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

July 7, 1994

Rangeland Reform '94
P.O. Box 66300
Washington, DC 20035-6300

RE: United States Department of Interior
Bureau of Land Management (BLM)
Proposed Rule
43 CFR Parts 4, 1780, and 4100
Department Hearings and Appeals Procedures:
Cooperative Relations; Grazing Administration--
Exclusive of Alaska

COMMENTS ON PROPOSED GRAZING REFORM
BY
NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.5363)

On June 1, 1994, in a public meeting, the members of Nevada's Legislative committee on Public Lands voted unanimously to comment on the livestock grazing reform proposed by the United States Department of Interior and BLM as described in the proposed rule published in the *Federal Register* on April 28, 1994.

General Comments

First and foremost, the committee questions the need to radically change the rules governing livestock grazing on public lands. Primarily, the committee is concerned about the lack of scientific evidence for extensive reform. In fact, the committee would argue that recent studies have concluded that changes to existing rules are not necessary. The federal land management agencies currently have all of the authority they need to punish abusive ranchers and reward and encourage good stewards.

In 1989, the National Research Council (NRC), a distinguished organization created by the National Academy of Sciences, formed a committee to examine the scientific basis

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of methods used by the Soil Conservation Service, BLM, and the U.S. Forest Service to inventory, classify, and monitor the nation's 330 million acres of public rangelands. As you probably know, the committee released its findings and recommendations in the NRC publication *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* in 1994. The report states that "[a]ll existing national-level rangeland assessments suffer from the lack of current, comprehensive, and statistically representative data obtained in the field." Further, "[t]he fact that the available data do not allow investigators to reach definitive conclusions about the state of rangelands seriously impedes efforts to resolve the debate about proper management of the nation's federal and nonfederal rangelands."

The members of Nevada's Legislative committee on Public Lands agree with the NRC that "current inventories [of rangeland health] are inadequate" and a "national system of inventorying and monitoring rangeland health is needed." The committee requests that the Department of Interior, before implementing major changes to its management of rangelands, to investigate and implement the NRC's recommendations to define, classify, and improve rangeland health and to work in cooperation with the Department of Agriculture to prevent overlap and duplication between the agencies.

The committee also requests that BLM fully examine the consequences of massive reform to rangeland management. If such reform results in forcing ranchers off of the public forests, has BLM provided for the hiring of additional range conservationists to take the place of these ranchers as "on-the-ground" managers? The daily routine of a rancher on the public lands is an important part of the management of that land, which must not be casually dismissed. The Public Lands committee suspects that the Federal Government has neither the funding nor the inclination to hire more range cons. If the true goal of rangeland reform is to benefit the land, this potential reality must be considered.

Section 1784.6-1, "Multiple Resource Advisory Councils"

The Public Lands committee supports the concept of these councils. The members approve of increased local input into the management of Federal lands and are pleased by the weight given to the recommendations of such councils.

However, the committee is concerned about the rules governing the membership of the councils. Under the proposal, it is possible that a major interest group could be excluded from membership by a hostile governor or secretary. For example, there is no guarantee that livestock operators will be represented on a council. The Department should mandate that specific interests be included on the councils.

On page 14320 of the *Federal Register*, the Department specifically invited comment about the requirement that recommendation letters for membership to the councils come from individuals within the area to be served by the council. This committee

agrees with this requirement. In order to be effective, the members of the council must have some connection with the area in question. Requiring recommendation letters to come from within the service area is an important way to ensure this connection.

The committee is also concerned that the proposed language makes the establishment of the councils arbitrary. For example, the BLM State Director may decide not to establish a council in northern Washoe County or extreme southeastern Nevada, pursuant to paragraph (2) of subsection (a). Such a decision may leave public lands users without a strong voice in the management of the area. It is important that some alternative exist for users of remote public lands.

Section 4120.3-9, "Water Rights for the Purpose of Livestock Grazing on Public Lands"

Despite assurances to the contrary, this committee is concerned that BLM's inclusion in a water right used for livestock watering is the beginning of an incursion by the Federal Government into yet another aspect of state sovereignty. Based on historical Federal actions, it is not unreasonable to expect that implementation of this seemingly-innocuous language would lead to additional requirements that BLM also hold the water right for water used in mining, agriculture, recreation, or any other use on federally-controlled land. In Nevada where almost 87 percent of the land is controlled by the Federal Government, where rainfall averages 8 inches a year, and where much of the water originates on public lands, it is not inconceivable to imagine that such actions would eventually result in the Federal Government controlling most, if not all, of our water as well. Such a result is entirely unacceptable to this state and must be averted. This committee is adamantly opposed to Section 4120.3-9 in the proposed regulations and requests its removal.

Section 4130.7-1, "Payment of Fees"

The members insist that any change to the grazing fee must be fair. Consequently, the proposed formula must take into account the differences between regions. To do this, the survey of private lease fees should be expanded to list, in more complete detail, the services and facilities the leaser receives from the landowner for the fee paid. We are certain that a more complete survey will find that a high fee reflects the amenities (such as fences, transportation of water, and provision of salt blocks) provided by the landowner to the livestock owner. Section 4130.7-1 would require that the grazing fee approximate fair market value. Such approximation must take into account the services provided by a private landowner that may not be provided by the federal landowner.

In addition, by considering the differences between regions, a fair formula would meet another stated goal in Section 4130.7-1: that "the fee should not cause unreasonable impacts on communities that are not economically diverse." In Nevada, where most of the land is controlled by the Federal Government, the vast majority of livestock operations and their communities must depend on resources from the public lands for

viability. Nevada is also the driest state in the West, averaging 8 inches of precipitation a year. A recent study by the University of Nevada, Reno, evaluated the economic impact of higher fees on the livestock industry in Nevada and concluded that any fee over $3 would be disastrous. Currently, cattle prices are $10 to $12 lower than they were when this study was conducted, indicating that the final outcome may be even worse than originally predicted.

The members also are concerned about the reliance, in developing the new formula, upon the 1983 Grazing Market Rental Appraisal. The committee has no concern about the use of the 1966 Western Livestock Grazing Survey, which is a valid study, but believes that the 1983 study is inaccurate and erroneous. The Public Lands committee requests that BLM carefully review the academic criticism of the study and reconsider its use as a basis for the new formula.

Additionally, the committee is pleased to see that the Departments of Interior and Agriculture reconsidered their earlier decision not to establish an incentive system for good stewards. However, more detail must be provided before this committee will completely support the plan. The program mentioned in Section 4130.7-2, "Incentive-Based Grazing Fee Reduction," does not include enough information. Before implementing this rule, BLM must expand on its stated concept and provide clearer directions to the ranchers and the land managers.

Finally, the committee notes that many of BLM's grazing rules have been changed to accommodate uses other than livestock grazing; however, the rule governing fees has not. If the BLM intends to issue permits or formally approve non-grazing uses of public lands, it should charge for that privilege. It is interesting to note, at this point, that livestock operators are the only ones being affected by "rangeland reform," yet they are not the only rangeland users. This committee believes that other users should pay their "fair share" as well.

The members of Nevada's Legislative committee on Public Lands committee requests that the formula be restructured, taking into consideration the points raised in these comments.

Section 4130.7-2, "Incentive-based grazing fee reduction"

The committee is pleased that the Departments of Interior and Agriculture have reconsidered their earlier decision not to establish an incentive system for good stewards. However, more detail must be provided before this committee will completely support the plan. In particular, the members are concerned with the subjective nature of the concept. Who will decide if a rancher is qualified for a fee reduction for good stewardship? How will good stewardship be measured?

A Nevada resident, Walter I. Leberski proposes that qualification be based on the amount of money a rancher invests in on-the-ground improvements. If a rancher expends a specific amount of funding on designated projects, that rancher would earn credit toward, or a specified reduction in, the grazing fee. This idea provides a concrete, measurable way of determining qualification for the reduction; an easily understood incentive; and opportunities for valuable land improvements that the government cannot afford to do itself. The members believe that Mr. Leberski's plan has merit and deserves further study.

Section 4160.3, "Final Decisions"

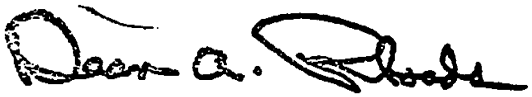
The implementation of this section as proposed would strip ranchers of one of the basic rights of all Americans: the right to be considered innocent until proven guilty. By placing grazing decisions in full force and effect, BLM will effectively terminate the livelihoods of innocent ranchers. While this committee agrees that ranchers who willfully and wantonly abuse the public lands with which they are entrusted must be corrected, it is concerned that this proposal does not contain a mechanism to protect the innocent rancher or the rancher who inadvertently violates the rules.

This committee applauds the Department's attempt to streamline the decision process; however, history indicates that BLM rarely accomplishes its tasks within the time allotted (for example, few management plans are on schedule). Therefore, the committee urges BLM to reject this proposed rule and work on expediting decisions under the current rules. If the proposal is implemented, the stated goal may not be achieved, but many innocent ranchers will lose money and even their entire ranches.

Concluding Remarks

Nevada's Legislative committee on Public Lands appreciates the opportunity to comment on these proposed rules. It cautions the BLM and the Department of Interior to tread cautiously into the quagmire of reform. Despite all good intentions, excessive regulation may harm the very land you are trying to protect. Please do not hesitate to contact me if I can provide any additional information or assistance.

Sincerely,



Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL29

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN JOHN W. MARVEL, Vice Chairman
SENATOR MARK A. JAMES
SENATOR MIKE MCGINNESS
ASSEMBLYMAN P. M. ROY NEIGHBORS
ASSEMBLYMAN JOHN B. REGAN
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

July 7, 1994

Rangeland Reform '94
P.O. Box 66300
Washington, DC 20035-6300

RE: United States Department of Agriculture
U.S. Forest Service (USFS)
Proposed Rule
36 CFR Part 222
Range Management; Grazing Fees

COMMENTS ON PROPOSED GRAZING FEE FORMULA
BY
NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.5363)

On June 1, 1994, in a public meeting, the members of Nevada's Legislative Committee on Public Lands voted unanimously to comment on the new grazing fee formula proposed by the United States Forest Service as described in the proposed rule published in the *Federal Register* on April 28, 1994.

The members insist that any change to the grazing fee must be fair. Consequently, the proposed formula must take into account the differences between regions. To do this, the survey of private lease fees should be expanded to list, in more complete detail, the services and facilities the leaser receives from the landowner for the fee paid. We are certain that a more complete survey will find that a high fee reflects the amenities (such as fences, transportation of water, and provision of salt blocks) provided by the landowner to the livestock owner. Section 222.51 would require that the grazing fee approximate fair market value. Such approximation must take into account the services provided by a private landowner that may not be provided by the federal landowner.

In addition, by considering the differences between regions, a fair formula would meet another stated goal of the Forest Service's: that "the fee charged should not cause unreasonable impacts on livestock operations that are heavily dependent on public forage." In Nevada, where 87 percent of the land is controlled by the Federal Government, the vast majority of livestock operations must depend on the public lands for viability. Nevada is also the driest

(O)-807

state in the West, averaging 8 inches of precipitation a year. A recent study by the University of Nevada, Reno, evaluated the economic impact of higher fees on the livestock industry in Nevada and concluded that any fee over $3 would be disastrous. Currently, cattle prices are $10 to $12 lower than they were when this study was conducted, indicating that the final outcome may be even worse than originally predicted.

The members also are concerned about the reliance, in developing the new formula, upon the 1983 Grazing Market Rental Appraisal. The committee has no concern about the use of the 1966 Western Livestock Grazing Survey, which is a valid study, but believes that the 1983 study is imprecise and erroneous. The Public Lands Committee requests that the USFS carefully review the academic criticism of the study and reconsider its use as a basis for the new formula.

Finally, the members are pleased to see that the USFS and the Bureau of Land Management have reconsidered their earlier decision not to establish an incentive system for good stewards. However, more detail must be provided before this committee will completely support the plan. The program mentioned in Section 222.51 does not include enough information. Before implementing this rule, the USFS must expand on its stated concept and provide clearer directions to the ranchers and the land managers.

A Nevada resident, Walt Leberski proposes that qualification be based on the amount of money a rancher invests in on-the-ground improvements. If a rancher expends a specific amount of funding on designated projects, that rancher would earn credit toward, or a specified reduction in, the grazing fee. This idea provides a concrete, measurable way of determining qualification for the reduction; an easily understood incentive; and opportunities for valuable land improvements that the government cannot afford to do itself. The members believe that Mr. Leberski's plan has merit and deserves further study.

The members of Nevada's Legislative Committee on Public Lands Committee requests that the formula be restructured, taking into consideration the points raised in these comments.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL27

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

July 7, 1994

Rangeland Reform '94
P.O. Box 66300
Washington, DC 20035-6300

RE: United States Department of Agriculture
U.S. Forest Service (USFS)
Proposed Rule
36 CFR Part 222
Management of Grazing Use Within
Rangeland Ecosystems

COMMENTS ON PROPOSED GRAZING REFORM
BY
NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.5363)

On June 1, 1994, in a public meeting, the members of Nevada's Legislative Committee on Public Lands voted unanimously to comment on the new grazing management rules proposed by the United States Forest Service as described in the *Federal Register* on April 28, 1994.

Primarily, the committee is concerned about the lack of scientific evidence that indicates extensive reform is necessary. In fact, the committee would argue that recent studies have concluded that changes to existing rules are not necessary. Both federal land management agencies currently have all of the authority they need to punish bad ranchers and reward and encourage good stewards.

In 1989, the National Research Council (NRC), a distinguished organization created by the National Academy of Sciences, formed a committee to examine the scientific basis of methods used by the Soil Conservation Service, Bureau of Land Management, and the USFS to inventory, classify, and monitor the nation's 330 million acres of public rangelands. As you probably know, the committee released its findings and recommendations in the NRC publication *Rangeland Health: New Methods to Classify,*

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Inventory, and Monitor Rangelands in 1994. The report states that "[a]ll existing national-level rangeland assessments suffer from the lack of current, comprehensive, and statistically representative data obtained in the field." Further, "[t]he fact that the available data do not allow investigators to reach definitive conclusions about the state of rangelands seriously impedes efforts to resolve the debate about proper management of the nation's federal and nonfederal rangelands."

The members of Nevada's Legislative Committee on Public Lands agree with the NRC that "current inventories [of rangeland health] are inadequate" and a "national system of inventorying and monitoring rangeland health is needed." The committee requests that the USFS, before implementing major changes to its management of rangelands, to investigate and implement the NRC's recommendations to define, classify, and improve rangeland health and to work in cooperation with the Department of Interior to prevent overlap and duplication between the agencies.

Finally, the committee requests that USFS fully examine the consequences of massive reform to rangeland management. If such reform results in forcing ranchers off of the public forests, has the USFS provided for the hiring of additional rangers to take the place of these ranchers as "on-the-ground" managers? The daily routine of a rancher in a national frest is an important part of the management of that land, which must not be casually dismissed. The Public Lands Committee suspects that the Federal Government has neither the funding nor the inclination to hire more rangers. If the true goal of rangeland reform is to benefit the land, this potential reality must be considered.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL28

APPENDIX M

Committee Resolution 93-4,

"Urging Implementation of Recommendations

Concerning Rangeland Health"

and Response from the

U.S. Department of Agriculture

NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS

RESOLUTION 93-4

URGING IMPLEMENTATION OF RECOMMENDATIONS CONCERNING RANGELAND HEALTH

WHEREAS, The National Research Council (NRC) is a distinguished organization of respected scientists and was created by the National Academy of Sciences in 1916 to assist the Academy in furthering its purposes of increasing knowledge and providing advice to the Federal Government; and

WHEREAS, In 1989, the NRC formed a committee to examine the scientific basis of methods used by the Soil Conservation Service, United States Bureau of Land Management, and the U.S. Forest Service to inventory, classify, and monitor over 330 million acres of public rangelands; and

WHEREAS, The committee released its findings and recommendations in the NRC publication *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* in 1994; and

WHEREAS, The report states that "[a]ll existing national-level rangeland assessments suffer from the lack of current, comprehensive, and statistically representative data obtained in the field." Further, "[t]he fact that the available data do not allow investigators to reach definitive conclusions about the state of rangelands seriously impedes efforts to resolve the debate about proper management of national's federal and nonfederal rangelands." Finally, "[a]nswering the question 'Are our rangelands healthy?' may be the most important contribution . . . to resolving the debate over the use and management of federal and nonfederal rangelands";

NOW, THEREFORE, BE IT RESOLVED, That Nevada's Legislative Committee on Public Lands agrees with the NRC that "current inventories [of rangeland health] are inadequate" and a "national system of inventorying and monitoring rangeland health is needed"; and be it further

RESOLVED, That the Public Lands Committee urges the U.S. Department of Interior to investigate and implement the NRC's recommendations to define, classify, and improve rangeland health before establishing specific standards and guidelines governing the administration of livestock grazing on public lands as provided in Subpart 4180 of the proposed rules published in the *Federal Register* on March 25, 1994; and be it further

RESOLVED, That the Public Lands Committee also urges the U.S. Department of Agriculture to investigate and implement the NRC's recommendations in cooperation with the Department of Interior to prevent overlap and duplication between the agencies; and be it further

RESOLVED, That the U.S. Congress is urged to prohibit the departments from unduly restricting any use of public lands, unless such restriction is based on sound, verifiable scientific findings; and be it further

RESOLVED, That a copy of this resolution be transmitted to the Secretaries of Interior and Agriculture, the Speaker of the U.S. House of Representatives, the

Majority Leader of the U.S. Senate, U.S. Senators Richard H. Bryan and Harry Reid, and U.S. Representatives James H. Bilbray and Barbara Vucanovich.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

16 AUG 1994

Ms. Dana R. Bennett
Staff Director
Committee on Public Lands
Nevada Legislature
Legislative Building, Capitol Complex
Carson City, Nevada 89710

Dear Ms. Bennett:

Thank you for your letter of June 3, 1994, regarding concerns about the scientific basis for rangeland reform, and for sending the Secretary a copy of your committee's Resolution 93-4, urging implementation of National Research Council (NRC) recommendations concerning rangeland health.

I am pleased to report that agencies within the Departments of Agriculture and the Interior are already exploring a Government-wide, cooperative approach to the development and implementation of recommendations made in the NRC report, as well as the Society for Range Management's Unity in Terms and Concepts Report. The NRC report stated that ". . . rangeland health should be defined as the degree to which the integrity of the soil and ecological processes of rangeland ecosystems are sustained." It is our goal to work cooperatively, and on a nation-wide scale, with the public and private sectors to build a firmer scientific foundation for rangeland assessment and management.

I hope your committee shares our excitement in the unprecedented, cooperative rangeland reform efforts that are now underway.

Thank you again for writing. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

James R. Lyons
Assistant Secretary
Natural Resources and Environment

APPENDIX N

Committee Response to the Draft Environmental Impact Statement

on *Rangeland Reform '94*

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

August 25, 1994

Rangeland Reform '94 EIS
Bureau of Land Management
P.O. Box 66300
Washington, DC 20035-6300

COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)
RANGELAND REFORM '94
BY
NEVADA'S LEGISLATIVE COMMITTEE ON PUBLIC LANDS
(*Nevada Revised Statutes* 218.5363)

On June 1, 1994, in a public meeting, the members of Nevada's Legislative Committee on Public Lands voted unanimously to comment on the DEIS for rangeland reform prepared by the United States Department of Interior.

Introductory Remarks

In its response to the recently-published proposed rules for livestock grazing, the committee noted its concern about the lack of scientific evidence to indicate that extensive reform is necessary. In fact, the committee would argue that recent studies conclude that changes to existing rules are not necessary. Both the Bureau of Land Mangement (BLM) and U.S. Forest Service currently have all of the authority they need to punish bad operators and reward good stewards. The DEIS does not change the committee's opinion in this regard.

The committee is also concerned about the lack of consistency between the DEIS and the proposed regulations. The DEIS, as the committee understands it, is the supporting document for the proposal; however, the DEIS does not address issues such as the expanded authority to impose grazing reductions, the taking of water rights, and the granting of permits to entities that will not use the grazing permits for domestic livestock production. It appears that omissions of such significance may render the DEIS legally deficient.

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Discussion of Alternatives

Following are the committee's comments about the range management alternatives discussed in the DEIS.

Alternative No. 1: Current Management (No Action) Alternative

The DEIS criticizes this alternative because it allows continuing resource damage and different grazing administrative systems, one for BLM and one for Forest Service. The conclusions in the discussion of this alternative are suspect and insufficiently supported. The Public Lands Committee again argues that the DEIS fails to provide adequate justification for rangeland reform.

Alternative No. 2: BLM-Forest Service Proposed Action

This alternative advocates adopting all of the proposed regulations, to which the committee has responded in detail. The DEIS continues to emphasize the need for national standards and guidelines to govern BLM administration of livestock grazing. The DEIS incorrectly assumes that BLM resource management plans lack such direction and disregards existing BLM policies concerning the protection of big game and wildlife habitat, riparian areas, and water quality.

The Preferred Alternative contains factual assumptions with which this committee does not agree. For example, the DEIS claims that current grazing use is causing continuing damage to rangeland resources, in both upland and riparian areas. However, respected studies conclude that the majority of rangelands are either improving or stable, and riparian areas continue to improve under properly managed livestock grazing.

The DEIS also argues that the removal of livestock grazing will result in rapid improvement of both uplands and riparian areas. Rangeland research and experience indicate that the removal of livestock grazing from damaged rangelands results in immediate and rapid improvement. However, after about 3 years of nonuse, there is little or no measurable improvement. Intensive management techniques, including grazing, are better suited to enhance range conditions.

In addition, the DEIS states that policies for ecosystem management or protection of biological diversity do not exist. However, the Forest Service and BLM have ecosystem management and biological diversity policies, adopted under existing authority. Both agencies already have ample statutory and regulatory authority, particularly to immediately implement grazing decisions to protect rangeland resources. Consequently, the committee argues that the administrative appeals system should not be limited as proposed.

Finally, the DEIS makes some economic assumptions about the proposed grazing fee formula that this committee finds troublesome. The assumptions include a 21 percent decline in range betterment funds if the current grazing fee formula is retained and an

increase of up to 171 percent if the Preferred Alternative is implemented. Both assumptions are incorrect. Congress has consistently appropriated about $10 million, regardless of the grazing fee receipts for BLM lands. There is no basis to assume it would not continue to do so under the No Action Alternative. The DEIS also fails to consider the reductions in grazing fee receipts due to decreases in grazing levels and ranchers leaving the federal lands.

The DEIS also assumes that there may be a short-term decline in grazing on land but that the long-term decline will be equal to what is currently occurring. Economic impacts are said to be both local and insignificant. The DEIS also claims that job losses will be insignificant and the same as at current fee levels.

These economic assumptions are incorrect. The job loss estimates concern ranch employees and do not include the family members who work on the ranch. Furthermore, these numbers assume no loss of ranches due to the increased fee. The DEIS also omits the secondary economic contributions by the agriculture industry. These factors are extremely important and refute the conclusion of insignificance.

Alternative No. 3: Livestock Production

This alternative would give the permittee greater control over the operation of the permit and would use local grazing advisory boards for planning, implementation, and evaluation of range conditions and management. The grazing advisory boards would develop the management standards and guidelines for grazing. The Forest Service and BLM would still impose performance criteria for the renewal of existing permits or the issuance of new permits and would require title of all range improvements be in the United States. This alternative does not include additional changes in appeals, issuance of stays, grazing advisory boards, or management of threatened, endangered or sensitive species.

Under this alternative, the DEIS assumes that rangeland conditions would deteriorate at an alarming rate. Longer permit terms would be a disincentive to improve range conditions. Actual upland range conditions would slowly improve or remain the same. Management would emphasize grazing at the expense of riparian areas, which would continue to decline. Ranchers could not be expected to make decisions to protect or enhance riparian areas.

The committee finds such conclusions bothersome. The livestock industry has long been the driving force to adopt new grazing management policies, often before they are accepted by agency personnel. The industry members have also performed monitoring more often than either agency, where monitoring is a low priority. If ranchers do not take care of their land, they will go out of business. The conclusions in this alternative provide yet another example of federal agency arrogance by presuming that citizens and local entities are incapable of self-government.

Alternative No. 4: Environmental Enhancement

This alternative indicates that grazing would decrease on both BLM and forest lands. There would be short-term increases in agency work loads, but the agencies would become more efficient, due to the end of subleasing and the immediate punishment of bad operators. Grazing would be removed from any area deemed to be not functioning properly. The DEIS admits that recovery in many systems would be slow or nonexistent, even if grazing is removed. Upland watershed would not change significantly, but riparian areas would rapidly improve. Wildlife habitat would also improve due to increase in food and cover, and riparian dependent species would greatly increase. The DEIS estimates job loss at 7,239 to 7,824 jobs, and total income is estimated to decline by $292.3 million to $314 million.

This committee suggests that the secondary economic impacts would be even greater than assumed. The DEIS acknowledges social and economic impacts on a local basis, but expects that persons leaving the agriculture business would be replaced by urbanites escaping the cities. However, in Nevada's case, few urbanites are likely to move to the many isolated areas where ranches are now located. The DEIS does not recognize this fact.

This alternative acknowledges that future cooperation between permittees and federal agency officials will be difficult. Such an assumption could safely be made for most of the DEIS alternatives.

Alternative No. 5: No Grazing

The DEIS assumes that the removal of livestock from the public lands will result in significant environmental improvements and relatively insignificant economic losses. This committee argues that the economic loss to public lands states, such as Nevada, and their rural communities will be devastating and should not be so lightly disregarded by the Federal Government. In addition, as the committee commented earlier, the removal of ranchers from the public lands will, in the long term, be harmful to the environment. This committee does not believe that the federal land management agencies have the finances or the inclination to assign employees to do the daily, on-the-ground management currently provided by ranchers.

Concluding Remarks

The DEIS also includes some interesting admissions and inconsistencies:

- According to this document. the Forest Service does not have a widespread unauthorized use problem. If there is no significant problem, why are permit compliance and increased penalties so critical?

- Under the Preferred Alternative, the improvement in riparian areas would not be immediately dramatic. However, other parts of the DEIS claim significant improvements from rangeland reform. If the objective is to accelerate the improvement of range conditions, it is interesting that the DEIS discussion of the

Preferred Alternative does not support the conclusion that rangeland reform will accomplish this goal.

In addition, the DEIS does not analyze some important issues:

- If ranches are sold for private development, there will be a significant loss of open space. Consequently, an increase in the construction of houses, resorts, and businesses can be expected in most of the Western United States. Currently, these ranches provide habitat for many important species because so few buildings are on the land. This loss of wildlife habitat will diminish biological diversity, not increase it.

- If the private land is converted to another land use, such as resort, residential, or industrial, water rights will also be converted. Agriculture water uses are more consumptive in many cases than residential. This means that the unused water right appropriation may be sold and converted to industrial uses. The DEIS fails to address this issue, despite the significant consequences to wildlife and fisheries.

- Research shows that livestock grazing benefits rangeland and wildlife habitat. The DEIS does not address the impacts on wildlife if livestock management is reduced or removed. In addition, if livestock are removed, many water projects for wildlife will be lost. The DEIS assumes that BLM can maintain these projects, but if the water rights are converted, there will be no projects to maintain.

The issues raised in the DEIS and these comments generate significant concerns about the environmental and economic consequences of rangeland reform. However, the DEIS does not discuss mitigation measures to reduce the effects of significant changes to rangeland management. In Nevada, where the Federal Government controls almost 87 percent of our land, such mitigation is crucial. Our rural communities and their residents deserve more consideration than this DEIS provides.

In light of the issues raised herein, the Public Lands Committee respectfully requests that the Department of Interior carefully reconsider the findings of this DEIS and delay implementation of extensive rangeland reform until it can be proven to be necessary.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok
LANDS\40842.53

APPENDIX O

Committee Letters to U.S. Senator J. Bennett Johnston

and

U.S. Representative Barbara Vucanovich

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

June 30, 1994

The Honorable J. Bennett Johnston
United States Senate
136 Senate Hart Office Building
Washington, DC 20510

Dear Senator Johnston:

On June 1, 1994, Nevada's Legislative Committee on Public Lands (*Nevada Revised Statutes* 218.5363) received several reports about the status of the mining industry in Nevada and the effects proposed Congressional legislation would have, if passed, on one of our state's most important industries. Based on the information provided that day, the members of the committee voted unanimously to write to you, as Chairman of the Conference Committee, to express our grave concern about this issue.

Mining has always been an important enterprise in this state. Throughout our history, it has been a major source of state revenues, a staple of local communities, and a well-paying employer of our citizens. In addition, Nevada's mineral deposits have provided much of the materials and wealth that have built the United States into a world power. Currently, the United States is among the top two countries in the world for the production of copper, gold, and lead.

Mining's contribution to the economic and social stability of Nevada is considerable. In fiscal year 1991, Nevada's mining industry paid around $43 million in net proceeds taxes and almost $10 million in mineral leasing, mining claim fees, and oil production taxes. Over 44,000 people are employed in mining and mining-related jobs, which pay an average annual wage of $36,000. In five of our largest rural communities, mining directly employs one out of every three workers. Because 87 percent of Nevada's land is controlled by the Federal Government, mining in this state is often more affected by federal, rather than state, law.

However, the state has not been overly lenient in the regulation of mining. Currently, Nevada has the toughest reclamation statutes in the country, a strong water law, and an ongoing abandoned mines project. We believe that Nevada does a very good job

in overseeing this major enterprise (as is the case with our other vital industry: gaming), and we are concerned whenever the Federal Government purports to usurp state authority in this area.

Should you doubt that federal regulation is harming the mining industry in this country, we encourage you to consider the decrease in exploration activities, the first step in establishing a mining operation. In Nevada alone, the number of claims filed has dropped 49 percent in 2 years, and nine of the largest mining companies have reduced or eliminated their American exploration offices and turned their attention south. In 1993, not one single mine opened in Nevada. Without a doubt, the movement of American mining companies to Mexico and South America is due to increased (and the threat of increased) regulation in the United States and decreased regulation in foreign countries. While the U.S. is planning to toss out a law that has worked well for over 120 years, other countries are adopting provisions similar to the Mining Law of 1872.

In fact, the 1993 annual report of one of Nevada's major mines included the following statement:

> The current socio-political climate in the United States has certainly been a factor in the decision to move off-shore. Equally important has been the fact that many developing companies now welcome foreign investment and have streamlined regulatory procedures to allow mining companies to operate efficiently and profitably while maintaining sound environmental practices. We believe that the potential to discover and develop a major deposit is significantly greater outside the United States than within.

This statement clearly shows the effect harsh regulations will have on the mining industry, states' economic stability, and national security. As policymakers, we should all be concerned about the flight of mining companies out of this country. While we agree that no mine should be allowed to operate in an environmentally irresponsible manner, we maintain that mining is a crucial industry, which must not be unduly restrained.

Consequently, the members of this committee urge you to ensure that the final legislation submitted by the Conference Committee is fair and reasonable. We also urge that the committee's deliberations include a consideration of the economic and social effects on states, such as Nevada. In particular, we urge you to reconsider the proposals contained in the "Chairman's Mark" that establish royalties on the gross production of minerals and provide the Secretary of Interior with broad, discretionary authority to determine the suitability of a mining operation on public land. The royalty proposal is simply a graduated income tax that will immediately cost the State of Nevada $2 million. The suitability clause will justifiably cause any mining company to question whether the expense of exploration is worth it and accelerate the industry's exodus from the United States.

Finally, we strongly urge you and the rest of the Conference Committee to address and incorporate the major areas of concern outlined in the January 26, 1994, letter to you from 42 of your Senatorial colleagues.

The members of Nevada's Committee on Public Lands believe that a workable solution, one that benefits federal and state governments without destroying a valuable industry, is possible. Please do not hesitate to contact me if I or the committee can provide additional assistance on this important issue.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:PLL25

CC: United States Senators:
Daniel Akaka
Bill Bradley
Dale Bumpers
Larry E. Craig
Frank H. Murkowski
Malcolm Wallop

United States Representatives:
Michael D. Crapo
E. (Kika) de la Garza
John D. Dingell
Harris W. Fawell
Jack Fields
William D. Ford
William J. Hughes
Richard H. Lehman
George Miller
Austin J. Murphy
Nick Joe Rahall
Pat Roberts
Charles Rose
Al Swift
Gerry E. Studds
Barbara Vucanovich
Don Young

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-68
Fax: (702) 687-30

June 30, 1994

The Honorable Barbara Vucanovich
United States Representative
2202 Rayburn House Office Building
Washington, DC 20515

Dear Representative Vucanovich:

Thank you for sending your staff assistant, Victoria Soberinsky, to the Fallon meeting of Nevada's Legislative Committee on Public Lands (*Nevada Revised Statutes* 218.5363) to present your letter concerning mining reform. Your comments were helpful to the committee's understanding of the current status of mining reform in Congress.

Based on the reports received at that meeting, the members of the committee voted to send a letter to Senator J. Bennett Johnston to express their concerns about the harsh provisions contained in the "Chairman's Mark" and to remind him of mining's importance to Nevada's economy. Copies of the letter are also being sent to the members of the Conference Committee; your copy is enclosed.

The Public Lands Committee also wants to thank you for your hard work in protecting Nevada and its important industries, such as mining. Although it is frightening to contemplate the kind of mining reform legislation that may emerge from the Conference Committee, it is reassuring to know that you will be right there, fighting for Nevada.

Good luck in the coming meetings. Should this committee be able to provide you with any assistance, please do not hesitate to call me.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:PLL26
Enc.

(O)-807

APPENDIX P

Committee Letters to

David Fanning, Executive Producer, *Frontline*,

U.S. Senator Frank H. Murkowski,

and

Janet Ward, Editor, *American City & County*

and

Mr. Fanning's Response Letter

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

August 8, 1994

David Fanning, Executive Producer
"Public Lands, Private Profits"
Frontline
WGBH TV
125 Western Avenue
Boston, MA 02134

Dear Mr. Fanning:

At its meeting on June 1, 1994, Nevada's Legislative Committee on Public Lands (*Nevada Revised Statutes* 218.5363) voted unanimously to protest the biased treatment of mining by your program, which aired on May 24, 1994. Your program should have presented a more complete picture of the hard-rock mining industry and allowed viewers to reach their own conclusions about the value of the industry. Instead, the viewer was told, in no uncertain terms, that only one law, the Mining Law of 1872, governs mining; that all mining companies make tremendous profits off the public lands without giving anything back to the public; and that all mining operations, like Summitville, are frauds and blatant abusers of the environment. The members of this committee disagree strongly with all of these statements.

Although the Mining Law of 1872 is an important piece of the regulatory web around mining, it is not the only one. Mining companies are subject to numerous federal and state laws designed to protect the environment and other users of the public lands. In fact, mining is regulated by over 35 federal laws. Examples of these important laws include the Wilderness Act of 1964, which protects millions of acres throughout the country from mining; the National Environmental Policy Act of 1970, which requires the study of the effects of a proposed mine before it begins operation; and the Endangered Species Act of 1973, which prohibits mining operations from adversely affecting wildlife. On a state level, Nevada has a tough reclamation law, which is often mentioned, nationally and in other states, as an effective and valuable model for this type of legislation. Why didn't your reporter investigate any of these laws and their regulation of mining?

Mining is an important part of our state's economy and, as such, a critical part of the nation's economy. Its contribution to the economic and social stability of Nevada is considerable. Nevada's mining industry pays over $81 million in state and local taxes, much of which supports the state's public educational system, and contributes over $1 billion to Nevadans' personal income. Over 47,000 people are employed in mining and mining-related jobs, which pay an average annual wage of $36,000. In five of our largest rural communities, mining directly employs one out of every three workers. Additionally, mining companies are some of the best corporate neighbors in this state. They voluntarily pay for needed social services, such as domestic violence counseling and drug abuse treatment; provide housing assistance by underwriting loans, assisting with down payments, and actually building affordable housing; and support their communities by funding neighborhood projects, children's organizations, and special events. In all, mining generates $4.7 billion in increased state output and contributes priceless enhancements for this state's quality of life. Why didn't your program highlight any of the beneficial aspects of mining?

This committee is appalled at the fraud, abuse, and damage of Summitville, but the members are also appalled at the insinuation of your reporter that this situation is normal. Every industry has one or two companies that operate disgracefully, and mining is no exception. In mining as in every industry, however, there are many more companies that function ethically and morally. Mining companies in Nevada have won prestigious awards for innovative environmental programs, provide respectable returns to their stockholders, and, essentially, lead the world in this complex and cost-sensitive business. Why wasn't the Summitville story balanced with examples of well-run mines?

Nevada came into existence because of its tremendous and valuable ore deposits. This state's silver helped the Union win the Civil War, and its vote helped President Abraham Lincoln free the slaves. Currently, Nevada leads the nation in the production of gold, silver, barite, mercury, and magnesite. Also produced are copper, lithium carbonate, gypsum, limestone, and specialty clays. These strategic minerals help the United States maintain its status as a world power, which would surely be compromised if this country had to import all of its metals. Your reporter suggested that such production is frivolous, but this committee challenges both of you to produce a television program without using any of these minerals. The mining industry is vitally important to the country and to Nevada, a state where the vast majority--87 percent--of its land is under federal control, but where mining occupies so little of it--less than one-tenth of 1 percent. One example of Nevada's vulnerability to federal whim is in the discussion of a gross royalty tax on mining. Should this be approved, mining operations will have lower net proceeds and Nevada's mining tax revenue, which is based on net proceeds, will drop dramatically. It is an industry of which the members of this committee are proud and protective, but which would never be allowed to operate irresponsibly.

The members of the Public Lands Committee are deeply disappointed that your program did not relay any of this information to the viewers. In the future, you might consider reporting the whole story and trusting your viewers to be intelligent enough to decide issues for themselves, instead of spoon-feeding them your opinion, assuming they are too stupid to balance the facts and reach a conclusion.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL30

CC: Henry Becton, President, WGBH TV
Jim Pagliarini, Manager, KNPB (Reno, Nevada)
Larry Ciecalone, Operations Manager, KLVX (Las Vegas, Nevada)

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

August 8, 1994

The Honorable Frank H. Murkowski
United States Senator
706 Senate Hart Office Building
Washington, DC 20510

Dear Senator Murkowski:

The members of Nevada's Legislative Committee on Public Lands (*Nevada Revised Statutes* 218.5363) congratulate you on an informative, professional program concerning mining reform. Your "Alaska Report" was aired in Reno, Nevada, immediately following *Frontline*'s "Public Lands, Private Profits" in May. It is the hope of this committee that other public broadcasting stations did the same.

Your program provided a critical response to the blatant bias against mining as presented by *Frontline*. Because mining on public lands is as economically important to Nevada as it is to Alaska, the members are pleased that you produced an immediate and articulate rebuttal to *Frontline*. Enclosed, for your information, is a copy of this committee's letter to the executive producer of "Public Lands, Private Profits," protesting its prejudice and lack of balance.

Also, the members appreciate the videotaped copy of "Alaska Report: Mining Reform" provided by your staff. Having this copy in the committee's files allows each of the members and other interested persons to view it as often as needed. Thank you.

Again, congratulations on a significant production. If this committee can assist you in any way in the mining reform debate, please do not hesitate to contact me.

Sincerely,

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/pok:PLL31
Enc.

(O)-807

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

August 23, 1994

Janet Ward, Editor
American City & County
6151 Powers Ferry Road, NW
Atlanta, Georgia 30339-2941

Dear Ms. Ward:

The members of Nevada's Legislative Committee on Public Lands were dismayed by the July 1994 "Editor's View," which showed amazing ignorance about the laws governing mining. While it is true that the Mining Law of 1872 is brief, containing few restrictions on hard-rock mining on public lands, it is not the only law governing the industry. Mining companies are subject to over 35 federal laws, such as the Wilderness Act, the National Environmental Policy Act, and the Endangered Species Act. On a state level, Nevada collects taxes from mining and has a tough, nationally-acclaimed, reclamation law.

Mining companies in Nevada pay over $80 million in taxes, most of which support the state's public educational system, and contribute over $1 billion to Nevadans' personal income. In five of our largest rural cities, mining directly employs one out of every three workers and pays an average annual wage of $36,000. Additionally, many mining companies are model corporate citizens: they voluntarily pay for social services, provide housing assistance, and fund children's organizations and special events. Mining generates $4.7 billion in increased state output and enhances our citizens' quality of life.

The Nevada mine mentioned did, indeed, pay $10,000 for the patented land. However, its investment to reach this point was around $1 billion, most of which directly benefited an American City and County.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman of Nevada's
Legislative Committee on Public Lands

DAR/pok
LANDS:41193.8

(O)-807

FRONTLINE

August 22, 1994

Senator Dean A. Rhoads
Chairman, Committee on Public Lands
Nevada Legislature
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Senator Rhoads,

Thank you for your letter concerning our recent broadcast "Public Lands, Private Profits." I am sorry you were disappointed in this program and want to respond to the points you raise, in the order in which you raise them.

125 Western Avenue
Boston
Massachusetts 02134
617 783 3500
Fax 617 254 0243
Telex 710 330 6687

1. In your letter you fault the program for not presenting "a more complete picture of the hard-rock mining industry."

The hard-rock mining industry was not the focus of this program. At the start, correspondent Robert Krulwich clearly states this report is about the battle over reforming the 1872 Mining Law, a law that has remained substantially unchanged for 122 years.

We examined the controversial terms of this law allowing mining companies to take title to and extract minerals from public lands. We focused on gold mining operations because of the tremendous growth in production over the past decade and because nearly half of this output comes from public lands.

2. You say in your letter "although the Mining Law of 1872 is an important piece of the regulatory web around mining, it is not the only one." You cite examples of federal and state laws designed to protect the environment and question why the program did not explain how they affect the industry.

Concern about the adequacy of existing federal and state environmental regulations is a primary reason why the U.S. House of Representatives voted by a 3-to-1 margin to include extensive federal clean-up requirements in its mining reform legislation.

Nowhere in our report does correspondent Krulwich suggest mineral mining is a "frivolous" venture. In fact, at one point Krulwich challenges Senator Bumpers' dismissal of gold mining's importance. Several interviews in this program include industry representatives and supporters explaining the importance of metals. Our report also aired in its entirety an industry ad, "Mining Makes America Work."

On the whole, we believe "Public Lands, Private Profits" was an accurate, important analysis of the struggle among elected officials to determine how reforming the 1872 Law will affect the future of the American West

We feel it dealt fairly with the pros and cons of the 1872 Law. The mining industry's chief lobby group, the American Mining Congress (AMC), apparently thought so too.

Robert Webster, AMC public relations officer, called the producers the day after the program aired to say he thought it was "balanced and very fair," He told them it was "the best thing he had ever seen on reform of the 1872 mining law."

Mr. Webster also said that Mr. Knebel, president of the AMC who was interviewed at length in the program, also thought the program was "very balanced." (However, Mr. Webster did note he wished more of Mr. Knebel's interview had been used.)

Again, I regret your disappointment with our report but appreciate this opportunity to respond to your concerns.

Sincerely,

David Fanning
Executive Producer

cc: Henry Becton, President, WGBH-TV
Jim Pagliarini, Manager, KNPB Reno
Larry Ciecalone, Operations Manager, KLVX Las Vegas

APPENDIX Q

Committee Letters to States With Surrender Clauses

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

January 2, 1995

The Honorable Tony Knowles
Governor of Alaska
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles:

Enclosed is a copy of Senate Joint Resolution No. 27, which proposes to amend the ordinance to the *Nevada Constitution* to remove the clause by which the state disclaimed all right and title to its unappropriated public lands. This resolution was approved by the 1993 Session of the Nevada Legislature. If approved by the 1995 Session and by the voters at the 1996 General Election, it will become effective.

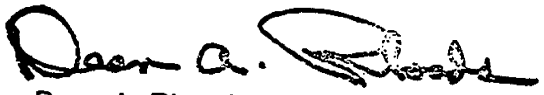
Although all states created after 1789 were to be added to the Union on an equal basis with the original states, 11 states were required to include this disclaimer in their constitutions. Like Nevada, your state was one of these. Nevada's Legislative Committee on Public Lands voted to send this letter to encourage the legislature in your state to join Nevada and remove this inequitable clause from your constitution.

Having so much land (almost 87 percent) under federal control creates several hardships for Nevada. With little land in private ownership, state and local governments must depend on volatile taxes, such as sales and gaming, for revenue. Payments made in lieu of taxes by the Federal Government do not compensate for lost property taxes. In addition, the management decisions concerning public lands are made thousands of miles away by people who have never been to this part of the country. If these rules make Nevada's citizens unhappy, they do not have any recourse at the ballot box, as Nevada's delegation is a tiny minority in Congress. And Nevada has had to fight hard again and again to keep the Federal Government from using the public lands for undesirable activities.

Surely your state has experienced the burden of undue federal control. Although the action of taking the disclaimer out of the state constitution will not end public land conflicts between the Federal Government and the state, it is a step that must be taken if we are to assert our right, as granted by the *United States Constitution*, to self-government. The Public Lands Committee urges you to take the necessary actions to amend your constitution.

For your information, this letter was also sent to the States of Arizona, Idaho, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington. Please do not hesitate to contact me should you have any questions about this important topic.

Sincerely,



Dean A. Rhoads
Nevada State Senator and
Chairman, Nevada's Legislative Committee on Public Lands

DAR/pok:PLL35.wpd
Enc.

This letter was sent to the Governors, Attorneys General, and Legislative Leadership members in Alaska, Arizona, Idaho, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-682
Fax: (702) 687-304

January 2, 1995

The Honorable Fov James, Jr.
Governor of Alabama
Governor's Office
State Capitol
Montgomery, AL 36130

Dear Governor James:

Enclosed is a copy of Senate Joint Resolution No. 27, which proposes to amend the ordinance to the *Nevada Constitution* to remove the clause by which the state disclaimed all right and title to its unappropriated public lands. This resolution was approved by the 1993 Session of the Nevada Legislature. If approved by the 1995 Session and by the voters at the 1996 General Election, it will become effective.

Although all states created after 1789 were to be added to the Union on an equal basis with the original states, six were required to agree to this disclaimer with the passage of their federal enabling acts. Like Nevada, your state was one of these. Unlike Nevada, your state was not required to include the disclaimer clause in its constitution. However, Nevada's Legislative Committee on Public Lands voted to send this letter to encourage the legislature in your state to join Nevada in its protest and send a message to Congress that this inequitable clause should be removed from your enabling act.

Having so much land (almost 87 percent) under federal control creates several hardships for Nevada. With little land in private ownership, state and local governments must depend on volatile taxes, such as sales and gaming, for revenue. Payments made in lieu of taxes by the Federal Government do not compensate for lost property taxes. In addition, the management decisions concerning public lands are made thousands of miles away by people who have never been to this part of the country. If these rules make Nevada's citizens unhappy, they do not have any recourse at the ballot box, as Nevada's delegation is a tiny minority in Congress. And Nevada has had to fight hard again and again to keep the Federal Government from using the public lands for undesirable activities.

Surely your state has experienced the burden of undue federal control. Although the action of removing the disclaimer clause will not end public land conflicts between the

Federal Government and the states, it is a step that must be taken if we are to assert our right, as granted by the *United States Constitution*, to self-government. The Public Lands Committee, while recognizing that amendment of an enabling act can only be made by Congress, urges you to take the necessary actions to demand that the disclaimer clause be removed from your enabling act.

For your information, this letter was also sent to Colorado, Louisiana, Mississippi, and Nebraska. Please do not hesitate to contact me should you have any questions about this important topic.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Nevada's Legislative Committee on
Public Lands

DAR/pok:PLL36.wpd
Enc.

This letter was sent to the Governors, Attorneys General, and Legislative Leadership members in Alabama, Colorado, Louisiana, Mississippi, and Nebraska.

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

January 2, 1995

The Honorable Jim Geringer
Governor of Wyoming
Governor's Office
State Capitol
Cheyenne, WY 82002-0010

Dear Governor Geringer:

Enclosed is a copy of Senate Joint Resolution No. 27, which proposes to amend the ordinance to the *Nevada Constitution* to remove the clause by which the state disclaimed all right and title to its unappropriated public lands. This resolution was approved by the 1993 Session of the Nevada Legislature. If approved by the 1995 Session and by the voters at the 1996 General Election, it will become effective.

Although all states created after 1789 were to be added to the Union on an equal basis with the original states, 12 were required to agree to language surrendering their control over unappropriated public lands with the passage of their federal enabling acts. Like Nevada, your state was one of these. Unlike Nevada, your state was not required to include the disclaimer clause in its constitution. However, Nevada's Legislative Committee on Public Lands has voted to send this letter to encourage the legislature in your state to join Nevada in its protest and send a message to Congress that this inequitable language should be removed from your enabling act.

Having so much land (almost 87 percent) under federal control creates several hardships for Nevada. With little land in private ownership, state and local governments must depend on volatile taxes, such as sales and gaming, for revenue. Payments made in lieu of taxes by the Federal Government do not compensate for lost property taxes. In addition, the management decisions concerning public lands are made thousands of miles away by people who have never been to this part of the country. If these rules make Nevada's citizens unhappy, they do not have any recourse at the ballot box, as Nevada's delegation is a tiny minority in Congress. And Nevada has had to fight hard again and again to keep the Federal Government from using the public lands for undesirable activities.

Surely your state has experienced the burden of undue federal control. Although the action of removing the surrender clause will not end public land conflicts between the Federal Government and the states, it is a step that must be taken if we are to assert our right, as granted by the *United States Constitution*, to self-government. The Public Lands Committee, while recognizing that amendment of an enabling act can only be made by Congress, urges you to take the necessary actions to demand that the surrender language be removed from your enabling act.

For your information, this letter was also sent to Arkansas, California, Florida, Iowa, Kansas, Michigan, Minnesota, Missouri, Oregon, and Wisconsin. Please do not hesitate to contact me should you have any questions about this important topic.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Nevada's Legislative Committee on
Public Lands

DAR/pok:PLL37-49.wpd
Enc.

This letter was sent to the Governors, Attorneys General, and Legislative Leadership members in Arkansas, California, Florida, Iowa, Kansas, Michigan, Minnesota, Missouri, Oregon, Wisconsin, and Wyoming.

Senate Joint Resolution No. 27—Committee on Natural Resources

FILE NUMBER 189

SENATE JOINT RESOLUTION—Proposing to amend the ordinance of the Nevada constitution to repeal the disclaimer of interest of the state in unappropriated public lands.

WHEREAS, The State of Nevada has a strong moral claim upon the public land retained by the Federal Government within Nevada's borders; and

WHEREAS, On October 31, 1864, the Territory of Nevada was admitted to statehood on the condition that it forever disclaim all right and title to unappropriated public land within its boundaries; and

WHEREAS, Nevada received the least amount of land, 2,572,478 acres, and the smallest percentage of its total area, 3.9 percent, of the land grant states in the Far West admitted after 1864, while states of comparable location and soil, including Arizona, New Mexico and Utah, received approximately 11 percent of their total area in federal land grants; and

WHEREAS, The State of Texas, when admitted to the Union in 1845, retained ownership of all unappropriated land within its borders; and

WHEREAS, The federal holdings in the State of Nevada constitute 86.7 percent of the area of the state, and in Esmeralda, Lincoln, Mineral, Nye and White Pine counties the Federal Government controls from 97 to 99 percent of the land; and

WHEREAS, The federal jurisdiction over the public domain is shared among several federal agencies or departments which causes problems concerning the proper management of the land and disrupts the normal relationship between a state, its residents and its property; and

WHEREAS, The intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states; and

WHEREAS, The exercise of dominion and control of the public lands within the State of Nevada by the United States works a severe, continuous and debilitating hardship upon the people of the State of Nevada; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the ordinance of the constitution of the State of Nevada be amended to read as follows:

In obedience to the requirements of an act of the Congress of the United States, approved March twenty-first, A.D. eighteen hundred and sixty-four, to enable the people of Nevada to form a constitution and state government, this convention, elected and convened in obedience to said enabling act, do ordain as follows, and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

First. That there shall be in this state neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested, in person or property, on account of his or her mode of religious worship.

Third. That the people inhabiting said territory do agree and declare, that [they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that] lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States, unless otherwise provided by the Congress of the United States.

And be it further

RESOLVED, That the Legislature of the State of Nevada hereby urges the Congress of the United States to consent to the amendment of the ordinance of the Nevada constitution to remove the disclaimer concerning the right of the Federal Government to sole and entire disposition of the unappropriated public lands in Nevada; and be it further

RESOLVED, That, upon approval and ratification of the amendment proposed by this resolution by the people of the State of Nevada, copies of this resolution be prepared and transmitted by the Secretary of the Senate to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval, except that, notwithstanding any other provision of law, the proposed amendment to the ordinance of the constitution of the State of Nevada, if approved and ratified by the people of the State of Nevada, does not become effective until the Congress of the United States consents to the amendment or upon a legal determination that such consent is not necessary.

19 93

APPENDIX R

Committee Letters to

Frankie Sue Del Papa, Attorney General

and

C. Wayne Howle, Senior Deputy Attorney General

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

September 26, 1994

The Honorable Frankie Sue Del Papa
Attorney General of Nevada
198 South Carson Street
Carson City, NV 89710

Dear Attorney General Del Papa:

As you know, Nevada's Legislative Committee on Public Lands has been interested in the takings issue for several years. In 1990, the committee formed a subcommittee to review the topic and develop legislation to protect landowners in Nevada from burdensome state laws and regulations.

After much debate in the 1991 and 1993 sessions of the Nevada Legislature, Senate Concurrent Resolution No. 50 (File No. 158, *Statutes of Nevada 1993*) was adopted. This legislation urges the Attorney General to develop a checklist for state agencies when considering actions that might affect real property and to train agencies in the use of the checklist.

At the committee's meeting in Fallon on June 1, 1994, C. Wayne Howle, Senior Deputy Attorney General, reported on the implementation of this resolution. His presentation was thoughtful and thorough. The members were impressed with the proposed checklist and encouraged by the seriousness with which Mr. Howle is taking the responsibility you assigned to him. Clearly, he is doing a good job working with state agencies and local governments to respond to the Legislature's concerns.

The members of the Public Lands Committee, meeting in Reno on this date, voted to extend their congratulations to Mr. Howle for working so diligently and so well on this significant issue. Congratulations are also due you for entrusting this important assignment to such a proficient attorney. With Mr. Howle responsible for S.C.R. 50, the Public Lands Committee is certain that it will be fully implemented as the Nevada Legislature intended.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:PLL33
cc: C. Wayne Howle

(O)-807

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

September 26, 1994

C. Wayne Howle
Senior Deputy Attorney General
Office of the Attorney General
198 South Carson Street
Carson City, NV 89710

Dear Mr. Howle:

Nevada's Legislative Committee on Public Lands, meeting in Reno on September 26, 1994, voted to send a letter to Nevada's Attorney General, Frankie Sue Del Papa, congratulating you for your hard work concerning Senate Concurrent Resolution No. 50 (File No. 158, *Statutes of Nevada 1993*). A copy of that letter is enclosed.

This committee is impressed with your careful attention to this important issue. Your report in Fallon on June 1, 1994, was thorough and well done, and the members are encouraged by your progress with this assignment.

Keep up the good work!

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:PLL34
Enc.

APPENDIX S

Committee Letters to

Nevada's Congressional Delegation

Concerning the

Grand Canyon Visibility Transport Commission

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

December 19, 1994

This letter also was sent to:
U.S. Senator Richard H. Bryan
U.S. Representative John Ensign
U.S. Representative Barbara Vucanovich

The Honorable Harry Reid
United States Senate
324 Hart Office Senate Building
Washington, DC 20510

Dear Senator Reid:

During the past year, Nevada's Legislative Committee on Public Lands received several reports about the Grand Canyon Visibility Transport Commission and the proposals it is considering to preserve visibility at the Grand Canyon and other National Parks. As you know, this group was commissioned by the 1990 amendments to the Clean Air Act.

While the members agree that clean air at these parks is a laudable goal, the committee is concerned that Nevada's residents may pay the price for other states' problems. The proposals being considered by the commission would definitely curtail economic development throughout southern and eastern Nevada.

Therefore, the Public Lands Committee, at its meeting in Las Vegas on December 5, 1994, voted to send you and the other members of Nevada's Congressional Delegation this letter. The committee asks that you closely monitor the actions of the Grand Canyon Visibility Transport Commission and ensure that Nevada's interests are protected. In addition, should any amendments to the Clean Air Act be proposed, please review them carefully for any unwarranted and undesirable effects on Nevada.

Thank you for your attention and your continued diligence on Nevada's behalf. Please do not hesitate to contact me if you have any questions.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:50159.53

(O)-807

APPENDIX T

Committee Letter to

BLM's Director of the Nevada State Office

Concerning the Additional Land Withdrawal

for the Groom Range

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

December 19, 1994

Ann Morgan
State Director
United States Bureau of Land Management
Nevada State Office
P.O. Box 12000
Reno, Nevada 89520

Dear Ms. Morgan:

At the meeting of Nevada's Legislative Committee on Public Lands in Las Vegas on December 5, 1994, the members were informed that BLM has approved the United States Air Force's request to withdraw of 3,972 acres of public land in Lincoln County, Nevada. This land is contiguous to the Groom Range, which was withdrawn under Public Law 98-485.

The State of Nevada, and other interested parties, submitted letters to the BLM, requesting that the proposed withdrawal be considered a supplement to the Environmental Impact Statement (EIS) required under P.L. 98-485, in order to allow full public participation in the evaluation of the military's request. In addition, the State strongly recommended the consideration of off-site mitigation for the loss of almost 4,000 acres of public land. Enclosed, for your review, are copies of the State's letters, dated January 17, 1994, and August 8, 1994.

It is clear to this committee that the State of Nevada was ignored in this process. Therefore, the members voted to ask for your written answers to the following questions:

1) Why was the proposal processed without full public participation under the National Environmental Policy Act (NEPA)? As the State pointed out in its January letter, NEPA regulations require federal agencies to prepare a supplement to an EIS when new circumstances are relevant to past action.

2) Why did BLM disregard P.L. 98-485 and the *Special Nevada Report* and choose not to pursue off-site mitigation opportunities?

(O)-807

The members of this committee are disappointed that BLM has yet again ignored the wishes of the State of Nevada. In addition, the committee is puzzled as to why BLM rejected off-site mitigation and, thus, lost a particularly good opportunity to improve its relationship with the State and its residents.

I look forward to your prompt response.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:50160.53

cc: Governor Robert J. Miller
United States Senator Richard H. Bryan
United States Senator Harry Reid
United States Representative John Ensign
United States Representative Barbara Vucanovich

BOB MILLER
Governor

STATE OF NEVADA

JOHN P. COMEAUX
Director

DEPARTMENT OF ADMINISTRATION
Capitol Complex
Carson City, Nevada 89710
Fax (702) 687-3983
(702) 687-4065

January 17, 1994

Billy Templeton, State Director
Bureau of Land Management, Nevada State Office
PO Box 12000
Reno, NV 89520

Re: Scoping Comments -- Notice of Proposed Withdrawal and Opportunity for Public Meeting, Federal Register Notice, October 18, 1993

Dear Mr. Templeton:

The State of Nevada has reviewed the above referenced Federal Register Notice for the proposed withdrawal of approximately 3,972 acres of public land in Lincoln County, Nevada. According to the notice, the United States Air Force has requested the withdrawal to safeguard certain defense activities conducted on the Nellis Air Force Range.

The State of Nevada recognizes the important role the Air Force provides in maintaining a safe and secure environment for conducting defense research and development activities on the Nellis Air Force Range. Nevertheless, because past withdrawals of public lands for military use have caused notable public controversy in Nevada, we strongly encourage the Bureau of Land Management (BLM) to process this current withdrawal in a way that addresses the concerns of all interested parties. To accomplish this, we believe the proposed action should be considered in the context of past military land withdrawals approved by Congress for the Nellis Air Force Range.

As you know, this current withdrawal is in fact a contiguous land withdrawal to the original Groom Range withdrawal implemented by Public Law 98-485. As such, we believe this current withdrawal should be considered as a supplement to the original withdrawal. By adopting this approach, we believe the BLM and the Air Force would be meeting both the spirit

and intent of the National Environmental Policy Act (NEPA). As an example, implementing regulations for NEPA {40 CFR Parts 1502.9(1)(ii), and 1508.28(b)} require federal agencies to prepare supplements to draft or final Environmental Impact Statement's (EIS), where new circumstances or information are determined relevant to past actions. The regulations further require "Tiering" from past EIS documents that dealt with specific site selections and/or actions that required "environmental mitigation".

The legislation[1] that authorized the Groom Range Land Withdrawal required the preparation of an Environmental Impact Statement (EIS). The law further required that this EIS include descriptions and recommendations of measures to mitigate the loss of public lands in the Groom Range.[2] We believe these requirements continue to be both relevant and appropriate, and should be considered as part of the proposed expanded withdrawal of the Groom Range.

Accordingly, we think the BLM and the Air Force should develop appropriate "off-site mitigation measures" for consideration and analysis in a supplemental NEPA document for implementing the current withdrawal.

Off-site mitigation measures that should be assessed include the identification of existing military withdrawn lands that could be opened for selected public uses such as outdoor recreation, mineral exploration and development, and agriculture. (We note these are the general categories that were stipulated under PL 98-485.) We would also encourage the Air Force to consider releasing lands from current withdrawals to compensate for new withdrawals on a one-to-one ratio, and/or to ask the Congress to pass legislation allowing Nevada to select lands from the unappropriated public domain to compensate for any new military withdrawals. (This recommendation was formally proposed in comments submitted by the State of Nevada on the Special Nevada Report.[3])

In addition to these considerations, the NEPA document should assess all other reasonable off-site mitigation proposals identified through the "Scoping" process, as well as

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[1] Public law 98-485, October 17, 1984.

[2] The final EIS For the Groom Range Land Withdrawal actually assessed eighteen separate mitigation measures.

[3] See "State Agency Comments for the Draft Special Nevada Report, Compiled by the Nevada Department of Administration, February 1991."

provide a brief update of those mitigation measures described in the Groom Mountain Range Final EIS that were either implemented or committed to by the Air Force. We note, for example, that at least one of these measures, the Improve Access Road from Rachel into NTS, was based on a commitment by the Air Force to seek Defense Access Road funding. The pending status of this commitment should be addressed in the forthcoming withdrawal document.

Thank you for considering these comments and we look forward to reviewing the NEPA document for the expanded Groom Range Land Withdrawal.

Sincerely,

Maud Naroll

Maud Naroll, State Clearinghouse
Coordinator, DOA\SPOC

MN\jbw

cc: Governor Bob Miller
John P. Comeaux, Department of Administration
State Agencies
Nevada Congressional Delegation
Committee on Public Lands, Nevada State Legislature
Commanding Officer, Nellis Air Force Base
Vienna Wolder, BLM, Nevada State Office
BLM, Caliente Resource Area
Lincoln County, Board of County Commissioners

BOB MILLER
Governor

STATE OF NEVADA

JOHN P. COMEAUX
Director

DEPARTMENT OF ADMINISTRATION
Capitol Complex
Carson City, Nevada 89710
Fax (702) 687-3983
(702) 687-4065

August 8, 1994

Ron Wenker, Acting State Director
Bureau of Land Management, State Office
P.O. Box 12000
Reno, NV 89520

Re: Scoping Comments -- Notice of Proposed Military Withdrawal at Groom Range Dated July 18, 1994 (N-57922)

Dear Mr. Wenker:

The State of Nevada has again reviewed the above referenced Notice for the proposed military withdrawal of approximately 3,972 acres of public land in Lincoln County, Nevada. As we understand it, the withdrawal is in fact a contiguous land withdrawal to the original Groom Range withdrawal implemented by Public Law 98-485. The Notice does not specifically mention this fact.

In our initial correspondence on this action[1], we stated that the withdrawal should be considered as a supplement to the original Groom Range withdrawal, since both withdrawals are contiguous and their purpose remains unchanged (i.e., to safeguard certain defense activities conducted by the U.S. Air Force at Area 51 on the Nellis Air Force Range).

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[1] The State of Nevada provided an initial response to the proposed withdrawal in a letter from Maud Naroll (Dept. of Administration) to Billy Templeton, former BLM State Director. The State's letter was dated January 17, 1994.

According to the current Notice, the Bureau of Land Management (BLM) is processing the withdrawal as a land use plan amendment (LUP) and final Environmental Assessment (EA). While we are not overly concerned about the specific administrative method used to accomplish the withdrawal, we do, however, maintain that the proposed action is an extension of the original withdrawal. In the original withdrawal legislation,[2] Congress required preparation of an Environmental Impact Statement (EIS) that compelled the Secretaries of the Interior and the Air Force to describe, assess, and recommend measures to mitigate the loss of 89,000 acres of public lands commonly referred to as the Groom Range Withdrawal[3].

Accordingly, and in reference to the pending withdrawal, we believe the spirit and intent of the legislation, in requiring an assessment of "offsite mitigation," remains current and appropriate for the proposed contiguous withdrawal of 3,972 acres.

As indicated in our previous correspondence, typical off-site mitigation measures that should be considered in the proposed LUP/EA include the identification of existing military withdrawn lands that could be opened for selected public uses such as outdoor recreation, mineral exploration and agriculture. We also encourage the BLM and the Air Force to consider releasing lands from current withdrawals to compensate for new withdrawals on a one-to-one ratio, and/or asking the Congress to pass legislation allowing Nevada to select lands from the unappropriated public domain to compensate for any new military withdrawals. This recommendation was formally proposed by the State in comments submitted on the Special Nevada Report[4].

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[2] Public law 98-485, October 17, 1984.

[3] The final EIS For the Groom Range Land Withdrawal actually assessed eighteen separate mitigation measures.

[4] See "State Agency Comments" for the Draft Special Nevada Report, Compiled by the Nevada Department of Administration, February 1991."

We realize that BLM and the Air Force may well ignore the State's proposal concerning an assessment of offsite mitigation as part of the proposed actions in the LUP/EA. If this does occur, we believe the BLM and the Air Force will not only have foiled the primary intent of the Groom Range Withdrawal legislation, but also will have missed a unique opportunity to demonstrate mature judgement in matters involving effective intergovernmental relations, as well as understanding issues important to the public that are germane to building trust and confidence in government.

We are also aware that BLM may issue the LUP/EA as a final document instead of the usual draft EA process typically employed by the agency. If this occurs, interested citizens, affected local governments, and the State will be relegated to a structured BLM appeal process, thus precluding any constructive opportunity to debate potential off-site mitigation measures for the loss of these 3,972 acres.

We hope you will consider these comments carefully.

Sincerely,

Maud Naroll

Maud Naroll, State Clearinghouse
Coordinator, DOA\SPOC

MN\jbw
cc: Governor Bob Miller
Nevada Congressional Delegation
John P. Comeaux, Department of Administration
Affected State Agencies
Randall Capurro, Chairman State C&NR Advisory Board
Committee on Public Lands, Nevada State Legislature
Commanding Officer, Nellis Air Force Base
BLM, Las Vegas District & Caliente RA
Lincoln County, Board of County Commissioners

APPENDIX U

Committee Letters to

Nevada's Congressional Delegation

Concerning Disposal of Public Land

Pursuant to the

Federal Land Policy Management Act of 1976

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

STAFF DIRECTOR: DANA R. BENNETT (702) 687-6825
Fax: (702) 687-3048

December 19, 1994

The Honorable Barbara Vucanovich
United States House of Representatives
2202 Rayburn House Office Building
Washington, DC 20515

Dear Representative Vucanovich:

As you probably know, the policy of the Federal Government toward land it controlled in the West was, for many years, a policy of disposal. In 1976, with the passage of the Federal Land Management Policy Act (FLPMA), the policy was formally changed to a policy of retention. However, this change allowed for some disposal; FLPMA states:

> the public lands [should] be retained in Federal ownership, unless as a result of land use planning procedure provided for in this Act, it is determined that the disposal of a particular parcel will serve the national interest. [43 U.S.C. §1701(a)(1)]

At its meeting in Las Vegas on December 5, 1994, Nevada's Legislative Committee on Public Lands voted to send this letter to you and the other members of Nevada's Congressional Delegation. The committee requests that you actively work with federal land management agencies to identify such parcels in Nevada and provide for their speedy and efficient disposal. If such action necessitates congressional legislation, this committee would be supportive.

Too many communities in Nevada are hindered from developing practical land use plans or from growing in a sensible manner due to the large amount of federally-controlled land surrounding them. Those communities that identify and attempt to acquire federal land find themselves in a long, expensive, and unnecessary process. Congress clearly stated its intention to surrender its control over some land, and Congress should ensure that its intentions are not forgotten.

I encourage you to contact me if you would like to discuss this issue further. Thank you for your consideration and your assistance.

Sincerely,

Dean A. Rhoads
Nevada State Senator and
Chairman, Committee on Public Lands

DAR/pok:50158-3.53

This letter also was sent to:

U.S. Senator Richard H. Bryan
U.S. Senator Harry Reid
U.S. Representative John Ensign

APPENDIX V

Issue Papers

BLM WILDERNESS

In Nevada, approximately 5.1 million acres of BLM lands are designated as Wilderness Study Areas (WSAs), and studies have been completed on these WSAs. The study process involved environmental impact statements, public participation, and mineral reports on these areas.

Nevada's BLM statewide wilderness recommendation package was submitted to the Secretary of Interior in 1991. The package recommends approximately 1.9 million acres of BLM lands in Nevada for wilderness designation, but former Secretary Manuel Lujan removed nearly 50,000 acres from consideration as wilderness areas.

The two WSAs removed consist of 33,900 acres surrounding Piper Peak west of Tonopah and 15,090 acres of Roberts Mountains in central Nevada. These areas were removed at the request of the U.S. Bureau of Mines, based on potential mining in that area.

Final recommendations were forwarded to then-President George Bush in the fall of 1991. He had 2 years to review them and forward them to Congress. The recommendations meet a 15-year deadline set by Congress in 1976 for the BLM to study and recommend wilderness areas nationwide. Congress will make the final decision on which areas will be designated as wilderness. In the meantime, all 5 million acres of Nevada's WSAs will be treated as wilderness.

Possible Questions:

- Did President Bush complete his review, or is this now President Clinton's responsibility?
- What is the status of the recommendations?
- What recommendations will Congress consider concerning water language in legislation designating BLM wilderness areas?

THREATENED AND ENDANGERED SPECIES

The 1973 Endangered Species Act, which is intended to protect animals and plants from extinction, expires in 1993. Interior Secretary Bruce Babbitt proposed a National Biological Survey of all plants and animals to assist the department in protecting entire ecosystems in which the species live and, thus, prevent species from being designated as threatened or endangered. Congressional legislation containing this plan include H.R. 1845, S. 1008, and S. 1110. Other lawmakers want to rewrite the Act to require that the economic consequences of protection be weighed equally with any environmental benefit. Such bills are H.R. 2043, H.R. 1490, and S. 921. The House may consider H.R. 1845 on the floor this fall; some of the amendments being considered for the bill include requiring the National Biological Survey to respect private property rights to ensure scientific peer review of agency findings. However, the fiscal year 1994 appropriations bill, as approved by both houses of Congress, includes enough money for the Secretary of Interior to initiate the survey before specific legislation is passed. The debate over reauthorizing the Endangered Species Act is not expected to begin until next year.

Certain species are of particular concern to Nevada:

Cui-ui

Cui-ui, a sucker fish found only in Pyramid Lake, was designated an endangered species in 1967. In 1993, the fish had their first successful spawning run in 6 years, but the criteria in the cui-ui recovery plan call for stable or increased numbers of the fish for 15 years. However, the U.S. Fish and Wildlife Service (F&WS) has determined that the earliest year the cui-ui could be delisted is 2016. That is the year when 5,000 acre-feet of water scheduled to begin being diverted from the Truckee River next year is expected to reach a total of 110,000 acre-feet. The goal is based on each year having at least average precipitation, which is historically unlikely.

Desert Tortoise

Because of the spread of a flu-like virus among the Mojave population of the desert tortoise, it was designated as a threatened species by F&WS on April 2, 1990, after an 8-month period of emergency designation as an endangered species. During the emergency designation, local governments in Clark County adopted ordinances requiring developers to pay fees to fund habitat areas. Additionally, the Nature Conservancy announced the acquisition of land near Searchlight, Nevada, to establish the first permanent preserve for the desert tortoise in Southern Nevada.

Based on an opinion by the F&WS that livestock grazing may adversely affect tortoise habitat, the Las Vegas District of the BLM banned grazing on Federal land near Mesquite for certain parts of each year. The ban was to take effect in March 1993. Thirty-two ranchers appealed the ban, which was overturned by the

Interior Board of Land Appeals a few days before the ban was to be implemented. However, the case, which seems to address a conflict between two Federal laws, the Taylor Grazing Act and the Endangered Species Act, will not be completely resolved until it is heard in Federal court.

On August 27, 1993, the F&WS proposed critical habitat zones in California, Nevada, Utah, and Arizona for the threatened desert tortoise. A total of 1.3 million acres in Clark and Lincoln counties is Nevada's portion of the proposed 6.2 million acres. The plan would provide protection to areas inhabited by the desert tortoise only if a proposed land use requires Federal funding or authorization. Private landowners within the zones will not be affected, unless they use Federal permits or money. The action stems from settlement of two Federal lawsuits filed by environmentalists to force the Government to protect the tortoise from becoming extinct. Public comments on the proposal will be accepted through October 29, 1993.

Goshawk

On October 31, 1991, Region 4 of the U.S. Forest Service (USFS) designated the goshawk as a sensitive species. Authority for such listing is pursuant to the Forest Services Management Act of 1976, not the Endangered Species Act. The region includes the Humboldt National Forest in Elko County, and the decision affected mining exploration activities in that area. In response to concerns expressed by Elko County, the Public Lands Committee, Nevada's Congressional Delegation, and other interested bodies, the USFS re-evaluated its decision. On February 8, 1993, the Regional Forester announced that the "administrative findings confirm that the sensitive species status for goshawks should be retained." This finding is not subject to appeal.

The USFS noted that retaining the sensitive species status for the northern goshawk would assist Forest Service managers in avoiding detrimental actions that could result in a designation of the bird as threatened or endangered under the Endangered Species Act. The F&WS has classified the northern goshawk as a candidate species for consideration as threatened or endangered. In evaluating the status of this species, the agency will consider the presence of regulatory mechanisms to protect it. The USFS pledged to continue a close partnership with commercial interests to minimize the economic impacts on communities.

Lahontan Cutthroat Trout

The Lahontan cutthroat trout has been identified as a threatened species since 1975. In recognition of the declining population of trout in its historic habitat of Pyramid Lake and the lower Truckee River, the U.S. Congress, through P.L. 101-618, directed the Secretary of Interior to implement plans for the recovery of the fish.

A draft recovery plan for the trout was issued early in 1993, and a public comment period on the plan ended in April 1993. Received comments are currently being reviewed, and the final plan should be completed by the end of the year. If implemented, the recovery plan could assist in the recovery of a neighbor species, the spotted frog, which is currently being considered for designation as a threatened or endangered species.

Actions Taken by the Nevada Legislature

The 1993 Nevada Legislature expressed its opinions on wildlife issues in two resolutions:

- S.J.R. 15, which urges Congress to require a timely determination of endangered or threatened species to allow for the evaluation and mitigation of the economic impact of that determination and to require the consideration of certain economic factors in the development of recovery plans for these species; and

- S.J.R. 18, which urges the F&WS and the Secretaries of Agriculture and Interior to expedite the Lahontan cutthroat trout recovery plan.

GRAZING FEES AND RANGE MANAGEMENT

The BLM and the USFS proposed new rules for range management and a new grazing fee formula in *Rangeland Reform '94* and the Advance Notices of Proposed Rulemaking published in the *Federal Register* on August 13, 1993. Certain aspects of the proposals include establishing national standards and guidelines for livestock grazing in rangeland ecosystems, allowing the Federal Government to file and hold sole title to water rights, replacing BLM's existing grazing advisory boards with a smaller number of resource advisory boards, collecting a surcharge for subleasing, expanding the definition of "affected interests," requiring the Federal Government to retain title to permanent improvements made on public land, and linking the duration of a grazing permit to a rancher's proven environmental stewardship. Additionally, grazing fees would more than double by fiscal year 1996 from $1.86 to $4.28 per animal unit month. After 1996, the fee would be no less than $4.28 and could increase each year by as much as 25 percent.

The comment period on these notices was extended into October. After review of the comments, proposed regulations and a draft environmental impact statement will be released, followed by another comment period of at least 45 days.

The Clinton Administration chose to conduct rangeland reform through regulations, rather than through Congressional legislation. Some have argued that the proposed regulations exceed the authority of the Secretary of Interior and must be done legislatively. On September 14, 1993, the U.S. Senate voted to prohibit the Administration from spending any money next year to implement new policies to boost the grazing fees. Many of these issues may be resolved in a House-Senate Conference Committee, which may have met by the time the Public Lands Committee reaches Washington, D.C.

Actions Taken by the Nevada Legislature and Committee on Public Lands

The 1993 Nevada Legislature approved Senate Joint Resolution No. 17, which urges Congress to reject any unreasonable increase in grazing fees.

On September 27, 1993, the Public Lands Committee adopted Resolution 93-1, which urges the U.S. House of Representatives to join the U.S. Senate in placing a 1-year moratorium on an increase in grazing fees and to use the period to establish a workable grazing fee formula in statute and reasonable rules governing livestock grazing on public lands.

Possible Questions

- Is the proposal to hold grazing-related water rights indicative of a Federal desire to obtain and hold all water rights on Federal land?

- How can all of the allotments in the West--an area of great climatic and geographical diversity--be held to identical "national standards"?

MINING REFORM

The Federal Mining Law of 1872 was intended to promote the development of the West. But with Western expansion no longer an issue, critics claim that the law allows the mining industry to exploit public land. Unlike oil and gas interests, mining companies are not required to pay royalties for gold, silver, and other hard-rock minerals extracted from public land. Years of mining have resulted in contaminated water and thousands of abandoned mines. As a result, mining reform legislation, which would establish royalties and other new mining requirements, has been introduced in Congress several times over the past few years. President Clinton has also indicated his desire to change the 1872 Mining Law.

Mining supporters have opposed royalties that fail to deduct production costs and claim that excessive regulation will adversely affect the industry, especially small companies. Industry advocates also contend that modern mining is environmentally safe and necessary for the United States to retain its prominence in world markets.

In January 1993, President Clinton proposed a 12.5 percent gross royalty on hard-rock mineral sales, but retracted it 2 months later. He indicated that he would pursue changes to the law through administrative steps and separate legislation. Secretary of Interior Bruce Babbitt stated that he would present the Administration's proposed reforms after Labor Day 1993, but has not yet done so.

Pending Congressional legislation on the issue includes H.R. 322, introduced by Nick Rahall (D-West Virginia), which would levy an 8 percent royalty on the gross value of mineral sales, impose strict reclamation standards, require the industry to pay to clean up abandoned mines, and end the current patenting system. The industry opposes H.R. 322. Senator Larry Craig, R-Idaho, introduced S. 775, which would levy a 2-percent royalty on the value of hard-rock mineral sales after production expenses are deducted, mandate a survey of abandoned mines, require that state--not Federal--standards regarding land restoration be followed, and require patents to reflect the fair market value of the land's surface. This bill is supported by the mining industry and has passed the Senate. Senator J. Bennett Johnston, D-Louisiana and Chair of the Senate Energy and Natural Resources Committee, indicated his intention to use the bill as a bargaining tool in the House-Senate conference on the issue. Both bills would eliminate some jobs, according to studies by the mining industry and the Congressional Budget Office.

In July 1993, a Washington-based environmental group announced that $71.5 billion would be needed to clean up nearly 558,000 abandoned mine sites, although the report noted that most of these sites do not pose public or environmental health hazards. However, 52 mines on the "superfund" priority list pose serious public health threats.

One goal of mining reformers was achieved recently with the implementation of a $100 fee to hold a mining claim. A preliminary BLM analysis of the effect of the new fee found that the number of active claims dropped 61 percent. In March 1993, 760,000 mining claims were active. On September 1, 1993, the day after the fee was due, only 295,000 claims were active. In Nevada, the number of active claims dropped from 270,000 to 130,000. When the fee was proposed, the Federal Office of Management and Budget estimated that it would generate $97.6 million in revenue; however, only $52 million were actually collected. This fee is mandated to continue for at least 5 more years.

Actions Taken by the Nevada Legislature

The 1993 Nevada Legislature passed A.J.R. 22, which urges Congress to reject gross value royalty and work toward compromise with mining industry.

PUBLIC-PRIVATE LAND TRANSFERS

Traditionally, the Public Lands Committee has closely monitored proposed exchanges of private land for public land and any other activities that would increase the amount of land in Nevada controlled by the Federal Government. Two specific proposals have attracted the committee's attention.

North Las Vegas

In 1989, the City of North Las Vegas (NLV) initiated procedures to purchase 7,500 acres of BLM land within its city borders to accommodate growth. The land had been designated as "available for disposal" by BLM. An environmental assessment of the proposal was completed in 1991, and BLM found no significant impact if the city acquired the land. A purchase price of $45 million, the appraised value of the land, was established. However, the decision was appealed by Citizen Alert and the Sierra Club, based on air quality and water supply considerations.

A compromise was negotiated, resulting in the city agreeing to purchase 3,000 acres in Northern Nevada (the Galena property on Mount Rose) to trade to the Federal Government as part of the purchase price of the NLV property. However, the NLV land was recently reappraised at $58 million, and BLM wants the city to purchase more land to trade as part of the deal. The land that NLV would trade to the Federal Government includes the Galena property; 3,000 acres near Peavine Mountain; 11,000 near Pyramid Lake; 4,000 acres in northern Washoe County; and an undetermined amount of land near the proposed East Mojave National Park in California. As of September 13, 1993, the city had not agreed to the new terms. In fact, if any buyer is not found for the Galena property by October 6, 1993, the owners will withdraw the sale offer and begin development. Senator Richard Bryan's office is attempting to resolve both issues.

Red Rock Canyon

Recently, Congressman Jim Bilbray introduced H.R. 3050, which would expand the boundaries of the Red Rock Canyon National Conservation Area near Las Vegas. The proposal would double the size of the area to 176,500 acres.

Actions Taken by the Nevada Legislature and the Committee on Public Lands

On November 20, 1992, the committee sent a letter to Nevada's Congressional Delegation requesting Congressional legislation that would require Federal land management agencies to streamline and expedite land disposal procedures for local governments seeking land needed to accommodate community expansion.

The 1993 Nevada Legislature passed S.J.R. 14, which urges Congress to limit acquisition of privately owned land and to return public land to private ownership.

RIGHTS-OF-WAY ON PUBLIC LANDS

On June 7, 1993, Secretary of Interior Bruce Babbitt released a report, requested by Congress, that examines the effect of *Revised Statute* (R.S.) 2477, an 1866 law that granted rights-of-way for constructing public highways over public lands. Secretary Babbitt recommended new administrative rules to bring the now-defunct law into the framework of contemporary public land management, but did not recommend any formal Congressional action.

The law, enacted during a period when the Federal Government was aggressively promoting the settlement of the West, provided a direct grant from Congress for state and local governments to build public highways on public lands without additional Federal approval or documentation. When R.S. 2477 was repealed 17 years ago, highways established before 1976 were protected as valid, existing rights of way.

The Department of Interior is developing regulations that will provide an orderly way to explore the complicated legal and policy questions surrounding this issue. Part of the complexity stems from the fact that thousands of miles of undocumented roads were constructed across public lands in the Western United States under R.S. 2477.

The majority of R.S. 2477 public highways are located on public lands administered by BLM, which is responsible for examining claims of pre-1976 roads across public lands and either acknowledging or denying each road's validity.

Among the objectives for the rulemaking (a process that will involve public participation) will be appropriate definitions of specific statutory terms, such as "construction," "highways," and "public lands not reserved for public purposes." The rules will also consider recordation requirements, elements of proof for an R.S. 2477 claim, and public notification and administrative appeals processes.

Actions Taken by the Nevada Legislature

The 1993 Nevada Legislature reviewed the issue of access to and across public lands. Several bills concerning this topic were passed, including A.B. 176 (Chapter 446) revises provisions relating to roads made public by prescriptive use; S.B. 235 (Chapter 36) provides a definition of the term "accessory road" and clarifies the rights of certain users of accessory roads; S.B. 236 (Chapter 435) grants governmental immunity with respect to minor county roads and revises the requirements for designating and indexing minor county roads; and S.J.R. 12 (File No. 66) urges the Federal Government to recognize the rights of users of roads which were established on certain rights of way over public lands and which provide access to private property.

Possible Questions

- What is the status of the development of the regulations?
- How will the states be included in resolving this issue?

WATER ISSUES

The actions, activities, and policies of various Federal agencies and the U.S. Congress can significantly affect the use, allocation, and management of Nevada's limited water resources. The following list provides a brief explanation of current water issues and highlights the major Federal players.

Water for Las Vegas (Bureau of Reclamation)

A variety of alternatives are being discussed to augment Nevada's share of Colorado River water. At the recent Western Legislative Conference, Daniel Beard, Commissioner of the Bureau of Reclamation, stated that Southern Nevada's water problems are a key priority for his agency. New regulations are due out soon from the Bureau that could affect the Law of the River. Questions could address specific actions by the Bureau relating to this priority and details of the new regulations.

Federal Acquisition of Water Rights (BLM and USFS)

Concerns are increasing in Nevada and the West about efforts by Federal agencies to acquire water rights for a variety of purposes such as wildlife and the protection of instream flows. Questions could address the state primacy issue in water law and the intentions and policy implications of the Federal agencies in this regard.

Newlands Project (Bureau of Reclamation, Senator Reid)

Farmers in the Fallon area are receiving reduced allocations of water, and concerns have arisen about the role of the Bureau of Reclamation in the Newlands Project area. Senator Reid is expected to hold hearings on the issue in Nevada and Washington, D.C. Questions could address the continuing commitment and role of the Federal Government in the Project.

Walker Lake (Senator Reid)

Walker Lake is declining, and a recent report from Nevada's Department of Wildlife indicated that the lake could "die" within the next 2 to 11 years due to the increasing levels of dissolved solids. Senator Reid requested a report on the Walker Lake issues from the Office of Technology Assessment, which provided several alternatives for action. Questions could address the Federal role in the Walker Lake issues and the prospects for any Federal action.

Mining and Water Issues (BLM, USFS)

Concerns are increasing about the effects and quality of the large bodies of water left by mining companies when they conclude their operations. Questions could

address the role and actions of the Federal agencies regarding the mining operations that are located on lands controlled by these agencies.

Water Quality Issues (Congressional Offices)

Proposals are under consideration in Congress to reauthorize the Clean Water Act. State and local governments, and small water companies, are concerned about the cost of increased water quality standards and mechanisms to ease the financial burden. Additionally, consideration of the reauthorization is expected to initiate debate on wetlands issues. Questions could address the status and prospects for passage of these proposals.

Prepared by Brian L. Davie, Staff to the Legislative Commission's Subcommittee to Study the Use, Allocation and Management of Water (Senate Bill 327, Chapter 655, *Statutes of Nevada 1993*).

WETLANDS MANAGEMENT

Increased attention in recent years has been focused on the management of riparian areas and wetlands in the West. A riparian area is defined as an area of land directly influenced by permanent water. It has visible vegetation and physical characteristics that reflect the water influence, such as lake shores and stream banks. Riparian areas in Nevada include less than one-half of 1 percent of the land, but these areas are critical for numerous uses such as recreation, wildlife, agriculture, and mining.

A closely related topic concerns the official definition of the term "wetlands." After President George Bush declared that there would be "no net loss of wetlands" during his administration, Federal officials scrambled for a definition of the term. However, the result of their efforts concerned many people who believed that the proposed definition was too broad and affected too much land, including lands that may not truly be wetlands, such as artificially irrigated land. A definition was not finalized before President Bush left office.

In August 1993, the Clinton Administration announced a comprehensive wetlands policy that includes expanding the number of activities requiring a Clean Water Act section 404 permit, exempting from Clean Water Act wetland regulations more than 53 million acres of wetlands converted to farmland prior to December 1985, and authorizing the Soil Conservation Service to designate wetlands on agricultural land. The Administration also requested that the new Wetlands Reserve Program, which pays farmers to restore wetlands, be expanded when Congress considers the 1995 farm bill.

The comprehensive policy is similar to the Bush Administration's 1991 proposal but does not include the proposed changes to the 1989 manual used by the government to define and delineate wetlands. Those changes, if any, are postponed pending the completion late next year of a National Academy of Sciences report on wetlands. The legislative aspect of the Clinton Administration's proposal is included in S. 1204, introduced by Max Baucus (D-Montana) and John Chafee (R-Rhode Island).

Recently, the General Accounting Office reported that, since 1976, the Federal Government has paid $2.5 million to wetlands landowners in takings claims and is appealing $9.2 million in court awards. A total of 28 cases have been filed against the Federal Government, alleging that private property was taken without due compensation by the Government under Clean Water Act section 404 wetlands permit regulations. Of these cases, the Government has won 10, lost 3, and settled 1 out of court. Fourteen cases are pending.

Actions taken by the Public Lands Committee

On December 4, 1991, the committee addressed a letter to the EPA, expressing concerns about the scientific validity of the proposed changes to the 1989 wetlands delineation manual.

WILD HORSES

Nevada is home to over 65 percent of the Nation's wild horses and burros, the population of which continues to expand. In June 1993, BLM and USFS reported that the number of horses increased almost 20 percent from1988 to 1992, from 44,917 to 53,218. However, 1993 may see a reduction, at least in the number of horses in Nevada. The Nevada State BLM Director indicated that 3,600 horses were gathered last year and 5,000 will be gathered this year, possibly resulting in the number of horses in Nevada dropping below 30,000. Such a decline would be the first since BLM began monitoring the numbers.

These animals are protected under the Wild Free-Roaming Horses and Burros Act of 1971, which also gives BLM the responsibility for the animals. In 1992, BLM began a fertility control program as one method to manage wild horse populations. However, gathering excess animals for adoption continues to be the most common management tool. Recently, the Animal Rights Law Clinic at Rutgers University filed suit in U.S. District Court, claiming that wild horse and burros cannot be gathered from public lands without approval by the Secretary or an Assistant Secretary of the Department of Interior. The BLM contends that, if the suit is successful, it could eliminate a State Director's ability to call a roundup as needed, including situations where animals are starving or in danger. The law clinic supports a recent, private survey that counted slightly over 8,000 horses in Nevada and accuses the BLM of planning to round up all of them for slaughter. The BLM maintains that there are over 30,000 horses in Nevada and plans to prove its count through the roundups the clinic is trying to prevent.

During the committee's last visit to Washington, D.C., concern was expressed about the destination of 2,000 wild horses located at three sanctuaries in other states. The BLM had indicated that the sanctuary program would be discontinued, but did not provide any other information. On June 20, 1993, BLM announced the award of an exclusive contract for a wild horse sanctuary to a Bartlesville, Oklahoma, ranch. The 18,000-acre ranch, run by John Hughes of the Prairie National Wild Horse Refuge, has operated as a sanctuary since 1989, and the horses at the other two sanctuaries will be sent to it. Wild horses in sanctuaries had been deemed unadoptable, either because of age or physical condition. Currently, BLM no longer removes unadoptable animals from the range, so three sanctuaries are no longer needed.

Actions Taken by the Nevada Legislature and the Committee on Public Lands

The committee sent a letter to Nevada State BLM Director on December 4, 1991, supporting the "Secretary's Strategic Plan for Wild Horse Management," which outlines the fertility control program.

The 1993 Nevada Legislature adopted S.J.R. 13, which urges Congress, BLM, and USFS to expedite implementation of wild horse management programs.

APPENDIX X

Bill Draft Requests

SUMMARY--Expresses support of Nevada Legislature for exchanges of land involving Bureau of Land Management and Colorado River Commission which would result in additional land for Laughlin. (BDR R-1081)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Expressing the support of the Nevada Legislature for exchanges of land involving the Bureau of Land Management and the Colorado River Commission which would result in additional land for Laughlin, Nevada.

WHEREAS, The town of Laughlin, Nevada, is an unincorporated town located on the banks of the Colorado River in the southern tip of Clark County, Nevada; and

WHEREAS, The current population of Laughlin is estimated at 7,500 residents, but may be increased, with existing facilities for water and sewage treatment, to an estimated 15,000 additional residents; and

WHEREAS, Because of Laughlin's unique location and warm climate, numerous tourists and visitors travel to Laughlin each year, and it is estimated that the number of hotel rooms in Laughlin will increase to approximately 11,000; and

WHEREAS, The dramatic influx of visitors and permanent residents in the Laughlin area has resulted in an exploding economy and a corresponding need for land upon which to expand; and

WHEREAS, Much of the land adjacent to or surrounding the unincorporated boundaries of Laughlin is under the control of the Federal Government, through the Bureau of Land Management; and

WHEREAS, The town board of Laughlin has recently negotiated with the members of the Colorado River Commission and the Bureau of Land Management for an exchange of 640 acres of land for residential development; and

WHEREAS, Successful exchanges of land involving the Bureau of Land Management and the Colorado River Commission are of great benefit in fulfilling Laughlin's need for additional land; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby expresses its support for exchanges of land involving the Bureau of Land Management and the Colorado River Commission which would result in additional land for Laughlin, Nevada; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Secretary of the Interior, the Director of the Bureau of Land Management in Nevada and the Commissioner and Director of the Colorado River Commission; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Expresses support of Nevada Legislature for activities and operations of all mining industries in Nevada and expresses its opposition to any extensive and unreasonable reform of existing federal laws governing mining. (BDR R-1082)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Expressing the support of the Nevada Legislature for the activities and operations of all mining industries in this state and expressing its opposition to any extensive and unreasonable reform of existing federal laws governing mining.

WHEREAS, Congress has recently considered the passage of legislation which proposes to reform extensively the laws governing mining in the United States; and

WHEREAS, The proposed legislation would impose substantial and burdensome changes on mining companies in the United States by severely restricting access to land, lengthening the process for obtaining permits for mining, imposing heavy royalties and fees in addition to income taxes and eliminating the process for the patenting of mining claims; and

WHEREAS, Because of these proposed changes and because of other recent changes in the law governing mining which make it more difficult and expensive to obtain permits to open new mines in the United States, mining

exploration by domestic companies has increased significantly in foreign countries which have more favorable policies towards the mining industry and perceive mining as a way to promote industrialization and prosperity; and

WHEREAS, The mining industry provides approximately 47,000 high-paying jobs in Nevada; and

WHEREAS, The State of Nevada, which is sparsely populated and comparatively undeveloped, relies heavily upon the mining industry to create jobs and to provide an important base for taxes; and

WHEREAS, It is estimated that approximately 40 percent of Nevada's hard rock minerals may be located on public lands which are under the control of Congress and therefore subject to the proposed changes in the law; and

WHEREAS, The proposed changes would entice domestic mining companies in Nevada to continue explorations in foreign countries and possibly move operations to those countries, thereby eroding a significant source of taxes to be used for schools and other important purposes in Nevada; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby expresses its support for the activities and operations of all mining industries in Nevada; and be it further

RESOLVED, That the Nevada Legislature opposes any extensive and unreasonable reform of existing federal laws governing mining; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Expresses support of Nevada Legislature for ranching and farming in Nevada and expresses its opposition to any extensive and unreasonable reform of existing regulations of Federal Government concerning management of public rangelands. (BDR R-1083)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Expressing the support of the Nevada Legislature for the ranching and farming industries in this state and expressing its opposition to any extensive and unreasonable reform of the existing regulations of the Federal Government concerning the management of public rangelands in Nevada.

WHEREAS, The people of the State of Nevada have a long history of being productive and successful ranchers and farmers; and

WHEREAS, The money received from the production and sale of livestock, crops and other agricultural products contributes millions of dollars each year to the economy of Nevada; and

WHEREAS, Because of Nevada's arid climate and lack of abundant supplies of water, large amounts of land are required to graze cattle and sheep effectively; and

WHEREAS, Much of the land needed for grazing livestock must be leased under permit from the Federal Government, thereby making many of the ranchers and farmers in Nevada involuntarily dependent upon the Federal Government and its regulations governing the use of the rangelands located on the public lands of the United States; and

WHEREAS, The Secretary of the Interior has proposed to reform the existing regulations of the Federal Government concerning the management of the rangelands located on the public lands of the United States; and

WHEREAS, Such proposed reforms are extremely broad and extensive, and seek to impose numerous changes in the administration of the public rangelands which are not necessary or reasonable in order to maintain the public rangelands in a healthy and productive condition; and

WHEREAS, The proposed reforms also seek to impose unduly burdensome conditions upon ranchers and farmers, including a gradual yet significant increase in the fees for grazing; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby expresses its support for the ranching and farming industries in Nevada; and be it further

RESOLVED, That the Nevada Legislature opposes any extensive and unreasonable reform of the existing regulations of the Federal Government concerning the management of the public rangelands in Nevada; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of

the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Urges Congress of United States to amend Endangered Species Act of 1973 to provide for consideration of economic impact of Act. (BDR R-1084)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging the Congress of the United States to amend the Endangered Species Act of 1973 to provide for a consideration of the impact of the Act on the economic growth and development of the geographic areas in which protected species are located.

WHEREAS, The Endangered Species Act of 1973 was enacted for the express purpose of providing a program for the conservation of endangered and threatened species of wildlife, fish and plants and to provide a means whereby the various ecosystems upon which such species depend may be conserved; and

WHEREAS, Since its enactment, the Endangered Species Act of 1973 and the several amendments thereto have been successful in protecting various species of wildlife from extinction, including the American bald eagle, and have increased the awareness of the American public as to the need for protecting the many diverse and unique species of wildlife in the United States; and

WHEREAS, Despite its successes, the Endangered Species Act of 1973 has also been criticized as containing draconian and intransigent provisions which do not allow for the consideration of its impact upon the ever-present need for human growth and development; and

WHEREAS, The enforcement of the provisions of the Act often requires restrictions to be placed upon economic growth and development in the geographic areas in which protected habitats are located, thereby creating hardships upon the persons residing within those geographic areas; and

WHEREAS, The recent controversy surrounding the protection of the spotted owl in the northwestern United States and its impact upon the logging industry provides a dramatic example of the need to balance competing interests in the area of wildlife protection; and

WHEREAS, The Congress of the United States has made several appropriations of money to assist in carrying out the provisions of the Endangered Species Act of 1973, and is currently considering making another such appropriation; and

WHEREAS, In conjunction with making such an appropriation, Congress may also consider the enactment of various amendments to the Endangered Species Act of 1973, thereby creating an opportunity for Congress to restructure the provisions of the Act and to carry out a more balanced approach to the protection of endangered and threatened species of wildlife; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Congress of the United States is hereby urged

to include in the appropriations act that is currently under consideration to fund the Endangered Species Act of 1973, an amendment which would provide for a consideration of the impact the Act may have on the economic growth and development of those geographical areas in which protected species of wildlife, fish and plants are located; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.