

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Public Lands
(*Nevada Revised Statutes* [NRS] 218E.510)

Date and Time of Meeting: Friday, August 24, 2012
9 a.m.

Place of Meeting: Legislative Building, Room 3138
401 South Carson Street
Carson City, Nevada

Note: Some members of the Committee may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location: Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

If you cannot attend the meeting, you can listen or view it live over the Internet. The address for the Nevada Legislature website is <http://www.leg.state.nv.us>. Click on the link "Live Meetings – Listen or View."

Note: Minutes of this meeting will be produced in summary format. Please provide the secretary with electronic or written copies of testimony and visual presentations if you wish to have complete versions included as exhibits with the minutes.

Note: Items on this agenda may be taken in a different order than listed. Two or more agenda items may be combined for consideration. An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.

- I. Opening Remarks
Assemblywoman Maggie Carlton, Chair
- II. Public Comment
(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)
- III. Approval of Minutes of the Meeting Held on June 19, 2012, in Ely, Nevada

*For
Possible
Action*

*For
Possible
Action*

- IV. Presentation on the Recommendations of the Governor’s Greater Sage-grouse Advisory Committee
Robert Crowell, Chair, Governor’s Greater Sage-grouse Advisory Committee

*For
Possible
Action*

- V. Briefing on Provisions and Implementation of the Federal Equal Access to Justice Act of 1980 as it Relates to Litigation Affecting Public Lands

*For
Possible
Action*

- VI. Work Session—Discussion and Possible Action on Recommendations Relating to:
- A. Energy
 - B. Greater Sage-grouse
 - C. Public Lands, Generally
 - D. Grazing on Public Lands
 - E. Pinyon-juniper Woodlands
 - F. Water Resources and Water Supplies

The “Work Session Document” is attached below and contains recommendations proposed at this and other meetings of the Legislative Committee on Public Lands during the 2011-2012 Legislative Interim. The document is also available on the Committee’s webpage ([Legislative Committee on Public Lands \[NRS 218E.510\]](#)) or a written copy may be obtained by contacting Dave Ziegler, Supervising Principal Research Analyst, Research Division, Legislative Counsel Bureau, at (775) 684-6825.

- VII. Public Comment
(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

- VIII. Adjournment

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call the Research Division at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 North Stewart Street. Notice of this meeting was faxed and e-mailed for posting to the following Las Vegas, Nevada, locations: Clark County Government Center, 500 South Grand Central Parkway; and Capitol Police, Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature’s website at www.leg.state.nv.us.

Legislative Committee on Public Lands

(Nevada Revised Statutes 218E.510)

WORK SESSION DOCUMENT



August 24, 2012

Prepared by the Research Division
Legislative Counsel Bureau



WORK SESSION DOCUMENT

Legislative Committee on Public Lands

(Nevada Revised Statutes 218E.510)

August 24, 2012

This “Work Session Document” has been prepared by the Chair and staff of the Legislative Committee on Public Lands (*Nevada Revised Statutes* [NRS] 218E.510) and is designed to assist the Committee in determining which legislative measures it will request for the 2013 Session of the Nevada Legislature and what other actions the Committee will endorse.

The members of the Committee may vote to send as many Committee statements or letters as they choose. However, pursuant to NRS 218D.160, the Committee is limited to ten legislative measures, including both bill draft requests (BDRs) and requests for the drafting of resolutions.

The inclusion of proposed actions in this work session document does not imply the support of the Committee. The members will review them and decide whether they should be adopted, changed, rejected, or further considered. Each item in this document may be the subject of further discussion, refinement, or action. The proposals have been grouped by topic but are not preferentially ordered.

Although possible actions are identified for each recommendation, the Committee may modify the possible action and select one of the following actions: (1) draft a bill or resolution; (2) send a letter; or (3) include a statement in the final report. To the extent the Committee urges or suggests action by public officials, it is understood that any such actions would be subject to the limits of those officials’ existing authority and all applicable laws.

As set forth in NRS 218E.515, five members of the Committee constitute a quorum and a quorum may exercise all the powers of the Committee.

The source of each proposed action is noted. A proposed action may have been modified during the preparation of this document for a variety of reasons, such as: (1) to combine it with similar proposals; (2) to propose a different type of action; or (3) to add details needed for drafting.

As in the past, the Committee members may use a consent calendar to approve proposals that require no consideration or clarification beyond what is set forth in the “Work Session Document.” Items on the consent calendar primarily include Committee letters and statements in the final report. Any Committee member may request that one or more items on the consent calendar be removed for further discussion and consideration.

To the extent that a proposed action may contain unquantified or unknown fiscal impacts, Legislative Counsel Bureau (LCB) staff will coordinate with the interested parties to obtain fiscal estimates, if needed, for inclusion in the final report. Also, some proposals may include references to specific chapters or statutes in the NRS, but as part of the legislative process, amendments to other related chapters or sections of the NRS may be added to fully implement the requested legislation.

Finally, please note that in the fall of 2012 during the legislative drafting process, specific details of Committee-requested legislation or other Committee action may be further clarified in consultation with the Chair of the Committee or others, as directed or as appropriate.

<p style="text-align: center;">PROPOSED ACTIONS RELATING TO ENERGY</p>

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

The Committee heard testimony from Ms. Harkins on this subject at the meeting of May 4, 2012. Statutory changes are necessary to allow full implementation of the Act, which, in part, establishes the basis for allocations of low-cost renewable hydropower from Hoover Dam to Nevada-based customers for a 50-year term. Current Hoover Dam hydropower contracts between the federal Western Area Power Administration and its customers, including the CRC, expire on September 30, 2017. The Act sets aside a portion of the energy from Hoover Dam as a resource pool for new hydropower customers. Thus, the CRC will offer 50-year contracts to its current hydropower customers and yet-to-be-identified new customers in Nevada. Section 704.787 of NRS provides that the CRC may serve only the customers under contract as of July 1997 and the Southern Nevada Water Authority (SNWA) and its member agencies without subjecting itself to the jurisdiction of the Public Utilities Commission of Nevada (PUCN). Since the CRC does not seek to subject itself to PUCN jurisdiction, amendments to NRS are necessary to authorize the CRC to serve the new customers after September 30, 2017, in the same manner as it will serve its existing customers.

PROPOSED ACTIONS RELATING TO THE GREATER SAGE-GROUSE

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

Governor Sandoval established the Governor's Greater Sage-grouse Advisory Committee by executive order in March 2012, to provide an updated strategy and recommended approach for sage-grouse conservation in Nevada. The Advisory Committee received presentations on such subjects as habitat, invasive species, livestock grazing, mitigation, and predation; updated the sage-grouse threat assessment; and recommended a sage-grouse management area map. The Advisory Committee's report covers conservation goals and strategies, implementation responsibilities, and recommended actions in response to identified threats.

According to testimony at the January 2012 meeting of the Committee on Public Lands, some of the ongoing efforts to preclude listing of the sage-grouse are:

- *Activities supported by the federal Natural Resources Conservation Service (NRCS) on private lands;*
 - *Amendments to Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), and U.S. Forest Service (USFS) land use plans;*
 - *Coordination among Nevada's Department of Wildlife (NDOW), the BLM, and the USFS to raise the priority of sagebrush habitat in wildfire prevention and suppression;*
 - *Hunting restrictions in certain counties and game management areas;*
 - *Restoration of Pinyon-juniper woodlands;*
 - *The work of the Great Basin Landscape Conservation Cooperative (LCC) on education, management, research, partnerships, restoration, and science; and*
 - *The work of Nevada Partners for Conservation and Development, using sportsmen's money.*
3. **Send a letter** to Nevada's agricultural producers, expressing the Committee's support for their efforts to help preclude the listing of the sage-grouse and urging them to continue those efforts. (Ron Cerri, Orovada, Nevada, and Joe Guild, National Cattlemen's Beef Association, June 2012 meeting)

According to testimony at the June 2012 meeting of the Committee on Public Lands, some of the efforts of agricultural producers to preclude the listing of the sage-grouse include:

- *Activities supported by the NRCS;*
- *Contract with Resource Concepts, Inc. (Carson City) to compile an online library of sage-grouse research and science documents;*
- *Fence removal or flagging in sage-grouse habitat;*
- *Maintenance of water troughs;*
- *Restoration of meadows, Pinyon-juniper woodlands, and riparian zones, in cooperation with the Eastern Nevada Landscape Coalition and others;*
- *Rest-rotation and deferred grazing systems; and*
- *Weed identification and control.*

To address Nevada's agricultural producers, it may be appropriate to send the letter to the following organizations:

- *Nevada Cattlemen's Association*
- *Nevada Farm Bureau*
- *Nevada Woolgrowers Association*
- *State Grazing Boards, Central Committee*

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

If the sage-grouse were listed as an endangered species, numerous direct and indirect socioeconomic impacts could occur. A listing would likely have direct impacts on the mining, ranching, and renewable energy sectors, since operators would be required to adjust their activities and plans on both private and public lands and would encounter more complex and lengthy regulatory proceedings. A listing may have widespread indirect impacts stemming from slower growth in the mining and renewable energy sectors and lower-than-anticipated employment and tax revenues statewide, and may hamper the State's economic diversification efforts. Recreation on the public lands could also be affected.

At the January 2012 meeting of the Committee on Public Lands, Allen Biaggi, representing the Nevada Mining Association, testified that a listing of the sage-grouse would affect the economic recovery of the State, and the impacts on rural Nevada would be large.

PROPOSED ACTIONS CONCERNING THE PUBLIC LANDS, GENERALLY

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

The Committee on Public Lands heard testimony at each of its meetings in the 2011-2012 Interim on the need for better cooperation, coordination, and collaboration among managers and users of the public lands. While there are some excellent examples of collaboration (e.g., the work of the Eastern Nevada Landscape Coalition, the Pine Forest Working Group, and the Wildfire Support Group), issues or problems were cited in these areas:

- *Completion of travel management plans, particularly in the Humboldt-Toiyabe National Forest;*
- *Conservation of cultural resources and consultation with tribal governments;*
- *Construction of water improvements for livestock and wildlife on the public lands;*
- *Difficulty in adding appropriate flexibility to grazing leases and permits, especially related to management of fine fuels that contribute to the cheatgrass-fire cycle;*
- *Lack of consultation with and inclusion of local elected officials in federal land use planning and permitting;*
- *Management of wild horses and burros;*
- *Pending but unresolved wilderness designations;*
- *Resolution of issues related to maintenance and ownership of R.S. 2477 rights-of-way on the public lands;*
- *Virtually automatic protests and legal challenges to most regulatory actions of the BLM and USFS;*
- *Water resource management, monitoring, and planning; and*
- *Weather-related and other restrictions on grazing leaseholders and permittees.*

Federal, state, and local agencies; users of the public lands; and interest groups need to work together to develop consensus strategies and plans for the benefit of all parties, to put those strategies and plans into action, and to monitor progress over time.

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

Certain federal environmental laws, including the Clean Water Act (CWA) of 1972, the ESA, and the National Environmental Policy Act (NEPA) of 1969 grant standing to individuals to sue for enforcement of those laws. These citizen-suit provisions are important aspects of environmental protection efforts generally.

The federal EAJA seeks to curb excessive governmental regulation by eliminating the financial disincentive for an individual to challenge unreasonable governmental actions, given the disparity in expertise and resources between a government agency and an average person. The EAJA allows prevailing parties to recover attorney fees, expert witness fees, and other expenses, unless the government's action was substantially justified.

Nonprofit environmental groups have pursued citizen suits against the BLM, the U.S. Environmental Protection Agency (USEPA), the USFS, and the U.S. Fish and Wildlife Service (USFWS), DOI, to enforce the CWA, the ESA, and NEPA, and have recovered fees and expenses under the EAJA. For example, from 2004 to 2010, the USFWS paid attorneys' fees of about \$1.5 million in 26 cases. From 2003 to 2010, the U.S. Treasury paid \$14.2 million to plaintiffs in litigation with the USEPA.

Although provisions in federal laws authorizing citizen suits and providing for recovery of attorneys' fees were enacted to help protect the rights of individuals, there needs to be improved reporting and transparency on the amount of recovery under the EAJA and the outcomes of the litigation against the public land management agencies.

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

In the 2011 Session, the Legislature adopted S.J.R. 4 (File No. 32) by unanimous vote in both the Assembly and the Senate. Since the resolution refers specifically to federal legislation introduced in the 112th Congress, which will have adjourned before the beginning of Nevada's 2013 Legislative Session, the Legislature should consider and adopt an updated resolution similar to S.J.R. 4.

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

Since the last legislative interim, federal agencies have announced plans to fast-track approval of seven renewable energy transmission projects; identified solar energy zones designed to identify conflicts early and avoid delays and litigation; required prescreening of renewable energy projects; and proposed the use of adaptive management plans in energy project permitting.

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

According to "Public Lands News" (July 27, 2012), President Barack Obama signed legislation in July that provides \$398 million for the PILT program in Federal Fiscal Year (FFY) 2013 and extends SRS through FFY 2012 at \$346 million. Members of Congress are attempting to develop a long-term approach to PILT and SRS funding, but there has been no agreement to date. Some members support using revenues from timber sales and other commercial uses of the public lands to fund the SRS program.

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

In 2010, U.S. Senator Harry Reid and then-U.S. Representative Dean Heller introduced legislation that would have established a leasing program for solar projects on federal lands and provided for payments of 25 percent of the revenue to the host state and counties.

In 2011, Senator John Tester (Montana) introduced the Public Lands Renewable Energy Development Act of 2011, of which Senators Reid and Heller are co-sponsors. Among its other provisions, it would establish a distribution formula for wind and solar energy development on public lands, dividing rental and royalty income among the State, county, the DOI, and a fund for land and wildlife conservation.

The Energy Policy Act of 2005 (42 USC 15873(a)) created a revenue sharing provision for geothermal energy generation on federal lands, helping affected state and local governments deliver governmental services and make necessary capital improvements to accommodate the energy development.

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

AND

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

The Committee on Public Lands received testimony on travel management on the Humboldt-Toiyabe National Forest at the November 2011 and January 2012 meetings. Elko County Commissioner Demar Dahl testified that the travel management plan was the County's biggest natural resource challenge. He said: (a) the County had been unable to get good answers on how many miles of roads would be closed and how cross-country travel would be managed; and (b) the County had concerns related to big game retrieval, dispersed camping, mineral prospecting, and road marking. Representatives of Eureka County and Lander County also expressed concern with the travel management process.

Jeannie Higgins, Forest Supervisor, Humboldt-Toiyabe National Forest, testified that the USFS has been establishing a designated system of roads and trails for public wheeled motorized use, in response to the Travel Management Rule (36 CFR Subpart B). She said: (a) there are over 5,700 miles of system roads and motorized trails and about 8,000 miles of additional routes created by users but not managed as part of the Forest Road system; (b) each ranger district has proposed a series of roads and trails for public use, including system routes and other routes; (c) the product is a motor vehicle use map for the public to use to know where they can drive various classes of vehicles; (d) USFS decisions include a concerted effort to maintain motorized access to dispersed campsites and recreation opportunities; and (e) guides, outfitters, mineral exploration firms, and ranchers will have the same level of access they currently have.

On the related subject of R.S. 2477 rights-of-way, federal law enacted in 1866, as amended, granted rights-of-way for construction of highways over public lands to provide access to mining claims and other private property. With the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), the act of 1866 was repealed, but FLPMA also provides that nothing in FLPMA shall be construed as terminating any valid right-of-way existing on the date of FLPMA's approval. The NRS deem such rights-of-way as accessory roads, declare them open to public use, and urge the U.S. government to recognize the rights so acquired. (See NRS 405.191 through 405.204.)

In separate rulings in 2005 and 2007, the Tenth U.S. Circuit Court of Appeals ruled that the BLM cannot adjudicate the validity of R.S. 2477 right-of-way

assertions, that only a federal court holds that right, and that environmental groups may intervene in R.S. 2477 suits if such groups demonstrate that the federal government is not adequately defending its rights. (“Public Lands News,” October 12, 2007, and January 6, 2012.)

PROPOSED ACTIONS RELATED TO GRAZING ON PUBLIC LANDS

12. **Adopt a resolution** urging the BLM and the USFS to consider increasing livestock grazing under certain circumstances in order to prevent range fires. (Senator Dean Rhodes)

The Committee considered this recommendation at the November 2011 meeting. Senator Rhoads stated, in light of numerous fires affecting grazing allotments and sage-grouse habitat on the public lands in northeastern Nevada and other parts of the State, it would make sense to use grazing to help control fine fuel loads. He cited examples from Nevada and elsewhere where grazing has been used to control fuel loads and weeds.

The BLM’s Elko District Manager testified that, because of NEPA requirements, it is not practical to extend the season of a grazing permit if the permittee seeks permission during that grazing season. He said grazing is one of the tools that is available to reduce fuels; that other resources (e.g., sage-grouse habitat) need to be considered also; and that if the BLM can partner with the livestock industry to control cheatgrass stands on hundreds of thousands of acres, the BLM will do so.

At the June 2012 meeting, the Committee heard testimony on research conducted at the University of Nevada’s Gund Ranch, near Austin, Nevada, which showed great promise for dramatically reducing cheatgrass by grazing in successive years in the fall, after seed drop. The ranch manager testified that the researchers hope to expand the experiment to other sites in Nevada and Oregon.

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

In addition to the research conducted at the University of Nevada's Gund Ranch, the Committee also heard testimony at the June 2012 meeting regarding the phenomenon of cheatgrass die-off. According to testimony, 500,000 acres of cheatgrass in northern Nevada has died, resulting in soil erosion and secondary weed invasion. The likely causes are fungal or other pathogens interacting with weather. More research is needed to determine whether there is a potential to use pathogens for biocontrol and how best to restore areas where die-off has occurred.

14. **Send a letter** to the BLM and the USFS urging the agencies to work with grazing permittees to ensure that: (a) management decisions are based on the best rangeland science; (b) flexibility is included in grazing permits to allow for adaptive management as conditions change; and (c) the quality and quantity of data collected is adequate to support decisions based on measurable resource objectives. (Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

Eureka County expresses concern for arbitrary and unjustified closures of livestock grazing in certain areas, and cites these examples: (a) when the BLM is conducting a vegetation treatment in a small area of an allotment and closes the entire allotment for two or more years; and (b) when the BLM closes allotments to grazing during hot weather because of perceived impacts on riparian areas. The County says the science behind these actions is flawed, they prevent ranchers from being able to provide for their livestock at the right time of year, and they shift the resource burden to private lands without solving the resource issue.

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

With appropriate accountability and safeguards, it may be appropriate to extend the term of some grazing permits to 20 years, to reduce the administrative burden on both the federal agencies and the permittees. When grazing leases or permits are due for renewal, no significant changes are proposed, and conditions on the range are stable, the renewal process should be streamlined. The process for adapting lease and permit provisions to changing conditions on the ground should also be streamlined, so that land managers and users can work together to manage fuel loads, conserve wildlife habitat, and make other adaptations for the benefit of everyone.

PROPOSED ACTIONS RELATED TO PINYON-JUNIPER WOODLANDS

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

OR

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

A resolution or letter would assist the NPJP in its efforts to obtain contracts, grants, and other funding to maintain and expand its programs.

17. **Adopt a resolution** expressing the desire and intent of the State of Nevada to establish a biomass industry, in order to expand efforts to restore Pinyon-juniper and sagebrush ecosystems at a landscape scale on the public lands for the benefit of economic stability, energy production, hydrologic function, rangeland health, and wildlife habitat;

AND/OR

Send a letter to the U.S. Secretary of the Interior, the U.S. Secretary of Agriculture, the Acting Director of the BLM, the Chief of the USFS, and Nevada's Congressional Delegation expressing the Committee's support for establishment of a biomass industry for this purpose.

(NPJP, July 31, 2012, and Leonard J. Fiorenzi, Chair, Board of Eureka County Commissioners, July 20, 2012)

The NPJP recommends support for additional federal funding for planning, implementing, and monitoring Pinyon-juniper and sagebrush restoration projects, which would provide an opportunity to use biomass generated by the those projects. This concept would benefit sage-grouse habitat. Policies to encourage the establishment of a biomass industry in Nevada would include: (a) providing more federal funding for implementing, monitoring, and planning Pinyon-juniper and sagebrush restoration projects; (b) reprogramming fire suppression funding to strategic hazardous fuels reduction projects in Pinyon-juniper woodlands with heavy fuel loading; (c) amending the White Pine and Lincoln County Public Lands Acts to authorize utilization of money from land sales in restoration projects; and (d) supporting continued Stewardship Contracting authority with the Departments of Agriculture and Interior, and extending the maximum length of stewardship contracts from 10 to 20 years.

Stewardship contracts are designed to meet environmental restoration and

maintenance objectives and may include capture of the value of forest or rangeland material created as part of the project, offsetting the cost to taxpayers. The contracts may allow for the exchange of goods for services, use the value of traded goods to meet land health goals, be awarded on the basis of best value, and have long terms in order to reduce uncertainty and encourage investment in local communities. Agreements with nonprofit organizations are encouraged.

Letters and resolutions on this subject should include the Committee's recognition of the concerns of tribal members regarding the cultural importance of Pinyon-juniper woodlands and the need for thorough consultation with the tribal governments on woodlands management projects.

**PROPOSED ACTIONS RELATED TO MANAGEMENT OF
WATER RESOURCES AND WATER SUPPLIES**

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

In 1988, Nevada's former Governor Richard H. Bryan appointed the drought response and reporting committee, chaired by the State Climatologist. The State Department of Conservation and Natural Resources (SDCNR) prepared the first drought plan in 1991. The plan was updated in 2003 at the direction of the State Engineer and by an interagency collaborative effort in 2012. The Water Planning Section, Division of Water Resources, SDCNR, must support activities in response to drought as provided for in the drought plan established for the State. (See NRS 540.051.)

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

According to the HRBWA, the Legislature eliminated 4.4 positions within the DWR in 2009, and 5 positions and one-half of the funding of the cost of the Deputy State Engineer in Las Vegas in 2011. The HRBWA says these reductions in staff impair the ability of the DWR to maintain the progress it had made in reducing the backlog of pending applications for water rights and the related public access to online data on water rights and water resources.

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

AND/OR

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

Many large gold mines in the Humboldt River Basin are open pit projects. Mining companies often need extensive groundwater dewatering systems to keep water levels below the pit floors. Section 519A.250 of the Nevada Administrative Code allows an exemption from the NDEP's mine reclamation requirements for open pits. According to the HRBWA: (a) exempt open pits often become pit lakes; (b) the aggregate surface area of present and future lakes in the Basin is several hundred acres or more; (c) as a result of surface evaporation, pit lakes act like high-production wells, drawing groundwater from surrounding aquifers; (d) the closed Lone Tree Mine between Winnemucca and Battle Mountain, when full, will lose 2,400 to 2,700 acre-feet per year to evaporation in perpetuity, for which no water right has been issued and which is not reflected in the Basin's water budget; (e) since no water right is required and pit lakes are not accounted for in water budgets, the State Engineer may over-appropriate basins with pit lakes; and (f) obtaining a water right for a pit lake is, at present, voluntary and few mines have chosen to do so.

The BLM's Battle Mountain District required a water right in the Record of Decision on the Cortez Hills expansion project (March 2011). However, this approach is not used consistently throughout Nevada.

If the Committee supports these recommendations in general, it may be appropriate to consider the applicability of such policies and whether they would apply to existing pit lakes or only new pit lakes.

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

In 2009, the Legislature passed A.B. 377, declaring that it is the policy of the State to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada. (See subsection 1(c) of NRS 533.024.) As introduced, A.B. 377 would have required the State Engineer to make a finding when processing an

application for a water right that the proposed use or change does not adversely affect any surrounding surface or underground source of water. The CNRWA says that groundwater and surface water systems are connected in certain areas, Nevada should acknowledge the possible connection in State law, and Nevada should ensure a proposed use or change in use of water does not adversely affect a nearby ground or surface source.

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

The CNRWA says it is critical for the State Engineer to have a correct accounting of legal water rights in a basin before issuing a permit for a new water right which might impair the vested right of a person to the use of water. The Committee should also recognize that such adjudications are very resource intensive and require a significant amount of time to complete, since all adjudications are decided in district court after the State Engineer completes a preliminary order.

23. **Send a letter** to the Chief of the USFS and the Forest Supervisor, Humboldt-Toiyabe National Forest, urging no further delays in approving and investing in water-related range improvements, notwithstanding the USFS concerns with Nevada water law on stockwater rights. The letter should request the USFS to revise its policy requiring federal ownership of stockwater rights as a prerequisite to authorizing federal expenditures on livestock water improvements on the National Forest. (HRBWA, July 20, 2012)

In 2003, the Legislature passed S.B. 76, which provides that the State Engineer may issue a permit to water livestock only to the rancher or operator of the livestock. (See NRS 533.040 and 533.503.) Therefore, since 2003, the BLM and the USFS cannot normally obtain a stockwater permit in their own name. Although the BLM adapted its policy to allow stockwater-related improvements on public lands in Nevada without the BLM having to own the stockwater right, the USFS has not done so, and has maintained a policy that stockwater rights associated with any water improvement on the National Forest must be owned by the USFS before an improvement will be approved. The HRBWA says this policy has blocked many water-related range improvements to the detriment of the environment, the livestock industry, and wildlife.

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

The Ely District of the BLM manages the Shoshone Ponds ACEC to maintain unique and valuable vegetation and aquatic habitat resources. In the 1970s, NDOW installed a well in the ACEC for the purpose of providing protected water flows to three ponds used as places of refuge for the endangered Pahrump poolfish. Poolfish were introduced into the ponds in 1972 and 1976 and are managed under the species recovery plan published by the USFWS. The ponds are within a fenced enclosure designed to keep livestock away from the ponds.

On a visit to the Shoshone Ponds in June 2012, the Chair observed that the vegetation within the enclosure is overgrown, the water appears to be stagnant, and it is unclear whether the Poolfish are being managed effectively inside the enclosure. An adjacent pond and stream, which are unfenced, appear to be in better condition and to house a thriving population of poolfish. The Chair wishes to meet with the BLM and other interested parties to review the management objectives and the present status of the ponds.

CONSENT CALENDAR FOR WORK SESSION

Legislative Committee on Public Lands

Nevada Revised Statutes 218E.510

August 24, 2012

NOTE TO COMMITTEE MEMBERS: The Chair has placed the proposals listed below on a consent calendar to assist the Committee in taking action on selected items. Committee members may request removal of any item from this list for purposes of further discussion. The Committee may also approve the addition of other proposals listed in the work session document to the Consent Calendar.

ITEM NUMBER	BRIEF DESCRIPTION OF RECOMMENDATION (Please see the "Work Session Document" for full description)
1	Amend the statutes (such as NRS 704.787) to allow full implementation of the Hoover Power Allocation Act of 2011 (P.L. 112-72).
8	Include a statement in the final report supporting streamlining of both State and federal permitting of activities on public lands, provided that such streamlining preserves necessary community and natural resource protections.
9	Include a statement in the final report supporting: (a) full funding for the Payments in Lieu of Taxes (PILT) program; (b) reauthorization of the Secure Rural Schools and Community Self-Determination Act (SRS) of 2000; (c) no reduction in PILT payments based on SRS payments; and (d) a shift in emphasis for these programs to create jobs and produce receipts for revenue sharing.
13	Send letters to the Nevada System of Higher Education, the USFS, and other parties as appropriate, supporting ongoing research concerning the control of cheatgrass and other annual grasses that contribute to the cheatgrass-fire cycle in Nevada.