



STATE LAND USE PLANNING ADVISORY COUNCIL

MEETING PACKET

Friday June 1, 2018

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**NOTICE OF PUBLIC MEETING AND AGENDA OF THE
STATE LAND USE PLANNING ADVISORY COUNCIL**

A public meeting will be held on:

Friday June 1, 2018, between 9:00 am and approximately 3:30 pm

At the following location:

White Pine Aquatic Center
1111 Veterans Blvd., Ely, NV 89301

Please note that times stated are approximate and agenda items may be heard out of order.

The Chair reserves the right to take breaks where practical.

9:00am CALL TO ORDER

Introductions

9:05am PUBLIC COMMENTS

An opportunity for general comments from the public on other land use planning related topics.

(Note: The Council may not take action on any item raised in the public comment period that is not already on the agenda.)

9:10am AGENDA/APPROVAL OF MINUTES

Review of the Agenda (For possible action)

(Agenda is reviewed for unforeseen circumstances such as the inability of a scheduled speaker to attend, to move an item to a different time during the meeting to accommodate a speaker, etc.)

Approval of Minutes of the February 9, 2018 SLUPAC meeting. **(For possible action)**

9:15am RS 2477 ROADS WORK SESSION (For possible action)

Ongoing roundtable discussion and development of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road as a result of the passage of Senate Bill 456 in the 2015 Legislative Session. This is a primary focus area of SLUPAC, in coordination with Nevada Association of Counties and the Nevada Attorney General.

Members - State Land Use Planning Advisory Council

9:30am COUNTY EXPERIENCES WITH REGULATION OF MARIJUANA DISPENSARIES (For discussion only)

Presentations by SLUPAC members regarding ordinances and other planning efforts pertinent to newly legalized marijuana sales.

Sami Real – State Land Use Planning Advisory Council

Lee Plemel – State Land Use Planning Advisory Council

10:00am DEPARTMENT OF INTERIOR REGIONALIZATION (For possible action)

Roundtable discussion on the potential regionalization of the Department of Interior and how it may affect Nevada. A possible action may include a SLUPAC comment letter to the Department of Interior.

Members – State Land Use Planning Advisory Council

10:15am BLM'S DIRECTIVE TO STREAMLINE (For possible action)

The BLM's directive to streamline the NEPA and Resource Management Plan process is an overhaul of the previous "Planning 2.0" proposal that was rescinded. SLUPAC held a special meeting on August 14, 2017 to review and provide an official comment letter. Roundtable discussion on status of this effort. A possible action may include a SLUPAC letter reaffirming or clarifying relative issues.

Members – State Land Use Planning Advisory Council

- 10:30am PUBLIC LAND POLICY PLAN UPDATE ASSISTANCE AND OUTREACH (For possible action)**
 A focus area for SLUPAC, roundtable discussion on public land policy planning efforts and ways to increase outreach and coordination. A possible action may include a SLUPAC resolution supporting public land policy planning efforts and increased participation by SLUPAC in these efforts.
Members – State Land Use Planning Advisory Council
- 11:00am UPDATE ON STATEWIDE MILITARY LAND WITHDRAWAL EFFORTS (For possible action)**
 Nellis Air Force Base and NAS Fallon are both in the process of seeking Congressional approval to expand their land base through land withdrawals. Counties and the State of Nevada have provided scoping comments and are currently reviewing Draft Environmental Impact Statements. A possible action may include a SLUPAC letter reaffirming or clarifying relative issues.
Members – State Land Use Planning Advisory Council
- 11:30am COUNTY PLANNING ISSUES (For discussion only)**
 Presentations by SLUPAC members on planning related activities within their areas of representation.
Members – State Land Use Planning Advisory Council
- 12:00pm LUNCH/CONTINUATION OF COUNTY PLANNING ISSUES (For discussion only)**
Members – State Land Use Planning Advisory Council
- 1:00pm COUNCIL MEMBER COMMENTS
 COUNCIL DISCUSSION AND RECOMMENDATIONS FOR REVISITING SLUPAC FOCUS AREAS (For possible action)**
 Council will discuss if pertinent the primary SLUPAC focus areas identified for 2018-2020:
 - RS2477 Roads Protocol (SB 456)
 - County NEPA Consistency Review Assistance
 - Public Land Policy Plan Update Assistance and Outreach
- 1:15pm PUBLIC COMMENTS**
 An opportunity for general comments from the public on other land use planning related topics.
(Note: The Council may not take action on any item raised in the public comment period that is not already on the agenda.)
- 1:15pm ADJOURN (For possible action)**
Members – State Land Use Planning Advisory Council
- 1:15pm CAMP SUCCESS FIELD TRIP (Voluntary – no action.)**
 After adjournment, field trip to Camp Success, recently renovated by White Pine County. On the way, stop at Comins Lake to discuss invasive Pike eradication efforts. Note: The public is invited but must provide own transportation. **Anticipated return time approximately 3:30pm.**

PLEASE NOTE:

(I) Times scheduled for all items are approximate. Items on the agenda may be taken out of order;
 (II) The public body may combine two or more agenda items for consideration. The chairperson reserves the right to take items out of order to expedite the meeting or to accommodate speakers. and;
 (III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.
 Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify Skip Canfield in writing at the Nevada Division of State Lands, 901 S. Stewart Street, Suite 5003, Carson City, Nevada 89701 or by calling 775-684-2723 no later than May 29, 2018.

Notice of this meeting was posted at the following locations:

Department of Conservation and Natural Resources, 901 S. Stewart Street, Carson City, NV 89701
 Division of State Lands, 901 S. Stewart Street, Suite 5003, Carson City, NV 89701
 Nevada State Library and Archives, 100 N Stewart St, Carson City, NV 89701
 Nevada Department of Wildlife, 1218 North Alpha Street, Ely, NV 89301
 White Pine Aquatic Center, 1111 Veterans Blvd., Ely, NV 89301

In addition, this notice of meeting was posted on the Nevada Division of State Lands website at: www.lands.nv.gov

STATE LAND USE PLANNING ADVISORY COUNCIL

DRAFT MINUTES

February 9, 2018

500 S Grand Central Parkway

Las Vegas, NV 89155

Department/Room: Organizational Development Center (ODC)/ODC 3

Members Present

Lee Plemel, Carson City
Eleanor Lockwood, Churchill County
Sami Real, Clark County
Nancy McDermid, Douglas County
Delmo Andreozzi, Elko County
Jake Tibbitts, Eureka County (Chair)
Varlin Higbee, Lincoln County
Jerrie Tipton, Mineral County
Jeanne Herman, Washoe County
Laurie Carson, White Pine County
Roger Mancebo, Pershing County

Members Absent

Jim French, Humboldt County
Austin Osborne, Storey County
Lorinda Wichman, Nye County (Vice Chair)
Tori Sundheim, NACO
Art Clark, Lander County
Roger Mancebo, Pershing County

Others Present

Nancy Amundsen, Clark County
Don Alt, Lyon County Commissioner (Pending SLUPAC Member)
Lori Story, Nevada Attorney General's Office
Rebecca Palmer, State Historic Preservation Office
Matthew Tuma, Governor's Office of Energy
Charles Donohue, Administrator, Nevada Division of State Lands
Ellery Stahler, Deputy Administrator, Nevada Division of State Lands
Skip Canfield, NDSL, State Land Use Planning Agency

CALL TO ORDER

The meeting was called to order at 9:05am and self-introductions were made. The Agenda was reviewed and approved, motion by **Jerrie Tipton**, second by **Eleanor Lockwood**, approved unanimously. **Skip Canfield** recognized two new attendees, **Nancy McDermid** (Douglas County member) and **Don Alt** (pending Lyon County member). **Charlie Donohue** introduced **Ellery Stahler**, the new Deputy Administrator for the Nevada Division of State Lands.

PUBLIC COMMENTS

None.

AGENDA/APPROVAL OF MINUTES

The Draft Minutes of the September 8, 2017 meeting in Reno were approved as presented, motion by **Eleanor Lockwood** and seconded by **Varlin Higbee**. **Jerrie Tipton** abstained.

Nevada Division of State Lands

State Land Use Planning Agency
901 S. Stewart Street, Suite 5003

Carson City, Nevada 89701-5246

Telephone: (775) 684-2723

Fax: (775) 684-2721

DRAFT Meeting Minutes –February 9, 2018 – Las Vegas

ELECTION OF CHAIR AND VICE CHAIR FOR 2018

The members discussed the election of Chair and Vice Chair and noted the excellent manner in which the existing officers had conducted themselves during 2017. Therefore, by motion (**Eleanor Lockwood**) and second (**Laurie Carson**), all in favor, **Jake Tibbitts** and **Lorinda Wichman** were chosen as Chair and Vice Chair respectively for 2018.

ELECTION OF THREE MEMBER TO THE SLUPAC EXECUTIVE COUNCIL

The Executive Council (NRS 321.755) consists of four SLUPAC members and the Administrator of Nevada Division of State Lands and is charged with, upon request, resolving inconsistencies in land use plans between two or more adjacent or overlapping local governmental entities which cannot be resolved between them. The current member is **Laurie Carson** (White Pine – 9/8/2019). There were three vacancies for a two-year term. A brief discussion ensued detailing the need to ensure a “broad spectrum” of members across the State. Recognizing this fact, a motion by **Jerrie Tipton**, seconded by **Laurie Carson**, proposed **Sami Real**, **Jim French** and **Austin Osborne** as the three additional members of the Executive Council, with their terms expiring on 2/9/2020. Motion passed unanimously.

CONSIDERATION OF LETTERS OF APPRECIATION

Letters recognizing the time and commitment of former members **Nancy Amundsen** (Clark), **Nancy Boland** (Esmeralda), **Randy Brown** (Elko) and **Harold Ritter** (Lyon) were provided for consideration of the Council and signature by the Chairman. The members all valued the service and commitment of their colleagues who were no longer on SLUPAC.

RS2477 ROADS WORK SESSION

Jake Tibbitts updated the members by referencing a pending court case in Storey County, “*Thomas v. Storey County Commissioners*”. The dispute is over an RS2477 road and whether or not once land is privatized the right-of-way ceases. The private landowner wants to block off a road that has been used for decades by the public. The private party petitioned for a stay. Prior to the stay, the judge stepped through RS2477 history and some of the standards to be made in designating a public right-of-way through RS2477. The importance here is that this case is Nevada-specific. This will be a case to watch.

Jake Tibbitts also mentioned that the District Attorneys’ Association is becoming involved with RS2477 protocols. The association is aware of the efforts underway by SLUPAC/NACO and the AG Office. The DA’s association will meet on April 18, 2018 and after that, there will be follow up by the Nevada AG’s Office with provision of a more comprehensive draft protocol (**Wayne Howle**). **Charlie Donohue** stated that getting the county DAs involved is a positive step and that it would be good to get BLM and US Forest Service involved as much as possible. He also asked if the comments by the judge in the Storey County case support the Nye County methodology. **Jake Tibbitts** replied that the court case is in regards to a dispute on a single road whereas Nye County’s process looks at and documents all subject roads for recognition. The Nye County process is consistent, however our SLUPAC mandate includes looking at a resolution that avoids a piecemeal one road at a time scenario.

Don Alt mentioned an example of roads in Elko County being blocked and not accessible for herding cattle and specifically stock driveways. The discussion clarified that SLUPAC’s mandate addresses protocol for perfecting RS2477 road rights-of-ways while driveways and trails would be a separate process. Case law shows that the counties have final primacy for title of roads. Cow trails and similar ways would be an issue for the rancher to pursue. **Jerrie Tipton** clarified that individual ranch owners can claim those trails and easements as RS2477 rights-of-way as long as they can prove that they have been trailing cattle there.

Jake Tibbitts stated that the 10th Circuit Court (and concurred by the 9th Circuit) agree that rights-of-way over Federal land can only be adjudicated in a Federal Court. Counties do not have a vested right in a road until it is adjudicated in Federal Court, all they have prior to that is a claim. BLM cannot therefor officially recognize RS2477 roads until adjudication. He went on to say that Eureka County had a formal proposal in to BLM to tackle the “low hanging fruit” roads, those easiest to recognize as roads under RS2477. However BLM then,

and still now, has no appetite to proceed with any process like that until such time as the Utah process and court precedent is decided, and BLM can have more guidance.

Eleanor Lockwood commented that Churchill County adopted Nye County's protocol and is a long way towards documenting all of the roads. Time is critical because the Carson City BLM Resource Management Plan will be updated and the next step for BLM will be to do the Travel Management Plan. Churchill County wants to be proactively ready for participation in that process with all roads identified.

NEVADA'S ELECTRIC HIGHWAY

Matthew Tuma, Nevada Governor's Office of Energy provided an update on the status of the Electric Highway, which started as a partnership between the Governor's Office, NV Energy, and Valley Electric Association to expand the state's electric vehicle charging infrastructure by placing charging stations at cost-effective and strategic locations between Reno and Las Vegas. Goals include completing an "electric highway" system serving the entire state by 2020, significantly reduce the percentage of imported fossil fuels over the next 10 years, and reduce carbon emission to a level at or below accepted federal standards. Transitioning Nevada's transportation infrastructure to alternative fuel and electric vehicles will lessen the state's dependency on out-of-state resources and keep more of these dollars in Nevada. Governor Brian Sandoval has stated *"This Electric Highway will allow electric vehicle drivers to power their cars by tapping into Nevada's own renewable energy resources. This will strengthen our state's energy independence while reducing Nevada's petroleum imports."*

Regional and State Coordination:

- **REV West Plan**
 - Formed in December 2016
 - Initial partnership between Nevada, Utah, and Colorado
 - Joined by additional interior western states in 2017
 - Identify priority corridors, standards, and best practices
- **SB 145 – EV Infrastructure Demonstration Program**
 - Passed and signed into law during 2017 Legislative Session
 - PUCN is currently going through the administrative rulemaking process to establish the Program
 - Authorizes incentives for utility customers to install EV charging infrastructure

VW "Clean Diesel" Consent Decree:

The Basics

\$10 billion + (estimated) for VW customers; 2.0 L diesel vehicle buyback/lease termination **\$2 Billion ZEV Investment Commitment over 10 years – "Appendix C"**

- Electrify America to invest \$2 billion over 10 years to support increased use of ZEVs, including, but not limited to, the development, construction, and maintenance of ZEV-related infrastructure.
- Two separate planning processes:
 - State of California, managed by CARB
 - \$800 million (four 30-month cycles, \$200 million in each cycle)
 - Rest of the United States, managed by the U.S. EPA
 - \$1.2 billion (four 30-month cycles, \$300 million in each cycle)
 - Cycle 1 announced in April 2017 – Identified I-80 and I-15 as priority corridors

\$2.925 Billion Environmental Mitigation Trust Fund – "Appendix D"

- **Goal:** Achieve reductions of NOx emissions in the United States.
- **Beneficiaries:** States, Indian Tribes, D.C., Puerto Rico
- Nevada identified to receive approximately \$25 million
 - The Nevada Department of Environmental Protection is serving as the state's lead agency.
- 10 categories of eligible mitigation projects

Light Duty Zero Emission Vehicle Supply Equipment (Category 9) is capped at 15% of total funding

NEH Phase 2 Funding – total available pool is \$4,477,320

- The GOE will utilize funding from the Renewable Energy Account to provide any required match
- The GOE will issue grants to host sites through their service providers and will be reimbursed from the VW Mitigation Fund

After the presentation, discussion ensued:

Ellery Stahler stated that it seems like a lot of energy is needed for this service and asked how renewable energy was factored in. Is there a corresponding push for more renewables to compensate for the increase in demand for this program? **Matt Tuma** replied that it is not directly part of this initiative, but instead is a concerted parallel effort that stresses a robust renewable energy portfolio for Nevada and the West.

Nancy Amundsen mentioned that Clark County acquired a Federal grant for solar charging stations and is reviewing the County parking code to ensure that charging stations are factored in.

Skip Canfield asked how payment of the service is made and how long it takes to charge a vehicle at a station. **Matt Tuma** replied that typically one would utilize a fleet card or credit card and the average recharge time would be 40 minutes. Future chargers will have additional capacity.

Nancy McDermid asked how vehicles participating in these charging stations contribute to operation and maintenance of roads since they are not paying the gas tax. **Matt Tuma** replied that this is a FHWA issue and they are looking at this on the national level.

Matt Tuma mentioned that in the last Legislative Session, SB 145 was approved allowing an owner of electric charging equipment can charge for the volumetric consumption of electricity without being regulated as a utility.

Laurie Carson asked how cooperative electric companies fit in and if there are statistics on how this program can help reduce air pollution. **Matt Tuma** replied that the companies are heavily involved and supportive, and also that statistics are evolving as the program progresses.

Jake Tibbitts asked if the rest of the State will benefit from the program, beyond the US95 corridor and **Matt Tuma** replied that, yes, over time and subsequent phases, the gaps will be connected.

Jerrie Tipton mentioned that the geothermal and solar energy produced in Mineral County goes to California and tax abatements are a huge hit.

NEVADA STATE HISTORIC PRESERVATION PLAN

Rebecca Palmer, Nevada State Historic Preservation Officer, provided an update on a survey that her office is conducting to gather feedback on the next version of the State Historic Preservation Plan (2020-2028).

Why is there a Preservation Plan?

Required by the National Historic Preservation Act of 1966, as amended:

The State Historic Preservation Officer shall prepare and implement a comprehensive statewide historic preservation plan.

The statewide plan is meant to encourage broad public participation in planning for cultural resources, meet challenges unique to Nevada, influence historic preservation policy in state and local governments, and empower local communities, organizations, and individuals to action.

Key features of historic preservation planning are:

1. The planning process has a **STATEWIDE** focus.

2. The **PUBLIC** helps identify issues about historic preservation that may need to be addressed in the statewide plan.
3. Working with its **PARTNERS**, the SHPO gathers and analyzes information about social, economic, political, legal, and environmental trends that affect historic resources and influence preservation practice.
4. The SHPO ensures that the statewide preservation plan is **INFORMED BY OTHER FEDERAL, STATE, AND LOCAL PLANNING EFFORTS**, such as transportation master plans, emergency management plans, recreation plans, tourism and economic development plans, and local land use plans.

Online Survey

Available at SHPO website: <http://shpo.nv.gov/>

Goals for the preservation community:

Objectives to reach goals:

How will the preservation community reach the goals the public has identified?

Benchmarks for objectives:

How will the public evaluate if the preservation community has made progress towards the goals set in the plan?

After the presentation, discussion ensued:

Charlie Donohue asked if there was a target for number of respondents. **Rebecca Palmer** replied that so far there have been over 300 respondents, a very good number. There is not any target, however, the goal is to reach as many people as possible.

Don Alt stated that the plan should consider custom, culture, history and heritage. **Jerrie Tipton** agreed and mentioned examples of Sodaville and Marietta where there were camel camps.

PLANNING THE LAS VEGAS STADIUM

Don Web, Principal with the Cordell Corporation who serves as the Chief Operating Officer of the LV Stadium development team, provided the members with a fascinating presentation of the pending development of the Las Vegas Raiders Stadium. The budget for the stadium is \$1.86 billion, the construction is costing at least \$46 million per month. In addition to the stadium, a \$110 million practice facility will also be constructed. Parking is one of the biggest issues and the plan for only 4,000 spaces on-site dictates an ambitious off site shared parking and shuttle program, combined with Uber-type services and walking from the casino corridor across I-15 on new pedestrian connections.

COUNTY PLANNING ISSUES

Jake Tibbitts, Eureka County:

EPA residential lot lead clean up ongoing. Over \$13 million has been spent over the last three years.

Laurie Carson, White Pine County:

County addressing and inventorying its roads.

Developing and enhanced 911 system.

Enforcing the new ordinance that requires OHVs to stay on existing trails in the Silver State Trail system.

County is leasing 760 acres at the airport to a solar farm developer.

The new Courthouse is a \$30 million project.

Eleanor Lockwood, Churchill County:

County actively engaged with NAS Fallon regarding the proposed military land withdrawal, there are significant impacts. Three pillars of the County's economy are (1) Agriculture, (2) Geothermal, and (3) NAS Fallon. She will be retiring on May 1 and will be sorely missed by all.

Nancy McDermid, Douglas County:

Finalizing 20-year update to the Master Plan and Transportation Plan.
 Ongoing 7-year process on the land bill, the Tribe has changed leadership, County awaiting an agreement.
 Two solar proposals were denied due to compatibility issues, the ordinance is being revised.
 Sale of marijuana was not supported in the County, new ordinance prohibits its sale. City of South Lake Tahoe also opted out.
 TRPA is hearing the Broadband issue, Edgewood is proposing a cell tower on private property with design mitigation for visual effects.
 "Dig once" policy proposed in the County, especially as it impacts Lake Tahoe.
 Concern about the tribal travel center on US 395 and their lack of conformance to County standards. County was opposed to the center.

Don Alt, Lyon County:

County is updating their Natural Resources Plan.
 Experiencing growth related water issues.
 Water Basin 102 is over allocated, this is where Stagecoach and Silver Springs are located as well as the USA Parkway. A moratorium on well drilling may be needed.

Jerrie Tipton, Mineral County:

New Public Land Use Plan Committee in place and the County is updating the Transportation Plan.

Jeanne Herman, Washoe County:

The Truckee Meadows Water Authority has enough excess water for 20 years and could accommodate an additional 200,000 population.
 There are issues with County lands being annexed and a resulting disparity over payments for services.
 The land bill is progressing with a 700,000-acre wilderness wish list that is not supported, there needs to be a better balance between wilderness and lands released for economic development.

Varlin Higbee, Lincoln County:

The County is actively participating in the NTTR land withdrawal proposal. Key issue is the need to maintain access to areas that are currently open.
 The Lincoln County Conservation, Recreation and Development Act implementation is stalled.
 County working with the State Engineer on well and springs verifications.
 City of Caliente is in the process of annexing land for marijuana growth operations.

Delmo Andreozzi, Elko:

County working on its 911 emergency system.
 Broadband expansion needed.
 County supports Senator Heller's resolution to resolve 272,000 acres of Wilderness Study Areas.
 One marijuana dispensary is allowed in Elko County (population less than 50,000 per statute). Plus one is allowed in each of the four incorporated cities. Jackpot is unincorporated, no dispensary allowed there.
 County has appealed the South Canyon Road issue, US Forest Service had negotiated a deal but the County felt that its rights had been stripped.

Sami Real, Clark County:

County looking at appropriateness of marijuana dispensaries closer to the Strip, and if more licenses should be granted in general.

The Convention Center is being expanded with new resorts and hotels.

Broadband co-location potential but County is stressing that this needs to be done correctly.

Lee Plemel, Carson City:

Legal marijuana sales commenced on January 1, 2018.

Water agreement with Lyon County being considered by the Board of Supervisors.

Charlie Donohue mentioned completion of a land exchange conducted by Division of State Lands and a private party on the north side of I-80 in Elko for the Nevada Youth Training Center. Private land (62 acres) immediately adjacent to the Center's entrance were exchanged with some Stater land to the west of the Center so that both parties had more realistic management and development potential.

The agency resolved an encroachment on the Truckee River where a portion of a private residence was on Federal land and an agreement was made between all sides to rectify the situation. State obtained some prime habitat.

The new Walker River State Recreation Area south of Yerington is progressing, first phase includes improvements to administrative structures, rural campsites and access for fishing along the East Fork down by the Elbow.

Ice Age Fossils State Park – Division of State Parks moving forward.

Carson River in Churchill County – questions of State ownership of bed and banks.

COUNCIL MEMBER COMMENTS

COUNCIL DISCUSSION AND RECOMMENDATIONS/CHECK IN ON SLUPAC GOALS

The members revisited the focus areas delineated for 2018-2020 and determined that the primary 2015-2017 SLUPAC focus areas shall be:

- RS2477 Roads Protocol (SB 456)
- County NEPA Consistency Review Assistance
- Public Land Policy Plan Update Assistance and Outreach

Next meeting will be Friday June 1, 2018 in White Pine County.

Agenda topics to pursue:

- County experiences with regulating marijuana dispensaries.
- Regionalization of the Department of Interior and potential impacts to Nevada.
- BLM Streamlining (overhaul of previous "Planning 2.0" that was rescinded).
- Public land policy planning efforts and prioritize which counties are in need of updates.

PUBLIC COMMENT

None.

ADJOURNMENT

The meeting was adjourned at 1:20 pm for a tour of "The Park", an immersive outdoor dining and entertainment district that connects Las Vegas Blvd to T-Mobile Arena, Las Vegas' newest sport and entertainment venue, which opened in April 2016.

Respectfully submitted,

Skip Canfield

/s/

Nevada Division of State Lands

State Land Use Planning Agency
901 S. Stewart Street, Suite 5003

Carson City, Nevada 89701-5246

Telephone: (775) 684-2723

Fax: (775) 684-2721

Meeting Recorder

Please note that minutes should be considered draft minutes pending their approval at a future meeting of the State Land Use Planning Advisory Council. Corrections and changes could be made before approval.

The meeting was digitally recorded. Anyone wishing to receive or review the recording may call (775) 684-2723. The recording will be retained for three years.

STATE LAND USE PLANNING ADVISORY COUNCIL
Membership Roster

COUNTY	REPRESENTATIVE	EXPIRES	PHONE
Carson City	Lee Plemel Planning Director 201 N Carson Street Carson City, NV 89701	12/31/20	775-887-2180 LPlemel@carson.org
Churchill	Michael Johnson Planning Director 155 N Taylor Street, Suite 194 Fallon, NV 89406	12/31/18	775-423-7627 planning-director@churchillcounty.org
Clark	Sami Real Planning Manager Department of Comprehensive Planning 500 S Grand Central Parkway Las Vegas, NV 89155	12/31/20	(702) 455-3129 Sami.Real@ClarkCountyNV.gov
Douglas	Nancy McDermid County Commissioner 1594 Esmeralda Avenue Minden, NV 89423	12/31/20	nmcdermid@me.com
Elko	Delmo Andreozzi County Commissioner 982 Northside Drive Elko, NV 89801	12/31/20	775-934-8117 dandreozi@elkocountynv.net
Esmeralda	Ralph Keyes County Commissioner PO Box 517 Goldfield, NV 89013	12/31/19	commissionerkeyes13@yahoo.com
Eureka	Jake Tibbitts Natural Resources Manager PO Box 694 10 S Main Street Eureka, NV 89316	12/31/19	775-237-6010 JTibbitts@EurekaCountyNV.gov
Humboldt	Jim French County Commissioner 5615 Patrician Way Winnemucca, NV 89445	12/31/18	775-843-8327 jlfrench6472@sbcglobal.net

Lander	Art Clark County Commissioner 50 State Route 305 Battle Mountain, NV 89820	12/31/18	775-761-6011 aclark@landercountynv.org
Lincoln	Varlin Higbee County Commissioner PO Box 90 Pioche, NV 89043	12/31/19	horanch@lcturbonet.com
Lyon	Don Alt County Commissioner 3945 Cypress St Silver Springs, NV 89429	12/31/20	donalt1939@gmail.com
Mineral	Jerrie C. Tipton County Commissioner PO Box 138 Mina, NV 89422	12/31/19	775-573-2327 tiptonstj@gmail.com
Nye	Lorinda Wichman County Commissioner Nye County Courthouse PO Box 153 Tonopah, NV 89409	12/31/20	775-761-1626 lawichman@gmail.com
Pershing	Roger Mancebo 590 14 th Street Lovelock, NV 89419	12/31/18	rmancebo24@gmail.com
Storey	Austin Osborne Planning Director 1064 S C Street Virginia City, NV 89440	12/31/19	775-847-0966 aosborne@storeycounty.org
Washoe	Jeanne Herman County Commissioner PO Box 11130 1001 E 9 th Street Reno, NV 89520	12/31/18	775-358-0555 jherman@washoecounty.us
White Pine	Laurie Carson 801 Clark Street, Suite 5 Ely, NV 89301	12/31/18	775-293-3134 carson4me@aol.com
Nevada Association of Counties (Non-Voting)	Tori Sundheim		775-883-7863 tsundheim@nvnao.org

STATE LAND USE PLANNING ADVISORY COUNCIL

BYLAWS

Adopted May 2, 1980
Amended October 9, 1981
Amended June 14, 1987
Amended November 25, 1996
Amended August 10, 2007
Amended February 7, 2014

ARTICLE 1 – GENERAL

1.1 NAME:

The name of the Council is the Land Use Planning Advisory Council.

1.2 MEMBERSHIP:

The membership of the Council shall consist of one elected official or representative of local political subdivisions from each county as appointed by the Governor and one non-voting member appointed by the Nevada Association of Counties or its successor organization (NRS 321.740). All such members shall hold office for terms of 3 years or until their successors have been appointed and have qualified. (NRS 232A.020)(August 10, 2007)(February 7, 2014)

1.3 DESIGNATION OF ALTERNATES:

In the event a member cannot be present, that member shall designate a person to represent him as an alternate at Council meetings. Designation must be confirmed by the member in writing, or by telephone, to the State Land Use Planning Agency. The alternate has voting privileges on all matters except policy recommendations to the Governor. (June 14, 1987)(August 10, 2007)

1.4 OFFICERS:

The Council shall elect from its own members a chairman and vice-chairman, whose terms of office shall be one year, and who may be re-elected. If a vacancy occurs in either office, the Council may fill such vacancy for the unexpired term.

The State Land Use Planning Agency shall serve as secretary, record minutes, send out announcements, and manage other related administrative affairs.

1.5 EXECUTIVE COUNCIL MEMBERSHIP:

The council shall elect from its membership four persons to serve with the Administrator of the Division of State Lands as an Executive Council. The Council shall elect two alternate members to the Executive Council; said alternate members to replace Executive Council members in cases which involve the regular members' counties. Each member and alternate member of the Executive Council shall serve for two year terms (NRS 321.755).

ARTICLE 2 – MEETINGS

2.1 MEETINGS:

The Council shall hold at least two (2) regular meetings each year. Special meetings may be called by the Chairman and the Administrator of the Division of State Lands. All meetings shall be open to the public except on those matters excluded from the Nevada Open Meeting Law (NRS 241.010-241.050). (October 9, 1981)

2.2 NOTICE OF MEETINGS:

Adequate notice shall be given in advance of all meetings to members of the Council and members of the press. Notice of all meetings shall be consistent with the guidelines contained in the Nevada Revised Statutes Chapter 241.

2.3 PLACE OF MEETINGS:

Meetings of the Council shall be held in such places as the Council members may select.

2.4 QUORUM AND VOTE REQUIRED:

A quorum is constituted by ~~nine (9) members present~~ a majority of the active voting members of the Advisory Council at a duly noticed meeting. A majority of those voting shall be required to take action with respect to any matter. Abstentions will not be considered a vote. (November 25, 1996)(February 7, 2014)

In the event less than ~~nine (9)~~ a majority of the active voting members of the Advisory Council members are in attendance at a duly advertised meeting, so as to not constitute a quorum, such meeting may continue as an informational meeting where no action is taken. (November 25, 1996)(February 7, 2014)

2.5 PARLIAMENTARY:

“Robert’s Rules of Order” shall govern the conduct of meetings in all cases in which they are applicable.

ARTICLE 3 – DUTIES

3.1 ADVISORY ROLE:

The Council shall advise the Administrator on the development and distribution to cities and counties of information useful to land use planning (NRS 321.750).

3.2 LIAISON ROLE:

The Council members shall serve a liaison function between the local governments in their respective counties and the State Land Use Planning Agency.

3.3 REVIEW AND COMMENT ROLE:

The Council may review and comment upon proposed actions of the Executive Council prior to final positions being established.

3.4 EXECUTIVE COUNCIL DUTIES:

The Executive Council shall render decisions on inconsistencies between local land use plans in conformity with the provisions of NRS 321.761—321.763.

The Executive Council shall make recommendations for land use planning policies and regulations in areas of critical environmental concern in conformity with the provisions of NRS 321.770.

ARTICLE 4 – MISCELLANEOUS

4.1 LIBERAL CONSTRUCTION:

These rules and regulations shall be liberally construed to secure just, speedy and economical determination of all matters before the Council.

4.2 DEVIATION:

In special cases, and for good cause not contrary to statute, the Council may permit deviation from these rules and regulations upon a finding and to the extent that strict compliance is determined to be impracticable or unnecessary.

State Land Use Planning Advisory Council

NRS 321.740 Creation; appointment, number and expenses of members.

1. The Land Use Planning Advisory Council, consisting of 17 members appointed by the Governor, is hereby created.
2. The Governor shall appoint members who are elected officials or representatives of local political subdivisions, one member from each county.
3. Members are entitled to receive the travel expenses and subsistence allowances provided by law for their positions from the local political subdivisions.
(Added to NRS by 1973, 819; A 1977, 1191, 1478, 1556)

NRS 321.750 Duties. The Land Use Planning Advisory Council shall:

1. Advise the Administrator on the development and distribution to cities and counties of information useful to land use planning.
2. Advise the State Land Use Planning Agency regarding the development of plans and statements of policy pursuant to subsection 1 of [NRS 321.7355](#).
(Added to NRS by 1973, 819; A 1975, 105; 1977, 1556; 1997, 1033)

NRS 321.755 Executive Council.

1. The Executive Council of the Land Use Planning Advisory Council is hereby created to consider and make recommendations for land use planning in areas of critical environmental concern and to resolve inconsistencies between the land use plans of local government entities.
2. The Executive Council consists of the Administrator and four persons selected by the Land Use Planning Advisory Council from among its members. Each member of the Executive Council shall serve for 2-year terms.
(Added to NRS by 1977, 1552; A 1979, 151)

Resolution of Inconsistencies in Local Plans

NRS 321.761 Technical assistance; submission of matter to Executive Council.

1. If an inconsistency in land use plans develops between two or more adjacent or overlapping local government entities which cannot be resolved between them, one or more of them may request the State Land Use Planning Agency to study and assist in resolving the inconsistency.
2. Upon receipt of such a request the Administrator shall convene a meeting of all the affected entities and shall provide technical assistance and advice in resolving the inconsistency.
3. If, after subsequent meetings over a reasonable period of time as determined by the Administrator, the affected entities cannot resolve the inconsistency, the matter shall be submitted to the Executive Council of the Land Use Planning Advisory Council for a decision.
(Added to NRS by 1977, 1552)

NRS 321.763 Duties of State Agency; adoption, enforcement and expiration of plans and regulations.

1. When an inconsistency in land use plans is submitted for decision, the Executive Council may direct the staff of the State Land Use Planning Agency to conduct studies, assemble information and prepare proposals for alternative courses of action if necessary.
2. The Executive Council shall conduct public hearings in the affected areas before arriving at a decision in the matter.
3. In rendering its decision, the Executive Council may sustain the position of one or more of the local government entities involved or prescribe its own land use plan for the area of inconsistency. The Executive Council may adopt land use regulations to carry out its decision.
4. All land use plans and regulations adopted by the Executive Council pursuant to this section supersede inconsistent plans and regulations of the affected local government entities, but the local government entities are responsible for enforcing the plans and regulations of the Executive Council.
5. In the event of noncompliance with such plans or regulations, any affected local government entity may bring an action to obtain injunctive relief against such noncompliance.
6. The Executive Council, upon petition from all of the affected local government entities or on its own motion, may determine the expiration date of the plans and regulations imposed pursuant to this section.

(Added to NRS by 1977, 1552; A 1979, 152)

Planning for Areas of Critical Environmental Concern

NRS 321.770 Duties of Administrator and Executive Council.

1. The State Land Use Planning Agency shall provide assistance in land use planning for areas of critical environmental concern:
 - a. When the Governor directs that the Agency review and assist in land use planning for an area he finds to be of critical environmental concern.
 - b. When one or more local government entities request that the Agency advise and assist in land use planning for an area which affects them and which they consider to be of critical environmental concern.
2. Upon receipt of a directive or a request pursuant to subsection 1, the Administrator shall study the problems of the area described and meet with the affected local government entities to receive their initial comments and recommendations. He shall then submit the matter of planning for the area of critical environmental concern to the Executive Council of the Land Use Planning Advisory Council for consideration and recommendation.
3. The Executive Council shall include in its procedures one or more public hearings upon notice given by at least one publication at least 20 days before the hearing in a newspaper or combination of newspapers having general circulation throughout the area affected and each city and county any portion of whose territory lies within such area. The notice shall state with particularity the subject of the hearing.
4. Following completion of the hearings and consideration of other information, the Executive Council shall make its final recommendations for land use planning policies in the area of critical environmental concern. The recommendations may include proposed land use regulations to carry out such policies.
5. No land use regulation adopted by the Executive Council pursuant to this section may become effective without the approval of the Governor.

(Added to NRS by 1973, 820; A 1975, 105; 1977, 1556)

9:15am **RS 2477 ROADS WORK SESSION (For possible action)**

Ongoing roundtable discussion and development of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road as a result of the passage of Senate Bill 456 in the 2015 Legislative Session. This is a primary focus area of SLUPAC, in coordination with Nevada Association of Counties and the Nevada Attorney General.

Members - State Land Use Planning Advisory Council

Senate Bill No. 456—Committee on Transportation

CHAPTER.....

AN ACT relating to roads; revising provisions authorizing the Attorney General to bring an action to vindicate the rights of certain persons or governmental entities with respect to certain roads which cross certain federal lands; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law defines certain roads or ways which exist upon certain rights-of-way granted between 1866 and 1976 by Congress over public lands of the United States and not reserved for public use as “accessory roads” or “public roads.” (NRS 405.191, 405.201) Existing law provides that, if an agency of the United States responsible for the lands over which such an accessory road runs pursues the closing of the accessory road or demands a fee or permit for the use of the accessory road, the Attorney General may bring an action for a declaratory judgment on behalf of: (1) the State and its residents; (2) owners of lands served by the accessory road; (3) holders of grazing rights served by the accessory road; and (4) all other users of the accessory road. Such an action is to vindicate the rights of all users of the unimpeded maintenance, use and enjoyment of the accessory road, and the rights of owners of the lands served by the accessory road to just compensation for any closing found necessary. (NRS 405.204) **Section 3** of this bill revises the authorization of the Attorney General to participate as a party in an action to quiet title as well as an action for declaratory judgment, and provides that such actions may be brought regarding those roads defined as “public roads,” which exist upon a right-of-way granted by Congress over public lands of the United States not reserved for public uses and which have been accepted by general public use and enjoyment. **Section 3** also urges the Attorney General to take a leadership role in pursuing actions on behalf of the State and its counties in formalizing and finalizing title to such accessory and public roads, and **sections 3-5** of this bill direct the Attorney General, the Land Use Planning Advisory Council and the Nevada Association of Counties to work cooperatively to develop, maintain and assist in the implementation of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 405.195 is hereby amended to read as follows:
405.195 1. Five or more residents of this state may petition any board of county commissioners to open, reopen, close, relocate or abandon a public road within the county. The petition must be accompanied by proof of the petitioners’ residency and adequate maps and documentation to justify a hearing on the petition. Upon receipt of such a petition and the required documentation, the board of county commissioners shall set a date to conduct a public hearing

on the petition. The date selected must not be earlier than 30 days, nor later than 45 days, after the petition is submitted. In addition to any other notice required by law or ordinance, the board shall cause notice of the time, date and location of the hearing to be published at least once each week for 2 successive weeks in a newspaper of general circulation in the county.

2. Upon conclusion of the public hearing, the board shall determine whether the road in question has acquired the status of a public road because:

(a) Construction of the improvement occurred while the land was unappropriated, unreserved public land;

(b) The improvement was constructed by mechanical means which made the physical change to the natural area necessary for the customary or usual passage of traffic; and

(c) The right-of-way was:

(1) Accepted by the state or local government for dedication as a road for public use and thereafter the road was used by the public at large; or

(2) Accepted by use as access to a mining claim or other privately owned property.

3. If the board concludes that the road is a public road, the board may order the public road to be opened, reopened, closed, relocated or abandoned, for all or part of the year. The board's decision must be based on specific findings, including, but not limited to:

(a) The resulting benefit to the general public;

(b) Whether any significant impairment of the environment or natural resources will result; and

(c) Whether the decision will result in a significant reduction in the value of public or private property.

↳ The order of the board must be reduced to writing, including a statement of any actions which must be taken to effectuate the decision and the person to whom each such action has been assigned. If possible, the order must be signed by any person who has agreed to take a specific action to effectuate the board's decision. The lack of such a signature does not invalidate the order.

4. If the order of the board is to close or abandon a public road, the board shall, upon the petition of five or more residents of the State, designate and provide an alternate route serving the same area. The closure or abandonment of a public road by the board does not prohibit or restrict the use of that road by a governmental agency or a public utility regulated by the Public Utilities Commission of

Nevada for the maintenance, construction or operation of a facility of the agency or utility.

5. Any person or governmental agency may bring and maintain an action in the district court of the county in which the public road lies to prevent any person, including a public agency, from violating an order issued pursuant to subsection 3.

6. The Attorney General may, *pursuant to this section or as provided in NRS 405.204*, bring and maintain an action in any court or before any federal agency if an agency or instrumentality of the Federal Government denies the use of a public road located on public land in this state.

7. Nothing in this section affects the right of the Department of Transportation to regulate freeways or highways in this state.

Sec. 2. NRS 405.201 is hereby amended to read as follows:

405.201 As used in NRS 405.201 to 405.204, inclusive, unless the context otherwise requires:

1. "Accessory road" means any way established over public lands between 1866 and 1976 pursuant to section 8 of chapter 262, 14 Stat. 253 (1866), former 43 U.S.C. § 932, as to which general public use or enjoyment before 1976 is not established, but which provides access to privately owned land.

2. *"Public road" has the meaning ascribed to it in subsection 2 of NRS 405.191.*

3. "Public utility" means any public utility, as that term is defined in NRS 704.020, that is subject to the jurisdiction of the Public Utilities Commission of Nevada.

Sec. 3. NRS 405.204 is hereby amended to read as follows:

405.204 1. The Legislature hereby finds and declares that ~~the~~:

(a) Formalizing and finalizing title to accessory roads and public roads is necessary for the State and its counties to protect proper authority over, continued access to and multiple uses on federally administered lands; and

(b) The public interest of the State of Nevada is served by keeping accessory roads and public roads open and available for use by the residents of this state because:

~~(a)~~ (1) There exists within this state a large number of accessory roads ~~;~~

~~(b)~~ *and public roads;*

(2) Accessory roads *and public roads* provide access for the control of fire on adjacent lands, the enforcement of laws by peace officers, search and rescue operations, medical personnel and ambulances, and public utilities;

~~[(e)]~~ (3) Accessory roads *and public roads* provide access to public lands for members of the general public; and

~~[(d)]~~ (4) Accessory roads *and public roads* enhance the taxable value of the private property served by such roads.

2. *The Legislature therefore urges the Attorney General to take a leadership role in pursuing actions on behalf of the State and its counties in formalizing and finalizing title to accessory roads and public roads in this State pursuant to the powers and duties provided in this section and NRS 228.180, 228.190 and 405.195.*

3. The Legislature therefore directs that ~~[(i)]~~:

(a) *If an agency of the United States responsible for the lands over which an accessory road or a public road runs pursues the closing of ~~[(an accessory)] such a road, [or]~~ demands a fee or permit for the use of ~~[(an accessory)] such a road, prescribes or asserts management authority over such a road or in any other way creates a case or controversy as to the use or title to such a road, the Attorney General, pursuant to this section or NRS 405.195, as applicable, may participate as a party in a quiet title action pursuant to 28 U.S.C. § 2409a or bring an action for a declaratory judgment as soon as practicable in cooperation with or~~* on behalf of:

~~[(a)]~~ (1) The State and its residents;

~~[(b)]~~ (2) *The county or counties in which the road lies;*

(3) Owners of lands served by the road;

~~[(e)]~~ (4) Holders of grazing, *mineral or other* rights served by the road; and

~~[(d)]~~ (5) All other users of the road,

↳ *to protect the ownership of and title to the road, or to vindicate the rights of all users to the unimpeded maintenance, use and enjoyment of the road, and the rights of owners of lands or holders of rights served by the road to just compensation for any closing found necessary.*

(b) *The Land Use Planning Advisory Council created by NRS 321.740, the Attorney General and the Nevada Association of Counties shall work cooperatively to develop, maintain and assist in the implementation of a legal protocol whereby a county may perfect its rights to and finalize title to an accessory road or a public road.*

Sec. 4. NRS 321.750 is hereby amended to read as follows:

321.750 The Land Use Planning Advisory Council shall:

1. Advise the Administrator on the development and distribution to cities and counties of information useful to land use planning.

2. Advise the State Land Use Planning Agency regarding the development of plans and statements of policy pursuant to subsection 1 of NRS 321.7355.

3. Work cooperatively with the Attorney General and the Nevada Association of Counties as required pursuant to subsection 3 of NRS 405.204.

Sec. 5. The Land Use Planning Advisory Council, the Attorney General and the Nevada Association of Counties, as soon as practicable after July 1, 2015, shall work cooperatively to develop the protocol required pursuant to NRS 405.204 as amended by section 3 of this act.

Sec. 6. This act becomes effective on July 1, 2015.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LORI L. THOMAS;

Plaintiff,

v.

THOMAS ZACHRY; MARNA ZACHRY;
JOHN HARPER; and STOREY COUNTY
and its BOARD OF COMISSIONERS,

Defendants.

Case No. 3:17-cv-0219-LRH-WGC

ORDER

Before the court is plaintiff Lori L. Thomas' ("Thomas") motion for a preliminary injunction. ECF No. 3. Defendant Storey County and its Board of Commissioners filed an opposition (ECF No. 21) joined by defendants Thomas Zachry, Marna Zachry, and John Harper (collectively "homeowner defendants") (ECF No. 25), to which Thomas replied (ECF No. 33). Thereafter, defendants filed "supplements" to their oppositions that are more appropriately considered sur-replies. See ECF Nos. 38, 39. A hearing on Thomas' motion for a preliminary injunction was held on May 31, 2017.

I. Facts and Procedural Background

At its heart, this case involves a dispute over a dirt road in Storey County, Nevada, commonly known as "Sutro Springs Road." In October 2016, Thomas purchased approximately 40 acres of real property within Storey County located near Dayton, Nevada. This property was originally carved out of a 960 acre parcel of land in Storey County that was taken out of the

1 public domain and transferred to private ownership by United States Land Patent No. 27-68-
2 0138 recorded February 8, 1968 ("1968 patent").¹ The property conveyed by the 1968 patent was
3 subsequently divided into smaller parcels through the Storey County development process. On
4 August 15, 1995, the Storey County Board of Commissioners ("Commissioners") approved a
5 subdivision of one of the parcels adjacent to the Thomas property. The final subdivision map
6 ("1996 map") was recorded in Storey County on January 10, 1996, as Document No. 77085.²

7 Sutro Springs Road is a now-paved road running through the approved subdivision. The
8 paved portion of the road terminates in a cul-de-sac at the edge of Thomas' property. A visible
9 dirt road then continues across Thomas' property in a northeasterly direction, continues onto
10 public land managed by the Bureau of Land Management ("BLM"), and ultimately leads to
11 defendants Zachry's and Harper's private properties above the public land.

12 After Thomas purchased her property in October 2016, she erected barriers and obstacles,
13 along with no trespassing signs, at the location where Sutro Springs Road transitions from the
14 paved road ending in the cul-de-sac to the dirt road entering her property. In response, on or
15 about December 28, 2016, the Storey County District Attorney ("D.A.") sent a letter to Thomas
16 advising that the dirt road across her property was a long-established public road and requesting
17 that she remove the barriers and allow the road to be used as a public roadway.³ Thomas refused.
18 Since that time, however, Thomas alleges that various trespassers have entered her property
19 along the disputed roadway on the advice and approval of the Storey County D.A. Then, in April
20 2017, during its regularly scheduled meeting, the Storey County Commissioners approved a
21 project to allow the Storey County Public Works Department to immediately remove all of the
22 obstructions Thomas had placed on the road.⁴

23 ///

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25 ¹ A copy of the 1968 patent is attached as Exhibit 1 to Thomas' motion for a preliminary injunction. See ECF No. 3,
Ex. 1.

26 ² A copy of the 1996 map is attached as Exhibit 2 to Thomas' motion for a preliminary injunction. See ECF No. 3,
Ex. 2.

27 ³ A copy of the Storey County D.A.'s letter is attached as Exhibit 3 to Thomas' motion for a preliminary injunction.
See ECF No. 3, Ex. 3.

28 ⁴ A copy of the proposed and approved agenda item from the April 2017 Commissioners meeting is attached as
Exhibit 4 to Thomas' motion for a preliminary injunction. ECF No. 3, Ex. 4.

1 On April 7, 2017, Thomas filed the underlying complaint against defendants alleging four
2 causes of action: (1) a petition for writ of mandamus or injunction against Storey County; (2) a
3 Fifth Amendment takings claim; (3) entitlement to injunctive relief; and (4) declaratory relief
4 and quiet title. ECF No. 1. Thereafter, on April 10, 2017, Thomas filed the present motion for a
5 preliminary injunction seeking to enjoin Storey County from removing the obstructions she had
6 placed on the road. ECF No. 3.

7 **II. Legal Standard**

8 A preliminary injunction is an “extraordinary remedy that may only be awarded upon a
9 clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council,*
10 *Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per
11 curiam)). A court may grant a preliminary injunction upon a showing of: (1) irreparable harm to
12 the petitioning party; (2) the balance of equities weighs in petitioner’s favor; (3) an injunction is
13 in the public’s interest; and (4) the likelihood of petitioner’s success on the merits. *See id.* at 20
14 (citations omitted). In *Winter*, the Supreme Court stated that a “likelihood” is required as to all
15 four factors. *See id.* at 22. The Ninth Circuit has since interpreted the *Winter* decision as being
16 compatible with a sliding scale, under which a party may satisfy the requirements for an
17 injunction with a lower showing under one factor if there is a very strong showing under another.
18 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under the sliding
19 scale approach, the Ninth Circuit has determined that “serious questions” as to the merits would
20 satisfy the “likelihood of success” requirement in the event of a strong showing of irreparable
21 harm. *Id.*

22 **III. Discussion**

23 **A. Likelihood of Success on the Merits**

24 “The sine qua non of preliminary injunction inquiry is likelihood of success on the
25 merits: if the moving party cannot demonstrate that he is likely to succeed in his quest, the
26 remaining factors become matters of idle curiosity.” *New Comm Wireless Services, Inc. v.*
27 *SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002). However, a plaintiff may be awarded a
28 preliminary injunction by establishing “serious questions going to the merits were raised and the

1 balance of hardships tips sharply in the plaintiff's favor," so long as the plaintiff satisfies the
2 additional *Winter* factors. *Alliance for the Wild Rockies*, 632 F.3d at 1131.

3 In her motion, Thomas argues that she is likely to succeed on her Fifth Amendment claim
4 against Storey County for unconstitutionally taking her real property without just compensation.
5 See ECF No. 3. Thomas' claims are premised on the assumption that the dirt road that crosses
6 her property is a private road. See ECF No. 1. Thus, the threshold question for the court is
7 whether the road is public or private. If the road is private, then Thomas may be likely to succeed
8 on her claims. However, if the road is public, then Thomas is not likely to succeed on her claims
9 and may not be entitled to preliminary injunctive relief.

10 The court has reviewed the pleadings, documents and exhibits in this matter and finds
11 that Thomas is not likely to succeed on her claims. The evidence before the court does not
12 support a finding that the road crossing her property is a private road. Rather, the weight of the
13 evidence, largely undisputed, shows that the road was used by the public for many years prior to
14 transfer of the underlying property from the federal government to private ownership in 1968. As
15 such, it is a public road, commonly known as an R.S. 2477 road.

16 1. R.S. 2477 Roads

17 In 1866, Congress passed 14 Stat. 253, which granted the States the right to construct
18 roads over public land owned by the federal government. That act, later codified at 43 U.S.C.
19 § 932, is more generally referred to as Revised Statutes 2477 or R.S. 2477 and states in its
20 entirety: "And be it further enacted, [t]hat the right-of-way for the construction of highways over
21 public lands, not reserved for public purposes, is hereby granted." R.S. 2477 was a self-executing
22 statute, and the creation of an R.S. 2477 right-of-way required no formal act by a state body. See
23 *S. Utah Wilderness Alliance v. BLM*, 425 F.3d 735, 741 (10th Cir. 2005). Rather, R.S. 2477 acted
24 "as a present grant" to use and traverse public land, "which takes effect as soon as it is
25 accepted[.]" *Wilderness Soc'y v. Morton*, 479 F.2d 842, 882 (D.C. Cir. 1973).

26 Nevada has "accepted" and acknowledged the creation of R.S. 2477 roads throughout the
27 state. In late 1979, the Nevada legislature enacted NRS 405.191, which defines what constitutes
28 a public road in the state. It provides:

1 **NRS 405.191 “Public road” defined; county roads and highways may be**
2 **established on rights-of-way over certain public lands.**

3 As used in NRS 405.193 and 405.195, “public road” includes:

- 4 1. ...
- 5 2. Any way which exists upon a right-of-way granted by Congress over
6 public lands of the United States not reserved for public uses in chapter 262,
7 section 8, 14 Statutes 253 (former 43 U.S.C. § 932, commonly referred to
8 as R.S. 2477), and **accepted by general public use and enjoyment before,**
9 **on or after July 1, 1979.** Each board of county commissioners may locate
 and determine the width of such rights-of-way and locate, open for public
 use and establish thereon county roads or highways, **but public use alone**
 has been and is sufficient to evidence an acceptance of the grant of
 public user right-of way pursuant to former 43 U.S.C. § 932.

10 Nev. Rev. Stat. § 405.101 (emphasis added).

11 The determinative issue for Thomas’ motion is whether Sutro Springs Road, as it crosses
12 her property, was a valid and existing R.S. 2477 public road as of February 8, 1968, when the
13 property was transferred from public land to private ownership.⁵ Generally, the party “claiming a
14 right-of-way bears the burden of establishing its existence.” *United States v. Carpenter*, 2016
15 U.S. Dist. LEXIS 108400, *43 (D. Nev. August 16, 2016) (citing *Lyon v. Gila River Indian*
16 *Cmty.*, 626 F.3d 1059, 1077 (9th Cir. 2010)). To establish the existence and acceptance of an
17 R.S. 2477 road, a claimant must show: “(1) that the alleged [road] was located ‘over public
18 lands,’⁶ and (2) that the character of its use was such as to constitute acceptance by the public of
19 the statutory grant.” *Hamerly v. Denton*, 359 O.2d 121, 123 (Alaska 1961). In Nevada, a road is
20 “accepted” for purposes of R.S. 2477 if there was general “public use [of the road] over a
21 specified period of time.” *Carpenter*, 2016 U.S. Dist. LEXIS 108400, *51 (citing *S. Utah*
22 *Wilderness Alliance*, 425 F.3d at 770); *see also*, Nev. Rev. Stat. § 405.191(2) (defining “public
23 road” as a road “accepted by general public use and enjoyment”). Public use does not require
24 constant or uninterrupted use, but it must be more than “occasional or desultory[.]” *Carpenter*,

25 _____

26 ⁵ In 1976, Congress passed the Federal Land Policy and Management Act (“FLPMA”), which repealed R.S. 2477.
27 The repeal, however, was prospective only. The FLPMA specifically states that any valid R.S. 2477 right-of-way
28 existing on the date of approval of the FLPMA would continue to be in effect. Pub. L. No. 94-579, Section 701(a),
90 Stat. 2743, 2786 (1976). Thus, if the disputed road was an R.S. 2477 road in 1968 when the property was
transferred from the public domain, it continues to be such a road unless the road has been abandoned.

⁶ It is undisputed that Sutro Springs Road was originally located over public lands. *See* ECF No. 3, Ex. 1.

1 2016 U.S. Dist. LEXIS 108400, *51. In determining whether public use has been sufficiently
2 continuous to constitute acceptance of an R.S. 2477 road, a court may take into account the
3 nature of the land upon which the road runs, the historical and traditional use of the land, and the
4 nature of the public use. *See S. Utah Wilderness Alliance*, 425 F.3d at 774; *Brown v. Jolley*, 387
5 P.2d 278 (Colo. 1963) (holding that regular use by a single person to reach their property
6 constitutes continuous public use).

7 Here, the historical record evidence before the court shows that the road crossing
8 Thomas' property has been in continuous public use since as early as the late 1880's. In fact,
9 every map and survey of the area containing Thomas' property while the property was still part
10 of the public domain shows Sutro Springs Road crossing the property in a northeasterly
11 direction.⁷ These maps graphically confirm that at the time the subject property was transferred
12 from the United States to private ownership in 1968, the Sutro Springs Road was an established
13 and accepted public road under R.S. 2477. Historical maps are direct evidence of public use and
14 are sufficient, in and of themselves, to establish "acceptance" of an R.S. 2477 road. *Anderson v.*
15 *Richards*, 608 P.2d 1096, 1098 (Nev. 1980); *Carpenter*, 2016 U.S. Dist. LEXIS 108400, *52-53.
16 In fact, in *Anderson*, the Nevada Supreme Court found an R.S. 2477 road based solely on the
17 road's presence on maps and surveys. *Anderson*, 608 P.2d at 1098 n.5. Thus, the clear weight of
18 the historical record in this action supports a finding that the road is a public R.S. 2477 road.

19 Additionally, defendants have submitted evidence from citizens of Storey County
20 concerning their use of the road prior to and after the 1968 land transfer. In their motion,
21 defendants have proffered four (4) affidavits from individuals who used the road prior to 1968
22 and have continued to use the road in a manner consistent with the land since that time, such as
23 accessing hot springs, trips for hunting, mining and reaching public land for camping and
24 outdoor activities since that time. *See* ECF No. 38, Exs. 4-7. And at the hearing, defendants
25

26 ⁷ Defendants have proffered the following undisputed historical maps of the relevant area of Storey County: (1) an
27 1887 survey of the Storey County township (ECF No. 21, Ex. 1); (2) an 1890 township plat map (ECF No. 21,
28 Ex. 2); (3) the official county map for Storey County in 1923 (ECF No. 21, Ex. 3); (4) a 1950 United States
Geological Survey of the "Virginia City Quadrangle" (ECF No. 21, Ex. 4); and (5) a 1967 United States Geological
Survey of the "Flowery Peak Quadrangle" (ECF No. 21, Ex. 5). All of these maps show the road crossing Thomas'
property in a northeasterly direction through the northern half of Section 20.

1 submitted a list of over 40 people who have used the road to either reach public land or the other
2 properties beyond Thomas'. *See* Joint Ex. 1. Further, homeowner defendants presented
3 declarations to the court that establish their own personal use of the road for decades prior to
4 Thomas' purchase of the property: thirty-four (34) years in the case of defendant Harper and
5 forty-four (44) years in the case of the Zachry defendants. *See* ECF No. 39, Exs. 1-2. The court
6 finds that this evidence is also sufficient evidence of continuous public use of the road to
7 constitute acceptance of an R.S. 2477 road across Thomas' property. Therefore, the court finds
8 that the overwhelming evidence in this action establishes that Sutro Springs Road is a public
9 road and Thomas is not likely to succeed on her claims.

10 **2. R.S. 2477 Abandonment**

11 At the hearing, Thomas argued that even if the portion of Sutro Springs Road that crosses
12 her property was an R.S. 2477 road when the property was transferred in 1968, it has since been
13 abandoned by Storey County and is now a private, rather than public, road. The court disagrees.

14 Once an R.S. 2477 road has been accepted through use by the public, it continues to be a
15 public road unless it has been abandoned. *Anderson*, 608 P.2d at 1099. Further, after acceptance
16 by the public of an R.S. 2477 road, subsequent "use by only a few members of the public" or "a
17 substantial reduction in the number of the members of the public who continue" to use the road
18 years later is insufficient to establish abandonment. *Id.* Similarly, obstruction or blocking of the
19 road by a party asserting abandonment is likewise unavailing to establish abandonment of the
20 road, regardless of how long the obstructions have been in existence. *Id.* ("An unlawful
21 encroachment placed upon a public roadway will not constitute an abandonment of the public
22 easement and cannot divest the public of its rights to traverse."). Rather, abandonment can only
23 be accomplished by statute. In Nevada, NRS 405.195 provides the sole statutory basis for
24 abandoning a public roadway. NRS 405.195 provides in relevant part that an action for
25 abandonment requires (1) a petition to abandon the road filed before the board of county
26 commissioners for the county in which the road runs and (2) a public hearing on the issue of
27 abandonment. The party asserting abandonment of a public road carries the burden of proof by
28 "clear and cogent" evidence. *Anderson*, 608 P.2d at 1099.

1 Thomas contends that when Storey County approved the subdivision plan in 1996 it
2 abandoned the portion of the road that crosses her property. Specifically, Thomas argues that
3 because the approved plan by Storey County required that a cul-de-sac be built on the edge of
4 her property and the plan did not show the road through Thomas' property, Storey County
5 terminated Sutro Springs Road at that point. Thomas' argument is without merit or evidentiary
6 support. Thomas has failed to proffer any evidence of abandonment to satisfy the statutory
7 requirements of abandonment under Nevada law. Although the subdivision plan involved public
8 hearings by the Storey County Commissioners, there is no evidence that any petition or action
9 was put forth to abandon the road at the point it crosses Thomas' property. Therefore, the court
10 cannot find that the road has been abandoned pursuant to the statutory requirements. And
11 contrary to Thomas' argument, an R.S. 2477 road cannot simply be abandoned by approval of a
12 subdivision plan that ignores the existence of the road across it.

13 **B. Additional Injunction Factors**

14 The court also finds that Thomas has not met the remaining *Winter* factors of irreparable
15 harm, public interest, and the balance of equities sufficient to overcome the court's findings on
16 the likelihood of success on the merits of her claims and thus warrant an injunction. First,
17 although Thomas contends that she stands to lose a portion of her real property absent an
18 injunction because Storey County has declared the roadway on her property a public roadway,
19 such an alleged injury would be compensable through monetary damages and declaratory relief.
20 Thus, Thomas has failed to establish an *irreparable* injury sufficient to warrant injunctive relief.
21 *Russell Rd. Food & Bev., LLC v. Spencer*, 2013 U.S. Dist. LEXIS 11034, *11 (D. Nev. 2013)
22 ("Harm is 'irreparable' for the purposes of a preliminary injunction if it cannot be redressed by a
23 legal remedy or equitable remedy following trial.").

24 Second, the court finds that both the balance of the equities and the public interest favor
25 denying an injunction. The status quo, prior to Thomas purchasing the property in late 2016 and
26 erecting barriers across the roadway, was that the Sutro Springs Road was an open road to the
27 homeowner defendants' properties and BLM land accessed by the public for many years. As
28 such, the equities favor the homeowner defendants as well as members of the public who used

1 the road to access private and public lands beyond the Thomas property. In contrast, the hardship
2 to Thomas is continued public use across her property consistent with the historical record of the
3 property.⁸ Thus, the balance of equities weighs against an injunction. *See Topanga Press, Inc. v.*
4 *City of Los Angeles*, 989 F.2d 1524, 1528 (9th Cir. 1993) (holding that in seeking a preliminary
5 injunction, the moving party must suffer a degree of hardship that outweighs the hardship on the
6 opposing party). Finally, the public interest is satisfied in the preservation and protection of
7 R.S. 2477 roads.

8 Based on the above, the court finds that Thomas is not entitled to an injunction.
9 Accordingly, the court shall deny her motion.

10 IT IS THEREFORE ORDERED that plaintiff's motion for a preliminary injunction
11 (ECF No. 3) is DENIED.

12 IT IS SO ORDERED.

13 DATED this 19th day of June, 2017.

14
15 
16 LARRY R. HICKS
17 UNITED STATES DISTRICT JUDGE
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28 ⁸ It is also significant that the road crossing the property was openly visible when Thomas purchased the property and that the road leads directly into BLM managed public domain.

9:30am **COUNTY EXPERIENCES WITH REGULATION OF MARIJUANA DISPENSARIES (For discussion only)**

Presentations by SLUPAC members regarding ordinances and other planning efforts pertinent to newly legalized marijuana sales.

Sami Real – State Land Use Planning Advisory Council

Lee Plemel – State Land Use Planning Advisory Council

10:00am **DEPARTMENT OF INTERIOR REGIONALIZATION** (For possible action)

Roundtable discussion on the potential regionalization of the Department of Interior and how it may affect Nevada. A possible action may include a SLUPAC comment letter to the Department of Interior.

Members – State Land Use Planning Advisory Council

Title 3—

Executive Order 13781 of March 13, 2017

The President

Comprehensive Plan for Reorganizing the Executive Branch

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. This order is intended to improve the efficiency, effectiveness, and accountability of the executive branch by directing the Director of the Office of Management and Budget (Director) to propose a plan to reorganize governmental functions and eliminate unnecessary agencies (as defined in section 551(1) of title 5, United States Code), components of agencies, and agency programs.

Sec. 2. Proposed Plan to Improve the Efficiency, Effectiveness, and Accountability of Federal Agencies, Including, as Appropriate, to Eliminate or Reorganize Unnecessary or Redundant Federal Agencies. (a) Within 180 days of the date of this order, the head of each agency shall submit to the Director a proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency.

(b) The Director shall publish a notice in the *Federal Register* inviting the public to suggest improvements in the organization and functioning of the executive branch and shall consider the suggestions when formulating the proposed plan described in subsection (c) of this section.

(c) Within 180 days after the closing date for the submission of suggestions pursuant to subsection (b) of this section, the Director shall submit to the President a proposed plan to reorganize the executive branch in order to improve the efficiency, effectiveness, and accountability of agencies. The proposed plan shall include, as appropriate, recommendations to eliminate unnecessary agencies, components of agencies, and agency programs, and to merge functions. The proposed plan shall include recommendations for any legislation or administrative measures necessary to achieve the proposed reorganization.

(d) In developing the proposed plan described in subsection (c) of this section, the Director shall consider, in addition to any other relevant factors:

(i) whether some or all of the functions of an agency, a component, or a program are appropriate for the Federal Government or would be better left to State or local governments or to the private sector through free enterprise;

(ii) whether some or all of the functions of an agency, a component, or a program are redundant, including with those of another agency, component, or program;

(iii) whether certain administrative capabilities necessary for operating an agency, a component, or a program are redundant with those of another agency, component, or program;

(iv) whether the costs of continuing to operate an agency, a component, or a program are justified by the public benefits it provides; and

(v) the costs of shutting down or merging agencies, components, or programs, including the costs of addressing the equities of affected agency staff.

(e) In developing the proposed plan described in subsection (c) of this section, the Director shall consult with the head of each agency and, consistent with applicable law, with persons or entities outside the Federal

Government with relevant expertise in organizational structure and management.

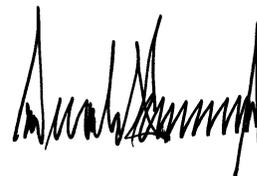
Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be the signature of Donald Trump, located on the right side of the page.

THE WHITE HOUSE,
March 13, 2017.

10:15am BLM'S DIRECTIVE TO STREAMLINE (For possible action)

The BLM's directive to streamline the NEPA and Resource Management Plan process is an overhaul of the previous "Planning 2.0" proposal that was rescinded. SLUPAC held a special meeting on August 14, 2017 to review and provide an official comment letter. Roundtable discussion on status of this effort. A possible action may include a SLUPAC letter reaffirming or clarifying relative issues.

Members – State Land Use Planning Advisory Council



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3355

Subject: Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”

Sec. 1 Purpose. This Order is intended to: 1) immediately implement certain improvements to National Environmental Policy Act (NEPA) reviews conducted by the Department of the Interior (Department); 2) begin assessment of additional such opportunities; and 3) begin implementation of Executive Order 13807 of August 15, 2017, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects” (E.O. 13807).

Sec. 2 Authorities. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended. Other statutory authorities for this Order include, but are not limited to, NEPA, 42 U.S.C. 4321-4347.

Sec. 3 Background. The Department has broad responsibilities to manage Federal lands and resources for the public’s benefit. The NEPA applies to the execution of many of the Department’s responsibilities with the goal of ensuring that information regarding environmental impacts is available to decisionmakers and the public before decisions are made. The NEPA accomplishes this goal by requiring Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment.

Both the Department and the Council on Environmental Quality (CEQ) have issued regulations to implement NEPA. Because the purpose of NEPA’s requirements is not the generation of paperwork, but the adoption of sound decisions based on an informed understanding of environmental consequences, the regulations encourage agencies to: 1) focus on issues that truly matter rather than amassing unnecessary detail; 2) reduce paperwork, including by setting appropriate page limits; 3) discuss briefly issues that are not significant; and 4) prepare analytic (rather than encyclopedic) documents, among other measures.

In recognition of the impediments to efficient development of public and private projects that can be created by needlessly complex NEPA analysis, I am issuing this Order to enhance and modernize the Department’s NEPA processes, with immediate focus on bringing even greater discipline to the documentation of the Department’s analyses and identifying opportunities to further increase efficiencies.

This NEPA-streamlining effort dovetails with E.O. 13807. Among other requirements, E.O. 13807 requires CEQ to take actions to enhance and modernize the Federal environmental review process and to form an inter-agency working group to identify agency-specific

impediments to efficient and effective reviews for covered infrastructure projects. This Order begins implementation of E.O. 13807 in the context of the Department's overall effort to streamline the NEPA process.

Sec. 4 Directives.

a. Setting Page and Timing Limitations for Environmental Impact Statements.

(1) To implement the longstanding directives in 43 C.F.R. 46.405, and in 40 C.F.R. 1500.4 and 1502.7, all EISs 1) for which a bureau is the lead agency and 2) that have not reached the drafting stage shall not be more than 150 pages or 300 pages for unusually complex projects, excluding appendices. Approval of the Assistant Secretary with responsibility for the matter, in coordination with the Solicitor, is required to produce an EIS exceeding the above stated page limitations. In instances of EISs prepared with bureaus serving as co-leads, each responsible Assistant Secretary shall approve any deviations from this policy. To meet the page limitations, each preparer should focus on various techniques such as tiering or incorporation by reference.

(2) To ensure timely completion of EISs, and consistent with the timelines established for major infrastructure projects in E.O. 13807, each bureau shall have a target to complete each Final EIS for which it is the lead agency within 1 year from the issuance of a Notice of Intent (NOI) to prepare an EIS. The initial timeline must be developed by the lead bureau before issuing the NOI in accordance with 43 C.F.R. 46.240, taking into account all relevant timing factors listed therein, including any constraints required by cooperating agencies. An updated timeline should be prepared as needed during the development of the EIS (e.g., at the completion of scoping or if additional time is provided for public comment). Timelines exceeding the target by more than 3 months must be approved by the Assistant Secretary with responsibility for the matter. In instances of EISs prepared with bureaus serving as co-leads, each responsible Assistant Secretary must approve any deviations from this policy.

b. Setting Target Page and Timing Limitations for the Preparation of Environmental Assessments. Within 30 days, each bureau head shall provide to the Deputy Secretary through its supervising Assistant Secretary a proposal for target page limitations and time deadlines for the preparation of environmental assessments. Any common impediments to achieving the proposed targets should also be identified. In developing its proposal, each bureau should consider guidance from CEQ on the page length of environmental assessments. (Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,037, Question and Answer 36a. (Mar. 23, 1981)).

c. Additional NEPA-Streamlining Review.

(1) The Deputy Secretary will coordinate a review of the Department's NEPA procedures to identify additional ways to streamline the completion of NEPA responsibilities. The review will include, but is not limited to, the following areas:

(a) bureau/office NEPA regulations, policies, guidance, and processes to identify: 1) impediments to efficient and effective reviews; 2) best practices and whether they can be implemented more widely; and 3) whether the Department should consider establishing additional categorical exclusions or revising current ones;

(b) requirements and process improvements under Title 41 of the Fixing America's Surface Transportation (FAST) Act, 42 U.S.C. 4370m-1(c)(1)(D), to determine whether any best practices can be broadly applied, including to projects beyond the terms of the FAST Act;

(c) requirements and process improvements required by E.O. 13807, to determine whether any best practices can be broadly applied, including to any projects beyond the terms of E.O. 13807; and

(d) CEQ NEPA regulations and guidance to assess whether to recommend changes to facilitate agency processes.

(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with bureau heads, should provide recommendations for actions to streamline the NEPA process to include potential regulatory revisions, development of revised or additional categorical exclusions, revised or new guidance or policies, and recommendations on streamlining the surnaming process.

d. Implementation of E.O. 13807. The Deputy Secretary will also coordinate implementation of E.O. 13807.

(1) In order to begin implementation of E.O. 13807, each Assistant Secretary, in coordination with the bureau heads, is hereby directed to identify:

(a) potential impediments to efficient and effective reviews for infrastructure and develop an action plan to address such impediments as a subset of the review required in Sec. 4c(1)(a) above;

(b) potential actions that could be taken by CEQ to facilitate a review of major infrastructure projects, as a subset of the review required in Sec. 4c(1)(d) above; and

(c) pending proposals for major infrastructure projects, as defined in E.O. 13807 and that are not yet the subject of a NOI issued by the Department, that could be candidates for the "One Federal Decision" process.

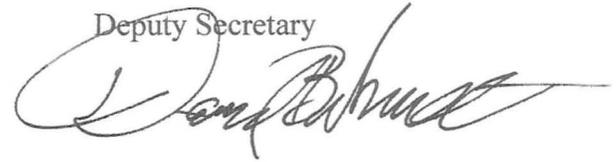
(2) Within 30 days of the effective date of this Order, each Assistant Secretary, in coordination with the bureau heads, should provide the information requested in Sec. 4d(1)(a)-(c) above.

Sec. 5 Implementation. The Deputy Secretary is responsible for implementing all aspects of this Order, in coordination with the Solicitor and the Assistant Secretaries.

Sec. 6 Effect of the Order. This Order is intended to improve the internal management of the Department. This Order and any resulting report or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officer or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately and will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

Date: AUG 31 2017

Deputy Secretary


BRADLEY CROWELL
Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
State Land Use Planning Agency
Nevada Tahoe Resource Team
Conservation Bond Program -Q1

Address Reply to

Division of State Lands
901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721
Web www.lands.nv.gov

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Division of State Lands
Nevada State Clearinghouse

August 17, 2017

To: Michael D. Nedd, Acting Director, Bureau of Land Management, Washington, D.C.

Steve Tryon, Deputy Assistant Director, Resources and Planning, Bureau of Land Management. Washington D.C. stryon@blm.gov

From: Skip Canfield, Program Manager, Nevada State Clearinghouse

RE: Official State of Nevada Comments and Suggestions Regarding BLM'S Directive to Streamline the NEPA and Resource Management Planning Processes

The Nevada State Clearinghouse conducted outreach to State agencies regarding BLM's directive to streamline the NEPA and Resource Management Planning processes. The Clearinghouse coordinated with Nevada's counties through the State Land Use Planning Advisory Council. Attached are the resulting comments and suggestions for your consideration.

Nevada's counties, through Nevada Association of Counties (NACO) and National Association of Counties, will be providing a comprehensive list of comments and suggestions. The Clearinghouse and Governor Brian Sandoval's Office coordinated closely with NACO on development of their comments which will be submitted separately.

The State of Nevada appreciates the efforts of all who participated in providing meaningful feedback as the BLM moves forward with this directive. Thank you for the opportunity to provide these official State of Nevada comments and suggestions.

ATTACHMENTS:

State Land Use Planning Advisory Council Comments and Suggestions (SLUPAC – NRS 321.740)
Nevada State Clearinghouse/BLM MOU
Nevada Division of Forestry Comments

BRADLEY CROWELL
Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
State Land Use Planning Advisory Council

Michael D. Nedd, Acting Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street, N.W., Room 2134LM
Washington, D.C. 20240

August 17, 2017

RE: BLM'S Directive to Streamline the NEPA and Resource Management Planning Processes

Dear Mr. Nedd:

The Nevada State Land Use Planning Advisory Council (SLUPAC, Nevada Revised Statutes 321.740) is the only Governor appointed council that includes a county commissioner or their representative from each of Nevada's 17 counties. The Nevada Association of Counties is also represented on SLUPAC in an ex-officio role. SLUPAC is involved with land use planning and natural resource issues important to many Nevadans. SLUPAC is a unique avenue for Nevada's counties to elevate local resource-related issues to the State level. At a special public meeting held on August 14, 2017, we discussed BLM'S directive to streamline the NEPA and Resource Management Planning processes.

A productive discussion ensued regarding the directive and how it will affect Nevada and its seventeen counties. This BLM effort may have multiple benefits but there are also concerns. These comments are in addition to those that are being submitted under separate cover on behalf of Nevada's counties through the Nevada Association of Counties and National Association of Counties.

SLUPAC supports and adopts the positions and comments of the State of Nevada, Nevada Association of Counties, and National NACO and appreciates the ability to provide a summary of the most prominent issues that arose at our meeting:

- There has been a strong concern expressed at both the State and county level that too often local on-the-ground knowledge is disqualified in favor of BLM-chosen "experts". A clear process and protocol should be developed that details the inclusion and balancing of local knowledge and local science and also rationale for how final decisions are made based on that balanced analysis. Knowledge and science is specific to a location and is acquired by indigenous and local peoples over hundreds and thousands of

years through direct contact with and management of the environment. In addition, knowledge should include those local residents of Nevada communities with a direct connection to the land through family, cultural, recreational and economic heritages.

- A “Pre-Planning” or “Pre-Project” step should be included at the beginning of any planning or NEPA process, before the formal public process has begun, emphasizing coordination and principled consistency review with State and local governments and sustained throughout the entire process. This is an opportunity to identify inconsistencies with State and local plans, policies, programs and processes early on and address these inconsistencies before unnecessary conflict develops later in the process.
 - The time for meaningful coordination with State and local governments is well before and during any planning or NEPA process; early and ongoing. Post-plan comment periods have been procedural, at best, and frustrating. A public comment period is not the same as coordination with State and local governments.
 - Principled consistency review and meaningful coordination must be undertaken by BLM whereby State and local plans, policies, programs and processes are identified and inconsistencies resolved. Rationale for the inability to resolve inconsistencies must be explained by BLM.
 - All “plans” prepared in accordance with authorization provided by Federal, State or local authorities should be included in the consultation and consistency process, regardless of whether they are called “land use”, “natural resource” or something entirely different at the local and State level.
- BLM should not limit state or local government participation in any planning or NEPA process though a narrow interpretation of “special expertise.” State and local governments should be allowed to bolster their special expertise through hiring of outside consultants the same as BLM and project proponents do. All BLM data, baseline reports, and associated documents should be readily available and shared with local governments with ability to make changes according to their input. Local governments must have a seat on BLM Interdisciplinary Team levels for all planning and projects, regardless of the varying levels of expertise.
- In Nevada we have an existing infrastructure for meaningful coordination between counties, state agencies, and federal agencies through the Nevada State Clearinghouse and State Land Use Planning Advisory Council (SLUPAC). The Nevada State Clearinghouse has a recently-adopted MOU with the BLM specifying consistency and coordination responsibilities between the State of Nevada and BLM (included as an attachment to this document). Meaningful coordination and principled consistency review between the BLM, State and local governments using SLUPAC as an important avenue for dialogue, is an explicit goal of this MOU. This is not meant to replace coordination requirements between BLM and individual counties, but to improve and enhance our mutual efforts.
 - Throughout any planning or NEPA process, and even when not in a formal process, improved public participation should be combined with improved coordination with State and county

government. Both have a role but they are not the same. Congress gave States and counties an elevated role because we not only represent local citizens and interests but our social stability and economies are tied to public lands. Meaningful and ongoing coordination and principled consistency review with State and local governments is critical.

- Nevada's counties have long struggled with existing comment periods being too short. The constant request by local and State governments for extensions is indicative of the need to maintain or increase comments periods, not reduce them as proposed. Principled coordination and identifying and adequately addressing inconsistencies early may reduce the need for extension requests in the future.
 - All existing public comment periods should remain as they are or increased. State agencies and counties have expressed concern that the current system does not always allow for adequate time to review and respond. The constant request by local and State governments for extensions is indicative of the need to better coordinate and maintain or increase comments periods.
- Land use planning should not become a voting exercise whereby resource and land use determinations are the result of public views or opinions. Public lands should be managed for multiple use and sustained yield. Resource management planning based upon social values, philosophy, or emotion as opposed to an ecological or scientific basis has led to grave problems in the past as can be clearly seen in the example of the wild horse and burro program.
- Current planning area boundaries tied to BLM district offices may not always be rationally connected to the resources and the emphasis on "landscape planning". The planning area should be scaled appropriately for the land uses in the Plan Area and coordinated with State and local governments. Any efforts to dilute locally-based planning or management is not supported by SLUPAC. This would include consolidation of BLM district offices.
- BLM should describe the rationale for the differences in identified alternatives, including:
 - A description of how each alternative addresses the planning issues, consistent with the principles of multiple-use and sustained yield, or other applicable law;
 - A description of management direction that is common to all alternatives; and
 - A description of how management direction varies across alternatives to address the planning issues.
- BLM should provide preliminary alternatives and supporting rationale to state and local governments the public. The responsible official should identify the procedures, assumptions, and indicators that will be used to estimate the environmental, ecological, social, and economic effects of the alternatives considered in detail (i.e., the "basis for analysis").

We look forward to coordinating with BLM regarding streamlining of land use planning and NEPA efforts and how to address our comments and concerns and develop a final process that will help put to rest past conflicts and allay fears about community viability threats down the road. This is in addition to reducing the need for appeal and judicial review of agency management decisions. In the end, we believe that successful coordination will build and strengthen the foundation for the long-term while making the necessary management decisions at the necessary scale. Thank you for your dedication to Nevada and to matters important to Nevada's citizens.

Respectfully,



Jake Tibbitts
Chairman, Nevada State Land Use Planning Advisory Council

ATTACHMENTS

cc:

- Secretary Ryan Zinke, U.S. Department of the Interior
- Steve Tryon, Deputy Assistant Director, Resources and Planning, BLM Washington D.C. Office
- Marci Todd, Acting Director, Nevada Bureau of Land Management
- Paul Petersen, Acting Associate State Director, Nevada Bureau of Land Management
- John Ruhs, Acting Deputy Director for Operations, Bureau of Land Management, U.S. Department of the Interior
- Cynthia Moses-Nedd, Department of Interior Liaison to State and Local Government
- Sheila Anderson, Governor Brian Sandoval's Office
- Bradley Crowell, Director, Nevada Department of Conservation and Natural Resources
- Charles Donohue, Administrator, Nevada Division of State Lands
- Tori Sundheim, Nevada Association of Counties

MEMORANDUM OF UNDERSTANDING
Between
STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF STATE LANDS
and
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEVADA STATE OFFICE

I. PURPOSE

- A. This Memorandum of Understanding (MOU) supersedes BLM MOU 1600-NEV-008-3 (dated 1994), between the State of Nevada, Department of Administration, Budget and Planning Division; and the U.S. Department of the Interior, Bureau of Land Management, Nevada State Office including BLM District Offices in Nevada.
- B. To establish procedures for the State of Nevada, through the Nevada Department of Conservation and Natural Resources ("State"), and the Nevada State Office of the Bureau of Land Management ("BLM") for coordination of planning and program activities conducted under the National Environmental Policy Act (NEPA) within the State of Nevada to ensure consideration of timely and thorough comments provided by the State and local governments.
- C. To supplement the Presidential Executive Order no. 12372 (EO 12372) providing for states to develop a review process for federally funded programs and development proposals on public land and to implement Nevada Governor Bob Miller Executive Order signed August 15, 1989, establishing the Nevada State Clearinghouse to implement EO 12372; all provisions contained therein are incorporated by this reference.

II. OBJECTIVES

- A. To recognize the Department of Conservation and Natural Resources, Division of State Lands, as the official State Clearinghouse for consultation and notification purposes, and as the official representative of the governor.
- B. To recognize the Bureau of Land Management, Nevada State Office, Division of Resources, Lands, and Planning, as the official contact for consultation and notification purposes for lands administered by the BLM Nevada State Office and BLM district offices in Nevada, which may not include portions of Nevada that are administered by other BLM offices in California and Idaho.

- C. To establish procedures (e.g., electronic mail or email) for the BLM to notify and consult with the state via the clearinghouse.
- D. To ensure the purposes of the Federal Land Policy and Management Act, Section 202(c)(9) are carried out regarding coordination of BLM land use planning and management activities with state and local governments and consistency of BLM land use plans with state and local plans, to the maximum extent practicable consistent with federal law.
- E. To ensure communication and coordination on issues of mutual concern in a timely and efficient manner, including BLM public notices under the National Environmental Policy Act (NEPA).
- F. To encourage exchange of relevant information on a continuing basis.

III. MUTUAL RESPONSIBILITIES

A. THE STATE AND THE BLM AGREE TO:

1. Comply with all appropriate state and federal laws and regulations to further the objectives of this agreement or MOU.
2. Recognize that other direct contacts and cooperation between the BLM and agencies and commissions of the state are in no way limited or modified by this MOU.
3. Work cooperatively to identify when feasible, any inconsistencies between proposed BLM and state and local land use plans, programs, and policies.
4. Where inconsistencies are identified or a decision may result in a state appeal or protest, the State Clearinghouse may mediate a discussion between the BLM and the State, to seek resolution of the issue(s). Any mediation process is strictly voluntary and non-binding.
5. Pursuant to NRS 321.735 and NRS 321.740, the State Land Use Planning Agency (SLUPA) and the State Land Use Planning Advisory Council (SLUPAC) “*may represent the interests of the state, its local or regional entities, or its citizens as these interests are affected by policies and activities involving the use of federal lands.*” To facilitate federal agency consultation efforts and public review of proposed federal actions under NEPA, SLUPAC may serve as a reviewing body on behalf of the state, pertaining to federal actions under NEPA. SLUPAC also may assist local agencies with commenting pursuant to NEPA regarding county-level concerns, when a county government may request such review. BLM will designate a point of contact for participation in SLUPAC meetings.

IV. INDIVIDUAL RESPONSIBILITIES

A. THE STATE AGREES TO:

1. Coordinate state agency and commission reviews of BLM actions, consolidate comments, and assist in resolving inconsistencies, should any

exist between state agencies and county commissions, to ensure comments or concerns represent the position of the State of Nevada.

2. Provide additional available information for specific proposals when requested.
3. Coordinate through the clearinghouse the 60-day Governors Consistency Review, pursuant to 43 CFR section 1610.3-2(e). The state shall notify the BLM Nevada State Director, in writing, of any state concerns or inconsistencies in appropriate local, BLM district, or regional plans by BLM. The BLM Nevada State Director shall provide a timely response to state comments.
4. Provide notification to the BLM Nevada State Office when state and county-level land use plans are revised or amended.

B. THE BLM AGREES TO:

1. Provide to the State Clearinghouse notices of proposed federal actions where public notices are announced pursuant to NEPA activities, including scoping-level activities when public scoping comments are solicited by the BLM.
2. Provide public notices under NEPA at the earliest practical opportunity through the NEPA process. Such notices and the full documents may be provided via electronic mail (email) or equivalent technologies that allow attachment of the full document in PDF or equivalent file format, and a hyperlink to where the documents and associated information may be available via the World Wide Web, or equivalent data location hosted and managed by the BLM.
3. Provide additional available information for specific proposals when requested and consistent with the NEPA process.
4. Provide to the State Clearinghouse public notices for other activities that support NEPA activities, such as notices for public input under the National Historic Preservation Act.
5. Provide to the State Clearinghouse, one hard copy and access to an electronic copy of each BLM Resource Management Plan, Plan Revision, or Plan Amendment. For all other BLM documents prepared under NEPA, provide to the State Clearinghouse an email notification with applicable hyperlinks, as described in paragraph number 2 above.

V. CONCLUSION & AGREEMENT

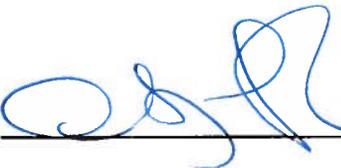
This MOU will be effective upon signature by the State Director, Bureau of Land Management Nevada, and the Director, Nevada Department of Conservation and Natural Resources.

This MOU will remain in effect for a period of five (5) years from the latter signature date below, unless formally terminated by either of the signatories after 30 days written notice to the other of their intention to do so.

At the end of the five-year period, this MOU will be reviewed by both signatories for effectiveness, and if appropriate, re-authorized by written notice from both parties.

Amendments to this agreement or MOU may be proposed at any time by either signatory, and shall be effective upon approval by both parties to this agreement.

BUREAU OF LAND MANAGEMENT

By  _____

Amy Lueders
State Director, Nevada

STATE OF NEVADA

By  _____

Leo Drozdoff
Director, Department of Conservation and
Natural Resources

Date: 1-15-15

Date: 1-7-15

[This MOU supersedes BLM MOU 1600-NEV-008-3 (dated 1994)]

E2018-006 (Secretarial Memorandum on Potential Revisions to BLM Planning Process)
Nevada Division of Forestry

AGENCY COMMENTS:

According to discussions I've had with BLM staff in the Las Vegas Field office, decisions regarding identification of BLM lands for disposal are made by congress, or their staff, who lack the environmental knowledge necessary to make informed decisions that protect sensitive species. This identification from Washington D.C. can, and does, lead to disposal of lands that contain critically endangered state-listed plant species. Once the designation for disposal is made, the State has no opportunity provide input on the appropriateness of disposal. It would be very beneficial for conservation of State-listed critically endangered plant species for the identification of disposal boundaries to occur at the local level, through the NEPA process.

Signature: John Christopherson, Natural Resource Program Manager

10:30am PUBLIC LAND POLICY PLAN UPDATE ASSISTANCE AND OUTREACH (For possible action)

A focus area for SLUPAC, roundtable discussion on public land policy planning efforts and ways to increase outreach and coordination. A possible action may include a SLUPAC resolution supporting public land policy planning efforts and increased participation by SLUPAC in these efforts.

Members – State Land Use Planning Advisory Council

NRS 321.7355 Plan or statement of policy concerning lands under federal management.

1. The State Land Use Planning Agency shall prepare, in cooperation with appropriate federal and state agencies and local governments throughout the State, plans or statements of policy concerning the acquisition and use of lands in the State of Nevada that are under federal management.

2. The State Land Use Planning Agency shall, in preparing the plans and statements of policy, identify lands which are suitable for acquisition for:

(a) Commercial, industrial or residential development;

(b) The expansion of the property tax base, including the potential for an increase in revenue by the lease and sale of those lands; or

(c) Accommodating increases in the population of this State.

↳ The plans or statements of policy must not include matters concerning zoning or the division of land and must be consistent with local plans and regulations concerning the use of private property.

3. The State Land Use Planning Agency shall:

(a) Encourage public comment upon the various matters treated in a proposed plan or statement of policy throughout its preparation and incorporate such comments into the proposed plan or statement of policy as are appropriate;

(b) Submit its work on a plan or statement of policy periodically for review and comment by the Land Use Planning Advisory Council and any committees of the Legislature or subcommittees of the Legislative Commission that deal with matters concerning the public lands; and

(c) Provide written responses to written comments received from a county or city upon the various matters treated in a proposed plan or statement of policy.

4. Whenever the State Land Use Planning Agency prepares plans or statements of policy pursuant to subsection 1 and submits those plans or policy statements to the Governor, Legislature or an agency of the Federal Government, the State Land Use Planning Agency shall include with each plan or statement of policy the comments and recommendations of:

(a) The Land Use Planning Advisory Council; and

(b) Any committees of the Legislature or subcommittees of the Legislative Commission that deal with matters concerning the public lands.

5. A plan or statement of policy must be approved by the governing bodies of the county and cities affected by it before it is put into effect.

(Added to NRS by [1983, 1882](#); A [1989, 1673](#); [1995, 643](#); [1997, 1032, 3251](#); [2011, 2478](#); [2013, 1620](#))

PLAN PURPOSE

The purpose of the Plan is to:

- **Detail a County’s vision and strong policy voice concerning public lands.**
- **Define a County’s public land-related issues and needs.**
- **Provide locally developed land management policies that enable the federal land management agencies to better understand and respond in a positive fashion to the concerns and needs of a County in a collaborative process.**
- **Increase the role a County has in determining the management of the federal lands.**
- **Provide an opportunity to positively address federal land use management issues directly and thereby offer a proactive alternative rather than an after-the-fact response.**
- **Encourage public comment and involvement.**

The initial County Public Lands Policy Plans were developed between 1983 and 1984 as part of a state-wide effort resulting from the passage of Senate Bill 40. Under SB40, the State Land Use Planning Agency section of the Nevada Division of State Lands (SLUPA) was directed by the 1983 State Legislature to:

- **“Prepare, in cooperation with appropriate state agencies and local governments throughout the state, plans or policy statements concerning the use of lands in Nevada which are under federal management.”**

A subsequent plan was adopted in 1997. The 2009 Plan represents a review of existing and emerging public lands issues that are of importance to a County as it works with federal agencies under the National Environmental Policy Act (NEPA) and other public processes.

Within the Plan are descriptions of issues and opportunities relating to public lands and how best to work collaboratively with the federal planning partners, most notably Bureau of Land Management (BLM), US Forest Service (USFS), Reclamation, Fish and Wildlife Service and the Bureau of Indian Affairs.

- The Plan enables the federal land management agencies to better understand and respond to the concerns and needs of a County.
- Planning, effective communication and coordination by Nevada's governments, in concert with its citizens, can establish a set of policies for the proper use of these lands and to take advantage of the "consistency" language in Section 202(c)(9) of the Federal Land Policy and Management Act (FLPMA).
- Section 202(c)(9) governs BLM Planning and directs the BLM to give consideration to appropriate state, local, and tribal lands in the development of land use plans for federal lands.
- The BLM is to provide for meaningful public involvement of state and local government officials in the development of land use plans, regulations and decisions for federal lands.
- The BLM will review each Resource Management Plan (RMP) and proposed federal action for consistency with the County Public Lands Policy Plan and will attempt to make the RMPs and proposed actions compatible with the Plan to the extent that the Secretary of the Interior finds consistent with federal law and the purpose of FLPMA.

Forest Service Regulations for Land Management Planning and for implementing the National Environmental Policy Act (NEPA) requires that the Forest Service determine the consistency of any project proposal with state and/or local laws and plans.

- The agency is required to describe any inconsistencies and the extent to which the agency would reconcile its proposal with the state/local laws and plans. This consistency review is also provided for by the Council of Environmental Quality (CEQ) regulations (40 CFR 1506.2(d)) developed to implement NEPA.

DRAFT

RESOLUTION 2018-1

A RESOLUTION OF THE NEVADA STATE LAND USE PLANNING ADVISORY COUNCIL SUPPORTING PUBLIC LAND POLICY PLANNING EFFORTS.

WHEREAS, the State Land Use Planning Advisory Council advises the Division of State Lands on matters relating to land use planning, including the use of federal lands; and

WHEREAS, the State Land Use Planning Advisory Council is the only governor-appointed board consisting of a county commissioner or other leadership representative from each of Nevada's 17 counties; and

WHEREAS, the State Land Use Planning Advisory Council has identified public land policy planning efforts as a focus area for 2018-2010; and

WHEREAS, Nevada has the highest percentage of public lands under federal management of the fifty states, and in some Nevada counties the total of federally managed lands exceed ninety-five percent of the land mass; and

WHEREAS, the economies of Nevada's counties rely on the use of public lands for mining, livestock grazing, energy production, tourism, recreation, and other vital multiple uses; and

WHEREAS, the State Land Use Planning Advisory Council views public land policy efforts as an important tool for elevating county issues to the State and Federal level by participating effectively in all NEPA consistency review efforts;

NOW, THEREFORE, BE IT RESOLVED, the Nevada State Land Use Planning Advisory Council supports public land policy planning efforts as described in NRS 321.7355 as an effective tool for partnering with State and Federal agencies in NEPA consultation and coordination. The State Land Use Planning Advisory Council will support any county that that is updating their public land policy plan.

Adopted this 1st day of June, 2018 by the State Land Use Planning Advisory Council.

Jake Tibbitts, Chair
State Land Use Planning Advisory Council

11:00am UPDATE ON STATEWIDE MILITARY LAND WITHDRAWAL EFFORTS (For possible action)

Nellis Air Force Base and NAS Fallon are both in the process of seeking Congressional approval to expand their land base through land withdrawals. Counties and the State of Nevada have provided scoping comments and are currently reviewing Draft Environmental Impact Statements. A possible action may include a SLUPAC letter reaffirming or clarifying relative issues.

Members – State Land Use Planning Advisory Council

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX No.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX No.: (702) 486-2505

Office of the Governor

December 9, 2016

Naval Facilities Engineering Command Southwest
Code EV21.AK
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

ATTN: Rob Rule – NAS Fallon Community Liaison

Dear Mr. Rule,

On behalf of the State of Nevada, enclosed are the scoping comments assembled through the Nevada State Clearinghouse for the proposed Fallon Range Training Complex (FRTC) Modernization at Naval Air Station Fallon Environmental Impact Statement (EIS). As you know, Nevada is a strong supporter of our military and the importance of your mission to protect the United States of America and we support your training facilities and operations in Nevada.

As you move forward with the analysis of the expansion of FRTC, it is important to remember that Nevada is a public land state and our economy and culture are strongly tied to our natural resources and the multiple uses they sustain. The proposed expansion has the potential to impact our mineral industry, wildlife, grazing operations and transportation routes. Additional withdrawals of public land from multiple use must be carefully evaluated to balance conservation and access to our public lands with expanded military training needs.

We appreciate the opportunity to work with you as alternatives are analyzed and developed and request that we be kept informed through the State's Cooperating Agencies as the Draft EIS is drafted and prepared.

Respectfully submitted,

A handwritten signature in blue ink that reads "Pam Robinson".

Pam Robinson
Policy Director
Office of Governor Brian Sandoval

BRADLEY CROWELL
Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
State Land Use Planning Agency
Nevada Tahoe Resource Team
Conservation Bond Program -Q1

Address Reply to

Division of State Lands
901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721
Web www.lands.nv.gov

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Division of State Lands
Nevada State Clearinghouse

December 12, 2016

To: Naval Facilities Engineering Command Southwest
Code EV21.AK
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

From: Skip Canfield, Program Manager, Nevada State Clearinghouse

RE: Official State of Nevada Comments:
Scoping: Fallon Range Training Complex Modernization EIS

Authorized by gubernatorial executive order in 1989, the Nevada State Clearinghouse exists to inform Executive Branch agencies of significant federal projects and policy initiatives that affect our state. The Clearinghouse is the single point of contact (SPOC) for National Environmental Policy Act (NEPA) proposals statewide. Pursuant to NEPA, federal agencies must ensure meaningful coordination and principled consistency review with the State and other local governments whenever a project or policy initiative is proposed on public lands.

The Clearinghouse conducted outreach to State agencies and local governments regarding this proposal.

- As part of this outreach, the Clearinghouse worked jointly with the Governor's Office in requesting a State Agency Briefing that was held at the State Capitol. As Program Manager of the Clearinghouse, I would like to personally thank NAS Fallon staff for their time and effort travelling to Carson City and speaking with our cabinet-level State agency representatives at the briefing. This face-to-face interaction was extremely valuable.

Attached to this Memorandum are the official State of Nevada comments and suggestions for your attention and consideration, they can be summarized as follows:

- Careful consideration should be given to the location and size of proposed withdrawn areas, balanced with the needs of current users of the public lands. Wherever possible, the proposed withdrawal boundaries should be reduced in scale.

- A scenario should be pursued in the EIS that offers a tradeoff between lands proposed for withdrawal and other lands that are currently withdrawn released back to the BLM for expanded multiple use.
- The 99.9% certainty of containment of live ordnance should be analyzed to determine suitable operational perimeters. Given the lack of urban structures, this requirement seems overly stringent for Nevada’s desert landscape.
- Public access to the proposed withdrawn lands should be spatially adjusted including the designation of specific usage times and dates based on a careful analysis of the public’s needs in the EIS. The final legislation should explicitly define and designate public access allowances, and should not be left to possible arbitrary implementation.
- The EIS should include a discussion on recreation, which is an integral use that is currently enjoyed on the open public lands.
- The EIS should include an analysis of impacts to local and state revenues from the withdrawal expansion and loss of taxes and tourist dollars.
- The term of the withdrawal should not be extended beyond 20 years. It is simply not clear what type of technologies will be present in 2040 and flexibility should be allowed for consideration of possible release of lands back to the public for multiple use at that time.
- Nevada’s counties and State agencies should be afforded a strong local voice as the EIS moves forward via all public and transparent input processes available including close coordination and Cooperating Agency status when requested.
- The definition of “open”, “closed: and “seasonally restricted” areas should be clearly defined since ranching, energy and other multiple use operations in these areas depend on the landscape for year-round management and access.
- Any loss of public grazing lands has a direct impact on private lands and affects the sustainability of the livestock industry.
- The EIS should include an analysis of the loss of grazing animal unit months and the availability of grazing as well as the potential closure of secondary access roads critical to the livestock industry.
- The proposed withdraw removes large swaths of land known to host existing geothermal resources and the EIS should include an economic analysis of the potential loss to county tax revenues, the State general fund, construction and operation jobs, capital investments and greenhouse gas emissions off-sets as a result of withdrawing these lands from development.
- The areas proposed for withdrawal have mineral rights and high potential. It is not in the best interest of Nevada’s economic future to remove these areas from claim staking, exploration and development. In addition, there is concern about what steps will be taken to recognize the Abandoned Mines Lands program and the measures that will be taken to

safeguard the public from the known as well as currently un-inventoried hazards in the area, while protecting the existing natural and cultural resources.

- The EIS should include an analysis of impacts to the multiple power transmission lines that are affected.
- There will be a considerable loss of Nevada Department of Wildlife (NDOW) and public access to areas that have received significant investments in time and resources. For example, the closure of NV839 and multiple secondary access roads will preclude agency management and public recreation, hunting, OHV, etc.
- The lowering of the airspace to 250 feet could have significant noise impacts on the Greater sage grouse and affect the ability of NDOW to conduct aerial surveys of wildlife populations and capture and release programs. Loss of access will affect wildlife research and monitoring of unique habitats and species and will eliminate wildlife viewing for the general public.
- The land withdrawals could increase proliferation of wild horses and increase fragmentation of habitats.
- Given the number of water developments and the complexity of coordination with military schedules, it is expected that an undue burden will be placed on NDOW to sustain these maintenance activities. Reductions in annual maintenance due to onerous coordination requirements may simply make it impractical to sustain these water developments and could lead to losses in the wildlife populations that rely on these resources.

Thank you for the opportunity to provide these official State of Nevada comments and suggestions.

cc: Sheila Anderson, Governor Brian Sandoval's Office
Rob Rule, Community Planning and Liaison Officer – NAS Fallon

ATTACHMENTS:

Nevada Department of Wildlife Letter
Nevada Department of Energy Letter
Nevada Department of Agriculture Letter
Nevada Division of Minerals Letter
State Land Use Planning Agency Memo
State Land Use Planning Advisory Council Letter
Nevada Commission on Off Highway Vehicles Information
Nevada Natural Heritage Letter and Documentation



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF WILDLIFE

1100 Valley Road
Reno, Nevada 89512
(775) 688-1500 • Fax (775) 688-1595

TONY WASLEY
Director

JACK ROBB
Deputy Director

LIZ O'BRIEN
Deputy Director

December 8, 2016

Naval Facilities Engineering Command Southwest
Code EV21.AK
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

Subject: Fallon Range Training Complex (FRTC) Modernization: Expansion of Land Ranges, Airspace Modifications, and Public Land Withdrawal Renewal Environmental Impact Statement (EIS)

To whom it may concern:

Thank you for providing the Nevada Department of Wildlife (NDOW) with the opportunity to review scoping documents and for providing us with a presentation regarding the FRTC Modernization Project. We understand the need for the FRTC modernization and will work cooperatively with you to help insure impacts to wildlife, wildlife management, and wildlife recreation access are minimized. We greatly appreciate your coordination and consideration of our concerns and recommendations below.

Primary Issues

The largest concern for NDOW with the FRTC modernization proposal is the loss of NDOW and public access to areas that have received significant investment of time and resources from the agency and partner conservation groups. The B-17 expansion alone (178,015 acres) would close State Route 839 approximately 4 miles south of US Highway 50, effectively removing access to the best areas in the Sand Springs Range. Similarly, the Monte Cristo Mountains and all of Fairview and Slate Mountains are completely encompassed in the expansion. The closure of access to these areas would preclude agency management and public recreation associated with the bighorn sheep, pronghorn, mule deer, and chukar populations.

The B-17 and B-17 proposed expansion area currently boast approximately 380 bighorn sheep that occur in four primary mountain ranges: the Fairview, Slate, and Monte Cristo Mountains, and the Sand Springs Range. The Bell Mountain, Bell Flat, Little Bell Flat, Gabbs Wash, and east of Fairview areas support around 200 pronghorn antelope. Additionally, the B-17 and proposed expansion supports >100 mule deer with numbers increasing in the winter as deer move from higher elevation mountain ranges (e.g., Desatoya Mountains and Clan Alpine Range). The proposed closure area currently supports healthy populations of chukar located on Fairview, Slate, Monte Cristo

Mountains and the Sand Springs Range. Furthermore, a diversity of non-game species occurs throughout the B-17 and proposed expansion areas (e.g., burrowing owl, songbirds, lizards). Many of these animals are dependent on water developments developed by NDOW and partner conservation groups as well as a few spring developments that are actively maintained and several natural springs.

Through the years, with the help of partner conservation groups, NDOW has enhanced big and small game populations in this arid region of Nevada by planning, constructing, and maintaining wildlife water developments (guzzlers) throughout the proposed FRTC expansion area. Below is a summary of how the FRTC modernization would impact these important wildlife resources:

- 65 wildlife water developments fall within the proposed expansion boundaries of the FRTC
- 10 of 15 big game guzzlers are in areas proposed to be closed from public access
- 23 of 50 small game guzzlers are in areas proposed to be closed from public access

Given the number of guzzlers and the complexity of coordination with NAS's 365 day training schedule, it is expected that an undue burden will be placed on NDOW to sustain our annual maintenance activities. Reductions in annual maintenance due to onerous coordination requirements may simply make it impractical to sustain these water developments, and could lead to losses in the wildlife populations that are augmented by these resources.

There are three hunting units for desert bighorn sheep within the FRTC boundaries. Cumulatively, there are about 41 ram tags issued for bighorn sheep in these three units each year (quotas vary based on annual population fluctuations), including six that are reserved for non-resident hunters. This represents over 13 percent of the total desert bighorn sheep tags issued statewide and over 19 percent of tags reserved for non-resident hunters—a significant proportion of bighorn hunting opportunity in Nevada. Since 2001, a total of 353 bighorn sheep tags have been made available for these hunt areas. Bighorn sheep tags are in high demand for sportsmen, and this is especially true for these units. On average, there are over 6,400 applications per year for this group of hunt units. Cumulatively, NDOW has received 96,300 applications for the 353 tags available since 2001. These populations continue to increase, promising added hunter opportunity in the future. The loss of public access for hunting and wildlife viewing activities associated with bighorn sheep would be a significant impact to Nevada sportsmen and the wildlife viewing public.

In addition to bighorn sheep hunting opportunities, there are approximately 351 mule deer tags (268 residents, 8 non-residents, 75 youth) and 60 pronghorn antelope tags (55 resident and 5 non-resident) issued for hunt units overlapping the FRTC boundary. Since 2001, NDOW received a total of 38,660 applications from hunters (average of 2,577 per year). During that same time period, a total of 5,440 mule deer or pronghorn antelope tags were made available for these hunt areas.

Access to these areas is critical for sportsmen and represents a popular hunting destination. For example, in 2015, 447 hunters were issued a bighorn sheep, mule deer, or antelope tag within units 181-184. These hunters spent a total of 1,112 days scouting (2.5 days/hunter) for big game and 1,734 days hunting for big game (3.9 days/hunter).

Further, many of the areas within the withdrawal expansion are popular and productive chukar hunting destinations. From 2010-2015, an estimated average of 305 chukar hunters spent 983 days each year in Churchill and Mineral Counties. On years with good chukar production, upwards of 750 hunters may spend nearly 3,000 days hunting in Churchill and Mineral Counties. The primary hunting areas within these counties includes the Sand Springs, Clan Alpine, and Stillwater Mountains. Public access and hunting opportunities experienced in this region cannot be replaced, particularly for residents living in Churchill and Mineral Counties with limited nearby high-quality chukar hunting opportunities.

Additional road closures on the east side of Fairview Peak and Slate Mountain, the east side of Churchill Valley, and along the south side of the West Humboldt Range will affect access for wildlife hunting and viewing opportunities. Dixie Valley has 279,400 acres of expansion, but it is shown as open to the public. If there are no additional limitations or restrictions placed on the public, then these additions do not present concerns for NDOW, but we do have concerns that in the future, the Navy may choose to close areas currently proposed as open to the public. Additional road closures in the Dixie Valley would limit NDOW's ability to properly manage species of concern such as the Dixie Valley Toad and tui chub. The Dixie Valley Toad has not yet been formally described, but unpublished molecular phylogenetic and morphology analyses is ongoing at University of Nevada, Reno that suggests it may be a unique species that will require active monitoring and management from NDOW and researchers. Maintaining access to the Dixie Meadows and Settlement Areas will be critical for these desert endemic species. Recreational fishing also occurs within the area at several streams and ponds. Horse Creek is one such priority for fisheries management and provides public fishing opportunities in addition to access for upland wildlife resources.

One area of concern that we were not able to adequately analyze is the potential impact from changes to the airspace from the FRTC modernization proposal. The biggest issue related to the proposed airspace change would be from wildlife exposure to excessive noise, particularly greater sage-grouse during the breeding season. Current science has shown that sage-grouse lek sites are at risk of abandonment from exposure to anthropogenic noise. If the FRTC airspace is changed from the current altitude requirement to a flight floor of 250 feet, this could have tremendous impacts to breeding sage-grouse. Low overflights of sage-grouse lek sites are likely to disrupt breeding events and associated behaviors and could lead to abandonment of lek sites, disruption to breeding opportunities, and subsequent decreases in population growth rates.

In addition to population-specific impacts, changes in airspace might greatly affect NDOW's ability to perform annual aerial surveys of wildlife populations and guzzler inspections. Aerial surveys are an important means of assessing population size and

status for many wildlife species, and these surveys directly influence the development of annual quotas for big game species. Changes to airspace may create complexities in scheduling NDOW's aerial survey activities that limits or blocks our ability to perform these activities. Additionally, NDOW performs capture and release operations with big game populations to assess population health (e.g., disease events, viability), movement patterns, responses to land use activities, and for translocation efforts to augment populations in other locations. All of these aerial activities may be impacted by the proposed airspace changes.

We are also concerned about displaced off-highway vehicle (OHV) activities from closures, particularly the Dead Camel Mountains. Currently, OHV use proliferates the Dead Camel Mountains. With a closure, these users will seek new areas to recreate, which will lead to fragmentation and degradation of wildlife habitats elsewhere.

Another area of concern is the potential for proliferation of wild horses on the FRTC. Wild horses are direct competitors for resources that native wildlife requires. Wild horses are not native to North America, but they have flourished in the Great Basin due to a general lack of management and control over the past several decades. NDOW has seen wild horses populations expand on other lands under management of the Department of Defense (e.g., Hawthorne Army Depot) to the detriment of native pronghorn, mule deer, and many other wildlife species. Analysis and management recommendations should be incorporated into the planning activities for the FRTC (e.g., manage at the Appropriate Management Levels as established by the Bureau of Land Management).

Recommendations

The Department of Defense requires an operational perimeter on training activities that provides a 99.99% certainty of containment of live ordnance. A one in ten-thousand chance of live ordnance reaching a point on the ground greatly expands the perimeter for the FRTC based on planned training activities. Given the lack of urban structures, this requirement seems overly stringent for Nevada's desert landscapes in and around the FRTC. We recommend analyzing perimeter needs with several different thresholds (e.g., 99.95%, 99.9%, 99.0%) to reduce the footprint requirements for the planned expansion and thus, reduce impacts to wildlife, wildlife management, and wildlife recreation access.

The FRTC modernization seeks to increase the distance, altitude, and heading radius for bomb releases based upon weapons capabilities that currently exist. We recommend analyzing additional bombing distances (shorter) and altitudes (lower) to produce alternatives for closure areas (e.g., 1 mile and 0.5 mile reductions in bombing distance; 1,000' decrease in altitude). We also recommend analyzing a reduced launch radius (e.g., 120°). Such analyses would help develop alternatives that still allow for increased training capacity, but reduce the effects of impacts related to highway closures, public access, and wildlife resources.

Currently, Fairview Valley is used for targeting and bombing activities. Under the FRTC expansion, the targeting zone would be moved south and adjacent to State Route 839.

We recommend locating this targeting zone further north and east to limit impacts to important wildlife management concerns outlined above. Alternatively, or in addition to this, we recommend analyzing a targeting and training scenario that uses multiple small target sites instead of one large site to determine if wildlife resource impacts can be reduced under such a scenario.

We recommend adjusting planned training activities so no roads or access to important wildlife resource areas (e.g., key chukar, bighorn sheep, and pronghorn populations) will be closed to the public.

We recommend providing guarantees that areas designated as “open to the public” will remain so through the duration of the withdrawal and in perpetuity.

We recommend careful analysis of the effects of displaced OHV uses with coordinated placement of a suitable designated OHV recreation area with distinct boundaries and limited impacts to wildlife to offset this displacement.

We recommend working cooperatively with BLM with to ensure wild horses and burros are managed at the low end of AML.

Thank you for providing us the opportunity to provide scoping comments. We are committed to working closely with the navy to expand training opportunities as the FRTC while eliminating and minimizing impacts to wildlife, NDOW, and wildlife recreationist. Let us know if you have any questions or would like any additional information.

Sincerely,



Mark Freese
Supervisory Habitat Biologist



755 North Roop Street, Suite 202
Carson City, NV 89701
Office: (775) 687-1850
Fax: (775) 687-1869

GOVERNOR'S OFFICE OF ENERGY

November 15, 2016

Naval Facilities Engineering Command Southwest
Attn: Amy P. Kelley
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

RE: Notice of Intent To Prepare an Environmental Impact Statement for the Fallon Range Training Complex Modernization: Expansion of Land Ranges, Airspace Modifications, and Public Land Withdrawal Renewal

Dear Ms. Kelley:

The Nevada Governor's Office of Energy appreciates the opportunity to provide comments during the public scoping period for the Fallon Range Training Complex Modernization and EIS preparation.

The mission of the Nevada Governor's Office of Energy (GOE) is to ensure the wise development of Nevada's energy resources in harmony with local economic needs and to position Nevada to lead the nation in renewable energy production, energy conservation, and the exportation of energy. The GOE implements the laws of the State as defined in Nevada Revised Statutes 701 and 701A; manages energy-related programs; facilitates cooperation between key stakeholders; advises the Governor on energy policy; and collaborates with our local, regional, and federal partners to ensure a reliable and sustainable energy system.

The GOE offers tax incentives to eligible renewable energy producers as a tool in attracting developers to the state, and has provided 8 geothermal projects in northern Nevada representing approximately 238 MW of generating capacity with a partial sales and use and property tax abatement since 2010. The total economic benefit to the state resulting from these projects, including taxes paid, construction and operational employee wages, and capital investment, is \$1.2 billion. This equates to a benefit, per MW capacity, of \$5 million to the state of Nevada and/or counties in which the projects are constructed.

The proposed withdrawal of an additional 604,789 acres of Federal Lands currently administered by the BLM in Churchill, Mineral, Nye and Pershing counties, along with the proposed acquisition of 65,160 acres of private lands in Churchill and Pershing counties, is of concern to the Governor's Office of Energy due to the high geothermal potential in the area and the potential impacts on future development of this renewable resource and associated infrastructure.

Nevada is proud to be ranked first in the nation for geothermal per capita, with roughly 65% of our renewable generation produced by domestic geothermal resources in northern Nevada. Nearly a third of this generation is located within the Fallon area, and existing BLM geothermal leases, along with previously held BLM geothermal leases which may be offered to other developers in future lease auctions, are located within the proposed withdrawal area.

The GOE has reviewed the Notice of Intent and associated scoping maps and offers the following comments/questions:

Cooperating Agencies

Federal agencies including the Bureau of Land Management, Federal Aviation Administration and the U.S. Fish & Wildlife Service have been identified as cooperating agencies in the preparation of the EIS; however, the process would be more transparent and inclusive if local and state-level cooperating agencies were included. The Governor's Office of Energy recommends at a minimum one state agency and one county be granted cooperating agency status.

Definition of Terminology

The uses associated with the designated "Proposed Open to the Public" and "Proposed Closed to the Public" require further explanation. For example:

- Will the existing geothermal leases located within the proposed withdrawal area be considered valid and existing rights? Will either of the designations above impose limitations on exploration and development including access, drilling and construction of power plants and transmission lines?
- How will existing transmission lines and natural gas pipelines within the proposed withdrawal area be maintained?
- How will future leasing and rights-of-way for geothermal, solar and associated transmission be addressed?

Generation Potential & Economic Analysis

The proposed withdrawal removes a large swath of land known to host existing geothermal resources and identified by the Nevada Bureau of Mines and Geology as high geothermal potential. The EIS should include an analysis of the potential geothermal generating capacity (nameplate) within the proposed withdrawal area based on the maps provided by the Nevada Division of Minerals in their agency comments and neighboring operational geothermal facilities, along with associated economic impacts from the potential loss of development. The economic analysis should include the loss to county tax revenues, the state general fund, construction and operation jobs, capital investment and greenhouse gas emissions off-sets as a result of withdrawing this land from development.

Access

Access to operational facilities along State Route 31, including the Rawhide Mine and Don A. Campbell geothermal plant, will be impacted by the proposed B-17 expansion. The EIS must address how access including emergency services will be maintained to these facilities, and how the roads will be maintained.

Alternatives

The GOE encourages the Navy to work with the geothermal industry and associated state agencies to develop an alternative proposal which would minimize the loss to the high potential geothermal areas within the proposed withdrawal area, and to consider limiting any restrictions imposed on exploration and development of renewable resources located within the proposed withdrawal area.

Thank you for this opportunity to provide comments. Please do not hesitate to contact me for any additional information.

Sincerely,



Angela Dykema
Director

cc: Nevada State Clearinghouse

Las Vegas Office:
2300 E. St. Louis Ave.
Las Vegas NV 89104-4211
(702) 668-4590
Fax (702) 668-4567



Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

November 15, 2016

Naval Facilities Engineering Command Southwest
Attention: Amy P. Kelley
Code EV21.AK
1220 Pacific Highway; Building 1
5th Floor; San Diego, California 92132

RE: Environmental Impact Statement (EIS) to assess the potential environmental consequences of maintaining and modernizing the Fallon Range Training Complex (FRTC) in Nevada, which would include land range expansion through additional land withdrawal and land acquisition, airspace modifications, and public land withdrawal renewal.

Dear Ms. Kelley:

The Nevada Department of Agriculture (NDA) would like to submit these formal comments regarding the Environmental Impact Statement (EIS) that will assess the potential environmental consequences of maintaining and modernizing the Fallon Range Training Complex (FRTC) in Nevada. The NDA promotes a business climate that is fair, economically viable and encourages environmental stewardship that serves to protect food, fiber and human health and safety through effective service and education, and does not support the proposed action for the following reasons:

- The NDA also formally requests to become a cooperating agency during this process so that we can more formally participate in this important process.
- Water rights held as vested rights in Nevada are ground water or surface water rights that pre-date statutory water law. By virtue of their pre-statutory nature, vested rights enjoy maximum protection against later appropriations and later statutory provisions. Watering of livestock is a beneficial use of water rights that are vested and non-vested. These water rights hold value, which will be lost if livestock operators cannot prove beneficial use of water in the areas are proposed for closure or seasonal restrictions. Chapter 533 of the Nevada Revised Statutes clearly outlines the legal definitions and uses of water in Nevada.
- The definitions of “open,” “closed,” and “seasonally restricted” areas are not clearly defined. The ranching operations that depend on these landscapes are part of year-round management that connect public and private land, and the seasonal needs of producers.
 - More specificity should be analyzed in the EIS regarding how the proposed restrictions would be defined, and if the seasonality of the closures will be consistent or change on a regular basis.

BRIAN SANDOVAL
Governor

STATE OF NEVADA

JAMES R. BARBEE
Director

Las Vegas Office:
2300 E. St. Louis Ave.
Las Vegas NV 89104-4211
(702) 668-4590
Fax (702) 668-4567



Elko Office:
4780 E. Idaho Street
Elko NV 89801-4672
(775) 738-8076
Fax (775) 738-2639

DEPARTMENT OF AGRICULTURE

405 South 21st Street
Sparks, Nevada 89431-5557
Telephone (775) 353-3601 Fax (775) 353-3661
Website: <http://www.agri.nv.gov>

- The sustainability of agriculture on private lands is a large concern for the NDA. In a state that is more than 80% public lands, any loss of private lands is a direct hit to the sustainability of the livestock industry.
- Although there are direct closures contained in polygons, those closures may have broader impacts as road closures through those areas may limit access. They also might block access roads to areas that will remain open. More specificity is needed in the analysis of the EIS of the direct and indirect impacts of closures.
- The NDA would like to see more alternatives besides the no action and proposed action alternative. We recognize importance of spending the time and effort of working through the EIS process, but it is crucial to analyze a range of options that meet the different needs and values of all the different stakeholders.
- The loss of grazing animal unit months and availability of winter grazing is something we would like to see analyzed in the EIS. There are more than eight families who would be negatively affected in the proposed the alternative.

Sincerely,

Jim R. Barbee

Director

Nevada Department of Agriculture



STATE OF NEVADA
COMMISSION ON MINERAL RESOURCES
DIVISION OF MINERALS
400 W. King Street, Suite 106
Carson City, Nevada 89703
(775) 684-7040 • Fax (775) 684-7052
<http://minerals.nv.gov/>



BRIAN SANDOVAL
Governor

Las Vegas Office: 2030 E. Flamingo Rd. #220, Las Vegas, NV 89119
Phone: (702) 486-4343; Fax: (702) 486-4345

RICHARD PERRY
Administrator

November 7, 2016

Naval Facilities Engineering
Command Southwest
Code EV21.AK
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

To Whom It May Concern:

This letter represents the comments and questions to be addressed in the public scoping phase for the Fallon Range Training Complex Modernization by the Nevada Division of Minerals. We appreciate the opportunity to be a part of this EIS and look forward to working with the EIS contractor and Department of the Navy.

GENERAL COMMENTS

The Nevada Division of Minerals has reviewed the Public Scoping Document and maps for the Fallon Range Training Complex Modernization (FRTCM) dated August, 2016. Division Staff also attended the scoping meeting held by the Navy in Reno on October 4, 2016. The Navy is proposing to renew the existing public land withdrawal of 202,859 acres, which makes up the current Fallon Naval Air Station. The Navy is requesting an additional withdrawal of 604,789 acres of Federal Lands currently administered by the BLM, which are located within Churchill, Mineral, Nye and Pershing Counties. In addition, the Navy proposes to acquire 65,160 acres of private lands, most of which is located in an area of mixed public and private railroad checkerboard in Churchill and Pershing counties.

In order to determine impacts to minerals and geothermal resources, two maps were prepared using shapefiles with the following information: active mines, historical mining districts, active unpatented claims, active geothermal fields, past and present geothermal leases, geothermal wells, and areas of high geothermal potential defined in a recently-completed study by the Nevada Bureau of Mines and Geology (1). Roads, power transmission lines, landforms and land status are also shown on the two maps.

The Division's focus is defined in Nevada Statutes to "encourage and assist in the responsible exploration for and production of oil, gas, geothermal energy and minerals within this State" (NRS 513.073). The additional 604,789 acres proposed by the Navy for withdrawal contains portions of 18

historical mining districts and is in the heart of the Dixie Valley geothermal area. The proposed withdrawal area represents approximately one percent of Nevada's total surface area, and has approximately 688 active unpatented mining claims and 15,360 acres of active BLM geothermal leases. While some areas proposed by the Navy do not currently have significant mineral or geothermal activity, specifically the B-16 and B-20 proposed range expansion areas, the DVTA and B-17 expansion areas have significant conflicts with existing minerals and geothermal rights and potential.

The Department of the Interior filed a two-year segregation for the Navy which has now withdrawn 604,789 acres from all forms of appropriation including the mining laws, mineral leasing laws and geothermal leasing laws on September 2, 2016 in the Federal Register. This was done during the public scoping phase without notification to current claim or leaseholders, or to the minerals and geothermal industry in Nevada. The fate of 688 claims and 15,360 acres of existing geothermal lease rights within the boundaries of the proposed withdrawal are now in a state of uncertainty.

MINING, MINERAL RIGHTS, AND ACTIVE CLAIMS

With regards to mineral rights, it is not in the best interest of Nevada's economic future to remove areas of high mineral potential from claim staking, exploration and development. The mining industry in Nevada generated \$8.1 billion in revenue in 2015, directly and indirectly employed 3 percent of the workforce, and generated approximately 7 percent of the general fund tax revenues of the State. Removing more Federal lands from mineral entry and leasing lessens our international competitiveness and national security. Regardless of the final boundaries of the proposed withdrawal, areas open to mineral entry and leasing should be maintained under the jurisdiction of the Bureau of Land Management. Please address the following in the scoping phase of the EIS:

- a. The status of existing unpatented mining claims if the withdrawal proceeds. Will these valid and existing rights have access for exploration and development? What will be the protocol for access to these claims, most of which are clustered in ten mining districts in the DVTA and B-17 areas. If they are developed into operating mines, how will daily access and power transmission be permitted and accomplished?
- b. Will there be compensation to owners of these claims if they become economically useless due to access or development restrictions?
- c. Will all or parts of the proposed 604,789 acre addition be open to appropriation under the mining laws and mineral leasing laws? Will there be a difference in how these are treated within the two classifications proposed in the expansion of "open to the public" and "closed to the public".

GEOHERMAL ENERGY

With regards to geothermal exploration and development, geothermal power production in Nevada has grown from zero to over 3.1 million megawatt-hours in the last 30 years. Nevada is now the second largest geothermal producer in the United States and the highest geothermal producer per capita of any state. 26 geothermal plants now operate in Nevada, eight of which are in the Fallon area. There are

geothermal plants directly north and south of the proposed expansion area, in Dixie Valley to the north and Alkali Flat to the south. A recent publication by the Nevada Bureau of Mines and Geology shows the B-17 and DVTA areas as having high geothermal potential (1). The loss of these areas to geothermal exploration and development is an economic loss to the future of Nevada's geothermal development. Please address the following in the scoping phase of the EIS:

- d. Address the status of the existing 15,360 acres of active BLM geothermal leases. Will owners of these leases have access for exploration and development, including the ability to drill on the surface and build power plants? Will they be considered "valid and existing rights"?
- e. Address the question of future geothermal leasing in the areas proposed to be "open to the public", and "closed to the public", as shown on the map of the proposed expansion.
- f. Will all or part of the 604,789 acre addition be open to the geothermal leasing laws?

ABANDONED MINE LANDS

In 1987 the Nevada Legislature, under NRS 513 (2), tasked the Commission on Mineral Resources with creating an Abandoned Mine Lands (AML) public safety program due to the increasing number of injuries and fatalities at abandoned mines. The proposed expansion of the Fallon Range and Training Complex (FRTC) includes approximately 5,465 historic mining features (2). Of these 5,465 features, 386 are ranked by the Division as hazardous, 1,849 are considered non-hazardous, and the remaining historic mining features are currently un-inventoried. A large percentage of the un-inventoried historic mining features are within the existing FRTC in the Fairview mining district. The proposed expansion will include over 277,000 acres with continued public access. In the areas that are publicly accessible there are approximately 2,885 historic mining features, with 258 ranked as hazardous, and 1,360 considered non-hazardous, with the remaining historic mining features being un-inventoried. Out of the 258 ranked hazardous, only 13 have been permanently secured while the rest are fenced or remain open to the public. NRS 455.010 requires an owner to erect a fence or other safeguard around any excavation, hole or shaft. NRS 41.510 (3) explains the owner's duty to keep the premises safe or to warn of danger for persons who participate in recreational activities. NAC 513.270 defines an owner as: "the owner of real property who is shown to be the owner on records located in the courthouse of the county in which the real property is located." If the proposed land withdrawal happens, the U.S. Navy could be held liable if any injury or fatality occurs at an AML site within the new boundary under NRS 455.010 and NRS 41.510.

The abandoned mines not only represent physical safety concerns, but may also have environmental issues, potentially significant historical cultural resources, and documented habitat for bats. The Wonder mining district lies within the proposed expansion for the Dixie Valley Training Area and has historic mining tailings with high acidity on both private and Federal lands. Bat habitat has been identified in abandoned mines in multiple areas by the Nevada Department of Wildlife with three sites at Wonder and two sites at West Gate having bat compatible closures installed to protect the habitat while excluding the public from physical safety concerns.

What measures will be taken to safeguard the public from the known as well as the currently un-inventoried AML hazards in the area, while protecting the existing natural and cultural resources?

ELECTRICAL TRANSMISSION LINES TO MINES AND GEOTHERMAL PLANTS

Five electrical power transmission lines are located within the proposed expansion. With regards to the existing power transmission lines, will they remain or be re-located? Please address these specifically:

- g. AEP Energy Services 765 kV line (crosses the B-20 area)
- h. Sierra Pacific Power Co. 230 kV Dixie Valley line
- i. Sierra Pacific Power Co. 345 kV Dixie Valley line
- j. Sierra Pacific Power Co. 230 kV Austin to Carson Lake line
- k. Sierra Pacific Power Co. 55kV Scheelite to Rawhide line

ACCESS ROADS

With regards to State Route 31, which provides access to the Rawhide Mine and the Ormat Don Campbell geothermal plants in Alkali Flat, how will access be maintained to these operations? Will State Route 31 be relocated or allowed to continue to be the main access to these two operations, both of which are within Mineral County. Also, counties and the BLM maintain gravel and dirt roads for public access in many of the areas within the proposed withdrawal. For those areas where public access will still be provided, who will maintain the roads?

ECONOMIC ANALYSES OF IMPACTS

A socioeconomic analysis of the proposed expansion is required under NEPA and FLPMA. An economic analysis is a component of the socioeconomic analysis. The standard in Nevada for this is the IMPLAN economic model, which should be done at the county and state level. We recommend Professor Thomas Harris, an economist at UNR, be included in this analysis. Dr. Harris is familiar with agriculture, mining, recreation and other natural resource impacts in rural Nevada, understands the technical issues using the IMPLAN model, and has participated in the proposed BLM EIS for the Sagebrush Focal Area mineral withdrawal.

MINERAL POTENTIAL REPORT

Under FLPMA Title II, Section 204, for a withdrawal of Federal lands in excess of 5,000 acres, a report by a qualified mining engineer, engineering geologist or geologist on general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands is required for both the "Reasonably Foreseeable Development Report" in the EIS, and for submission to the appropriate Congressional Committee when the withdrawal is acted upon by Congress. We suggest that the US Geological Survey or Nevada Bureau of Mines and Geology be hired to conduct this analysis and report, which should also include geothermal potential.

SUGGESTED ALTERNATIVE

The Division of Minerals requests that an alternative be evaluated that is a compromise between the Navy's needs and protection of areas of high geothermal and mineral potential, as shown on the attached maps. This could be done by shrinking the footprint of the areas proposed for the DVTA and B-17 proposed expansion areas, or by designating areas where mineral and geothermal exploration and development can continue to operate within the proposed expansion.

NEED FOR LOCAL AND STATE COOPERATING AGENCIES

Local and state-level cooperating agencies should be included. The final EIS will be better with input from local and state cooperating agencies involvement and input.

(1) Nevada Bureau of Mines and Geology Fairway Geothermal Map of Central Nevada, October 2015, DOE Grant DE-EE0006731

(2) Nevada Division of Minerals abandoned mine lands database, 2016.

Attachments:

1. Geothermal Resources Map of FRTCM EIS, October 14, 2016, Nevada Division of Minerals
2. Mineral Resources Impact Map of FRTCM EIS, October 24, 2016, Nevada Division of Minerals

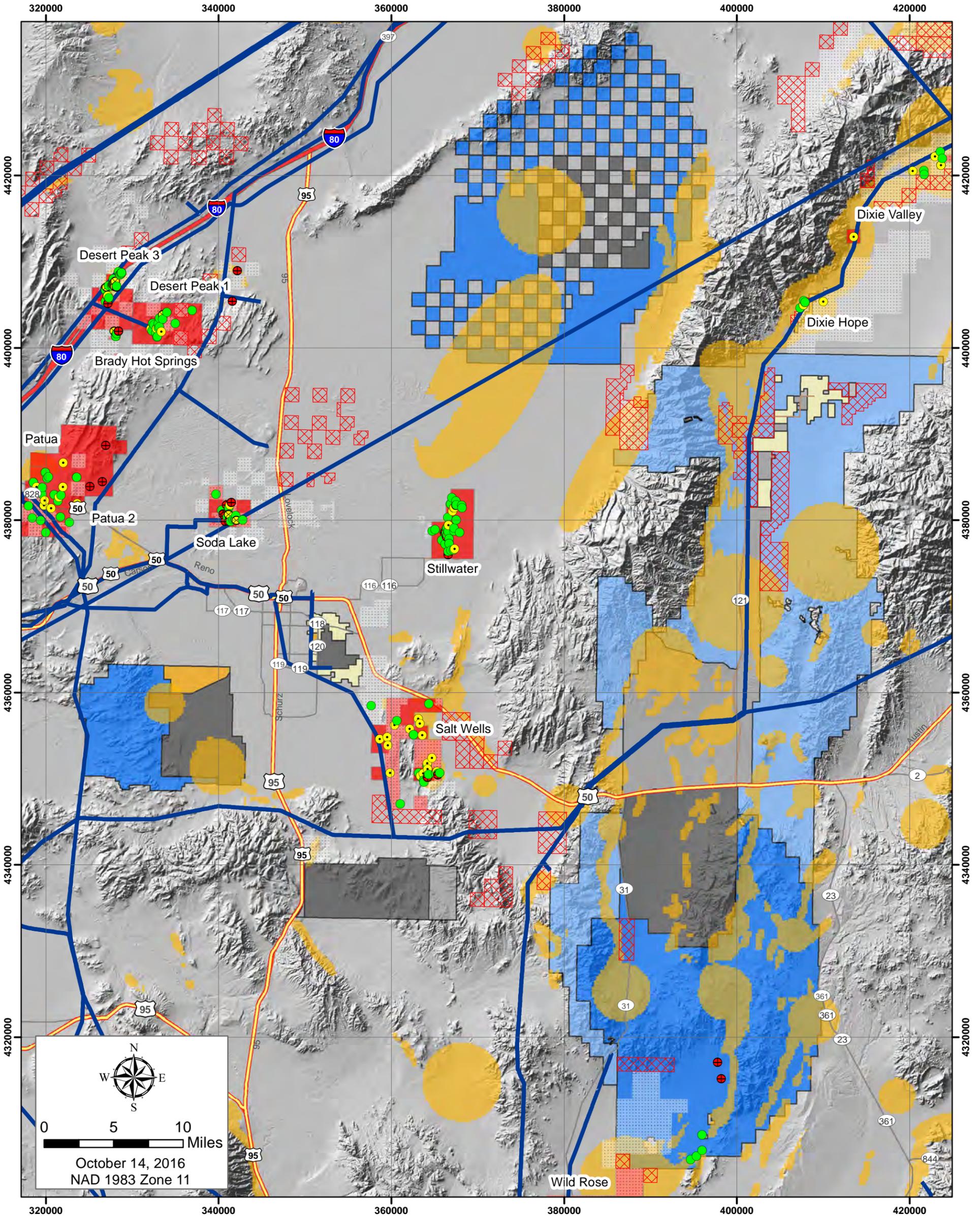
Sincerely,

 11/7/2016

Richard M. Perry

Fallon Range Training Complex Modernization EIS

Map Compiled By: Lucia M. Patterson, Nevada Division of Minerals



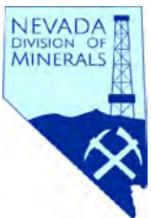
Geothermal Resources Impact Map:

Land Status

- Navy Owned Land
- Existing Withdrawal from BLM (Open to Public)
- Existing Withdrawal from BLM (Closed to the Public)
- Existing Withdrawal from BLM (Open to the Public - Proposed Closed to the Public)
- Proposed Withdrawal from BLM (Proposed Open to the Public 277,624 Acres)
- Proposed Withdrawal from BLM (Proposed Closed to the Public 328133 Acres)

Geothermal Well Status

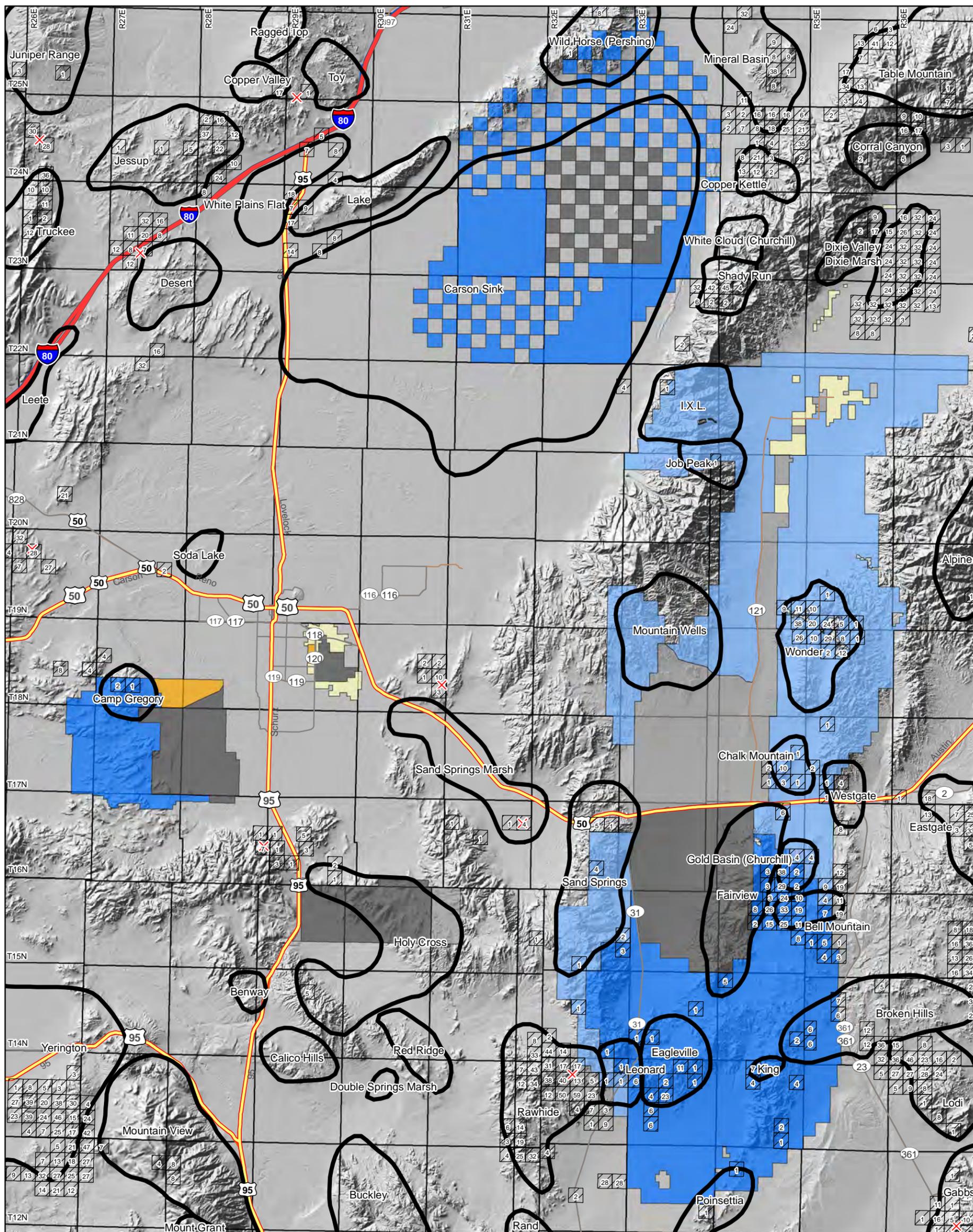
- Active Geothermal Fields
- Areas With High Geothermal Potential (NBMG)
- 2016 Geothermal Leases
- 2010-2014 Geothermal Lease Sales
- Transmission Corridor
- In Use
- Idle
- Shut-In
- P&A



Total Proposed Additional Withdrawal: 605,757 Acres within which there are 15,360 acres under geothermal leases.

Fallon Range Training Complex Modernization EIS

Map Compiled By: Lucia M. Patterson, Nevada Division of Minerals



Mineral Resources Impact Map:

Land Status

- Navy Owned Land
- Existing Withdrawal from BLM (Open to Public)
- Existing Withdrawal from BLM (Closed to the Public)
- Existing Withdrawal from BLM (Open to the Public - Proposed Closed to the Public)
- Proposed Withdrawal from BLM (Proposed Open to the Public 277,624 Acres)
- Proposed Withdrawal from BLM (Proposed Closed to the Public 328,133 Acres)

Sections With 2017 AY Claims
of Claims Inside Section

Mining Districts X Active Mine



0 5 10 Miles



October 24, 2016
NAD 1983 Zone 11

Total Proposed Additional Withdrawal: 605,757 Acres within which there are 688 mining claims.

BRADLEY CROWELL
Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
State Land Use Planning Agency
Nevada Tahoe Resource Team
Conservation Bond Program -Q1

Address Reply to

Division of State Lands
901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721
Web www.lands.nv.gov

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Division of State Lands
State Land Use Planning Agency

December 12, 2016

To: Nevada State Clearinghouse

From: Skip Canfield, Program Manager, State Land Use Planning Agency (NRS 321.700)

RE: Comments and Suggestions:
Scoping: Fallon Range Training Complex Modernization EIS

It has always been recognized how valuable Nevada's military mission is to the State of Nevada and the nation as a whole. The State and counties within its borders benefit greatly economically from all of the activities associated with NAS Fallon and all of our military partners. Nevada is a large public lands state with a significant acreage dedicated to military withdrawn lands. Nevada is known for its extremely high percentage of lands within its boundaries that are Federally-managed. Barely 14% of Nevada is privately owned. This land pattern creates challenges for economic development and maintenance and expansion of the tax base. The vast amount of public lands designated for multiple use is very unique and comes with its own challenges and opportunities. The State Land Use Planning Agency, as well as a broad spectrum of other agencies has consistently stressed the need to have a balance that recognizes military mission while protecting multiple use interests. Any reduction in multiple use activities through a land withdrawal will reduce multiple use opportunities and must be considered carefully.

With this in mind, the State Land Use Planning Agency offers the following comments and suggestions:

- Public access to the proposed withdrawn lands should be spatially adjusted including the designation of specific usage times and dates based on a careful analysis of the public's needs in the EIS. The final legislation should explicitly define and designate public access allowances, and should not be left to possible arbitrary implementation.
- Wherever possible, the proposed withdrawal boundaries should be scaled back. For example:
 - Nevada State Highway 839 (Rawhide Road) should remain open to public use. This area is simply too important to many multiple use activities to be closed,

including, and not limited to, access to hunting, grazing allotments, mining claims, OHV travel, sightseeing, camping, etc.

- A scenario should be pursued in the EIS that offers a tradeoff between lands proposed for withdrawal and other lands that are currently withdrawn released back to the BLM for expanded multiple use. Withdrawal of lands could be more palatable to counties and the State if this tradeoff is included in the analysis. Certain currently withdrawn lands within the NAS Fallon boundary could warrant release at this time, and this should be thoughtfully considered.
- The term of the withdrawal should not be extended beyond 20 years. It is simply not clear what type of technologies will be present in 2040. Emerging technologies could render such large swaths of withdrawn lands unnecessary, thereby warranting some lands for release to multiple use. Any term greater than 20 years does not provide the flexibility needed to accommodate potential options.
- The EIS should include a discussion on recreation, which is an integral use that is currently enjoyed on the open public lands.
- The EIS should include an analysis of impacts to local and state revenues from the withdrawal expansion and loss of taxes and tourist dollars.
- Nevada's counties and State agencies should be afforded a strong local voice as the EIS moves forward via all public and transparent input processes available including close coordination and Cooperating Agency status when requested.
- The Nevada Association of Counties and the Nevada State Clearinghouse should act as points of contact to coordinate County and State participation.
- The State Land Use Planning Advisory Council (NRS 321.740) values public and transparent interaction with Nevada's military partners and should be afforded future briefings by NAS Fallon representatives as the EIS process moves forward.
- The NEPA principle of "Avoid, Minimize and Mitigate" should be employed throughout the process with mitigation being the very last option only after all reasonable avoidance and minimization options have been exhausted.

Any proposal of this significance to Nevada should be carefully examined. Nevada is a proud host to our military and values the broad array of benefits that come with such a large presence in our state. Thank you for the opportunity to provide these comments and suggestions. I look forward to the continued positive working relationship with NAS Fallon that I have enjoyed for many years.

KAY SCHERER
Interim Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
State Land Use Planning Agency
Nevada Tahoe Resource Team
Conservation Bond Program -Q1

Address Reply to

Division of State Lands
901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721
Web www.lands.nv.gov

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
State Land Use Planning Advisory Council

Naval Facilities Engineering Command Southwest
Code EV21.AK
1220 Pacific Highway
Building 1, 5th Floor
San Diego, CA 92132

November 28, 2016

RE: Fallon Range Training Complex Modernization EIS

To Who It May Concern:

The Nevada State Land Use Planning Advisory Council (SLUPAC, Nevada Revised Statutes 321.740) is the only Governor appointed council that includes a county commissioner or their representative from each of Nevada's 17 counties. The Nevada Association of Counties is also represented on SLUPAC in an ex-officio role. SLUPAC is involved with land use planning and natural resource issues important to many Nevadans. SLUPAC is a unique avenue for Nevada's counties to elevate local resource-related issues to the State level.

At our regularly scheduled public meeting held in Eureka, Nevada on November 4, 2016, an agenda item included a discussion regarding the Environmental Impact Statement (EIS) for the Fallon Range Training Complex (FRTC) Modernization with a proposed action to renew the current public land withdrawal, withdraw additional public land, acquire private land, and modify airspace. We very much appreciated the presentations provided by representatives from NAS Fallon regarding the proposal. Our Council shares the concerns of many other stakeholders that any proposal of this significance to Nevada should be carefully considered and scrutinized. Nevada is a proud host to our military and values the broad array of benefits that come with such a large presence in our state.

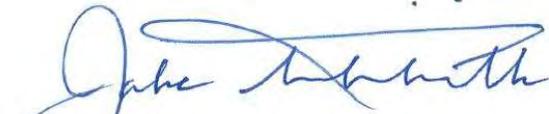
At the same time, Nevada is known for its extremely high percentage of lands within its boundaries that are Federally-managed. Barely 14% of Nevada is privately owned. This land pattern creates challenges for economic development and maintenance and expansion of the tax base. The vast amount of public lands under multiple use is very unique with its own challenges and opportunities. A reduction in multiple use activities through land withdrawal and a reduction in private land ownership will reduce land use opportunities and must not be considered lightly.

Recognizing the strong and positive working relationship that Nevada has enjoyed with our military partners over many decades, we are confident that we can move forward jointly so that the end result is one that maintains the essential military mission in Nevada while protecting and promoting the unique multiple use cultural and economic heritage in our state. In order to help reach that end, we request your consideration of the following:

- Nevada's counties and State agencies should be afforded a strong local voice as the EIS moves forward via all public and transparent input processes available including close coordination and Cooperating Agency status when requested.
- The Nevada Association of Counties and the Nevada State Clearinghouse should act as points of contact to coordinate County and State participation.
- The State Land Use Planning Advisory Council values public and transparent interaction with our military partners and should be afforded future briefings by NAS Fallon representatives as the EIS process moves forward.
- The NEPA principle of "Avoid, Minimize and Mitigate" should be employed throughout the process with mitigation being the very last option only after all reasonable avoidance and minimization options have been exhausted.

Thank you very much for your commitment to matters important to many Nevadans.

Respectfully,



Jake Tibbitts
Chairman, Nevada State Land Use Planning Advisory Council

cc:
Governor's Office
Rob Rule – NAS Fallon
BLM via email BLM_NV_FRTC@blm.gov

Please accept these comments from the Nevada Commission on Off-Highway Vehicles regarding the Department of the Navy's: *Notice of Intent to Prepare an Environmental Impact Statement for the Fallon Range Training Complex Modernization: Expansion of Land Ranges, Airspace Modifications, and Public Land Withdrawal Renewal* (NOI).

The Commission understands the proposed action includes the renewal of the existing 202,859-acre public land withdrawal that expires on November 6, 2021; the withdrawal and reservation for military use of approximately 604,744 acres of additional public land to expand existing land ranges; acquisition of approximately 65,160 acres of non-federal land to expand existing land ranges; expansion of associated SUA, as well as reconfiguration of existing airspace; and modification of range infrastructure to support expansion and modernization.

- The Commission appreciates the Navy's effort in the Proposed Action to allow for limited OHV use to continue in several of the expansion areas. Unfortunately, we are concerned the PA – as currently configured in B16 and B17 – would unnecessarily restrict continued access to historic and important OHV recreation including, but not limited to, casual use, permitted competition events, and club activities.
- OHV groups have performed a trail/road inventory in B16 and found that it would functionally close approximately 60 miles of popular routes. The expansion in B17 would close approximately 200 miles of roads and trails that are highly popular with campers and day riders. The Navy needs to include in an analysis, the impacts of closing hundreds of miles of roads. We believe that these impacts to historical recreation access can be avoided or mitigated.
- The Fallon Naval Base's requested expansion would result in loss of motorized access on over 604,744 acres (945 square miles) of public lands from Churchill, Pershing, Mineral, and Nye County in Nevada, and, in particular, everything northwest of Gabbs would become a 178,015 acre bombing range completely closed to all use.
- This analysis should include the loss of access and economic losses to residents, recreationists, hikers, mt. bikers, off road vehicle users, campers equestrians, commercial and competitive permits, local businesses, outfitter and guides, miners, ranchers, sportsman, and tribal entities.

The following mitigation is recommended to be analyzed in an Alternative:

- Existing OHV recreation in B17 and B16 should be replaced with a similar type and amount of OHV recreation on lands outside of the expansion areas. Mitigate recreation losses with commensurate new federal land designations outside of the project areas for OHV use. Lands may include: hard release of WSA's and/or ACEC's, special status designations such as NCA's and/or NRA's, recreation-focused prescriptions on general public lands, acquisition of nonfederal lands, or similar mechanisms. New and existing OHV recreation areas should be protected in statute by Congress as a "prescribed use."
- Existing OHV recreation in B17 and B16 should remain until replacement lands are designated and available for OHV use.



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Nevada Natural Heritage Program

Brian Sandoval
Governor

Kay Scherer
Interim Director

Kristin Szabo
Administrator

18 October 2016

Skip Canfield
Nevada State Clearinghouse
Nevada Division of State Lands
901 S. Stewart Street, Suite 5003
Carson City, NV 89701-5246

Dear Mr. Canfield:

We are pleased to provide the information you requested on endangered, threatened, candidate, and/or at risk plant and animal taxa recorded within or near the Proposed Land Range Expansion by the Fallon Range Training Complex (FRTC) Project (preparation of Environmental Impact Statement), effecting Churchill, Mineral, and Nye Counties. We searched our database and maps for the following, a two kilometer radius around:

Map of Proposed FRTC Modernization Overview

The enclosed printout lists the taxa recorded within the given area.

Please address the following concerns and requests (especially any that are checked) in the environmental planning, analysis, and documentation for this project:

With respect to sensitive biological resources:

- 1. Please consult the Nevada Natural Heritage Program databases for the most recent information on actual and potential occurrences of conservation target species in and near the project area.
- 2. Please survey potential habitat for any and all threatened, endangered (including N.R.S. 527.270 state-listed), or otherwise **sensitive species** prior to direct or indirect disturbance, at the time(s) of year best suited for detecting presence or absence of all such species, using biologists fully qualified for the work. This includes the **sensitive habitats** listed in (3) below, where the occurrence of previously undiscovered species is particularly likely.
- 3. Please avoid direct and indirect impacts to **sensitive habitats** (high mountain tops, sand dunes, riparian corridors, springs, ephemeral pools, playas), **native vegetation** (including cryptobiotic soil crusts), and all known and undocumented populations of threatened, endangered, or otherwise **sensitive species**, or minimize and mitigate such impacts where necessary. Our primary objective is to avoid further endangerment and regulatory listings of any species native to Nevada.
- 4. As one mitigation measure, please fully document any and all unavoided impacts to sensitive species with respect to the a) species involved, b) numbers of individuals and acres of habitat impacted, removed, or destroyed, c) nature and time(s) of occurrence of the impacts, and d) ultimate disposition of any salvaged individuals, and forward the documentation to our office in a timely manner for use in state-wide cumulative impact analyses and in maintaining current species population information.
- 5. Please submit all survey data, metadata, and other field documentation of conservation target species collected for this project to the Nevada Natural Heritage Program databases to help inform future projects and conservation priorities.



STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
Nevada Natural Heritage Program

Brian Sandoval
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Interim Director

Kristin Szabo
Administrator

The Nevada Department of Wildlife (NDOW) manages, protects, and restores Nevada's wildlife resources and associated habitat. Please contact Bonnie Weller, NDOW GIS Biologist (775 688-1439) to obtain further information regarding wildlife resources within and near your area of interest. Removal or destruction of state protected flora species (NAC 527.010) requires a special permit from Nevada Division of Forestry (NRS 527.270).

Please note that our data are dependent on the research and observations of many individuals and organizations and in most cases are not the result of comprehensive or site-specific field surveys. Natural Heritage reports should never be regarded as final statements on the taxa or areas being considered, nor should they be substituted for on-site surveys required for environmental assessments.

Thank you for checking with our program. Please contact us for additional information or further assistance.

Sincerely,

Eric S. Miskow
Biologist/Data Manager

Data Sensitive and At Risk Taxa Recorded Near the Fallon NAS Project Area

Compiled by the Nevada Natural Heritage Program for the Nevada Division of State Lands

18 October 2016

<u>Scientific name</u>	<u>Common name</u>	<u>Usfws</u>	<u>Blm</u>	<u>Usfs</u>	<u>State</u>	<u>Srank</u>	<u>Grank</u>
Plants							
<i>Astragalus pseudiodanthus</i>	Tonopah milkvetch		S			S2	G3Q
<i>Eriogonum beatleyae</i>	Beatley buckwheat		S			S3	G2Q
<i>Eriogonum lemmonii</i>	Lemmon buckwheat					S3?	G3?
<i>Eriogonum rubricaula</i>	Lahontan Basin buckwheat					S3	G3
<i>Helianthus deserticola</i>	dune sunflower					S3	G2G3Q
<i>Mentzelia candelariae</i>	Candelaria blazing star					S3?	G3?Q
<i>Mentzelia inyoensis</i>	Inyo blazing star			R5S		S1	G3
<i>Oryctes nevadensis</i>	oryctes		S			S3	G3
<i>Phacelia glaberrima</i>	Reese River phacelia					S3?	G3?
<i>Psoralea kingii</i>	Lahontan indigobush					S3	G3
Invertebrates							
<i>Aegialia hardyi</i>	Hardy's aegialian scarab		S			S1	G1
<i>Coenonychia pygmaea</i>	Sand Mountain pygmy scarab		S			S1	G1?
<i>Myrmecocystus snellingi</i>	dune honey ant					S2?	G2?
<i>Serica psammobunus</i>	Sand Mountain serican scarab		S			S1	G1
Fishes							
<i>Oncorhynchus clarkii henshawi</i>	Lahontan cutthroat trout	LT	S	T	GF	S3	G4T3
<i>Siphateles bicolor</i> ssp. 9	Dixie Valley tui chub					S1	G4T1Q
Mammals							
<i>Antrozous pallidus</i>	pallid bat		S	R5S	PM	S3	G4
<i>Brachylagus idahoensis</i>	pygmy rabbit		S	R4S, R5S	GM	S3	G4
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat		S	R4S, R5S	SM	S2	G4
<i>Eptesicus fuscus</i>	big brown bat		S			S4	G5
<i>Lasiorycteris noctivagans</i>	silver-haired bat		S			S3B	G3G4
<i>Lasiurus cinereus</i>	hoary bat		S			S3N	G3G4
<i>Microdipodops pallidus</i>	pale kangaroo mouse		S		PM	S2	G3
<i>Myotis ciliolabrum</i>	western small-footed myotis		S			S3	G5
<i>Myotis evotis</i>	long-eared myotis		S			S4	G5
<i>Myotis lucifugus</i>	little brown myotis		S			S3	G3
<i>Myotis volans</i>	long-legged myotis		S			S4	G4G5
<i>Ochotona princeps</i>	American pika		S		PM	S2	G5
<i>Parastrellus hesperus</i>	canyon bat		S			S4	G5

<u>Scientific name</u>	<u>Common name</u>	<u>Usfws</u>	<u>Blm</u>	<u>Usfs</u>	<u>State</u>	<u>Srank</u>	<u>Grank</u>
Mammals (cont.)							
<i>Tadarida brasiliensis</i>	Mexican free-tailed bat		S		PM	S3S4B	G5
Birds							
<i>Accipiter gentilis</i>	Northern Goshawk		S	R4S, R5S	SB	S2	G5
<i>Aquila chrysaetos</i>	Golden Eagle		S			S4	G5
<i>Buteo regalis</i>	Ferruginous Hawk		S			S2	G4
<i>Buteo swainsoni</i>	Swainson's Hawk		S			S2B	G5
<i>Charadrius nivosus nivosus</i>	Western Snowy Plover		S			S3B	G3T3
<i>Chlidonias niger</i>	Black Tern					S2S3B	G4G5
<i>Coccyzus americanus</i>	Yellow-billed Cuckoo	LT	S	T	SB	S1B	G5
<i>Pelecanus erythrorhynchos</i>	American White Pelican					S2B	G4
<i>Plegadis chihi</i>	White-faced Ibis					S3B	G5

U. S. Fish and Wildlife Service (Usfws) Categories for Listing under the Endangered Species Act:

LT Listed Threatened - likely to be classified as Endangered in the foreseeable future if present trends continue

Bureau of Land Management (Blm) Species Classification:

S Sensitive Species- Species designated Sensitive by State Director of Nevada BLM

United States Forest Service (Usfs) Species Classification:

T Threatened- as designated by the Endangered Species Act
R4S Region 4 (Humboldt-Toiyabe National Forest) Sensitive
R5S Region 5 (Inyo National Forest or Lake Tahoe Basin Management Unit) Sensitive or Watch Status

Nevada State Protected (State) Species Classification:

Fauna:

GF Game Fish (NAC 503.060)
GM Game Mammal (NAC 503.020)
PM Protected Mammal (NAC 503.030.1)
SM Sensitive Mammal (NAC 503.030.3)
SB Sensitive Bird (NAC 503.050.3)

Nevada Natural Heritage Program Global (**Grank**) and State (**Srank**) Ranks for Threats and/or Vulnerability:

G Global rank indicator, based on worldwide distribution at the species level
T Global trinomial rank indicator, based on worldwide distribution at the infraspecific level
S State rank indicator, based on distribution within Nevada at the lowest taxonomic level
1 Critically imperiled and especially vulnerable to extinction or extirpation due to extreme rarity, imminent threats, or other factors
2 Imperiled due to rarity or other demonstrable factors
3 Vulnerable to decline because rare and local throughout its range, or with very restricted range
4 Long-term concern, though now apparently secure; usually rare in parts of its range, especially at its periphery
5 Demonstrably secure, widespread, and abundant
A Accidental within Nevada
B Breeding status within Nevada (excludes resident taxa)
H Historical; could be rediscovered
N Non-breeding status within Nevada (excludes resident taxa)
Q Taxonomic status uncertain
U Unrankable
Z Enduring occurrences cannot be defined (usually given to migrant or accidental birds)
? Assigned rank uncertain

ONE HUNDRED ONE NORTH CARSON STREET
CARSON CITY, NEVADA 89701
OFFICE: (775) 684-5670
FAX NO.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100
LAS VEGAS, NEVADA 89101
OFFICE: (702) 486-2500
FAX NO.: (702) 486-2505

Office of the Governor

March 8, 2018

99th Air Base Wing Public Affairs
4430 Grissom Ave. Suite 107
Nellis Air Force Base 89191

Sent via 99ABW.PAOutreach@us.af.mil

Re: Nevada Test and Training Range Military Land Withdrawal Draft Legislative Environmental Impact Statement Comments

Dear Gentlemen:

Thank you for the opportunity to submit the attached comments on behalf of the State of Nevada to the Draft Legislative Environmental Impact Statement (LEIS) for the Nevada Test and Training Range (NTTR) Land Withdrawal. As you know, the State of Nevada is a strong supporter of our military and national defense and we appreciated the presentation you made to our state agencies on February 5, 2018.

We understand there are management conflicts between the U.S. Air Force (Air Force) and the U.S. Fish and Wildlife Service that occur in the south range based on inherent differences in land use and management approaches. The Congressional designation that created the NTTR in 1999 on approximately half of the Desert National Wildlife Range, with shared agency jurisdiction, may warrant some modification that would better accommodate both agencies' needs, but should be accomplished in an equitable manner.

During the preparation of the Draft LEIS, there was little interaction with our state agencies. Better coordination with the Nevada Department of Wildlife (NDOW) would have led to a more complete analysis and an opportunity to develop a compromise alternative that would both enhance training opportunities for the Air Force and continue to provide essential protections for Nevada's wildlife and outdoor recreational experiences for Nevadans and visitors. Lack of coordination with Governor's Office of Energy (GOE) also resulted in missed opportunities to incorporate minor adjustments to the proposed withdrawal to avoid conflicts with future energy development.

We request that the Air Force initiate additional coordination with our state agencies, especially NDOW and GOE, as previously requested in our scoping comments dated December 9, 2016. We are confident that an alternative to avoid and minimize impacts to Nevada's wildlife and future energy development, while also achieving the Air Force's needs can be developed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Pam Robinson".

Pam Robinson, Policy Director
Office of Governor Brian Sandoval

BRADELY CROWELL
Director

Department of Conservation
and Natural Resources

CHARLES DONOHUE
Administrator

BRIAN SANDOVAL
Governor



State Land Office
State Land Use Planning Agency
Nevada Tahoe Resource Team
Conservation Bond Program -Q1

Address Reply to

Division of State Lands
901 S. Stewart St. Suite 5003
Carson City, Nevada 89701-5246
Phone (775) 684-2720
Fax (775) 684-2721
Web www.lands.nv.gov

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Division of State Lands
Nevada State Clearinghouse

March 8, 2018

To: Nellis Air Force Base
99th Air Base Wing Public Affairs - 4430 Grissom Ave., Ste. 107
Nellis AFB, NV 89191 via 99ABW.PAOutreach@us.af.mil

From: Skip Canfield, Program Manager, Nevada State Clearinghouse

RE: Official State of Nevada Comments:
Draft LEIS – Nevada Test and Training Range Land Withdrawal

Authorized by gubernatorial executive order in 1989, the Nevada State Clearinghouse exists to inform Executive Branch agencies of significant federal projects and policy initiatives that affect our state. The Clearinghouse is the single point of contact (SPOC) for National Environmental Policy Act (NEPA) proposals statewide. Pursuant to NEPA, federal agencies must ensure meaningful coordination and principled consistency review with the State and other local governments whenever a project or policy initiative is proposed on public lands.

The Clearinghouse conducted outreach to State agencies and local governments regarding this proposal.

- As part of this outreach, the Clearinghouse worked jointly with the Governor's Office in requesting a State Agency Briefing that was held at the State Capitol on February 5, 2018. As Program Manager of the Clearinghouse, I would like to personally thank Colonel Paul Murray of Nellis AFB and his staff as well as colleagues from BLM for their time and effort travelling to Carson City and speaking with our cabinet-level State agency representatives at the briefing. This face-to-face interaction was extremely valuable.

A concern voiced by multiple agencies is the lack of adequate consultation and the fact that the Draft LEIS contains a broad range of alternatives and sub-alternatives that, cumulatively, do not appear to satisfactorily address the State's scoping comments provided in December 2016. During the February 5, 2018 State Agency Briefing, the question was posed about this range of alternatives and what the outcome will be. The reply was that the Final Preferred Alternative will be a combination of the Draft alternatives taking into consideration all of the agency and public feedback.

Therefore, since there is no preferred alternative provided in the Draft, and with the understanding that the Final LEIS Preferred Alternative will be a combination of elements of the draft alternatives, all State feedback should be considered in the context of how it cumulatively affects the final outcome.

Attached to this Memorandum are the official State of Nevada comments and suggestions for your attention and consideration, they are briefly summarized as follows:

- Planning processes under NEPA are designed to inform the public and provide an opportunity for the project proponent to work with cooperating agencies and the general public to develop project alternatives and analyze the effects of those alternatives. This type of process requires in-depth discussions amongst cooperating agencies and is most effective when the process employs a collaborative atmosphere to create or modify alternatives. We are very concerned that this type of real coordination and consultation with cooperating agencies has been minimal, and what coordination, consultation, and cooperating agency feedback has occurred does not appear to be under consideration or inclusion by the US Air Force.
- Nevada's counties and State agencies should be afforded a strong local voice as the LEIS moves forward via all public and transparent input processes available including close coordination with the Cooperating Agencies.
- Careful consideration should be given to the location and size of proposed withdrawn areas, balanced with the needs of current users of the public lands. Wherever possible, the proposed withdrawal boundaries should be reduced in scale, not expanded.
- A scenario should be pursued in the LEIS that offers a tradeoff between lands proposed for withdrawal and other lands that are currently withdrawn released back to the BLM or US Fish and Wildlife Service for expanded multiple use.
- Public access to the proposed withdrawn lands should be spatially adjusted including the designation of specific usage times and dates based on a careful analysis of the public's needs in the LEIS. The final legislation should explicitly define and designate public access allowances, and should not be left to possible arbitrary implementation.
- The term of the withdrawal should not be extended beyond 20 years. It is simply not clear what type of technologies will be present in 2040 and flexibility should be allowed for consideration of possible release of lands back to the public for multiple use at that time.
- The Air Force is encouraged to continue coordinating with the BLM as well as the energy industry in Nevada, including NV Energy and Valley Electric Association, to develop a proposal which would minimize any energy infrastructure impact. The Governor's Office of Energy believes that the Draft LEIS has not addressed all of these impacts.
- Expanded restrictions placed on the Desert National Wildlife Range (DNWR) will further complicate and reduce the effectiveness of wildlife conservation and public use on the DNWR. Additionally, it is apparent that knowledge of biological resources and impacts to those resources is consistently lacking within the Draft LEIS. The wholesale transfer of primary jurisdiction to the USAF will shift the primary focus of the DNWR from wildlife

conservation to one of military training and negate the purpose and benefits of administering the DNWR.

Thank you for the opportunity to provide these official State of Nevada comments and suggestions.

cc: Sheila Anderson, Governor Brian Sandoval's Office
Mike Ackerman, Air Force Civil Engineer Center
Tom Seley, BLM Project Manager
Victor Rodriguez, Nellis AFB

ATTACHMENTS:

Nevada Department of Wildlife Letter
Nevada Department of Energy Letter
State Land Use Planning Agency Memo



BRIAN SANDOVAL
Governor

STATE OF NEVADA

DEPARTMENT OF WILDLIFE

6980 Sierra Center Parkway, Suite 120

Reno, Nevada 89511

Phone (775) 688-1500 • Fax (775) 688-1697

TONY WASLEY
Director

JACK ROBB
Deputy Director

LIZ O'BRIEN
Deputy Director

March 7, 2018

99th Air Base Wing Public Affairs
Attn: NTTR LEIS
4430 Grissom Ave., Ste. 107
Nellis AFB, NV 89191
99ABW.PAOutreach@us.af.mil

Re: Draft LEIS: Nevada Test and Training Range Military Land Withdrawal Legislative Environmental Impact Statement (LEIS) Comments

To whom it may concern:

The Nevada Department of Wildlife (NDOW) has been a cooperating agency in developing the Draft LEIS since December 2015. Initially, NDOW engaged in meetings with the U.S Air Force (USAF) and the other agency cooperators to better understand the importance of a renewed land withdrawal for maintaining the Nevada Test and Training Range (NTTR) environment as the premier USAF asset for electronic and live-fire tactical testing and training exercises. Additionally, the USAF has articulated that expansion of NTTR jurisdictions to adjoining public lands managed by the U.S. Fish and Wildlife Service (USFWS) and Bureau of Land Management (BLM) would enable them to keep optimal pace with technological advances and tactics used in aerial warfare around the globe now and into the future. Scoping comments to the Draft LEIS formally outlined the State of Nevada's concerns for fundamental wildlife management relationships and public access that supports a variety of outdoor experiences. We have included these comments as an attachment to this letter.

The programmatic nature of the Draft LEIS, especially the land withdrawal and expansion proposed onto the Desert National Wildlife Refuge (DNWR), will result in a significant departure from existing land management priorities. NDOW remains concerned with the alternatives presented in the LEIS as written and especially with the USAF's consistent absence of real and honest coordination with cooperating agencies, including NDOW. We recommend the USAF take steps to strike a more equitable balance between the desire to modernize training capabilities and maintain sustainable wildlife resources and public access on the DNWR. To achieve this, NDOW feels there is an opportunity to develop a revised version of Alternative 2 that enhances training opportunities, while simultaneously providing essential protections for wildlife resources and public access.

In our comments below, we present additional input on the proposed withdrawal expansions and Draft LEIS alternatives. It is our hope that the supplied information will initiate more productive collaboration among the cooperating agencies and result in measures that minimize impacts to wildlife and public access.

We have organized our comments into the following sections:

- Desert National Wildlife Refuge (DNWR);
- National Environmental Policy Act (NEPA) Planning;
- Comments on Existing Proposed Alternatives;
- Comments on General Environmental Constraints and Proposed Mitigation;
- Recommendations for new Boundary Fencing; and
- Comments on Wildlife Monitoring, INRMP and Agency Coordination

Desert National Wildlife Refuge (DNWR)

The DNWR landscape was originally selected for its remoteness, ruggedness, and minimal land-use conflicts. These attributes protect ecosystem services that Nelson (Desert) bighorn sheep (*Ovis canadensis nelsoni*; hereafter, bighorn sheep) and other species depend upon, and we, as humans, use and enjoy. The current boundary of the DNWR is a remnant of the original Desert Game Range created in 1936. The intent of the Desert Game Range was that of preserving bighorn sheep. When created, the Desert Game Range was much larger than the existing 1.6 million-acre DNWR. The Military Land Withdrawal Act of 1999 withdrew approximately 2.9 million acres of federal lands for military use, including 826,000 acres (approximately one-half) of the DNWR to create what is now the NTTR. This portion of the DNWR is currently managed under a shared agreement between the USAF and the USFWS, with primary jurisdiction under the authority of the USFWS. As previously stated in our scoping comments, the largest concern for NDOW is additional loss of access and adverse impacts to wildlife resources as a result of continued military expansion into the DNWR. In concert with the original intent of the refuge, NDOW and its conservation partners have made significant investments of time and resources to improve wildlife resources on the DNWR, both within and outside of the NTTR. Expanded restrictions placed on the DNWR will further complicate and reduce the effectiveness of wildlife conservation and public use on the DNWR.

National Environmental Policy Act (NEPA) Planning

Planning processes under NEPA are designed to inform the public and provide an opportunity for the project proponent to work with cooperating agencies and the general public to develop project alternatives and analyze the effects of those alternatives. This type of process requires in-depth discussions amongst cooperating agencies and is most effective when the process employs a collaborative atmosphere to create or modify alternatives. In our experience, this process produces a final result that achieves the purpose and need of the proponent, while minimizing adverse impacts to significant resources. Many times, these efforts occur during the cooperating agency review period between scoping and release of a public draft. The general public benefits from this internal development phase as the draft document typically includes a preferred alternative that represents the results of intra-agency cooperation and is considered the best-available alternative. We are very concerned that this type of real coordination and consultation with cooperating agencies has been minimal, and what coordination, consultation, and cooperating agency feedback has occurred does not appear to be under consideration or inclusion by the USAF.

Additionally, it is apparent that knowledge of biological resources and impacts to those resources is consistently lacking within the Draft LEIS. The lack of in-depth conversations between USAF and NDOW throughout the development of the Draft LEIS, where wildlife specialists could provide specific feedback informed by scientific data, across each proposed Alternative has resulted in weak analysis of these resources. We recommend USAF re-engage with NDOW and other cooperating agencies to develop the best preferred alternative possible for use in the Final LEIS. The value of face-to-face coordination between stakeholders cannot be understated when working towards a collectively acceptable alternative.

Comments on Existing Proposed Alternatives

Alternative 1

NDOW fully supports selection of Alternative 1, which would maintain status quo management of the NTTR. NDOW considers this to be the least environmentally damaging alternative and would maintain the original intent and purpose of the DNWR. However, NDOW recognizes Alternative 1 meets a limited portion of the purpose and need for the USAF. For that reason, if Alternative 1 is not a viable option, we propose a collaborative effort to develop a significantly restricted Alternative 2 in concert with the USAF and DNWR. A discussion of the proposed modifications and refinements to Alternative 2 are discussed in more detail below.

Alternative 2

A modified version of Alternative 2 would maintain a significant portion of the DNWR as it was originally designed, reduce impacts to wildlife and public access, and fulfill the USAF's purpose and need. Despite our conceptual support for certain aspects of Alternative 2, NDOW has significant concerns with this alternative as written due to a tremendous lack of detail provided in the Draft LEIS. To this end, we are including specific comments relative to the existing language contained in Alternative 2 and have made recommendations for developing a modified version of this alternative that would be more acceptable to a broader array of stakeholders.

NDOW Opposes any Wholesale Transfer of Land, Jurisdiction or Release of Wilderness

NDOW does not support any effort to fully grant "ready access" or primary jurisdiction to the USAF under a wholesale approach. There are likely options to strategically transfer portions of the DNWR to facilitate meeting purpose and need, but a wholesale transfer would run counter to the purpose and objective of the DNWR. Further, we perceive this action to circumvent all public disclosures and prevent future opportunities for public dialog and input. The wholesale transfer of primary jurisdiction to the USAF will shift the primary focus of the DNWR from wildlife conservation to one of military training and negate the purpose and benefits of administering the DNWR.

NDOW Recommends Developing a Clear Description and Scaled-Approach for Ready-Access

The foundation of Alternative 2 is built on providing "ready access," but the LEIS lacks a specific description of what "ready access" includes and how the USAF would use this access. Without a clear description of what actions are likely to be implemented under "ready access," it is difficult for cooperating agencies and the general public to provide substantive and meaningful comments. Further, it clearly does not meet the intent of NEPA, which is rooted in public

disclosure. For example, the potential impacts from a handful of special forces conducting foot-based training is far different than a convoy of vehicles traveling off designated roads and trails. The Draft LEIS provides some general examples of training operations that could be expected to occur from allowing ready access; however, the more environmentally significant events are paid little attention within the document. For example, travel through riparian areas and overland travel of vehicles are both mentioned, but with little discussion of frequency, location, or potential impact. The document contains inadequate guidance to illustrate the expected extent and severity of impacts possible under “ready access” other than to indicate a 30% increase in “aircraft operations, munitions expenditures, and motorized vehicular activity.” To the reader, “ready access” conveys a free-for-all approach to military operations, as there is limited specificity as to what this alternative really translates to on the landscape.

Since the Draft LEIS is unclear as to exactly what “ready access” includes, the Final LEIS should take steps to more clearly define and place boundaries upon “ready access” to illustrate which actions can be implemented under the guise of “ready access.” NDOW recommends incorporating a scaled approach, where less-impactful trainings such as special forces ground movements would be considered differently than highly disruptive training methods. This type of approach could be applied through a binding Memorandum of Agreement (MOA) that clearly illustrates de minimis-type activities versus more disruptive activities that would yield additional restrictions or avoidance areas. Avoidance areas set up on temporal and spatial scales would ensure protection of sensitive resources and provide sideboards to the concept of ready access. NDOW believes this type of approach could help serve the needs of the USAF, while still maintaining a level of integrity and protection to the DNWR.

Recommendations for a Modified Version of Alternative 2

The Draft LEIS includes four methods to institute “ready access” and we are providing a single suite of comments to address these methods as they appear to result in a relatively similar functional outcome for wildlife and habitat resources. NDOW does not support a carte-blanche release of proposed wilderness, reallocation of primary jurisdiction, or other means of providing “ready access” to the portion of the DNWR that overlaps with the NTTR. We can understand the inherent challenges of two agencies jointly-managing resources under differing directives (wildlife conservation vs. military training). To solve this issue with as few resource impacts as possible, NDOW supports a concept where small acreages of land are prescriptively released to grant “ready access” or facilitate discrete developments such as emitter locations. This approach should be applied as-needed to permit the USAF to make necessary improvements where existing wilderness or refuge regulations prohibit such developments. The concept for a modified Alternative 2, and NDOW’s conditional support, relies on using best-available data and creating real opportunities for consultation and coordination with cooperating agencies to select areas of mutual agreement. Collaboration with resource agencies will be instrumental in identifying logical areas of critical importance. Priority would be given to areas where impacts to wildlife and habitat resources are minimized, but still provide basic functions required by the USAF.

Under this approach, NDOW could support limited carve-outs of proposed wilderness designations, strategic and discrete transfer of primary jurisdiction, and the development of the binding MOA to outline when and where “ready access” can occur. Under all circumstances, prescriptive releases should avoid critical wildlife resources such as bighorn sheep lambing areas, artificial and natural water sources, and other wildlife areas sensitive to human disturbance. The Draft LEIS states there would be an increase in military activities on the NTTR

from five percent (5%) to less than seven percent (7%) of the land area and impacts from Alternative 2 would be site-specific and represent a small portion of the NTTR. Despite a general lack of detail on “ready access” these figures suggest there is a very real possibility that cooperating agencies could develop a modified version of Alternative 2 that seeks to maximize mutual benefit through compromise. NDOW is largely uncertain why such an approach was not proposed in the Draft LEIS as this would seem to be acceptable to more stakeholders compared with the existing suite of possible alternatives. We strongly recommend a process to explore this possibility.

Recommendation to Increase Staff and Funding for NTTR’s Integrated Natural Resource Management Plan

Additionally, it is our understanding that the existing Integrated Natural Resource Management Plan (INRMP) has not adequately executed wildlife resource management, data collection, or analysis goals on a consistent basis. As-such, assurances would need to be included to address this, and dedicated financial and/or staff resources to ensure compliance with an approved INRMP may be warranted. Continued development of the existing INRMP should continue to include NDOW input.

Alternative 3A and 3A-1

Amargosa toad (*Anaxyrus nelsoni*), a species that has been petitioned in the past for protection under the Endangered Species Act (ESA), has been documented by NDOW biologists less than 300 feet immediately adjacent to the Alternative 3A expansion. Biologists captured Amargosa toads at Spring 112 during recent surveys, as well as Oasis Valley speckled dace (*Rhinichthys osculus* ssp.) and unidentified springsnails in the surrounding springs and wetlands. These aquatic and wetland habitats are within historic and current distribution of the Amargosa toad (a state protected species), Oasis Valley speckled dace (also a state protected species), and springsnail populations, although taxa are presently unidentified to species, are considered endemic (multiple species of springsnails are currently under review for ESA-listing). The continued integrity of and access to these sites is critical for conservation and management of those species. In 2000, a Conservation Agreement and Strategy was completed for Amargosa toad and other species that co-occur with the toad in the Oasis Valley such as the Oasis Valley speckled dace. The Conservation Agreement and Strategy is a concerted effort among stakeholders to expand wildlife conservation opportunities, thus precluding the need to list the Amargosa toad under the ESA. (NV USFWS, 2014). These efforts are only effective if conservative, collaborative management of the habitats these species depend on is maintained or protected.

Additionally, NDOW is concerned with the proposal to re-designate Electronic Combat South (EC South) to Range 77 and allow live-fire air-to-ground operations as specified in Proposed Alternative 3A. The core area of EC South is Thirsty Canyon, which holds several critical water sources and is occupied by bighorn sheep year round. The Thirsty Canyon area is also important for bighorn sheep movement among subpopulations between Stonewall Mountain, Bare Mountain, Yucca Mountain, and potentially, through the Nevada Test Site to the Spotted Range. There are data to suggest bighorn sheep movement through all these areas occurs and we feel that live-fire exercises in this area will be significantly detrimental to bighorn sheep. We recommend that EC South be maintained as an electronic combat area and look for alternative areas outside of this movement corridor to conduct live-fire training. We further recommend the Thirsty Canyon complex, including all water sources and areas occupied by bighorn sheep, be

added as a biologically sensitive area and included as an avoidance area under the General Environmental Constraints section. If this is absolutely unavoidable, we recommend additional coordination with NDOW biologists to minimize impacts to the extent possible through coordinated placement of new targets.

Alternative 3B

The southwest corner of the Spotted Range, included in Alternative 3B, is important to bighorn sheep and includes the Spotted #05 water development. Aerial survey data indicate frequent use of this area by bighorn sheep. Withdrawal of this area will restrict access for the general public and resource agencies and will complicate management efforts such as wildlife surveys and maintenance of the Spotted #05 water development. Existing difficulties in accessing the NTTR for a variety of wildlife management actions are in large part due to difficulties gaining necessary military approval. Alternative 3B will greatly compound this issue to the detriment of wildlife resources. Other than “operational security and safety buffers” the Draft LEIS does not indicate what the USAF intends to accomplish with this withdrawal. It remains difficult to analyze specific impacts to wildlife resources with so little information presented in the Draft LEIS, but given the loss of public access and anticipated negative effects on wildlife resources, NDOW strongly opposes this alternative.

Alternative 3C

The entirety of Alternative 3C is important to bighorn sheep and includes several artificial and natural water sources. In many ways, this is the heart of the DNWR and the importance of this area to wildlife resources and public access cannot be overstated. Alternative 3C will likely have significant and long-term negative effects to a variety of resources, many of which are difficult to assess at this point because very few details on the future use of this area are included in the Draft LEIS. What is certain are that opportunities for public and agency access (e.g. NDOW, USFWS), wildlife resources, and public recreation will suffer significant adverse impacts. Given the resulting loss of access, anticipated negative impacts to wildlife resources, and the resulting conclusion that implementing this alternative will reduce the DNWR to a fraction of its original land mass and intent, NDOW strongly opposes this alternative in its entirety.

Comments on General Environmental Constraints and Proposed Mitigation

NDOW believes that significant, adverse impacts will occur to wildlife-related recreational opportunities and wildlife resources that are not currently addressed in the Draft LEIS. Eliminating public access will directly impact a variety of recreational opportunities, and NDOW expects significant adverse impacts to wildlife resources, including special status species, migratory birds, golden eagles, and bighorn sheep. Impacts to wildlife resources are likely to occur as a result of increased military activity, loss of access and control by wildlife agencies, and shifting priorities from wildlife conservation on the DNWR to military utilization. Additionally, NDOW believes there may be adverse impacts to water resources (artificial and natural) occurring from increased military activity, future disturbance, and loss of access for wildlife management interests that are not addressed in the Draft LEIS. These issues should be properly addressed through a suite of mitigation strategies.

NDOW also finds the Draft LEIS lacks important details on the development, application, compliance, and monitoring of environmental constraints and mitigation measures. There is insufficient detail on several important concepts for developing effective mitigation, including:

- a) How resources were prioritized for protection by the USAF;
- b) How existing mitigation measures were developed;
- c) What processes will be put in place to revise or add new environmental constraints as new information is obtained or as priorities for wildlife management shift over time;
- d) How NDOW's knowledge of wildlife resources will be included in existing and future processes on developing and implementing mitigation;
- e) How compliance with mitigations will be monitored and enforced; and
- f) How adaptive management can play a role in ensuring mitigation measures are performing as expected to protect wildlife and important habitat areas.

The existing mitigation measures are far from adequate to even marginally protect the most basic wildlife resources. As an example, the DNWR was created specifically for the conservation of bighorn sheep, but the Draft LEIS does not contain a single measure specifically addressing bighorn sheep. As an additional example, the proposed mitigation measures offer no specific protection to artificial water developments that have been installed and maintained for decades by NDOW, USFWS, and sportsman-conservation organizations. These water developments are critical to bighorn sheep and represent a significant investment of time and money, but do not appear to be afforded any specific protection under the Draft LEIS. The lack of commitment to wildlife resources is further documented when the Draft LEIS states "avoid use of exploding ordinance within 200 feet of a well or natural spring" (Page 2-51). It is difficult to imagine that this buffer will afford any meaningful protection to critical water resources on the DNWR and is a prime example of how the USAF's training objectives at the NTTR are not compatible within the boundary of the DNWR. Water is a scarce resource in this region and active targets or use of exploding ordinance should be used well away from water sources. The activity alluded to in this sentence will likely result in direct munitions-related mortality of wildlife, including bighorn sheep.

There appears to be limited opportunity or willingness for the USAF to engage wildlife specialists with NDOW to collaboratively identify specific issues and develop strategies that help avoid and minimize negative impacts to wildlife resources. The lack of coordination thus far is not reassuring and given the general lack of biological information and understanding displayed throughout the Draft LEIS and supporting reports, the USAF is clearly not well prepared to make these types of decisions. If strategies are developed without well thought-out input from wildlife specialists that have on-the-ground knowledge of species and sensitive areas, they are at high risk of missing their intent. The USAF should directly collaborate with NDOW and USFWS to develop more effective mitigation strategies that incorporate critical datasets and knowledge of wildlife behavior.

There is little direction in the Draft LEIS as to what threshold is used to trigger developing and implementing specific mitigation measures. However, under 40 CFR § 1503.3(d), "Cooperating agencies with jurisdiction by law that object to a proposed action based on environmental impacts are required to specify the mitigation measures they believe are necessary for approval of the action." NDOW has been participating during the process of updating the INRMP and intends to continue providing input; however, the INRMP is not intended to address mitigation, which should be addressed in the Draft and Final LEIS. Thus far in the process, NDOW has not been afforded an opportunity to discuss more effective mitigation measures with the USAF. The

current Draft LEIS does not provide sufficient detail in the alternatives, affected environment, or environmental consequences sections to provide opportunity for NDOW to recommend more specific mitigation. We request opportunities to hold face-to-face meetings with the objective of developing effective mitigation strategies that protect wildlife resources. In the interim, NDOW recommends the following be incorporated into the document as avoidance and minimization strategies:

- a) All natural water sources and artificial water developments should have a one-mile protective buffer that excludes disruptive training actions (e.g. low overflights, live munitions/explosives, overland vehicle travel, large groups of troops, emitters, etc.) and other training activities that are likely to disrupt wildlife or damage water sources. With the limited number of water sources on the DNWR, these are critical areas for wildlife, in particular bighorn sheep. Bighorn sheep often congregate around water sources and will nearly always be found within a two-mile radius of water during the hot season;
- b) Ensure NDOW can access artificial water developments, developed natural springs, and undeveloped natural spring sites to monitor water availability and conduct maintenance and/or management activities within reasonable timeframes. Install and maintain water level sensors on artificial and developed natural water sources within the NTTR boundary that relay real-time water availability to NDOW personnel to reduce on-site visitation requirements.
- c) During the lambing period, all identified or known bighorn sheep lambing sites should have a one-mile minimum buffer that excludes disruptive training actions (e.g. low overflights, live munitions/explosives, overland vehicle travel, large groups of troops, emitters, etc.) and other training activities that are likely to disrupt wildlife;
- d) Identify and develop use-models for bighorn sheep through use of GPS Collar and Aerial Survey data sets. Use the model to identify core bighorn sheep habitats and apply restrictions to exclude disruptive training actions (e.g. low overflights, live munitions/explosives, overland vehicle travel, large groups of troops, emitters, etc.) and other training activities that are likely to disrupt wildlife;
- e) During the nesting season, all known or identified golden eagle nests should have a one-mile protective buffer that excludes disruptive training actions (e.g. low overflights, live munitions/explosives, overland vehicle travel, large groups of troops, emitters, etc.) and other training activities that are likely to disrupt nesting eagles;
- f) Avoid known Amargosa toad habitat and restrict disruptive training in riparian areas within potential Amargosa toad habitat;
- g) Avoid Oasis Valley speckled dace habitat and exclude disruptive training in areas within or supplying flows to identified speckled dace habitat; and
- h) Develop training and compliance monitoring to ensure mitigation measures are properly followed by all personnel in cooperation with NDOW;

A major concern is the Draft LEIS lacks indication of any assurances so that even the limited mitigation measures mentioned will indeed be incorporated into the final LEIS package presented to Congress. The Draft LEIS analysis is dependent on environmental constraints and mitigation to ensure adverse impacts are below a threshold of significance. Should the existing mitigation measures be adopted into the final documentation as written, they do not specifically require any protections or compensations for reduced or lost resources. Language such as “consider,” “should,” or “may” conveys little confidence to NDOW that the described mitigation measures will be implemented by the USAF. Given that mitigations are not directly or indirectly required in the Draft LEIS, we question whether and how the analysis can conclude certain impacts will be below the significance threshold. As such, the mitigation measures as written are arbitrary. We question how this analysis was completed given the document does not

specifically articulate strategies to avoid, minimize, and mitigate impacts. Even if the USAF cannot specifically commit to mitigation measures on a Congressional action, including effective and thorough strategies in the document is an important and necessary step toward protecting valuable resources and will provide Congress with the ability to fully understand the potential impacts to these resources and ways to reduce or compensate for their loss.

Further, the mitigation measures proposed in the Draft LEIS attempt to avoid or minimize impacts, however, these measures do not provide relief or offset for impacts that despite best efforts occur due to military actions. In these cases, additional mitigation measures such as compensation, is intended to address unavoidable adverse impacts by directing positive efforts elsewhere. This can be achieved through creation of a fund where specific identified recreation opportunities or wildlife resources can be offered, protected, enhanced, or recreated, and maintained. A specific example of mitigation for lost habitat at a spring site could be to permanently protect a spring complex at another location through the acquisition of land, permanent fencing, and long-term management and monitoring at that location. These scenarios represent additional options for the USAF to help address the irreparable or irretrievable resource degradation and losses that are expected to occur as a result of the proposed action and cannot be mitigated through avoidance or minimization strategies.

The mitigation section should have been used to convey to the public and cooperating agencies that the USAF possesses an understanding of sensitive resources and took steps to develop effective mitigation strategies with resource agencies, including NDOW. We recommend the USAF take steps to further develop and clarify actions that avoid, minimize and mitigate, through some level of compensation, impacts, as well as a plan to ensure compliance prior to finalizing the LEIS. Without these specifics, there is limited assurance to the public or cooperating agencies that effective mitigation measures will become a reality if the proposed action is implemented.

Recommendations for new Boundary Fencing

NDOW called out the inappropriate application of antelope fencing in our scoping comments and will do so again here as the issue has not been adequately addressed. We recommend changing the fencing specification to one developed by Jack Helvie for bighorn sheep and subsequently adopted by the BLM (BLM Fencing Handbook H-1741-1). Further, we request more specificity on the proposed location of the different fencing specifications. NDOW remains concerned that the USAF continues to push for antelope fencing specifications when the primary wildlife species that will be affected in these alternatives is bighorn sheep. We recommend the Final LEIS set prescriptive limits, in coordination with NDOW, on elevation and slope limits where fencing will be required, instead of the general approach used in the Draft LEIS. In areas of gentle to moderate bighorn sheep habitat where fencing may be required, the bighorn sheep specification should be used as follows*:

- a. Three smooth strands spaced at 20 inches, 35 inches, and 39 inches above ground;
- b. T-posts or stays should be placed no further than 10 feet apart; and
- c. Fences should be inspected annually and maintained in good condition.

*See: Helvie, 1971

In areas of steeper slope (greater than 8%), elevations above 5,000 feet, or on particularly rugged or rocky terrain, NDOW recommends use of boundary markers, such as those used by the USFWS, to identify the boundary instead of fencing.

Comments on Wildlife Monitoring, INRMP and Agency Coordination

The development and use of approved INRMPs have been the primary mechanism for the USAF to implement natural resource programs on the NTTR. Our understanding of the 2010 INRMP for Nellis Air Force Base, Creech Air Force Base, and NTTR is as an effort to improve upon previously inadequate endeavors to complete comprehensive inventory and documentation of biological and water resources on the NTTR. Information compiled for use in the Draft LEIS provides little insight to the present situation on the NTTR and little analytical value in determining potential impacts to wildlife resources on the NTTR as a result of the Proposed Alternatives, or how impacts could be minimized. Further, inadequate funding and logistical support for natural resource program implementation has been problematic, and the quality of information collected through the INRMP programs is questionable.

Information useful for addressing special status species have been discussed for updating the current INRMP. For the Final LEIS and updates to the current INRMP, improved data sets and analytical products are necessary to support:

- a) Analysis for the proposed alternatives and mitigation measures (on and off the DNWR);
- b) Solid baseline surveys and data for species and habitats on the NTTR, which are essential for meaningful biological interpretation. Existing information is inadequate for most species inhabiting the NTTR;
- c) Development of predictive models to support the INRMP and future NEPA compliance;
- d) Further validation of existing predictive models for species (e.g. bighorn sheep, desert tortoise) directly applicable for mitigation measures;
- e) Health status evaluations for species of particular vulnerability; and
- f) Understanding seasonal distribution patterns during critical reproductive, summer, and winter periods for select wildlife species.

In addition to continued collaborations among USAF and cooperators, the USAF should commit to increased funding and support for natural resource programs. Data collection and management should be designed to improve decision-making and resource management. Given the proposed addition to land area and jurisdictional authority, the USAF should be prepared to fund the majority of work programs. This will require additional financial appropriations, and it would be reasonable for Congress to allocate dedicated INRMP funding for the life of any new NTTR withdrawal legislation. The USAF and cooperators could assist in developing a reasonable budget to meet funding needs. Establishing a priority for access to perform natural resource surveys would ensure data collection is performed under optimal conditions for each species.

Conclusion

The Nevada Department of Wildlife strongly urges the USAF to consider our comments, and comments of the many stakeholders with a vested interest in the DNWR. There is an opportunity to improve training opportunities, while minimizing the loss of public access, impacts to DNWR, and the wildlife resources therein. It is our belief that a modified version of Alternative 2 focusing on select carve-out and prescriptive transfers identified in a coordinated manner can fill this niche. The USAF's process to date has failed in providing opportunity for stakeholder engagement and presenting a cooperative spirit to resolve the many issues brought forth during Scoping and Public Comment. This is a disservice to a passionate general public, the investments they have made over many decades, and the sensitive wildlife species for which the DNWR was created. It is also not in-line with the spirit and intent of NEPA.

An opportunity to further refine a modified version of Alternative 2, with additional input and coordination with core stakeholders would result in a stronger alternative that could draw more support than existing Alternatives 2, 3A, 3A-1, and 3C proposed in the Draft LEIS. This effort would increase the likelihood of successfully implementing a product built on compromise. The Nevada Department of Wildlife has helped project proponents refine joint alternatives in the past and would offer there are significant mutual benefits to this approach. We see a tremendous opportunity to move forward in a more collaborative manner and would appreciate the opportunity to further develop a more acceptable alternative before the document is finalized.

Sincerely,



Alan Jenne
Habitat Division Administrator
Nevada Department of Wildlife

REFERENCES

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- Helvie, J. 1971. Bighorns and Fences. Desert Bighorn Council Transactions. 15:53-62. Online Resource: [<https://www.desertbighornCouncil.com/transactions/download-past-dbc-transactions/>]. Accessed February 26, 2018.
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GOVERNOR'S OFFICE OF ENERGY

February 28, 2018

Nellis Air Force Base
99th Air Base Wing Public Affairs
4430 Grissom Ave., Ste. 107
Nellis AFB, NV 89191

RE: Nevada Test and Training Range (NTTR) Military Land Withdrawal Draft Legislative Environmental Impact Statement (LEIS)

To whom it may concern:

The Nevada Governor's Office of Energy (GOE) appreciates the opportunity to provide comments on the NTTR Military Land Withdrawal Draft Legislative EIS.

The mission of the GOE is to ensure the wise development of Nevada's energy resources in harmony with local economic needs and to position Nevada to lead the nation in renewable energy production, energy conservation, and the exportation of energy. The GOE implements the laws of the State as defined in Nevada Revised Statutes 701 and 701A; manages energy-related programs; facilitates cooperation between key stakeholders; advises the Governor on energy policy; and collaborates with our local, regional, and federal partners to ensure a reliable and sustainable energy system.

The State of Nevada has established a goal to become the nation's leading producer and consumer of clean and renewable energy. NV Energy, the main investor-owned utility in Nevada, recently announced its own goal of becoming 100% renewable. Neighboring states like California continue to seek renewable resources located in Nevada to meet their renewable energy goals. Additional renewable generation will need to be developed for Nevada and other western states to achieve these clean energy goals and new electric transmission lines will be a critical component to complete utility scale projects.

Section 368 (a) of the Energy Policy Act of 2005, Public Law 109-58, enacted in 2005, directed the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to designate corridors on federal land in 11 Western states for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. A Programmatic EIS was prepared through a stakeholder driven process and the Bureau of Land Management (BLM) approved a Record of Decision for the PEIS in 2009, including corridor designations in Nevada.

In July 2012, the BLM, U.S. Forest Service (USFS), U.S. Department of Energy (DOE), and Department of Justice (DOJ) entered into a Settlement Agreement to conduct periodic reviews of

these corridor designations, update agency guidance, update agency training, and complete a corridor study. The BLM, USFS, and DOE entered into a Memorandum of Understanding in 2013 to conduct Regional Reviews of the designated corridors and is currently in the process of completing this activity for the six regions identified. It is important to note that while corridors are going through Regional Reviews, any potential revisions, deletions, and additions to the corridors must be made in subsequent land-use planning and environmental review processes. Sections of the draft LEIS discussing the Section 368 corridor review and process (Executive Summary, and Sections 2.3.3.2, 3.6.1.3, and 3.6.2.4) need to be clarified and updated.

The GOE has reviewed the Draft LEIS and associated maps and offers the following comments/questions:

Alternative 3A-1

The GOE appreciates the responsiveness of the U.S. Air Force in altering the 3A Alternative presented during the scoping period; however, there continues to be a conflict with the designated 368 corridor 18-224. The Draft LEIS eliminated the conflicts in Township 10S, Range 48E, Sections 31 & 32 but conflicts remain in Township 10S, Range 47E, Sections 6, 7, & 8. The Draft LEIS narrative stated that these conflicts were eliminated but they are identified in Attachment 1.

This section of the 18-224 corridor is located in Region 5 and has not been reviewed; however, initial analysis completed by the BLM has not identified the need to move the section of the corridor in conflict with the NTTR draft LEIS. The GOE recommends that the sections in conflict be removed from the proposed withdrawal or to develop an alternative which preserves the ability to permit uses within the corridor consistent with the 368 designations. Requiring that energy transmission lines be placed underground for this distance of overlap is not considered a viable alternative, as costs are prohibitive.

Alternative 3B

The GOE has identified conflicts with the 368 corridor 223-224 and proposed withdrawal areas in Township 16S, Range 57E, Sections 27, 28, 34, & 35 and Township 17S, Range 58E, Sections 5, 6, 8, 9, & 15. These conflicts are identified in Attachment 2.

The 223-224 corridor is located in Region 1 and final review has not been completed; however, initial analysis did identify a potential conflict with the route. The initial analysis recommended realigning the corridor with the existing 1998 Resource Management Plan (RMP) designated corridors, US-95-Crater Flat and the US095-Crater Flat-Red Rock. The BLM Southern Nevada District is currently going through the NEPA process to update their RMP and have evaluated the recommendations in the analysis. The preferred Alternative (Alternative 3) in the BLM's draft RMP EIS would realign the corridor along the recommended route but would continue to conflict with the NTTR proposed land withdrawal identified in the draft LEIS. Attachment B also identifies the BLM's draft RMP corridors for Alternative 1 (no action) and Alternative 3 (preferred). Alternative 3 would not only conflict with the same locations identified earlier with the 223-224 route, but it would also conflict with areas in Township 16S, Range 56 E, Section 13 and Township 16S, Range 57E, Sections 18, 19, and 20. The GOE recommends that the sections in conflict be removed from the proposed withdrawal or to develop an alternative which preserves the ability to permit uses within the corridor consistent with the 368 designations. Requiring that energy

transmission lines be placed underground for this distance of overlap is not considered a viable alternative, as costs are prohibitive.

Thank you for this opportunity to provide comments. The GOE encourages the U.S. Air Force to work with the energy industry in Nevada and federal and state agencies to develop an alternative proposal which would minimize the impact of Alternatives 3A-1 and 3B to existing permitted uses in the 368 corridors. Please do not hesitate to contact me for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Dykema". The signature is fluid and cursive, with the first name being more prominent.

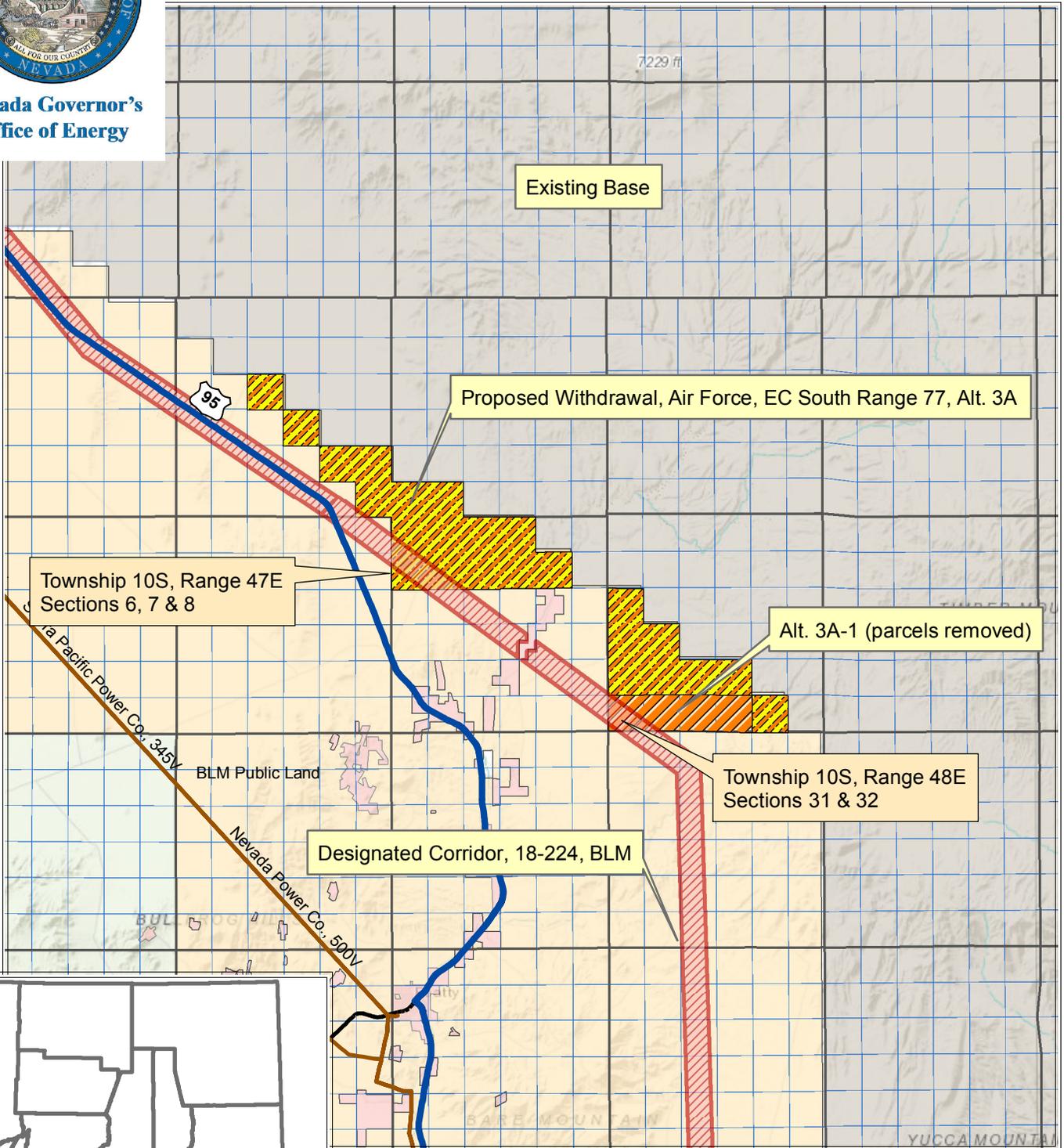
Angela Dykema
Director

cc: Nevada State Clearinghouse

Proposed Nevada Test and Training Range (NTR) Expansion - Electric Corridor Impact (Alt 3A vs 3A-1)

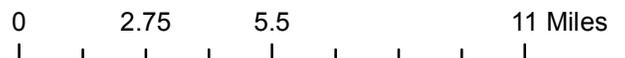


Nevada Governor's Office of Energy



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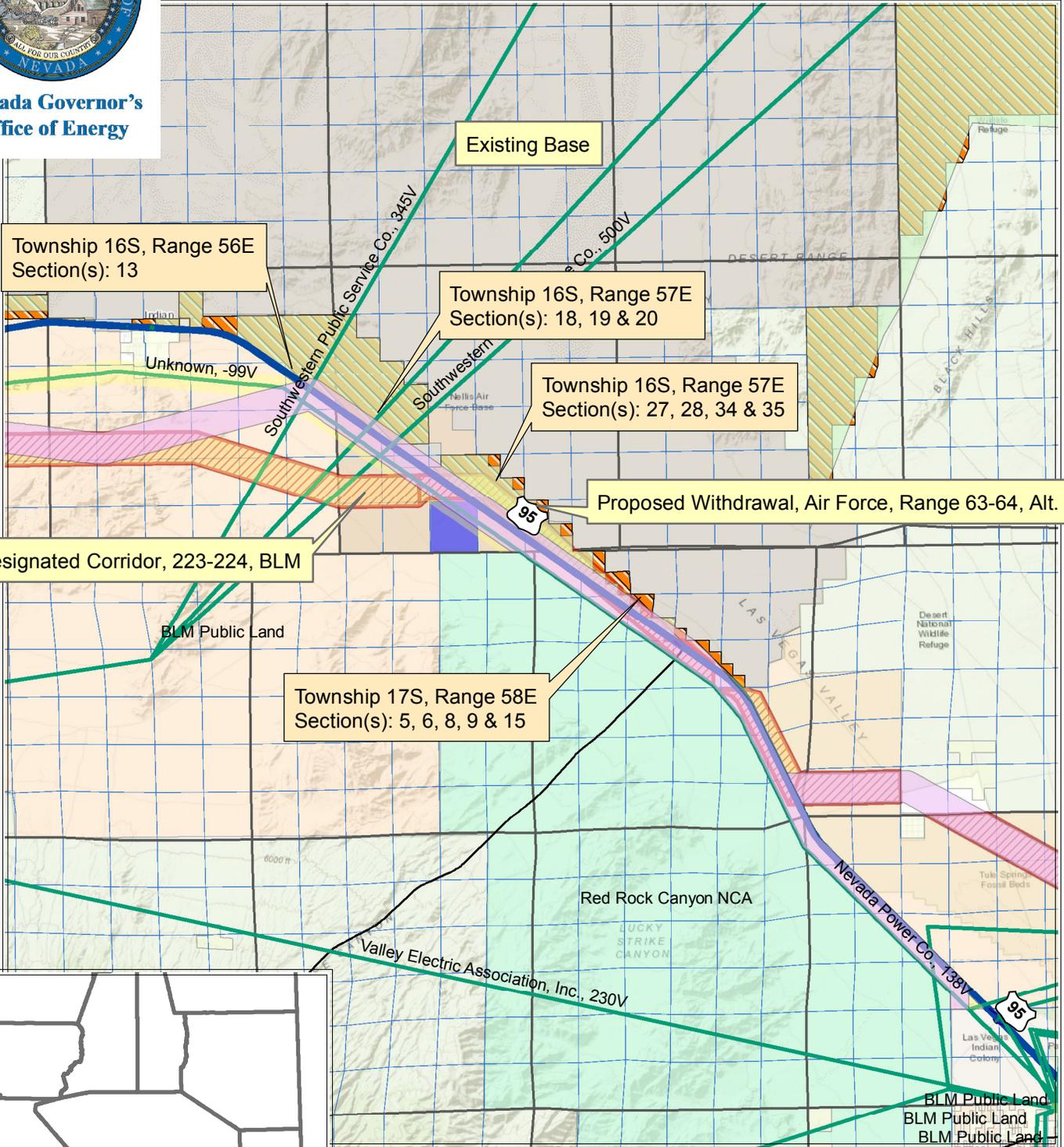
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|-----------------------------|-----------------------|
| Existing Transmission Lines | Land Ownership |
| Section368CorridorZone_ROD | Private Land |
| NTR_Expansion_(2017) 3A-1 | BLM Public Land |
| NTR_Expansion_(2016) | |



Proposed Nevada Test and Training Range (NTR) Expansion - Electric Corridor Impact (Alt 3B)

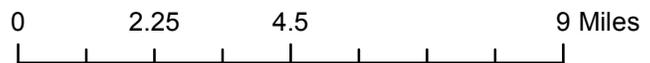


Nevada Governor's Office of Energy



Legend

-  Existing Transmission Lines
-  BLM RMP Utility Cor. Alt. 1
-  Section368CorridorZone_ROD
-  BLM RMP Utility Cor. Alt. 3
-  NTRR_Expansion_(2016)





March 8, 2018

To: Nevada State Clearinghouse

From: Skip Canfield, Program Manager, State Land Use Planning Agency (NRS 321.700)

RE: Comments and Suggestions:
Draft LEIS – Nevada Test and Training Range Land Withdrawal

It has always been recognized how valuable Nevada's military mission is to the State of Nevada and the nation as a whole. The State and counties within its borders benefit greatly economically from all of the activities associated with Nellis AFB and the NTTR and all of our military partners. Nevada is a large public lands state with a significant acreage dedicated to military withdrawn lands. Nevada is known for its extremely high percentage of lands within its boundaries that are Federally-managed. Barely 14% of Nevada is privately owned. This land pattern creates challenges for economic development and maintenance and expansion of the tax base. The vast amount of public lands designated for multiple use is very unique and comes with its own challenges and opportunities. The State Land Use Planning Agency, as well as a broad spectrum of other agencies has consistently stressed the need to have a balance that recognizes military mission while protecting multiple use interests. Any reduction in multiple use activities through a land withdrawal will reduce multiple use opportunities and must be considered carefully.

A concern of this agency is the fact that the Draft LEIS contains a broad range of alternatives and sub-alternatives that, cumulatively, do not appear to satisfactorily address the State's Scoping comments provided in December 2016. During the February 5, 2018 State Agency Briefing, the question was posed about this range of alternatives and what the outcome will be. The reply was that the Final Preferred Alternative will be a combination of the Draft alternatives taking into consideration all of the agency and public feedback.

Therefore, since there is no preferred alternative provided in the Draft, and with the understanding that the Final LEIS Preferred Alternative will be a combination of elements of the draft alternatives, please consider the following comments as they cumulatively affect the final outcome.

- Public access to the proposed withdrawn lands should be spatially adjusted including the designation of specific usage times and dates based on a careful analysis of the public's needs in the LEIS. The final legislation should explicitly define and designate public access allowances, and should not be left to possible arbitrary implementation.

- Wherever possible, the proposed withdrawal boundaries should be scaled back. For example:
 - North of Beatty and east of US95, the expansion of the withdrawn lands boundary should be eliminated if proposed targets and other military apparatus can be accommodated within the existing withdrawn lands without the need for the added safety buffers proposed in the expansion areas. It is very important to Nye County, Beatty, and Nevada as a whole, to maintain as much multiple use public lands as possible. These lands should remain in multiple use for economic development, transportation and transmission of energy and other utilities.
 - The Alamo Road should remain open to public use between Corn Creek Station and the Pahranaagat Valley. The withdrawal boundary should be moved and aligned to the west of the road. This area is simply too important to many multiple use activities to be closed, including, and not limited to, Big Horn Sheep hunting, OHV travel, sightseeing, camping, etc.
- A scenario should be pursued in the LEIS that offers a tradeoff between lands proposed for withdrawal and other lands that are currently withdrawn released back to the BLM or US Fish and Wildlife Service for expanded multiple use. Withdrawal of lands could be more palatable to counties and the State if this tradeoff is included in the analysis. Certain currently withdrawn lands within the NTTR could warrant release at this time, and this should be thoughtfully considered.
- The term of the withdrawal should not be extended beyond 20 years. It is simply not clear what type of technologies will be present in 2040. Emerging technologies could render such large swaths of withdrawn lands unnecessary, thereby warranting some lands for release to multiple use. Any term greater than 20 years does not provide the flexibility needed to accommodate potential options.
- Nevada’s counties and State agencies should be afforded a strong local voice as the LEIS moves forward via all public and transparent input processes available including close coordination and Cooperating Agency status when requested.
- The Nevada Association of Counties and the Nevada State Clearinghouse should act as points of contact to coordinate County and State participation.
- The State Land Use Planning Advisory Council (NRS 321.740) values public and transparent interaction with Nevada’s military partners and should be afforded future briefings by Nellis/NTTR representatives as the LEIS process moves forward.
- The NEPA principle of “Avoid, Minimize and Mitigate” should be employed throughout the process with mitigation being the very last option only after all reasonable avoidance and minimization options have been exhausted.

Any proposal of this significance to Nevada should be carefully examined. Nevada is a proud host to our military and values the broad array of benefits that come with such a large presence in our state. Thank you for the opportunity to provide these comments and suggestions. I look forward to the continued positive working relationship with Nellis AFB and the NTTR that I have enjoyed for many years.

1:15pm **CAMP SUCCESS FIELD TRIP (Voluntary – no action.)**

After adjournment, field trip to Camp Success, recently renovated by White Pine County. On the way, stop at Comins Lake to discuss invasive Pike eradication efforts. Note: The public is invited but must provide own transportation. **Anticipated return time approximately 3:30pm.**



Camp Success

Success Loop

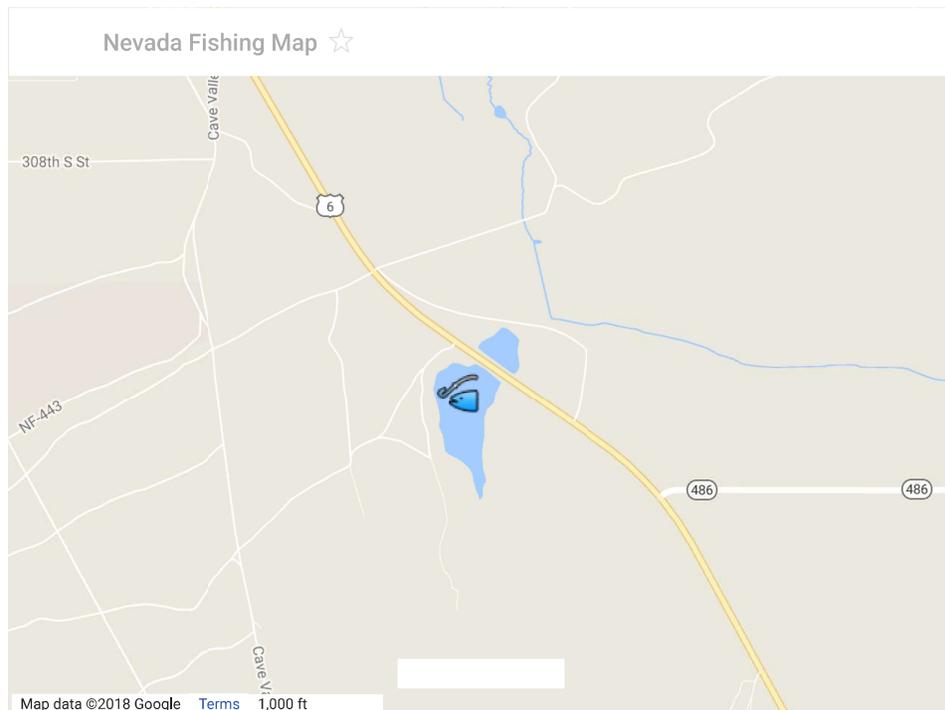
Ely, NV

If you want the ultimate camping experience, Camp Success is the perfect area. The camp is in a very remote location, approximately 10 miles from Cave Lake. The camp has trees, tents, showers, restrooms, a lodge equipped with a propane refrigerator and grill, RV parking, and fire pits.

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COMINS LAKE

Map of Comins Lake



View [Nevada Fishing Map](#) in a larger map

History

Comins Lake was built in 1953 from the realignment of Highway 93, which created the dam for this impoundment. The Department of Wildlife acquired the reservoir as part of the 3-C Ranch purchase in 1999, which is situated on the Steptoe Valley Wildlife Management Area. The reservoir has been chemically treated twice to remove northern pike, first in 1989 and most recently in the summer of 2015. In both instances, northern pike decimated the reservoir's trout and bass populations through predation. Predictably, once pike exhaust their food supply, they turn cannibalistic. This results in a population crash and development of stunted-sized pike. Since its most recent renovation, Comins Lake has been restocked with trout and largemouth bass. Largemouth bass are self-sustaining and generally need on further stocking, while trout are stocked annually in the spring and fall.

Pertinent Information

Comins Lake is fed by Steptoe and Cave creeks from the east and occasionally by Willow Creek from the south. At capacity, the lake covers 410 surface acres, has a maximum depth of 14 feet, and an average depth of about 8 feet. Rainbow trout, brown trout, and largemouth bass currently inhabit the reservoir. Due to the tremendous amount of feed, fish grow very rapidly and reach healthy sizes. Fishing for trout is usually best in the spring and fall while bass fishing is most productive during the warmer summer months. Bait anglers find Power Bait, salmon eggs, or night crawlers fished off the bottom with minimal weight is best for trout. Small spinners and spoons are also popular with casters, but a fly behind a bubble can produce excellent results. Fly-fishing is popular for trout and anglers have the best success using wooly buggers and damsels in the spring as well as nymphs and midges under a strike indicator the rest of the year. Remember to use a heavy leader. For those willing to brave the elements, weighted jigs (green or yellow) seem to work best for ice fishing. There is a primitive boat launch along the west side of the reservoir along with restrooms. Overnight camping and fires are not allowed.

Stocking

[Stocking Updates](#)

Regulations

[Nevada Fishing Regulations](#)

Health Advisory

Due to elevated methylmercury levels, the Nevada State Health Division has issued a health advisory that recommends no consumption of largemouth bass or northern pike from Comins Lake. Please visit NDOW's web site (www.ndow.org) for more details.

Boating Regulations

Boats must be operated at a speed which leaves a flat wake and in no case exceeds 5 nautical miles per hour from sunset to 11 a.m. From 11 a.m. to sunset the reduced speed restriction is lifted and water skiing is allowed.

Facilities

A primitive boat launch is available. There are restrooms on-site. Overnight camping and fires are not allowed. Vehicles must stay on designated roads.

Access

Comins Lake is located 7 miles south of Ely off Highway 93.

SPECIES

- [Largemouth Bass](#)

REGIONS

- [Eastern Nevada](#)

COUNTIES

- [White Pine](#)

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FOR IMMEDIATE RELEASE

CONTACT: Ellery Stahler, 775-684-2711, estahler@lands.nv.gov

Expansion of Steptoe Valley Wildlife Management Area boosts recreation and marks a new milestone in State Land ownership

In early spring 2018, the [Nevada Division of State Lands](#) completed the conveyance of 6,281 acres of federal land to nearly double the size of the Steptoe Valley Wildlife Management Area near Ely, Nevada. The land transfer from the Bureau of Land Management to State Lands was made possible by the White Pine County Conservation, Recreation and Development Act of 2006, legislation that State Lands partnered with federal lawmakers on to ensure this important conservation area was included in the bill.

The newly-acquired property expands the Wildlife Management Area's borders on its west and east sides, and increases a shared boundary with the adjacent Cave Lake State Park. Not only does the acquisition represent a boon to Nevada's outdoor enthusiasts, who can now enjoy over 16,800 acres of contiguous State Land for public recreation use, it is also marks an important milestone for Nevada: The State's ownership of land and land interests in Nevada now exceeds more than 300,000 acres.

"The Nevada Division of State Lands is excited to offer expanded access to Nevada's natural wonders in the beautiful Steptoe Valley," said Charlie Donohue, Administrator of the Nevada Division of State Lands. "Situated in a picturesque setting, the Steptoe Valley will provide a unique and memorable outdoor experience for residents, families, and visitors to enjoy for generations to come."

The process to secure the federal land patent gained momentum in 2014. At that time, the BLM sent its survey team to map and legally define the area's new boundaries. State Lands developed environmental documents required under the National Environmental Policy Act and worked with the [Nevada State Historic Preservation Office](#) on an agreement for the protection of the area's cultural resources. Ranchers with grazing leases and other entities with interest in the property were engaged in this transfer process. In March 2018, State Lands received and recorded the land patent, completing the conveyance.

The expanded Steptoe Valley Wildlife Management Area is assigned to and will be managed by the Nevada Department of Wildlife (NDOW). The area is known for its wildlife diversity, bird watching, fishing, and boating opportunities. For those who enjoy birding, up to 30 species of shorebirds, 15 species of hawks, and more than 140 species of songbirds have been recorded in the area. Sage grouse hens and broods are frequently seen in Steptoe Valley's meadows during

the summer. For anglers, Steptoe Creek contains rainbow and brown trout, and boating is popular on Comins Lake.

Getting there

From Ely, take US 93/50 approximately seven miles south to the main entrance. Comins Lake is located just south of the main entrance on the west side of US 93/50. From Las Vegas, take I-15 to US 93 approximately 280 miles north to the main entrance.

For more information on the role Nevada Division of State Lands plays in acquiring, authorizing the use, and disposing of state land, go to: <http://lands.nv.gov/authorizations-and-permitting/state-land-office>