

LEGISLATIVE COMMITTEE
ON PUBLIC LANDS



Bulletin No. 91-11

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

JANUARY 1991

NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

BULLETIN NO. 91-11

LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

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NEVADA REVISED STATUTES

LEGISLATIVE COMMITTEE ON PUBLIC LANDS

218.536 Legislative findings and declarations. The legislature finds and declares that:

1. Policies and issues relating to public lands and state sovereignty as impaired by federal ownership of land are matters of continuing concern to this state.

2. This concern necessarily includes an awareness that all federal statutes, policies and regulations which affect the management of public lands are likely to have extensive effects within the state and must not be ignored or automatically dismissed as beyond the reach of the state's policymakers.

3. Experience with federal regulations relating to public lands has demonstrated that the State of Nevada and its citizens are subjected to regulations which sometimes are unreasonable, arbitrary, beyond the intent of the Congress or the scope of the authority of the agency adopting them and that as a result these regulations should be subjected to legislative review and comment, and judicially tested where appropriate, to protect the rights and interests of the state and its citizens.

4. Other western states where public lands comprise a large proportion of the total area have shown an interest in matters relating to public lands and those states, along with Nevada, have been actively participating in cooperative efforts to acquire, evaluate and share information and promote greater understanding of the issues. Since Nevada can both contribute to and benefit from such interstate activities, it is appropriate that a committee on matters relating to public lands be assigned primary responsibility for participating in them.

(Added to NRS by 1979, 5; A 1983, 208)

(1989)

218.5361 "Committee" defined. As used in NRS 218.5361 to 218.5371, inclusive, "committee" means the legislative committee on public lands.

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

218.5363 Establishment; membership; chairman; vacancies.

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

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

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

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

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

218.5365 Meetings; regulations; compensation of members.

1. The members of the committee shall meet throughout each year at the times and places specified by a call of the chairman or a majority of the committee. The research director of the legislative counsel bureau or a person he has designated shall act as the nonvoting recording secretary. The committee shall prescribe regulations for its own management and government. Four members of the committee constitute a quorum, and a quorum may exercise all the power and authority conferred on the committee.

2. Except during a regular or special session of the legislature, the members of the committee who are state legislators are entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding session, the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207 for each day of attendance at a meeting of the committee and while engaged in the business of the committee. Per diem allowances, compensation and travel expenses of the legislative members of the committee must be paid from the legislative fund.

(1989)

3. The member of the committee who represents a local political subdivision is entitled to receive the subsistence allowances and travel expenses provided by law for his position for each day of attendance at a meeting of the committee and while engaged in the business of the committee, to be paid by his local political subdivision.

(Added to NRS by 1979, 5; A 1981, 170; 1983, 209; 1985, 398, 1131; 1987, 1208; 1989, 426, 1217, 1222)

218.5367 Powers of committee.

1. The committee may:

(a) Review and comment on any administrative policy, rule or regulation of the:

(1) Secretary of the Interior which pertains to policy concerning or management of public lands under the control of the Federal Government; and

(2) Secretary of Agriculture which pertains to policy concerning or management of national forests;

(b) Conduct investigations and hold hearings in connection with its review, including but not limited to investigating the effect on the state, its citizens, political subdivisions, businesses and industries of those policies, rules, regulations and related laws;

(c) Consult with and advise the state land use planning agency on matters concerning federal land use, policies and activities in this state.

(d) Direct the legislative counsel bureau to assist in its research, investigations, review and comment;

(e) Recommend to the legislature as a result of its review any appropriate state legislation or corrective federal legislation;

(f) Advise the attorney general if it believes that any federal policy, rule or regulation which it has reviewed encroaches on the sovereignty respecting land or water or their use which has been reserved to the state pursuant to the Constitution of the United States;

(g) Enter into a contract for consulting services for land planning and any other related activities, including, but not limited to:

(1) Advising the committee and the state land use planning agency concerning the revision of the plans pursuant to NRS 321.7355;

(2) Assisting local governments in the identification of lands administered by the Federal Government in this state which are needed for residential or economic development or any other purpose; and

(3) Assisting local governments in the acquisition of federal lands in this state; and

(h) Apply for any available grants and accept any gifts, grants or donations to aid the committee in carrying out its duties.

2. Any reference in this section to federal policies, rules, regulations and related federal laws includes those which are proposed as well as those which are enacted or adopted.

(Added to NRS by 1979, 5; A 1981, 170; 1989, 1674)

218.5368 Duties of committee. The committee shall:

1. Actively support the efforts of state and local governments in the western states regarding public lands and state sovereignty as impaired by federal ownership of land.

2. Advance knowledge and understanding in local, regional and national forums of Nevada's unique situation with respect to public lands.

3. Support legislation that will enhance state and local roles in the management of public lands and will increase the disposal of public lands.

(Added to NRS by 1983, 208)

218.5369 Oaths; depositions; subpoenas.

1. In conducting the investigations and hearings of the committee:

(a) The secretary of the committee, or in his absence any member of the committee, may administer oaths.

(b) The secretary or chairman of the committee may cause the deposition of witnesses, residing either within or without the state, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

(c) The secretary or chairman of the committee may issue subpoenas to compel the attendance of witnesses and the production of books and papers.

2. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the secretary or chairman of the committee may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the committee pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the committee which is named in the subpoena, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the committee.

3. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the committee. A certified copy of the order shall be served upon the witness.

4. If it appears to the court that the subpoena was regularly issued by the committee, the court shall enter an order that the witness appear before the

(1989)

committee at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

(Added to NRS by 1979, 6)

218.5371 Fees and mileage for witnesses. Each witness who appears before the committee by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this state. The fees and mileage shall be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the secretary and chairman of the committee.

(Added to NRS by 1979, 6)

REPORT OF THE
NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

TO THE MEMBERS OF THE 66TH SESSION OF THE NEVADA
LEGISLATURE:

This report summarizes the activities of the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) during the past legislative interim.

The Legislative Commission appointed the following members to the committee:

Senator Dean A. Rhoads, Chairman
Assemblyman Matthew Q. Callister, Vice Chairman
Senator John M. Vergiels
Senator Virgil M. Getto
Assemblyman John W. Marvel
Assemblyman James A. Gibbons
Clark County Commissioner Karen W. Hayes

Legislative Counsel Bureau staff services for the committee were provided by Dana R. Bennett of the Research Division (principal staff), Brenda J. Erdoes of the Legal Division (legal counsel), and Gloria Johnson of the Research Division (committee secretary).

The committee held six regular meetings from September 1989 through December 1990 and twice visited Washington, D.C., to meet with Federal officials involved in public lands issues. Five additional meetings were held by the committee's Subcommittee to Study Takings.

This report includes a review of the major public lands topics considered by the committee and of the committee's activities. The report also contains a copy of the background paper concerning the takings issue and material which may be used to supplement the committee's last report, Legislative Counsel Bureau Bulletin No. 89-9, dated January 1989, titled "Report Of The Nevada Legislature's Committee On Public Lands."

During the interim, the committee received extensive testimony and supporting materials in addition to the information provided by this report. All minutes of meetings and supporting documents are on file in the Research Library of the Legislative Counsel Bureau.

Although not required by state law, this report is submitted to the members of the 1991 Nevada Legislature for their information, consideration and appropriate action.

Respectfully submitted,

Nevada Legislature's
Committee on Public Lands

Carson City, Nevada
January 1991

SUMMARY OF RECOMMENDATIONS

This summary presents the recommendations to the 66th session of the Nevada legislature by its Committee on Public Lands.

The committee recommends:

1. That the Legislature require the Executive Branch of State Government to prepare an assessment of takings implications on private property for certain governmental actions. (BDR 18-260)
2. That the Legislature urge the United States Secretary of Interior to remove the Lahontan cutthroat trout from the list of threatened species. (BDR R-1168)
3. That the Legislature urge the Secretary of Interior to remove the Cui-ui fish from the list of endangered species. (BDR R-1282)
4. That the Legislature require Nevada's Commission for the Preservation of Wild Horses to establish habitats for wild horses in Nevada. (BDR 45-1200)
5. That the Legislature support and approve, through the budget process, the addition to Nevada's Division of State Lands of a planner who would assist the counties, on an ongoing basis, in identifying Federal lands needed for community expansion.

REPORT TO THE 66TH SESSION OF THE NEVADA LEGISLATURE
BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS

I. INTRODUCTION

The Committee on Public Lands is a permanent, statutory committee of the Nevada Legislature (Nevada Revised Statutes 218.536, et seq.). The committee was created in 1983 to monitor proposals and activities impacting lands controlled by the Federal Government in this State and to provide a forum for the discussion of public lands matters.

Public lands issues are of fundamental importance to Nevada and its citizens as approximately 87 percent of this State's land is controlled by Federal agencies.

This document is the committee's fourth interim report. It contains information which may be used to supplement the earlier reports. Following are the numbers and dates for the previous bulletins:

<u>Legislative Counsel Bureau Bulletin Nos.</u>	<u>Title</u>	<u>Date</u>
85-22	"Nevada Legislature's Committee On Public Lands"	July 1985
87-17	"Public Lands"	January 1987
89-9	"Report Of The Nevada Legislature's Committee On Public Lands"	January 1989

These reports may be consulted for a review of the history of the Public Lands Committee and for background information on major issue areas.

The 1991 report includes a review of public lands legislation from the 1989 session of the Nevada Legislature and a summary of public lands issues heard by the committee during the 1989-1990 legislative interim. The report also contains information on the committee's Subcommittee to Study Takings.

The committee was active in a variety of public lands issues during this period, including proposed land exchanges, the designation of endangered species, and the gradual

acquisition of Federal land for the expansion of Nevada communities. The committee's report highlights these issues and provides background information on the committee's recommendations to the 1991 session of the Nevada Legislature.

II. PUBLIC LANDS LEGISLATION OF THE 65TH SESSION OF THE NEVADA LEGISLATURE

The Nevada Legislature's Committee on Public Lands made several recommendations to the 1989 Nevada Legislative Session which were modified and adopted during the legislative process. These measures establish a wildlife deperadation program, modify state land transaction procedures and the authority of the committee, and provide for the acquisition of lands. Resolutions also were adopted relating to grazing fees and wild horses.

Additional bills and resolutions on public lands issues were introduced by other legislators and the appropriate standing committees: the Senate Committee on Natural Resources and the Assembly Committee on Natural Resources, Agriculture and Mining. The most significant public lands measures adopted by the 1989 Nevada Legislature are summarized below.

A. ACQUISITION OF FEDERAL LANDS

Senate Bill 113 expands the jurisdiction of the State Land Use Planning Agency to include planning for the State to acquire Federal land. The bill also allows the Committee on Public Lands to contract for consulting services for land planning and related activities.

The bill includes a policy statement to continue to seek the acquisition of Federal lands within Nevada. In addition, the State Land Use Planning Agency is required, in preparing plans and policy statements, to identify lands suitable for acquisition for commercial, industrial or residential development; for the expansion of the property tax base including the potential for increased revenue by the sale and lease of lands; and for accommodating population increases in the State.

This measure also allows the Public Lands Committee to apply for any available grants and to accept any donations, gifts or grants to aid the committee in its duties.

B. GRAZING FEES

Senate Joint Resolution No. 6 urges the United States Congress to require that the current formula for grazing fees be continued. The resolution also urges the U.S. Departments of Agriculture and the Interior to recommend the continuation of the current formula for fees.

The existing grazing fee formula was established by an Executive Order signed by President Ronald W. Reagan in 1986 and subsequent regulations adopted by the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). Placing the formula in the law will ensure the stability of the livestock industry upon which many of Nevada's rural counties heavily depend.

C. MINING RECLAMATION

Assembly Bill 958 establishes regulatory requirements and a permitting process for mining operations and exploration projects to be administered and enforced by the Division of Environmental Protection in Nevada's Department of Conservation and Natural Resources.

The measure prohibits a person from engaging in an exploration project or a mining operation without a valid permit issued by the division. An approved Federal reclamation plan supersedes this plan requirement if the mining operation or exploration project is conducted on public lands administered by a Federal agency. In addition, for mining activities on a site that includes both public and private land, the Federal plan suffices if it substantially provides for the reclamation and security required by this law.

The bill requires persons engaged in mining operations and exploration projects to file a reclamation bond or other surety with the division in a form and amount established by regulation. Nevada's Department of Minerals is required to develop and administer a bond pool program, which is to be self-sustaining, to assist operators in meeting the bonding requirements.

The reclamation program is to be self-funded through permit fees and annual fees related to each acre of land affected by a mining operation. Mining operators are required to submit annual reports on the status and production of operations and to identify the acres of land affected and reclaimed by mining operations.

The bill also requires the creation of a program for the abatement of hazardous conditions at abandoned mine sites.

Senate Bill 549 authorizes the Department of Minerals to administer the program. The department is required to report the activities, expenditures and revenues of this program to the Governor and Legislature by February 1 of each odd-numbered year. The fees and this program are scheduled to sunset on July 1, 1994.

D. STATE LANDS

Senate Bill 132 repeals the moratorium on the exchange or sale of State lands and requires the approval of the State Board of Examiners and the Nevada Legislature's Interim Finance Committee for the exchange, lease or sale of such lands. The bill authorizes the State Land Registrar, Division of State Lands in Nevada's Department of Conservation and Natural Resources, to make direct sales of State lands to public agencies of the State if the land is not needed by the State and is needed for a valid public use. Land transactions under this process must be sold at current fair market value and include the costs of the sale.

Under previous law, a moratorium was placed on the sale of State lands, and any exchange or sale of State lands required legislative approval. Because the Legislature only meets every other year, this process was cumbersome and time-consuming. Senate Bill 132 is intended to simplify state land transactions conducted through the Division of State Lands.

E. WILD HORSES

Senate Joint Resolution No. 7 urges Congress to enact legislation, or the Secretary of the Interior to adopt regulations, modifying the guidelines to authorize a pilot program for the establishment of sanctuaries for unadoptable wild horses and burros on a combination of private and public lands in this state. It further urges that interested persons, including livestock operators, be allowed to bid for contracts with the Federal Government to provide private land and its water and forage for the establishment of sanctuaries for unadoptable wild horses and burros.

The resolution points out that the present guidelines adopted by the Secretary of the Interior do not allow for sanctuaries to be established on public land even though such action is authorized by the Federal Wild Free-Roaming Horses and Burros Act. These guidelines prevent the establishment of sanctuaries in Nevada which has the most wild horses.

In a related issue, Senate Bill 446 increases the membership of the Commission for the Preservation of Wild Horses by adding two additional members from the general public. The measure also increases the compensation of the members from \$60 to \$80 for each day they are engaged in commission business.

F. NEVADA'S DEPARTMENT OF WILDLIFE

Several bills were adopted relating to Nevada's Department of Wildlife (NDOW) and its administration, the wildlife violator compact and wildlife deprecation.

1. Board of Wildlife Commissioners

Senate Bill 395 increases the membership of the Board of Wildlife Commissioners with the appointment of two additional members representing the interests of sportsmen. It also allows an increase in membership of county advisory boards to manage wildlife. Persons appointed to such boards must be residents of the county and either sportsmen or farmers or ranchers.

In addition, the act requires the Board of Wildlife Commissioners to meet at least nine times each year. The bill also requires representatives of county advisory boards to attend meetings of the Board of Wildlife Commissioners at which seasons are set or bag limits or other regulations or policies are established.

2. Wildlife

Senate Bill 414 increases the civil penalties for unlawfully killing or possessing certain species of wildlife and authorizes Nevada's Board of Wildlife Commissioners to enter into reciprocal hunting agreements with adjoining states.

The measure gives license agents of NDOW the option of purchasing their inventory in advance of sales in lieu of furnishing a bond, or providing a cash bond in lieu of paying a premium for a bond. The bill also creates a combination fishing and hunting license for persons between the ages of 12 and 16 years, which costs \$9, and revises the criteria for deposits of State money by NDOW.

Senate Bill 386 adopts the wildlife violator compact. The purpose of the compact is to allow party states to participate in a reciprocal program that promotes compliance with the statutes and administrative rules relating to the management of wildlife resources in each state.

The compact requires party states to recognize the suspension of wildlife license privileges of any person and treat the suspension as if it had occurred in their state. It also allows a home state to recognize and treat wildlife convictions recorded for its residents in another party state as if the convictions had occurred in the home state.

3. Wildlife Depradation

Senate Bill 130 authorizes NDOW to prevent and mitigate damage and to compensate for certain losses caused by elk or game animals not native to this State. The bill directs NDOW to adopt regulations governing the disbursement of money to prevent and mitigate damage to private property and privately maintained improvements, and to compensate persons for grazing reductions and the loss of stored or standing crops caused by elk or nonnative game animals. The measure prohibits the disbursement of money to a claimant unless a preponderance of the evidence shows that the damage was caused solely by elk or game animals not native to the State.

The bill also requires the director of NDOW to submit, by the 5th calendar day of each regular session of the Legislature, a report summarizing the actions taken by the department to prevent or mitigate damage caused by elk or game animals not native to Nevada. The report must include a list of expenditures made for damages during the previous biennium.

This legislation became effective on July 1, 1989, and sunsets on July 1, 1991, if matching money from the wildlife account is not committed.

III. SUMMARY OF INTERIM ACTIVITIES

The Nevada Legislature's Committee on Public Lands reviews many public lands issues which involve ongoing activities, problems and programs that are subject to administrative, Congressional and other Federal action. The committee was active and involved in a number of issues during the 1989-1990 interim period.

This section briefly summarizes the committee's meetings and major issues. Further information on the committee's meetings and certain issues is included in the ensuing sections of this report.

A detailed list of the meetings, issues and actions of the Public Lands Committee from September 1989 through December 1990 is provided in Appendix A.

A. MEETINGS

The committee held six regular meetings throughout Nevada as noted:

<u>Date</u>	<u>Location</u>
September 26, 1989	Reno
December 8, 1989	Las Vegas
February 26-27, 1990	Laughlin
June 25, 1990	Elko
September 7, 1990	Fallon
December 7, 1990	Reno

The committee's Subcommittee to Study Takings met five times as follows:

<u>Date</u>	<u>Location</u>
February 8, 1990	Carson City
March 29, 1990	Las Vegas
May 21, 1990	Reno
November 19, 1990	Reno
December 7, 1990	Reno

In addition, members of the committee twice visited Washington, D.C., to meet with U.S. Senators and Representatives and Federal Executive Branch officials involved in public lands matters. These meetings were held October 27-28, 1989, and May 8-9, 1990.

B. ISSUES

The committee heard and discussed many public lands issues of interest to Nevada citizens. Presentations and reports to the committee helped to inform the public of these issues. In addition, the committee provided recommendations, when appropriate, to Federal officials and Nevada's Congressional delegation.

The following is a list of the issues discussed and investigated by the committee during the 1989-1990 interim period:

- . Abandoned mines program;
- . Back country byways;
- . BLM reauthorization legislation;

- . BLM State Director;
- . BLM wilderness process;
- . City of Carlin land acquisition process;
- . Congressional legislation concerning public lands;
- . Elko cumulative mining impact report;
- . Endangered species designation for desert tortoise;
- . United States Forest Service road budget bill;
- . Funding for parks and wildlife.
- . Gradual land acquisition process and study;
- . Great Basin National Park;
- . Lahontan cutthroat trout;
- . Land exchange proposals involving lands in Nevada;
- . Laughlin area development;
- . Livestock grazing;
- . Military airspace and operations;
- . Mining reclamation bonds and regulations;
- . National Wildlife Federation lawsuit;
- . Ordnance removal from public lands;
- . Riparian areas;
- . The "Special Nevada Report";
- . The taking of private land by government without just compensation;
- . Thousand Springs and White Pine Power Projects;
- . Wildlife damage mitigation; and
- . Wild horses.

C. TAKINGS STUDY

In September 1989, the Nevada Legislature's Committee on Public Lands created a Subcommittee to Study Takings. The task of the subcommittee was to evaluate the need for possible legislation requiring Nevada agencies to consider takings implications whenever they are involved in actions affecting private property rights. The word "takings" is shorthand for the legal issues originating from a clause in the Fifth Amendment of the *U.S. Constitution* that says that government shall not take private property without just compensation.

The subcommittee conducted a major survey of state agencies, attended educational forums and held five public meetings in various Nevada locations. Additional data on the subcommittee's meetings, activities and recommendation may be found in the remainder of this bulletin. A separate background paper on the takings issue is included as Appendix B of this report.

IV. OVERVIEW OF COMMITTEE MEETINGS

The Nevada Legislature's Committee on Public Lands maintained an active schedule during the 1989-1990 interim period. This section of the report discusses meetings of the full committee in Nevada and Washington, D.C., and the meetings of its Subcommittee to Study Takings.

A. REGULAR MEETINGS

The Committee on Public Lands held six meetings throughout the State, gathering twice in Reno and once each in Elko, Fallon, Laughlin and Las Vegas.

1. Organizational Meeting

The committee organized itself and planned its activities for the interim at the first meeting in Reno on September 26, 1989. The information presented at this meeting included reports and updates from staff and BLM officials on major issues impacting Nevada's public lands, such as the "Special Nevada Report," wild horses, proposed land exchanges and wilderness. Information was also presented on the issue of takings. Major actions of the committee included:

- . Creation of a Subcommittee to Study Takings; and
- . Approval of a statement to be sent to Nevada's Congressional Delegation and other relevant Congressional representatives objecting to the water language in the Nevada wilderness bill (copy attached as Appendix C).

2. Second Meeting

The committee's second meeting on December 8, 1989, in Las Vegas included testimony on the endangered species designation for the desert tortoise, the proposed Mary's River land exchange, and back country byways. Staff updated the committee on the takings subcommittee and the gradual land acquisition process. Major actions of the committee included:

- . Approval of a resolution to the U.S. Bureau of Land Management (BLM) and the commissioners of Clark and Elko Counties to express the committee's opposition to the Mary's River land exchange proposal (copy attached as Appendix D); and
- . Approval of a resolution to the Clark County Commissioners to request that the commission oppose the Mary's

River land exchange proposal and request a full environmental impact statement which analyzes the economic impacts of the proposed exchange (copy attached as Appendix E).

3. Third Meeting

The meeting in Laughlin began with a tour of the area on February 26, 1990. The committee's hearing on February 27, 1990, included a discussion of Laughlin's development. The committee also received updates on issues being continually monitored, such as the desert tortoise classification and the Mary's River land exchange proposal. Staff reported that an informal survey indicated that the initial cost for a consultant to prepare an inventory of Federal lands in Nevada needed by local governments for expansion would be \$250,000. Major actions of the committee included:

- Approval of a subcommittee to meet with representatives of consulting firms to discuss the inventory of lands for the gradual land acquisition process; and
- Approval of a resolution to Nevada's Congressional Delegation and the chairmen of the appropriate Congressional public lands subcommittees to request that the U.S. Congress require the approval of all county governments directly impacted by a proposed exchange of lands within the same state for the exchange to proceed (copy attached as Appendix F).

4. Fourth Meeting

The major focus of the meeting in Elko on June 25, 1990, was the State's regulations for the reclamation of mining operations. The committee heard testimony and presentations on this issue from State agency officials and representatives of mining and environmental protection groups who had been involved in writing the regulations. Other issues of interest to northern Nevada were also discussed, including Carlin's land acquisition process, riparian areas, two proposed land exchanges, two proposed power projects and wild horses. Major actions of the committee included:

- Approval of letters from the committee to Nevada's Congressional delegation and the BLM supporting Carlin's position in the land acquisition process (copies of the committee letters and a response are attached as Appendix G); and
- Approval of letters from the committee to BLM recommending DeLoyd Satterthwaite and Molly Knudtson for

membership on the new Wild Horse and Burro Advisory Board (copies of the letters and BLM's response are attached as Appendix H).

5. Fifth Meeting

Meeting in Fallon on September 7, 1990, the committee focused on military and grazing issues. The Commanding Officer of the Fallon Naval Air Station updated the committee on the removal of ordnance from public lands. Extensive testimony was presented by ranchers and BLM on concerns in the White Pine Grazing District involving the grazing allotment evaluations. Other issues discussed included the proposed Mary's River land exchange, wild horses, and the gradual land acquisition process. Major actions of the committee included:

- Approval of a letter from the committee to BLM requesting a copy of the original 1971 wild horse area map (copy attached as Appendix I);
- Approval of a letter from the committee to BLM requesting the extension of the comment period on the draft environmental assessment on the Mary's River land exchange proposal (copy attached as Appendix J);
- Approval of a letter from the committee to BLM recommending the adoption of a facilitator committee to consider issues in the White Pine Grazing District (copies of the committee letter and BLM's response are attached as Appendix K);
- Approval of a letter from the committee to Nevada's (then) Acting Governor Robert J. Miller supporting the requested additional position to the staff of the Division of State Lands to prepare the inventory of lands needed for the gradual land acquisition process (copy attached as Appendix L); and
- Approval of a letter from the committee to BLM citing the lack of sufficient notice to permittees prior to the visitation of monitoring sites on allotments (copies of the committee letter and BLM's response are attached as Appendix M).

Subsequent to this fifth meeting, the chairman of the committee was informed that the comment period for the draft environmental assessment on the Mary's River land exchange proposal would not be extended. However, more specific comments from the committee would be accepted. Based on the discussion of this issue at the meeting, a letter was sent

to BLM outlining the committee's concerns with the assessment (copy attached as Appendix N).

6. Sixth Meeting

The final meeting of the committee during this interim period was held in Reno on December 7, 1990. The committee heard presentations on Lahontan cutthroat trout and the recently approved funding for parks and wildlife (Question No. 5 on the 1990 General Election Ballot). The BLM updated the committee on several public lands issues, many of which the committee monitored during the interim period. The committee conducted a work session to decide upon recommendations to be presented to the 1991 session of the Nevada Legislature. The actions of the committee at this meeting are discussed in further detail in the section of the report titled "Discussion Of Recommendations."

B. MEETINGS OF THE SUBCOMMITTEE

The Subcommittee to Study Takings met five times in 1990: once each in Carson City and Las Vegas and three times in Reno.

1. First Meeting

The first meeting of the subcommittee was held in Carson City on February 8, 1990. The focus was on providing background information on the takings issue and the Federal Executive Order on takings. An extensive explanation of takings cases and issues was provided by two attorneys who worked in the U.S. Department of Justice and assisted in the drafting of the Federal Executive Order. Staff reported on the results of the subcommittee's survey of several state agencies on their consideration of takings issues. Support for the study was expressed by Nevada's Office of the Attorney General.

2. Second Meeting

The subcommittee next met on March 29, 1990, in Las Vegas. Testimony from several representatives of private industry highlighted problems they have encountered in this area. Local government representatives also provided their perspectives on the issue. Major actions of the subcommittee included:

- Approval of a letter from the subcommittee to the BLM asking if takings impact analyses were completed prior to the designation of back country byways, the designation

of the desert tortoise as threatened and the introduction of elk into the Jarbidge area (copies of the subcommittee letter and BLM's response are attached as Appendix O); and

- . Approval of the preparation of a bill draft request requiring the Executive Branch of State government to prepare an assessment of takings implications on private property for certain governmental actions.

3. Third Meeting

The third meeting of the subcommittee was held in Reno on May 21, 1990. Marlyta Deck, lobbyist for the Washington Cattlemen's Association, reported on that state's legislation concerning takings. Three state agencies responded to the subcommittee's questions and comments concerning the current relationship of the agencies with the takings issue. Information on past takings cases in Nevada was provided by the Attorney General's Office. Further discussion was held concerning the contents of the BDR requested at the previous meeting.

4. Fourth Meeting

At the fourth meeting of the subcommittee, held in Reno on November 19, 1990, the discussion was devoted to the contents and merits of the proposed bill draft request on takings.

5. Final Meeting

The subcommittee took final action on its bill draft request at its meeting on December 7, 1990, in Reno. The subcommittee recommended that the full Committee on Public Lands include this BDR in its recommendations to the 1991 Nevada Legislature.

A separate background paper on the takings issue and the other activities of the subcommittee is included as Appendix B of this report.

C. VISITS TO WASHINGTON, D.C.

During the interim period, the Committee on Public Lands twice visited Washington, D.C., to discuss public lands issues with certain U.S. Senators, Representatives, and Federal Executive Branch officials. The purposes of these meetings were to monitor Federal legislation and to emphasize positions taken on public issues by the 1989 Nevada Legislature.

1. First Visit

The first visit was conducted from October 26 through October 27, 1989. Members of the committee met with Nevada's Congressional delegation and key administration officials. These officials included George Leonard, Associate Chief of the USFS; Cy Jamison, Director of the BLM; Manuel Lujan, Secretary of the Interior; Debra Anderson, Director of the President's Office of Intergovernmental Affairs; Richard Smith, Deputy Director of the U.S. Fish and Wildlife Service (USF&WS); and Jim Brookshire, Deputy Chief in the U.S. Department of Justice.

The committee also met with representatives from several groups involved in public lands issues, including the National Wildlife Federation, the Wilderness Society, and the American Recreation Coalition.

2. Second Visit

The committee's second visit occurred on May 8 and 9, 1990, to discuss ongoing and new issues. Some of the topics of discussion included the Federal Executive Order on takings, endangered species, wilderness, proposed land exchanges and the gradual land acquisition process.

Committee members again met with Nevada's Congressional delegation. They also met with key staff members for the Senate Subcommittee on Public Lands, National Parks and Forests, the House Subcommittee on National Parks and Public Lands, and the Senate Committee on Environment and Public Works.

Executive Branch officials visited by the committee included Marty Suuberg, Associate Solicitor in the Department of the Interior and representatives of USFS and USF&WS.

V. DISCUSSION OF RECOMMENDATIONS

The Committee on Public Lands adopted five recommendations in the areas of takings, Lahontan cutthroat trout, Cui-ui fish, wild horses and the gradual land acquisition process. These recommendations are discussed in this section of the report.

A. TAKINGS

As noted earlier in this report, the Nevada Legislature's Committee on Public Lands created a Subcommittee to Study Takings to evaluate the need for possible legislation

requiring Nevada agencies to consider takings implications whenever they are involved in actions affecting private property rights.

A background paper providing further information on the takings issue and details on the activities of the Subcommittee to Study Takings is included as Appendix B.

The subcommittee determined that preparing a takings implication analysis would be a valuable management tool for State agencies to help protect them from adverse awards in takings cases.

The committee, therefore, recommends:

1. **That the Legislature require the Executive Branch of State Government to prepare an assessment of takings implications on private property for certain governmental actions. (BDR 18-260)**

B. LAHONTAN CUTTHROAT TROUT AND CUI-UI FISH

For over 20 years, the Lahontan cutthroat trout and the Cui-ui have been on the threatened and endangered species list. The Committee on Public Lands maintains that allowing these fish to remain on the list interferes with the conservation, development and enjoyment of land and water resources in Nevada.

Indications suggest that the fish may no longer be on the path to extinction. Fish hatcheries and other efforts to manage the populations of the trout and Cui-ui have produced enough fish to ensure the preservation of the species. Habitat and food supplies have been protected through adequate plans implemented to ensure the continued development of the fish. In addition, these fish are no longer being used for commercial or sporting purposes at the historically high levels which initially threatened their existence.

The committee, therefore, recommends:

2. **That the Legislature urge the Secretary of the Interior to remove the Lahontan cutthroat trout from the list of threatened species. (BDR R-1168)**
3. **That the Legislature urge the Secretary of the Interior to remove the Cui-ui fish from the list of endangered species. (BDR-1282)**

C. WILD HORSES

Proper and cost-effective management of wild horses is an ongoing, elusive issue for State and Federal officials. The problem is particularly acute in Nevada which is home to the majority of the horses.

This topic has been reviewed and discussed by the Committee on Public Lands for many years. In September 1990, the members received an update on a presentation made to the committee in December 1988 on a proposal to establish a system of privately-owned wild horse habitats. This proposal appears to be a cost-effective method to manage wild horses without excluding other users of the public lands and to preserve the horses for the enjoyment of future generations.

Further information on this proposal is found in Appendix P which is the document provided to the committee on the subject.

The committee, therefore, recommends:

4. **That the Legislature require the Nevada Commission for the Preservation of Wild Horses to establish habitats for wild horses in Nevada. (BDR 45-1200)**

D. GRADUAL LAND ACQUISITION PROCESS

The gradual land acquisition process is a proposal to identify Federal lands needed now and in the future in Nevada primarily for expanding population centers to allow the State and its local governments to adequately plan for growth and development within the constraints of available resources. Background information and actions taken previously by the committee on this subject are discussed in Bulletin 89-9, Nevada Legislature's Committee On Public Lands.

The committee received the following indications of support for the proposal during this legislative interim.

- . The four members of Nevada's Congressional delegation provided letters supporting the funding of a consultant to prepare an inventory of Federal lands needed by local governments. (Copies are attached as Appendix Q.)
- . Manuel Lujan, Secretary of the Interior, sent a letter of support for the concept to the committee. (Copy is attached as Appendix R.)

- Cy Jamison, Director of the BLM, indicated his support to committee members.
- A recommendation of support was provided by the State Multiple Use Advisory Committee on Federal Lands. (Copy is attached as Appendix S.)
- The State Land Use Planning Advisory Council has shown continued interest and support.
- A resolution of support was passed by Nevada's Commission on Economic Development. (Copy is attached as Appendix T.)

During this interim, the Committee on Public Lands investigated the possibility of hiring a nationally-known consultant to prepare an inventory of Federal lands needed for expansion. Several land planning firms were asked to provide an estimate of completing such a survey. All of these estimates began at \$250,000.

The committee was concerned about the high cost of using a consultant to complete the survey, so it explored other options. The State Multiple Use Advisory Committee on Federal Lands recommended that the public lands committee direct local governments to provide the initial survey of lands desired. (A copy of the committee's recommendation is attached as Appendix U.)

Building on that suggestion, the committee discussed with representatives from county governments and Nevada's Division of State Lands the addition of a planning position to the division. This position would be responsible for working with local governments, particularly the smaller counties, to produce the initial survey and to update it as necessary. This process would provide the continuity and expertise in state government which would not be accomplished through a one-time assessment conducted by a consultant. The committee understands that such a position is included in the division's budget proposal for the upcoming biennium.

The committee, therefore, recommends:

5. **That the Legislature support and approve, through the budget process, the addition to Nevada's Division of State Lands of a planner who would assist the counties, on an ongoing basis, in identifying Federal lands needed for community expansion.**

VI. CONCLUSION

This report reflects the active participation of the Nevada Legislature's Committee on Public Lands in Federal and state issues concerning the state's public lands. The number of letters and resolutions produced by the committee speaks to its involvement and concern. The recommendations included herein address issues that the committee found to require the attention of the Nevada Legislature.

As was stated earlier in this report, the Committee on Public Lands monitors many ongoing issues. Such activity may require the committee to meet during the 1991 Legislative Session to review continuing Federal activities concerning public lands in Nevada. The committee may find it necessary to make additional recommendations as a result of any meetings held during the session.

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APPENDIX A

List Of Meetings, Issues And Actions
Of The Nevada Legislature's
Committee On Public Lands,
July 1989 through December 1990

LIST OF MEETINGS, ISSUES AND ACTIONS
OF THE
NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS
JULY 1989 THROUGH DECEMBER 1990

September 26, 1989 - Reno, Nevada

Issues discussed:

- . BLM wilderness process;
- . Wild horse roundups;
- . National Wildlife Federation lawsuit;
- . Desert tortoise classification;
- . Elko cumulative mining impact report;
- . BLM reauthorization legislation;
- . Mary's River land exchange proposal;
- . Alaska-Nevada land exchange proposal;
- . Congressional legislation concerning public lands;
- . Water language in Nevada's wilderness bill;
- . United States Forest Service road budget bill;
- . Wildlife damage mitigation;
- . Mining reclamation;
- . Special Nevada Report;
- . Military airspace and operations; and
- . The taking of private land by government without just compensation.

Actions taken:

- . Creation of a Subcommittee to Study Takings.
- . Approval of statement to be sent to Nevada's Congressional delegation and other relevant U.S. Congressmen objecting to the water language in the Nevada wilderness bill.

October 26-27, 1989 - Washington, D.C.

Issues discussed:

- . Gradual land acquisition process;
- . Proposed land exchanges;
- . Grazing fees and range management;
- . Wild horse management and the sanctuary program;
- . Wilderness;
- . Mining reclamation;
- . Riparian management policies;
- . Military airspace and the Special Nevada Report;
- . Takings;
- . National Trails System; and
- . Endangered species.

Actions taken:

- . Meetings and discussions with U.S. Senators, Representatives, congressional staff and Federal executive branch officials.

December 8, 1989 - Las Vegas, Nevada

Issues discussed:

- . Gradual land acquisition process;
- . Takings study;
- . Endangered species designation for desert tortoise;
- . Mary's River land exchange proposal;
- . Apex land transfer; and
- . Back country byways.

Actions taken:

- . Approval of a resolution to the BLM and the commissioners of Clark and Elko Counties indicating the committee's opposition to the Mary's River land exchange proposal.
- . Approval of a resolution to the Clark County Commissioners to request that the Commission oppose the Mary's River land exchange proposal and request a full environmental impact statement which analyzes the economic impacts of the proposed exchange.

February 26-27, 1990 - Laughlin, Nevada

Issues discussed:

- . Laughlin;
- . Desert tortoise;
- . Mary's River land exchange proposal;
- . Federal legislation concerning public lands; and
- . Gradual land acquisition process.

Actions taken:

- . Approval of subcommittee to meet with representatives of consulting firms to discuss inventory of lands for gradual land acquisition process.
- . Approval of resolution to Nevada's Congressional Delegation and the chairmen of appropriate Congressional public lands subcommittees to request that the U.S. Congress require the approval of all county governments directly impacted by a proposed exchange of lands within the same state for the exchange to proceed.

May 8-9, 1990 - Washington, D.C.

Issues discussed:

- . National Trails System;
- . Wild horse management;
- . Takings;
- . Riparian management;
- . Gradual land acquisition process;
- . Proposed land exchanges;
- . Grazing;
- . Endangered species;
- . Wilderness; and
- . Back country byways.

Actions taken:

- . Meetings and discussions with U.S. Senators, Representatives, Congressional staff and Federal executive branch officials.

June 25, 1990 - Elko, Nevada

Issues discussed:

- . City of Carlin land acquisition process;
- . State mining reclamation regulations;
- . Abandoned mines program;
- . Great Basin National Park;
- . Gradual land acquisition process;
- . Wild horses;
- . Riparian areas;
- . Soldier Meadows land exchange proposal;
- . Mary's River land exchange proposal;
- . Thousand Springs Power Project;
- . Wilderness;
- . Livestock grazing;
- . Desert tortoise; and
- . White Pine Power Project.

Actions taken:

- . Approval of letters from committee to Nevada's Congressional Delegation and the BLM supporting Carlin's position in the land acquisition process.
- . Approval of letters from committee to BLM recommending Deloyd Satterthwaite and Molly Knudtson for membership on the new Wild Horse and Burro Advisory Board.

September 7, 1990 - Fallon, Nevada

Issues discussed:

- . Ordnance removal from public lands;
- . Mary's River land exchange proposal;
- . Carlin land acquisition proposal;
- . New land exchange regulations;
- . Bonding requirements for mining reclamation;
- . Wild horse gathers;
- . Special Nevada Report;
- . Grazing allotment evaluations in White Pine Grazing District; and
- . Gradual land acquisition process.

Actions taken:

- Approval of a letter from the committee to the BLM requesting a copy of the original 1971 wild horse area map.
- Approval of a letter from the committee to BLM requesting the extension of the comment period on the draft environmental assessment on the Mary's River land exchange proposal.
- Approval of a letter from the committee to BLM recommending the adoption of a facilitator committee to consider issues in the White Pine Grazing District.
- Approval of a letter from the committee to (then) Acting Governor Robert J. Miller supporting the requested additional position to the staff of the Division of State Lands to prepare the inventory of lands needed for the gradual land acquisition process.
- Approval of a letter from the committee to BLM citing the lack of sufficient notice to permittees prior to the visitation of monitoring sites on allotments.
- Subsequent to the meeting, a letter was sent from the committee to BLM outlining the committee's concerns with the draft environmental assessment on the Mary's River land exchange proposal.

December 7, 1990 - Reno, Nevada

Issues discussed:

- Lahontan cutthroat trout;
- Soldier Meadows land exchange proposal;
- Mary's River land exchange proposal;
- Carlin land acquisition proposal;
- Grazing fees;
- New BLM State Director;
- Desert tortoise;
- Recently approved funding for parks and wildlife;
- Takings study.

Actions taken:

- Requests for bill draft requests on takings, Lahontan cutthroat trout, Cui-ui fish and wild horses to be included in final report.
- Approval of statement to be included in final report supporting, through budget process, the addition to Nevada's Division of State Lands of a planner who would assist the counties, on an ongoing basis, in identifying Federal lands needed for community expansion.

APPENDIX B

Background Paper 91-1
Takings

BACKGROUND PAPER 91-1

TAKINGS

Dana R. Bennett, Senior Research Analyst
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Takings
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TAKINGS

I. INTRODUCTION

The word "takings" is shorthand for the legal issues originating from a clause in the Fifth Amendment of the *United States Constitution* that says:

Nor shall private property be taken for public use, without just compensation.

Article I, Section 8, of the *Nevada Constitution* contains similar language. Copies of these clauses are attached as Appendix A. However, the interpretation of these clauses has been debated in the courts for many years, and no specific definition has yet been accepted.

A turning point in the debate occurred in 1987 when the United States Supreme Court decided three important takings cases in favor of private property interests. These decisions prompted President Ronald W. Reagan to sign Executive Order (E.O.) No. 12630, titled Governmental Actions and Interference with Constitutionally Protected Property Rights, on March 15, 1988, a copy of which is attached as Appendix B. The order requires Federal agencies to consider whether their regulatory, budgetary, or legislative actions have fiscal implications under the *United States Constitution's* just compensation clause.

As a result of the activity on the Federal level, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) determined that the issue merited investigation and formed a Subcommittee to Study Takings. This paper provides background information on the issue of takings and on the activities of the subcommittee.

II. FEDERAL ACTIVITY

The Fifth Amendment to the *U.S. Constitution* provides that private property not be taken for public use without just compensation. This clause is a limitation on the power of eminent domain which is the power of government to acquire private property for legitimate governmental functions. The protection extends to all types of property and is applied whenever the government physically invades or occupies property or takes title to property. Not until 1922, however, in Pennsylvania Coal Company v. Mahon, 260 U.S. 383 (1922),

did the U.S. Supreme Court clarify that governmental regulations could cause a compensable taking of property.

Most of the discussion about takings has occurred in the court system. Historically, the takings clause has been interpreted and clarified primarily by the U.S. Supreme Court.

A. Supreme Court Cases

Until the 1987 term of the U.S. Supreme Court, decisions from the Court appeared to be contradictory and did not assist private property owners in understanding their rights under the Fifth Amendment. Three major cases in 1987 clarified the interpretation of the clause. These cases also increased the risk to government of being required to pay a large award if poorly tailored regulations result in a taking of property.

1. Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 107 S.Ct. 1232 (1987)

This case reaffirmed the general rules developed in earlier cases for determining whether or not a taking has occurred. First, the Court will review the regulations to determine if they are rationally related to a legitimate public purpose. If a legislature states a public purpose for the regulations, the Court will defer to the legislature's determination.

The Court will also look at the economic impact of the government action in determining whether a taking has occurred. It will consider the following factors in making this determination:

- . The remainder of any viable economic use;
- . The interference with reasonable investment-backed expectations; and
- . The character of the government action.

2. First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378 (1987)

In this case, the court held that invalidation of the offending regulation is not an adequate remedy for a regulatory taking of property. Only an award of money damages will suffice when a temporary taking is found to have occurred.

The Supreme Court was asked to decide the remedy for regulations that deny the owner all use of his or her property, not whether a taking had occurred in this particular situation. Consequently, the Court indicated that invalidation of a regulation denying a property owner all use of his or her property is an inadequate constitutional remedy. While an aggrieved landowner is not entitled to receive the full fair market value of the property as the measure of damages, compensation must be paid for the value of the land's use for the period that the regulation was in place.

Importantly, the Court limited its holding to the facts presented and stated that:

Quite different questions would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like * * *

3. Nollan v. California Coastal Commission, 438 U.S. 825, 107 S.Ct. 3141 (1987)

Of the three cases decided in 1987, Nollan appears to be the most significant. The case established new standards to be applied in regulatory takings cases.

The Court declared that to build on one's property is a right, not a governmental benefit to be granted or withheld with whatever conditions the government wishes to impose. It required a connection between the condition on use and the burden that use imposes on the public (the "nexus"). It also required that any condition imposed to alleviate that burden actually substantially advance that purpose. The court indicated that the owner must be allowed economically viable use of his or her property.

The case also raised the question of proportionality; that is, the degree to which government can require one person, or a small number of persons, to bear the burden of solving a problem caused by many. In other words, even if a property owner's proposed use of property contributes to a specific problem, he or she cannot be required to bear a disproportionately greater share of the burden of providing the solution.

B. Federal Executive Order No. 12630

After the decisions in these cases were announced, President Reagan issued E.O. 12630 upon the recommendation of the Vice President's Task Force on Regulatory Relief of the Domestic Policy Council, headed by then-Vice President George Bush.

The order directs Federal agencies to produce a "Takings Impact Assessment" (TIA) before taking any action or implementing any policy that might have takings implications. The E.O. also requires the U.S. Attorney General to produce "Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" (a copy of these guidelines is available in the Research Division of the Legislative Counsel Bureau) for agencies to follow in evaluating actions affected by the E.O. The Attorney General is further directed to assist each agency in producing supplemental guidelines that are specific to the agency.

Although the E.O. does not stop Federal agencies from taking private property for a public benefit, the order requires agency decisionmakers to consider the implications of their actions on private property rights. Then, if the Federal agency determines that it remains in society's best interest to take private property, the owner must be compensated for his or her losses under the Fifth and Fourteenth Amendments to the *U.S. Constitution*.

1. Scope of the E.O.

The scope of the E.O. is quite broad. It affects all:

- . Regulatory activities;
- . Legislative proposals from the executive branch;
- . Executive policies; and
- . Permitting processes.

The E.O. applies to real property, personal property such as licenses and permits which are pertinent to real property contracts with the Federal Government, and intellectual property.

It does not impact the actions of independent agencies which operate as quasi-regulatory agencies outside of the executive department. It also does not affect any regulations in existence or proposed prior to July 1, 1988.

2. Requirements of the E.O. and Guidelines

The order and guidelines require governmental decisionmakers to:

- Consider the potential impact of proposed governmental actions on the use or value of private property;
- Evaluate those proposed actions for their potential to cause a taking; and
- Tailor those actions in a manner least intrusive upon private property interests to the extent permitted by law.

Budgetary tracking measures are also included to ensure that the potential costs of regulatory action are anticipated.

3. Objectives of the E.O. and Guidelines

The order and guidelines have two major goals. The first and principal goal is a good government objective: to ensure fiscally sound and cost-effective government. The second objective is to increase the sensitivity of government regulators to the civil rights that individuals have in their property.

However, the E.O. and its guidelines do not:

- Create a private right of action to sue the government;
or
- Demand a particular result other than that the agency involved achieve a legitimate objective with the least impact on property owners.

Inherent in the order and guidelines is a recognition that government has the power to take property to meet important public goals. At the same time, the order and guidelines recognize the obligation to do so fairly and honestly and to minimize the cost to taxpayers.

4. Implementation of the E.O. and Guidelines

The writing of supplemental guidelines has been a slow process. As of March 1990, four Federal agencies had completed their guidelines, four were in progress and 14 were remaining. However, indications are that the E.O. is accomplishing its purpose of publicizing the issue of maintaining the balance between public will and private rights, which is the basic concept of the takings issue.

The E.O. is applicable only as an internal administrative branch management tool, and its implementation has not been costly to taxpayers. The obligation to prepare a TIA does not create an unreasonable financial burden on the agencies. The process is streamlined to be cost effective and may realize a savings over time. The TIAs are short--normally 1 1/2 to 2 pages-- because of the concern that the obligation to produce such a document would create another level of governmental bureaucracy.

III. ACTIONS BY OTHER STATES

After the signing of the Federal Executive Order, other states became interested in the issue. In late 1989, the governors of California and Colorado issued similar executive orders requiring agencies in their states to consider takings issues. Copies of these state E.O.s are attached as Appendix C.

Legislation was also considered by several states in 1989. Bills concerning takings were introduced in Arizona, Oregon, Vermont, and Washington. Washington had the most successful bill which passed the Legislature with a majority of the votes, but was vetoed by the Governor. However, the measure's supporters are currently circulating an initiative petition to reintroduce the bill during the Legislature's 1991 session. Copies of the vetoed Washington bill and the language of the initiative are attached as Appendix D. The bills in the other states failed to pass in the legislatures.

IV. THE SUBCOMMITTEE TO STUDY TAKINGS

The Subcommittee to Study Takings was formed by the Nevada Legislature's Committee on Public Lands in September 1989 to evaluate the need for possible legislation requiring Nevada agencies to consider takings implications whenever they are involved in actions affecting private property rights.

A. Composition And Funding Of The Subcommittee

The subcommittee consisted of Senator Dean A. Rhoads, Chairman; Assemblyman Matthew Q. Callister; Assemblyman John W. Marvel; and Clark County Commissioner Karen W. Hayes. Senator Virgil M. Getto and Assemblyman James A. Gibbons were also involved in the subcommittee's discussions.

The activities of the subcommittee were funded by contributions from several groups; the amount raised

exceeded \$12,000. A copy of the list of sponsors is attached as Appendix E.

B. Activities Of The Takings Subcommittee

The subcommittee conducted a survey of Nevada agencies, attended educational forums and held five public meetings.

1. Survey

In November 1989, a letter was sent to certain state agencies requesting information on the agencies' assessments of their actions which may result in the taking of private property without just compensation. Copies of this letter and a list of the agencies to whom it was sent are attached as Appendix F.

Of the 40 agencies questioned, 33 responded. The major findings of the survey are summarized below:

- Over two-thirds of the responding agencies indicated that they do not take actions which may result in a "taking."
- Nine agencies indicated that they may take actions which may result in a "taking." These agencies indicated that they have formal or informal guidelines to assess whether certain actions involve taking private property without just compensation.

A copy of the memorandum summarizing these responses is attached as Appendix G.

2. Educational Forums

In October 1990, members of the Public Lands Committee and staff met in Washington, D.C., with James Brookshire for an initial discussion of E.O. 12630 and the subsequent guidelines. Mr. Brookshire, Deputy Chief for General Litigation in the Lands and Natural Resources Division of the U.S. Department of Justice, is the Federal official responsible for implementing the E.O. 12630. His office also assists agencies with the writing of their supplemental guidelines.

In January 1990, staff assigned to the subcommittee attended a Lincoln Institute seminar in Orlando, Florida, titled "Land Use and the Constitution: The New Realities." The seminar was a workshop on takings issues. The speakers were involved in arguing major takings cases before the U.S. Supreme Court and are active land use policy attorneys on both private and public sides.

In March 1990, in Reno, Nevada, the chairman and staff of the subcommittee met again with Mr. Brookshire. He provided information on the implementation of the E.O. and the writing of supplemental guidelines.

In May 1990, members of the subcommittee and the Public Lands Committee and staff met in Washington, D.C., with Marty Suuberg, Associate Solicitor in the U.S. Department of Interior. Mr. Suuberg provided information on the implementation of the E.O. by the Department of Interior.

In June 1990, members of the subcommittee and staff attended the Bicentennial Takings Clause Conference at Montpelier, Virginia. The conference provided historical background on and developments in the takings issue area.

3. Meetings of the Subcommittee

The subcommittee met five times in 1990: once each in Carson City and Las Vegas, and three times in Reno. Following are highlights of these meetings:

- . An extensive explanation of takings cases and issues was provided by two attorneys who worked in the U.S. Department of Justice and assisted in the drafting of the Federal E.O.
- . Support for the study was expressed by Nevada's Office of the Attorney General and several representatives of private industry.
- . Local governments and state agencies provided their perspectives on the issue.
- . Marlyta Deck, lobbyist for the Washington Cattlemen's Association, reported on that state's legislation concerning takings.
- . A considerable amount of discussion was devoted to the contents and merits of a possible bill draft request (BDR).

The subcommittee took final action on the BDR at its meeting on December 7, 1990, in preparation for its report to the full Committee on Public Lands later in the day on December 7, 1990.

V. CONCLUDING REMARKS

As was noted earlier in the report, the committee received extensive testimony on the proposed BDR. Supporters of the BDR stressed the merits of the Federal Executive Order and the need to protect Nevada from paying large awards resulting from takings decisions. Opponents indicated that the bill is unnecessary. They noted that the State has not yet been subject to large adverse takings decisions and that state agencies have indicated that they are already sensitive to the issue.

At the final meeting of the Subcommittee to Study Takings, the subcommittee voted to recommend that the Committee on Public Lands request a bill draft on takings. Following that recommendation, the committee voted to sponsor BDR No. 18-260. A copy of the BDR is attached as Appendix H.

This BDR requires the Executive Branch of state government to prepare an assessment of takings implications on private property for certain governmental actions. The bill is modeled after E.O. 12630. Both documents rely on and incorporate current takings jurisprudence.

The subcommittee expects that the passage of this bill would provide an internal management tool for Nevada agencies and would sensitize them to the issue of balancing public mandates with private property rights. It anticipates that the implementation of this bill would be inexpensive to the agencies, yet valuable to private property owners in Nevada.

VI. SELECTED REFERENCES

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APPENDIX A

Amendment V of the *Constitution*
of the *United States* and
Article I, Section 8, of the
Nevada Constitution

AMENDMENT IV**[SEARCHES AND SEIZURES]**

Unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Proposed in 1789; adopted in 1791.]

AMENDMENT V**[RIGHTS OF PERSONS]**

Prosecution by presentment, indictment; double jeopardy; self-incrimination; due process; property taken for public use. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Proposed in 1789; adopted in 1791.]

AMENDMENT VI**[RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS]**

Rights of accused in criminal prosecutions. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[Proposed in 1789; adopted in 1791.]

AMENDMENT VII**[CIVIL TRIALS]**

Trial by jury in civil cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be

eral Union, or forcibly resist the Execution of its laws, the Federal Government may, by warrant of the Constitution, employ armed force in compelling obedience to its Authority.

Sec: 3. Trial by jury; waiver in civil cases. The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; and in civil cases, if three fourths of the Jurors agree upon a verdict it shall stand and have the same force and effect as a verdict by the whole Jury, Provided, the Legislature by a law passed by a two thirds vote of all the members elected to each branch thereof may require a unanimous verdict notwithstanding this Provision.

Sec: 4. Liberty of conscience. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this State, and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief, but the liberty of conscience [conscience] hereby secured, shall not be so construed, as to excuse acts of licentiousness or justify practices inconsistent with the peace, or safety of this State.

Sec: 5. Suspension of habeas corpus. The privilege of the writ of Habeas Corpus, shall not be suspended unless when in cases of rebellion or invasion the public safety may require its suspension.

Sec: 6. Excessive bail and fines; cruel or unusual punishments; detention of witnesses. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Sec. 7. Bail; exception for capital offenses and certain murders. All persons shall be bailable by sufficient sureties; unless for Capital Offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great.

[Amended in 1980. Proposed and passed by the 1977 legislature; agreed to and passed by the 1979 legislature; and approved and ratified by the people at the 1980 general election. See: Statutes of Nevada 1977, p. 1697; Statutes of Nevada 1979, p. 1941.]

Section 8. Rights of accused in criminal prosecutions; jeopardy; due process of law; eminent domain. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or attorney-general of the state, and in any trial,

(1989)

in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

[Amended in 1912. Proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 346; Statutes of Nevada 1911, p. 454.]

Sec: 9. Liberty of speech and the press. Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

Sec: 10. Right to assemble and to petition. The people shall have the right freely to assemble together to consult for the common good, to instruct their representatives and to petition the Legislature for redress of Grievances.

Sec. 11. Right to keep and bear arms; civil power supreme.

1. Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes.

2. The military shall be subordinate to the civil power; No standing army shall be maintained by this State in time of peace, and in time of War, no appropriation for a standing army shall be for a longer time than two years.

[Amended in 1982. Proposed and passed by the 1979 legislature; agreed to and passed by the 1981 legislature; and approved and ratified by the people at the 1982 general election. See: Statutes of Nevada 1979, p. 1986; Statutes of Nevada 1981, p. 2083.]

Sec: 12. Quartering soldier in private house. No soldier shall, in time of Peace be quartered in any house without the consent of the owner, nor in time of War, except in the manner to be prescribed by law.

Sec: 13. Representation apportioned according to population. Representation shall be apportioned according to population.

Sec: 14. Exemption of property from execution; imprisonment for debt. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property

(1989)

APPENDIX B

Executive Order 12630, Governmental Actions
and Interference with Constitutionally
Protected Property Rights,
March 15, 1988

EO 12628

Title 3—The President

Sec. 2. This Order shall be effective immediately.

RONALD REAGAN

THE WHITE HOUSE,

March 8, 1988.

Executive Order 12629 of March 9, 1988

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, and 12587, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of U.S. non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1989. Executive Order No. 12587 shall be superseded on the effective date of this Executive Order.

RONALD REAGAN

THE WHITE HOUSE,

March 9, 1988.

Executive Order 12630 of March 15, 1988

Governmental Actions and Interference With Constitutionally Protected Property Rights

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

Section 1. Purpose. (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection

of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

Sec. 2. Definitions. For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

- (1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;
- (2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;
- (3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;
- (4) Studies or similar efforts or planning activities;
- (5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such commu-

nications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority:

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

Sec. 3. General Principles. In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use

or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

Sec. 4. Department and Agency Action. In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

- (1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;
- (2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;
- (3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and
- (4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

Sec. 5. Executive Department and Agency Implementation. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of that department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress, stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

Sec. 6. Judicial Review. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its officers, or any person.

RONALD REAGAN

THE WHITE HOUSE,

March 15, 1988.

Executive Order 12631 of March 18, 1988

Working Group on Financial Markets

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

Section 1. Establishment. (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

- (1) the Secretary of the Treasury, or his designee;
- (2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;
- (3) the Chairman of the Securities and Exchange Commission, or his designee; and
- (4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

Sec. 2. Purposes and Functions. (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

- (1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and
- (2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

APPENDIX C

Executive Order D-78-79,
State of California, and the
Executive Order regarding
Protected Property Rights,
State of Colorado

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA



EXECUTIVE ORDER D-78-89

WHEREAS, the Fifth Amendment to the United States Constitution, applicable to the State of California by the Fourteenth Amendment, and Article I, Section 19, of the California Constitution, guarantee that private property shall not be taken for public use without just compensation; and

WHEREAS, recent United States Supreme Court decisions in Nolan v. California Coastal Commission, 483 U.S. 825 and First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, have affirmed that state governmental actions, including regulations, that do not formally invoke the condemnation power may result in a taking of private property, even temporarily, for which just compensation is required; and

WHEREAS, responsible fiscal management and fundamental principles of good government require that government decision makers evaluate carefully the effect of their regulatory actions on constitutionally protected private property rights; and

WHEREAS, the executive branch of the State of California is comprised of numerous agencies, departments, boards and commissions whose decisions may potentially effect private property interests; and

WHEREAS, state government should be a leader in demonstrating sensitive consideration of protected private property rights and in avoiding unintended and undue financial burdens on the state budget, while state agencies fulfill their statutory duties;

NOW, THEREFORE, I, George Deukmejian, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. All agencies, departments, boards, and commissions shall:
 - a. Consistent with fulfilling their statutory duties, evaluate their proposed regulatory actions in light of guidance provided in the aforementioned Supreme Court decisions and other relevant judicial authority in order to ensure the appropriate protection of private property rights consistent with the provisions of the United States and California Constitutions.
 - b. Assure that their actions are properly supported by the administrative record, by statutory and other legal authority, and fully comply with the guidance set forth by the United States Supreme Court, including consideration of the following principles:
 - (1) Governmental actions resulting in a physical invasion, or physical damage to private property may constitute a taking.

(ii) Governmental actions which interfere with the use and enjoyment of, or access to and from private property may constitute a taking.

(iii) For governmental actions which amount to a taking the actions result in a "temporary" taking.

2. The legal staff of the Department of General Services may be requested to provide guidance and technical assistance to any departments seeking to evaluate the potential private property impacts of agency proposals.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this *20th* day of December 1989.

George Deukmejian
Governor of California

ATTEST:

Marth Jong Eu
Secretary of State



STATE OF COLORADO

EXECUTIVE CHAMBERS
 130 State Capitol
 Denver, Colorado 80203-1792
 Phone (303) 866-2471



Roy Romer
 Governor

EXECUTIVE ORDER

REGARDING THE PROTECTION OF PRIVATE PROPERTY RIGHTS

WHEREAS, the ability of Americans to own private property, and to be secure in that ownership, is one of our most basic rights; and

WHEREAS, private property is central to our economic success and an underpinning of our democratic freedoms; and

WHEREAS, state government must have the highest respect for private property, and government agencies and officials are obligated to ensure that respect for private property is reflected in their decisions and actions; and

WHEREAS, both the U.S and Colorado constitutions guarantee due process and just compensation when government takes actions affecting private property which a court determines is a taking of property; and

WHEREAS, the Colorado General Assembly passed House Joint Resolution 1011 calling for an executive order reaffirming the importance of protection of private property rights.

NOW, THEREFORE, I Roy Romer, Governor of Colorado, by virtue of the authority vested in me under the laws of Colorado, DO HEREBY ORDER THAT:

1. It is the declared policy of state government that government actions shall not unduly infringe private property rights.
2. Each executive agency of state government, before condemning private property for a public purpose, shall undertake appropriate review to ensure that the condemnation is essential to advance the particular public purpose involved.
3. Each executive agency shall undertake to eliminate undue or inadvertent burdens on the exercise of private property rights resulting from government actions taken for the purpose of protecting public health and safety.

00108 89

4. Nothing in this executive order is intended to abrogate or conflict with judicial decisions defining what constitutes a taking for purposes of the constitutional just compensation requirement.



Given under my hand and the
Executive Seal of the State
of Colorado this ~~17th~~ day
of November, 1989.

A handwritten signature in cursive script, which appears to read "Roy Romer". The signature is written in black ink and is positioned above the printed name and title.

Roy Romer
Governor

APPENDIX D

Senate Bill No. 6253,
State of Washington, March 2, 1990, and
Washington Initiative Measure No. 123

IN THE LEGISLATURE
of the
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT

SENATE BILL NO. 6253

CHAPTER NO. _____

Passed the Senate February 7. 19 90

Yeas 47 Nays 0

Passed the House March 2. 19 90

As Amended

Yeas 92 Nays 5

3/6/90 - Senate refused to concur in the House amendments and asked the House to recede

3/7/90 - House refused to recede, insists on its position and asked the Senate to concur

3/8/90 - Senate concurred in the House amendments and passed the bill as amended by the House

YEAS 45 NAYS 0

CERTIFICATE

I, Gordon A. Golob, Secretary of the Senate of the State of Washington do hereby certify that the attached is enrolled Senate Bill No. 6253 as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary of the Senate

SENATE BILL NO. 6253
AS AMENDED BY THE HOUSE

State of Washington 51st Legislature 1990 Regular Session
by Senators Patterson, McCaslin, Matson, Hayner, Amondson, Rasmussen
and Barr

Read first time 1/9/90 and referred to Committee on Governmental
Operations.

1 AN ACT Relating to the regulatory taking of private property by
2 state government; and adding a new chapter to Title 8 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. The purpose of this chapter is to
5 establish an orderly process that better enables state decision
6 makers to evaluate whether proposed state regulatory or
7 administrative actions may result in a taking of property that may
8 require compensation. It is not the purpose of this chapter to
9 expand or reduce the protection of private property owners from
10 regulatory takings as provided by the state and federal
11 Constitutions.

12 NEW SECTION. Sec. 2. Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.

15 (1) "Policies that have taking implications" means state
16 regulations, proposed state regulations, or proposed state
17 legislation, that, if implemented or enacted, could effect a taking.
18 "Policies that have taking implications" does not include:

19 (a) Actions in which the power of eminent domain is formally
20 exercised.

21 (b) Actions abolishing regulations, discontinuing governmental
22 programs, or modifying regulations in a manner that lessens
23 interference with the use of private property.

24 (c) Law enforcement actions involving seizure, for violations of
25 law, of property for forfeiture, or as evidence in criminal
26 proceedings.

27 (2) "Private property" means all property protected by Amendments
28 V and XIV of the Constitution of the United States or Article I.

SB 6253

Sec. 2

1 section 16 of the state Constitution.

2 (3) "Taking" means an uncompensated damaging or deprivation of
3 private property in violation of Amendment V or XIV of the
4 Constitution of the United States or Article I, section 16 of the
5 state Constitution.

6 (4) "State agency" means any state board, commission, department,
7 or officer except legislative and judicial branches.

8 NEW SECTION. Sec. 3. The attorney general shall develop a
9 checklist and guidelines for the evaluation of risk and avoidance of
10 unanticipated takings pursuant to this chapter to assist departments
11 and agencies in the identification and evaluation of governmental
12 policies that have taking implications.

13 The guidelines and checklist are to be completed by July 1, 1990.
14 The attorney general shall review and update the checklist and
15 guidelines at least on an annual basis to maintain consistency with
16 court rulings.

17 NEW SECTION. Sec. 4. (1) Commencing October 1, 1990, each state
18 agency or department proposing policies that have taking implications
19 shall designate a person or persons in the agency who will be
20 responsible for ensuring compliance with the provisions of this
21 chapter. Each agency policy that has a taking implication shall
22 submit the proposed agency action to the designated person for
23 review.

24 (2) Using the checklist and guidelines for the evaluation of risk
25 and avoidance of unanticipated takings prepared pursuant to section 3
26 of this act, the designee shall determine the need for preparing a
27 "taking implications assessment." The "taking implications
28 assessment" shall include an analysis of at least the following
29 elements:

30 (a) The likelihood that the proposed action could result in a
31 taking, including a description of how the taking affects private
32 property rights.

33 (b) Alternatives to the proposed action that would fulfill the
34 government's legal obligation but that would reduce the impact on the
35 private property owner and thus the taking risk.

SB 6253

Sec.

1 (c) An estimate of a financial cost to the government for
2 compensation and source of payment within the agency's budget.

3 (3) Prior to implementing the policies that have taking
4 implications, a copy of the "taking implications assessment" shall be
5 submitted to the agency director and to the office of financial
6 management.

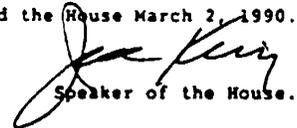
7 (4) Nothing in this act grants a private party the right to seek
8 judicial relief requiring compliance with the provisions of this act.

9 NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall
10 constitute a new chapter in Title 8 RCW.

Passed the Senate March 8, 1990.


President of the Senate.

Passed the House March 2, 1990.


Speaker of the House.

SB 625

INITIATIVE MEASURE NO. 123

AN ACT Relating to regulatory takings and other unconstitutional interferences with the use of private property by governmental bodies; and adding a new chapter to Title 64 RCW.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. Article I, sections 3 and 16 of the Constitution of the state of Washington and Amendments V and XIV of the Constitution of the United States provide that no person shall be deprived of property without due process of law and no private property shall be taken or damaged for public use without just compensation having first been made. Recent decisions by the United States supreme court and the supreme court of the state of Washington have established the criteria and tests to be used for determining when a taking of private property or violation of due process has occurred.

These criteria should be carefully evaluated by governmental bodies whose actions affect private property so as to assure proper protection of constitutionally guaranteed property rights and reduce the burdens and uncertainty forced upon citizens, local governments, and the state by lengthy and costly litigation to settle private property issues through the judicial process.

The purpose of this chapter is to establish an orderly, consistent process that better enables governmental bodies to evaluate whether proposed regulatory or administrative actions may result in a taking of private property or violation of due process. It is not the purpose of this chapter to expand or reduce the scope of private property protections provided in the state and federal Constitutions.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Private property" means all property protected by Amendments V and XIV of the Constitution of the United States or Article I, sections 3 and 16 of the Constitution of the state of Washington.

(2) "Government agency" means the state of Washington and any officer, agency, board, commission, department, or similar body of the executive branch of state government; and any of the political subdivisions of the state including any cities, towns, counties, or other public bodies exercising regulatory authority or control over the use of private property in the state.

(3) "Taking" means an uncompensated damaging or deprivation of private property in violation of the state or federal Constitution.

(4) "Policies that have constitutional implications" means current or proposed regulations, ordinances, or resolutions; proposed state legislation; or other government agency policy statements that, if implemented or enacted, would effect a taking or deprive a person of property without due process or law, such as policies, regulations, orders, or agreements that propose or implement licensing, permitting, or condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have constitutional implications" does not include actions in which the power of eminent domain is formally exercised, or law enforcement actions involving seizure of property for forfeiture or as evidence in criminal proceedings.

NEW SECTION. Sec. 3. The attorney general shall develop a checklist and guidelines by October 1, 1991, to assist government agencies in the identification and evaluation of policies that have constitutional implications including policies that may result in a taking. The attorney general shall review and update the checklist and guidelines at least on an annual basis to maintain consistency with changes in the law.

NEW SECTION. Sec. 4. Commencing January 1, 1992, each government agency proposing or implementing policies that have constitutional implications shall designate a person or persons in the agency who will be responsible for ensuring compliance with the provisions of this chapter. Each agency policy that has constitutional implications shall be submitted to the designated person for review.

Using the checklist and guidelines prepared pursuant to section 3 of this act, the designated person shall prepare a constitutional impact assessment which includes an analysis of at least the following elements:

(1) A description of how the policy affects private property including the likelihood that the policy could result in a taking or deprive a person of property without due process of law.

(2) Alternatives to the policy that would fulfill the government agency's legal obligations but that would reduce the impact on the private property owner and the risk of a taking.

(3) An estimate of the financial cost to the government agency for compensation and a source of payment within the agency's budget.

Prior to implementing policies that have constitutional implications, a copy of the constitutional impact assessment shall be submitted to the agency director and appropriate financial management authority.

Any award made to an owner of private property from a government agency for a taking or other unconstitutional interference with the use of private property, including any award of reasonable costs and attorneys' fees, shall come from the agency's existing budget unless the agency had previously disclosed an estimate of such costs to the appropriate financial management authority and funds were included in the budget for that purpose.

NEW SECTION. Sec. 5. Owners of a property interest, who successfully establish that a policy that has constitutional implications is an unconstitutional taking or violation of due process, shall be awarded reasonable costs and attorneys' fees incurred in establishing their claim. The remedies provided by this chapter are in addition to any other remedies provided by law.

NEW SECTION. Sec. 6. The effect of policies that have constitutional implications on the fair market value of affected property shall be reflected in the assessed valuation of that property for taxes, levies, and similar purposes.

NEW SECTION. Sec. 7. This chapter may be referred to as the property rights protection act.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act shall constitute a new chapter in Title 64 RCW.

APPENDIX E

Contributors to the
Takings Study

Contributors to the Takings Study

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APPENDIX F

Letter to Nevada Agency Heads
from Committee on Public Lands,
dated November 20, 1989

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

November 20, 1989

<name>
<title>
<agency>
<address>
<city>, <state> <zip>

Dear <dear>:

On March 15, 1988, President Ronald Reagan signed Executive Order No. 12630. This Executive Order summarized inverse condemnation "takings law" under the Fifth Amendment to the United States Constitution as the law existed on that date. As a result of the U.S. Supreme Court's decision in two Fifth Amendment takings cases, Nollan v. California Coastal Commission and First Evangelical Lutheran Church v. City of Los Angeles, regulatory takings were found to exist in more broadly expanded factual situations.

On September 26, 1989, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) formed a subcommittee to undertake a takings study as proposed in Senate Concurrent Resolution No. 57 which the 1989 Nevada Legislature did not adopt. Copies of S.C.R. 57 and Executive Order No. 12630 are enclosed.

The Committee finds the issue to be of prime importance and requests your assistance in determining compliance with the requirements of Article I, Section 8 of the Constitution of Nevada and the Fifth Amendment as applied to the states through the Fourteenth Amendment of the U.S. Constitution.

Therefore, please respond in writing to the following questions on or before December 15, 1989:

1. Does your department/agency assess whether its actions involve the taking of private property without just compensation? Actions in this context mean any proposed rules

or regulations, proposals for legislative action, communications to other departments and state governments that recommend governmental actions, proposed litigation, issuance or denial of permits or licenses and general interactions with the public.

2. If your agency presently assesses whether its actions involve the taking of private property without just compensation, please indicate the method of assessment used and whether specific guidance to the field is provided on how to conduct the assessment.
3. If you do not now assess whether your actions involve the taking of private property without just compensation, indicate the reasons why not.
4. If you do not now assess whether your actions involve the taking of private property without just compensation, would you recommend that such an assessment be made and, if so, how would you implement that recommendation?
5. Are there any alternatives to a legislative requirement that would compel you to assess the implications of your actions with regard to the taking of private property?
6. Please list actions and programs within your agency that may be affected by the takings issue.
7. Please provide the name of a contact person in your agency with whom the subcommittee can communicate on this takings study.

Please send your responses to:

Nevada Legislature's Committee on Public Lands
Subcommittee to Study Takings
Attn: Dana R. Bennett, Research Division
Legislative Building
Carson City, Nevada 89710

Thank you very much for your cooperation in this endeavor.

Very truly yours,

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

DAR/llp:Land,L1-1.2
Encs.

cc: C. Joseph Guild, III
of Guild & Hagen, Ltd.

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Director
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Waters Bldg.
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Mark Twain
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Brian Lahren, Ph.D.
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Office of the Nev. Commissioner
for Veterans Affairs
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Buildings & Grounds Division
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J. Scott Miller
Administrator, Department of
Museums & History
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William A. Molini
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Nevada Gaming Commission
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State Dept. of Education
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State Forester-Firewarden
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and State Land Registrar
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Executive Director
Tahoe Regional Planning Agency
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Zephyr Cove, NV 89448-1038

APPENDIX G

Memorandum to Subcommittee to Study Takings
from Dana R. Bennett, Senior Research Analyst
dated February 8, 1990

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
Steven J. Watson, *Acting Director, Secretary*

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

STEVEN J. WATSON, *Acting Director*
(702) 687-6800

JOHN R. CROSSLEY, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

February 8, 1990

M E M O R A N D U M

TO: Chairman and Members, Subcommittee to Study Takings
Nevada Legislature's Committee on Public Lands
(Nevada Revised Statutes 218.536, et seq.)

FROM: Dana R. Bennett, Senior Research Analyst

SUBJECT: Responses from State Agencies on Takings Issue

This memorandum summarizes the responses received from certain state agencies on the takings issue.

On November 20, 1989, the Committee on Public Lands sent a letter to certain state agencies requesting information on the agencies' assessments of their actions which may result in the taking of private property without just compensation. A copy of the letter and a list of the agencies to whom the letter was sent is attached.

Of the 40 agencies questioned, 33 responded. Only seven agencies have not answered the letter. Copies of the letters received are attached. The major findings of the survey are summarized below:

- Over two-thirds of the responding agencies indicated that they do not take actions which may result in a "taking."
- The following nine agencies indicated that they may take actions which may result in a "taking":

Department of the Military
Department of Transportation
Department of Minerals
Department of Industrial Relations
Department of Wildlife

Division of Financial Institutions, Department of Commerce
State Fire Marshal Division, Department of Commerce
Department of Conservation and Natural Resources
Tahoe Regional Planning Agency

- All nine organizations indicated that they have formal or informal guidelines to assess whether certain actions involve taking private property without just compensation.

Following are the suggestions provided in some of the letters for methods of compelling state agencies to assess the implications of agency actions with regard to the taking of private property without just compensation:

- Issuance of an order from the Governor's office to the various executive agencies.
- Adoption of formal policy by the commission or board governing an agency.
- Legislatively require the prompt review by hearing of an agency's action to allow a person an opportunity to show that an agency's action was based upon legal or factual error (including constitutional questions of taking) prior to the final action by the agency which results in the actual taking.

No agency supported the passage of a legislative requirement for state agencies to assess takings implications. In fact, some respondents suggested that case law adequately protects citizens' rights in this issue and that state legislative action would be redundant.

DRB/gj: Public-T,M-2
Enclosure

APPENDIX H

Bill Draft Request 18-260

SUMMARY--Requires executive branch of state government to prepare assessment of takings implications on private property for certain governmental actions. (BDR 18-260)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the state executive department; requiring the departments of the executive branch of state government to prepare an assessment of the takings implications on private property for certain governmental actions; and providing other matters properly relating thereto.

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

Section 1. Title 18 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act, have the meanings ascribed to them in those sections.

Sec. 3. "Department" means an agency, bureau, board, commission, division, officer or employee of the executive branch of state government. The term includes, without limitation, the Nevada Tahoe regional planning agency.

Sec. 4. "Governmental action" means:

1. A regulation proposed by a department.
2. Legislation proposed by a department.
3. Comments of a department on a proposed state or federal regulation or proposed legislation.

4. The application of a state regulation or legislation to private property, which may cause, among other things:

- (a) The physical invasion or occupancy of private property.
- (b) The physical damaging of private property.
- (c) Interference with the use and enjoyment of private property.
- (d) Interference with access to private property.
- (e) Interference with or acquisition of title to or an interest in private property.

5. Any statement of policy or a proceeding concerning the regulation, acquisition, physical invasion or occupancy of private property by the state.

Sec. 5. "Private property" means all property protected by Amendments V and XIV of the Constitution of the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 6. "Taking" means any uncompensated damaging or deprivation of private property in violation of Amendment V or XIV of the Constitution of

the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 7. "Takings implications" means the possibility that a governmental action, if implemented or enacted, could effect a taking, such as regulations that propose or implement licensing, permitting or other requirements on the use of private property or that require a dedication or an exaction from an owner of private property.

Sec. 8. The provisions of this chapter do not apply to:

1. Governmental action that modifies a regulation in a manner that lessens interference with the use of private property, abolishes a regulation, discontinues a governmental program or discontinues the use of a facility; or

2. Action by a law enforcement agency that involves the seizure of property for forfeiture or evidence in criminal proceedings.

Sec. 9. The attorney general shall:

1. After consultation with the various departments, adopt regulations for the evaluation of the risk and avoidance of unanticipated takings. The regulations must:

(a) Require each department to prepare a written assessment of the takings implications of its governmental actions; and

(b) Specify the information that must be included in the assessment, including, without limitation:

(1) An estimate of the probability that the governmental action will result in a taking of private property; and

(2) If the estimate prepared pursuant to subparagraph (1) indicates that any probability of a taking exists:

(I) The potential fiscal impact on the department if the governmental action is found to result in a taking of private property; and

(II) Alternatives to the governmental action that would accomplish the purposes of the governmental action without resulting in a taking of private property.

2. Modify the regulations after changes occur in state and federal law concerning takings.

3. Send the regulations and any modifications to the departments.

Sec. 10. 1. The departments shall cooperate and consult with the attorney general to formulate the regulations pursuant to section 9 of this act.

2. Each department:

(a) Shall comply with the regulations adopted by the attorney general in proceeding with a governmental action.

(b) May adopt such additional regulations concerning takings as may be appropriate for the department after approval by the attorney general.

3. The head of each department shall designate an officer who will be responsible for ensuring compliance by the department with the provisions of this chapter.

Sec. 11. 1. Upon completion of an assessment prepared in compliance with the regulations adopted pursuant to section 9 of this act, the department shall publish a notice stating that the assessment was performed. The notice must

include a list of the property for which takings implications were identified, if any.

2. The contents of the assessment, other than the information contained in the notice, are a confidential work product of the department. The officers and employees of the department shall not disclose the contents of the assessment unless ordered to do so by a court of competent jurisdiction.

Sec. 12. The assessment of a department prepared in compliance with the regulations adopted pursuant to section 9 of this act must not be admitted as evidence in any proceeding brought by the owner of an interest in private property against the department seeking compensation for an unauthorized taking of private property or as evidence by the department in such an action.

Sec. 13. The attorney general and the departments shall consider the following standards when adopting regulations pursuant to section 9 of this act and when the departments identify and evaluate governmental actions for takings implications pursuant to those regulations:

1. A taking may result from governmental action that:

(a) Causes a physical invasion or occupancy of or damage to private property.

(b) Causes interference with the use and enjoyment of or access to private property.

(c) Causes interference with or acquisition of title to or an interest in private property.

(d) Regulates the use of private property when the actions substantially affect the value of property or its use or unduly interfere with reasonable expectations concerning investment.

(e) Is temporary or does not result in complete deprivation of all use or value or of all of the separate interests in the private property.

(f) Regulates the use of private property and fails to advance legitimate governmental objectives substantially.

(g) Is an arbitrary and capricious abridgment of the right to make reasonable use of private property.

(h) Causes undue delay in making a decision if that delay interferes with use of private property.

2. If a proposed governmental action places conditions on the use of private property, the conditions must:

(a) Serve the same legitimate objective that would have been served by a lawful prohibition of the proposed use;

(b) Substantially advance the objective; and

(c) Not be disproportionate to the extent to which the proposed use contributes to the problem that the conditions propose to redress.

3. If a proposed governmental action involves a study, or a planning or other process that will interfere with or prohibit the use of private property pending the completion of the process, the length of the process must be kept to the minimum necessary.

Sec. 14. 1. Each officer designated pursuant to section 10 of this act shall:

(a) Identify any regulation of the department against which a claim based on a taking is pending; and

(b) Compile and send an itemized list of any award or claim based on a taking for each fiscal year to the chief of the budget division of the department of administration at the end of the fiscal year.

2. For the purposes of this section, an award or a claim is based on a taking if it is made or brought to compensate a person for damage to or deprivation of private property which is taken for public use without just compensation pursuant to Amendment V or XIV of the Constitution of the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 15. The chief of the budget division of the department of administration shall, to the extent permitted by law, ensure that any award levied against a department based on a taking is considered in the budget submitted by that department.

Sec. 16. The director of the department of administration shall, to the extent permitted by law, ensure that the policies and regulations of each department are consistent with the provisions of this chapter.

Sec. 17. 1. The attorney general shall adopt regulations pursuant to section 9 of this act on or before June 1, 1992.

2. The attorney general shall send the regulations to each department on or before August 1, 1992.

3. Each department shall submit the list of awards pursuant to paragraph (b) of subsection 1 of section 14 of this act to the chief of the budget division

of the department of administration for the fiscal years 1989-90, 1990-91 and 1991-92 on or before August 1, 1992.

APPENDIX C

Letter To Nevada's Congressional Delegation
Objecting To Water Language In The
Nevada Wilderness Bill

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
Donald A. Rhodes, *Director, Secretary*

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

DONALD A. RHODES, *Director*
(702) 687-6800

JOHN R. CROSSLEY, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

October 2, 1989

<NAME>
<ADDRESS>
<CITY> <STATE> <ZIP>

Dear <DEAR>:

This letter is to express the strong opposition by the Nevada Legislature's Committee on Public Lands to the water language in Section 9 of S. 974, the Nevada Wilderness Protection Act of 1989.

The Nevada Legislature's Committee on Public Lands is a permanent, statutory, bipartisan committee created by the Nevada State Legislature. Its purposes are to provide oversight and review of federal land management policies and practices, and to provide a forum for the discussion and hearing of public lands matters. In this capacity, the committee serves as an official liaison between the Nevada Legislature, when the legislature is not in session, and the United States Congress.

At its meeting in Reno, Nevada, on September 26, 1989, the Public Lands Committee heard testimony, reviewed and discussed S. 974 with particular emphasis on Section 9 of the bill relating to water allocation authority. By a unanimous vote of six ayes and no nays (with one member absent), the committee adopted a motion to oppose the water language in Section 9 of S. 974 and to communicate this opposition and its concerns to the appropriate congressional committees and the state's delegation in Congress.

The Nevada Legislature's Committee on Public Lands objects to the water language in Section 9 on the following basis. These provisions set a dangerous precedent for wilderness water language which unnecessarily expands the authority of the Federal Government to hold and control water rights.

Nevada's State Engineer testified to Congress that the proposed wilderness areas are located in high elevation areas, the existing water sources in those areas are essentially fully appropriated, and wilderness water rights could have no adverse effect on existing water rights. However, he was not speaking for the Nevada Legislature and the citizens of this state. While these statements may be factual as they apply to the proposed

United States Forest Service (USFS) wilderness areas in Nevada, they do not take into account the precedent set by this language for future proposed wilderness areas on Bureau of Land Management lands in the state and for wilderness areas in other Western States.

The water language in Section 9 raises a number of questions which have not been adequately addressed. The Public Lands Committee questions the need for federal control of wilderness water rights in these areas if they will have no practical effect. The water flowing from these sources in Nevada are, for all practical purposes, fully appropriated. In addition, since federal law prohibits development in wilderness areas, there is no rational reason to claim a right to keep the waters from anyone else.

Section 9 requires the U.S. Secretary of Agriculture to file a claim for the quantification of federal reserved wilderness water rights and to take all necessary steps to protect these rights in an adjudication. However, Congress has provided no guidelines concerning the "quantity" of water necessary to preserve a wilderness area. In reference to the proposed wilderness areas in the Nevada bill which encompass headwaters, this requirement particularly is spurious since nature, rather than a federal mandate, will determine the quantity of water available.

The longstanding position of the Nevada Legislature's Committee on Public Lands is that Congress needs to resolve the issue of USFS wilderness in Nevada as quickly as possible. However, the Committee does not believe that Nevada's wilderness bill should be used as a mechanism to resolve the wilderness water rights issue or to set a precedent for future wilderness bills in Nevada or in other Western States.

Nevada is the most arid state in the Nation, water is its most precious resource, and the state has a long history of managing and planning the use of this valuable commodity. It is generally acknowledged that the water language in Section 9 is meaningless for the proposed USFS wilderness areas in this state. Therefore, the provisions in Section 9 should be deleted, no federal water rights should be reserved for these wilderness areas, and Congress, if it so desires, should address the wilderness water rights issue directly in a separate measure.

Thank you for your attention and consideration to these concerns. The Nevada Legislature's Committee on Public Lands requests that this letter be read into the record of the hearing on S. 974 which is scheduled on October 17, 1989, in the Subcommittee on National Parks and Public Lands of the U.S. House of Representatives, and that it be considered in any subsequent meetings or discussions on the Nevada Wilderness Protection Act of 1989.

With best wishes,



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

BD/kk:lands, letter 1

APPENDIX D

Resolution Of The Nevada Legislature's
Committee On Public Lands In Opposition
To The Mary's River Land Exchange

**RESOLUTION OF THE NEVADA LEGISLATURE'S COMMITTEE
ON PUBLIC LANDS IN OPPOSITION TO
THE MARY'S RIVER LAND EXCHANGE**

WHEREAS, An exchange has been proposed by Olympic Management Inc., through the Bureau of Land Management, of approximately 60,000 acres of private land in Elko County for about 2,300 acres of public land in Clark County in the Las Vegas Valley; and

WHEREAS, The completion of this exchange could deprive Elko County of \$20,000 or more annually in tax revenues and the loss of 3 percent of the deeded land in Elko County; and

WHEREAS, The completion of this exchange could also result in the loss of local economic benefits from the ranching operation on the private lands totaling more than \$4 million; and

WHEREAS, The proposal would result in more private land on the tax rolls in Clark County, but the development of the selected lands could impose additional costs on the local governments to extend services to those areas; and

WHEREAS, The proposed exchange would result in economic benefits and costs to one county at the expense of economic losses in another county, thus pitting one county against another within this state; and

WHEREAS, The proposal would continue to erode the small and limited private land base in this state which already has about 87 percent of its land under federal control; and

WHEREAS, Procedures already exist for a private entity to acquire federal lands by fair market value since the proposed selected lands in the Las Vegas Valley have been identified for disposal by the Bureau of Land Management; and

WHEREAS, The use of federal land exchange procedures by a private company to achieve profitable benefits through real estate speculation is questionable; now, therefore, be it

RESOLVED BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS, That the committee opposes the Mary's River Land Exchange proposal; and be it further

RESOLVED, If the proposal is to proceed, that a full environmental impact statement be prepared to include a complete analysis of the public and private economic effects; and be it further

RESOLVED, That a copy of this resolution be transmitted to the Bureau of Land Management, the commissioners of Clark County, and the commissioners of Elko County.

BD/en:Reso.Mary's River.1
(12/8/89)

APPENDIX E

Resolution Of The Nevada Legislature's
Committee On Public Lands To Request
The Clark County Commission To Oppose
The Mary's River Land Exchange

**RESOLUTION OF THE NEVADA LEGISLATURE'S COMMITTEE ON
PUBLIC LANDS TO REQUEST THE CLARK COUNTY COMMISSION
TO OPPOSE THE MARY'S RIVER LAND EXCHANGE**

WHEREAS, An exchange has been proposed by Olympic Management Inc., through the Bureau of Land Management, of approximately 60,000 acres of private land in Elko County for about 2,300 acres of public land in Clark County in the Las Vegas Valley; and

WHEREAS, The completion of this exchange could result in negative economic effects for Elko County; and

WHEREAS, The proposal would result in more private land on the tax rolls in Clark County, but the development of the selected lands could impose additional costs on the local governments to extend services to those areas; and

WHEREAS, The proposed exchange would result in economic benefits and costs to one county at the expense of economic losses in another county, thus pitting one county against another within this state; and

WHEREAS, The use of federal land exchange procedures by a private company to achieve profitable benefits through real estate speculation is questionable; now, therefore, be it

RESOLVED BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS, That the committee urges and requests the Clark County Commission to take action to oppose the Mary's River Land Exchange proposal and to request a full environmental impact statement which analyzes its economic impacts; and be it further

RESOLVED, That a copy of this resolution be transmitted to the commissioners of Clark County.

BD/en:Reso.Mary's River.2
(12/8/89)

APPENDIX F

Resolution Of The Nevada Legislature's
Committee On Public Lands Urging The
United States Congress To Include
County Governments In Certain
Land Exchange Procedures

RESOLUTION OF THE NEVADA LEGISLATURE'S COMMITTEE
ON PUBLIC LANDS URGING THE UNITED STATES CONGRESS
TO INCLUDE COUNTY GOVERNMENTS
IN CERTAIN LAND EXCHANGE PROCEDURES

WHEREAS, An exchange has been proposed through the United States Bureau of Land Management of approximately 60,000 acres of private land in Elko County, Nevada, for about 2,300 acres of public land in Clark County, Nevada; and

WHEREAS, The completion of this exchange could deprive Elko County of \$20,000 or more annually in tax revenues and the loss of 3 percent of the deeded land in the county; and

WHEREAS, The proposal would result in more private land on the tax rolls in Clark County, but the development of the selected lands could impose additional costs on the local governments to extend services to those areas; and

WHEREAS, The proposed exchange would result in economic benefits and costs to one county at the expense of economic losses in another county, thus pitting one county against another within the State of Nevada; and

WHEREAS, Current federal regulations could allow the exchange to proceed over the objections of either or both counties; now, therefore, be it

RESOLVED BY THE NEVADA LEGISLATURE'S COMMITTEE ON PUBLIC LANDS, That the committee urges the United States Congress to consider including county governments in the land exchange approval process when an exchange is proposed between lands in different counties of the same state; and be it further

RESOLVED, That the committee urges the United States Congress to require the approval of all county governments directly impacted by a proposed exchange of lands within the same state in order for the exchange to proceed; and be it further

RESOLVED, That a copy of this resolution be transmitted to each member of Nevada's Congressional delegation, and to the chairmen of the House Subcommittee on National Parks and Public Lands, and the Senate Subcommittee on Public Lands, National Parks and Forests.

DRB/gj: RESO.LE
(2/27/90)

APPENDIX G

Letters From The Committee On Public Lands
To Nevada's Congressional Delegation And
The United States Bureau of Land Management
Supporting Carlin's Position
In Land Acquisition And
A Response

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR BRIAN L. DAVIE (702) 687-6825

July 10, 1990

Fred Wolf
Acting State Director, Nevada
United States Department of the Interior
Bureau of Land Management (BLM)
Nevada State Office
P.O. Box 12000
Reno, Nevada 89520-0006

Dear Mr. Wolf:

At its meeting in Elko on June 25, 1990, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) heard testimony from the City of Carlin and BLM on Carlin's efforts to acquire federal land to facilitate expansion of the city.

As you know, Carlin has been greatly affected by the mining boom currently underway in Elko County. The city's existing residential and business areas are straining under Carlin's rapidly growing population. Consequently, Carlin needs to expand and develop more land to accommodate its changing environment.

Three years ago, Carlin began the process to acquire needed land from BLM. The Committee on Public Lands is concerned that the process is still not complete. Therefore, the committee voted unanimously at its meeting in Elko to express to you its support for a speedy conclusion of this matter.

Thank you for your attention. We look forward to the timely and successful completion of Carlin's land acquisition proposal.

Sincerely,

A handwritten signature in black ink that reads "Dean A. Rhoads".

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

DAR/gj: LANDS, L-21

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

July 10, 1990

Cy Jamison, Director
United States Department of the Interior
Bureau of Land Management (BLM)
Main Interior Building
18th and C Streets NW.
Washington, D.C. 20240

Dear Mr. Jamison:

Recently, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) received information from the City of Carlin, Nevada, and BLM on Carlin's efforts to acquire federal land to facilitate expansion of the city.

The Committee on Public Lands is concerned that Carlin's effort to acquire needed land from BLM has not, after 3 years, been successful. Therefore, the committee voted unanimously at its last meeting to express to the Acting State Director, Fred Wolf, its support for a speedy conclusion of this matter.

Enclosed, for your information, is a copy of the letter sent to Mr. Wolf. Please do not hesitate to contact me if you wish to discuss this issue.

Sincerely,

A handwritten signature in black ink that reads "Dean A. Rhoads".

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

DAR/gj: LANDS, L-22
Enc.



July 10, 1990

The Honorable Barbara F. Vucanovich
United States House of Representatives
206 Cannon House Office Building
Washington, D.C. 20515-2802

*Identical letter
was sent to the
other three members
of the Nevada Congressional
Delegation.*

Dear Representative Vucanovich:

Recently, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) received information from the City of Carlin, Nevada, and the Bureau of Land Management (BLM) on Carlin's efforts to acquire federal land to facilitate expansion of the city.

The Committee on Public Lands is concerned that Carlin's effort to acquire needed land from BLM has not, after 3 years, been successful. Therefore, the committee voted unanimously at its last meeting to express to the Acting BLM State Director for Nevada, Fred Wolf, its support for a speedy conclusion of this matter.

Enclosed, for your information, is a copy of the letter sent to Mr. Wolf.

The committee was pleased to learn that Nevada's Congressional delegation is monitoring this situation and is assisting Carlin in its endeavor. We encourage and support your involvement in this matter.

Please do not hesitate to contact me if I may provide additional information on the committee's action.

Sincerely,

A handwritten signature in black ink that reads "Dean A. Rhoads".

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

DAR/gj: LANDS, L-23
Enc.

HARRY REID
NEVADA

United States Senate

WASHINGTON, DC 20510

July 24, 1990

The Honorable Dean Rhoads
Nevada State Senator
Chairman, Committee on Public Lands
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Senator Rhoads:

Thank you for your recent letter concerning attempts by the City of Carlin to acquire land from the Bureau of Land Management (BLM). I must agree with you on the protracted nature of this project. Until recently, it has been a painfully laborious process with few tangible results.

A member of my staff has been working very closely with the City of Carlin and BLM as an intermediary. He too has experienced the frustrating stops and starts this project is plagued with. However, it now appears that the project is much closer to fruition.

Following a site examination and closer scrutiny of the proposal, the City and BLM have come to agreement that the 60 acre cultural resources site which has been the source of contention will be removed from the proposed sale. It will be offered again later when the archaeological values have been mitigated. According to BLM Elko District Manager Rod Harris, the City of Carlin is free to move ahead with the final appraisal.

If I can be of further help in this matter, please do not hesitate to contact me. Again, thanks for your interest.

With all best wishes,

Sincerely,


HARRY REID
United States Senator

HMR:bed

APPENDIX H

Letters Concerning The Nominees
To The Wild Horse And Burro Advisory Board
And A "News Release," U.S. Department Of
The Interior, Bureau of Land Management



June 27, 1990

Chief, Division of Wild Horses and Burros (250)
Bureau of Land Management
Premier Building, Room 901
Washington, D.C. 20240

Dear Chief:

At its meeting on June 25, 1990, the Nevada Legislature's Committee on Public Lands voted to nominate two individuals to the Wild Horse and Burro Advisory Board. Following are their names and background information.

DELOYD SATTERTHWAITE (Category: Livestock Management)

Mister Satterthwaite is the manager of Ellison Ranching Company, one of the oldest and largest ranching organizations in Nevada. The company's holdings include several allotments on which are found many wild horses.

Mister Satterthwaite is a past member and chairman of Nevada's Commission for the Preservation of Wild Horses, having served 3 years with that organization. He is a past president of both the Nevada Cattlemen's and Woolgrower's Associations. He also served 7 years on the Board of Wildlife Commissioners for the Nevada Department of Wildlife.

His address is Spanish Ranch, Tuscarora, Nevada, 89834, and his telephone number is 702/756-6542.

MOLLY KNUDTSEN, Ph.D. (Category: Public at Large)

Doctor Knudtsen has been a rancher in the Grass Valley area north of Austin, Nevada, since 1942. This area has numerous wild horses, and Dr. Knudtsen has been active in the management of these herds over the last several decades.

Since January 1989, she has served on the Battle Mountain District Advisory Council for the United States Bureau of Land Management.

Doctor Knudtsen's address is Grass Valley Ranch, Austin,
Nevada, 89310, and her telephone number is 702/964-2566.

Because Nevada is home to the largest number of wild horses in
the country, it is important to include residents of our state on
the Wild Horse and Burro Advisory Board. We believe that both of
these Nevadans would be valuable members of the board and are
proud to submit their nominations.

Please do not hesitate to contact me if I may provide further
information on these nominations.

Sincerely,

A handwritten signature in cursive script that reads "Dean A. Rhoads". The signature is written in black ink and is positioned above the typed name.

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

DAR/gj: LANDS, L-20



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:

1784 (250)
4700

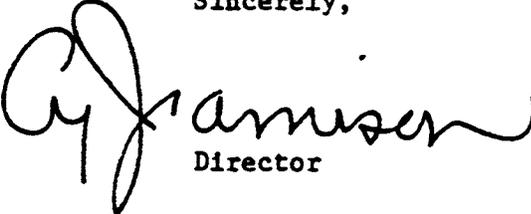
Mr. Dean A. Rhoads
Nevada State Senator
Chairman, Committee on Public Lands
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Rhoads:

On behalf of Secretary Lujan and myself, I want to thank you for participating in the nomination process for the Wild Horse and Burro Advisory Board. More than 100 individuals were nominated, and it was a difficult task to choose just 9 members from such a large group of well-qualified nominees. After careful consideration, the Secretaries of the Interior and Agriculture recently announced their choices for the Board.

Enclosed for your information is a copy of the press release about the newly appointed Board members. If we can provide additional information, please let us know.

Sincerely,


Director

Enclosure



NEWS RELEASE

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT NEVADA

Nevada State Office PO Box 12000 850 Harvard Way
Reno, Nevada 89520

Release Number: 91-03

For Release: Immediately

Contact: Bob Stewart (702) 785-6586

WILD HORSE AND BURRO ADVISORS APPOINTED

Secretary of the Interior Manuel Lujan and Secretary of Agriculture Clayton Yeutter today announced appointments to a newly chartered Wild Horse and Burro Advisory Board. The Board will advise the Secretary of the Interior and the Secretary of Agriculture on issues concerning the management and protection of wild free-roaming horses and burros on the nation's public lands.

"I am exceptionally pleased with the caliber of those nominated to serve on this Board," Lujan said. "We now have the expertise and commitment needed to provide sound advice on issues relating to managing the nation's wild horse and burro herds," he added.

Yeutter said, "The Board is vital to the constructive relationship between the Federal government, producers and ranchers on these land management issues."

Director of the Interior Department's Bureau of Land Management (BLM) Cy Jamison noted, "The new Board members represent a diverse range of talent and backgrounds that will help us to manage wild horse and burro herds on western public lands. I'm looking forward to receiving their counsel."

Board members, who will serve two year terms, are selected to represent a specific category of interest. Board members are:

- Fred Burke, former rancher, owner of a white water rafting company, and state legislator. Residence: Wickenburg, Arizona. Category - Public at Large.

WILD HORSE AND BURRO ADVISORS APPOINTED - 22222

- J. Wayne Burkhardt, Ph.D., Associate Professor of Rangeland Science at the University of Nevada - Reno. Residence: Reno, Nevada. Category - Rangeland Management.

- Robert Grieve, cattle and sheep producer and Wyoming State Senator. Residence: Savery, Wyoming. Category - Livestock Management.

- James C. Heird, Ph.D., Associate Dean, College of Agricultural Sciences, Colorado State University. Residence: Eaton, Colorado. Category - Wild Horse and Burro Research.

- Robert K. Hillman, Director of Field Services for the Animal Protection Institute of America. Residence: Sacramento, California. Category - Animal Husbandry: Humane Organizations.

- Edward S. Murray, D.V.M., President of the American Society of Equine Practitioners. Residence: Spur, Texas. Category - Animal Husbandry: Veterinary Medicine.

- Mary Ann C. Simonds, Director of the Whole Horse Institute. Residence: Walnut Creek, California. Category - Wildlife Management.

- Karen Ann Sussman, President of the International Society for the Protection of Mustangs and Burros. Residence: Scottsdale, Arizona. Category - Wild horse and Burro Management.

- Lonnie L. Williamson, Vice President of the Wildlife Management Institute. Residence: Washington, D.C. Category - Conservation.

About 46,500 wild horses and burros currently roam on Western public lands managed by BLM and the Forest Service. The BLM also administers the popular Adopt-A-Horse program which has placed over 100,000 animals with qualified adopters since 1973.

APPENDIX I

Letter To United States Bureau Of Land
Management Requesting Wild Horse
Management Areas Map

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

October 30, 1990

Cy Jamison, Director
United States Department of the Interior
Bureau of Land Management (BLM)
Main Interior Building
1849 C Street, NW.
Washington, D.C. 20240

Dear Mr. Jamison:

As you know, the U.S. Congress passed the Wild Horse and Burro Act in 1971. At that time, a map showing the Wild Horse Management Areas (WHMAs) in Nevada was being circulated.

During a recent discussion of WHMAs, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) expressed a desire to obtain a copy of this 1971 map.

The committee would appreciate your assistance in procuring a copy of the map. Please inform us of the location of the map and how a copy of it may be acquired.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Dean A. Rhoads".

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

DAR/gj: LANDS, L-29
cc: Fred Wolf, Acting State BLM Director

APPENDIX J

Letter To United States Bureau Of Land Management
Concerning Draft Environmental Assessment
Comment Period For Mary's River Land Exchange

NEVADA LEGISLATURE'S
COMMITTEE ON PUBLIC LANDS

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

September 11, 1990

Rodney Harris, District Manager
United States Department of the Interior
Bureau of Land Management (BLM)
Elko District Office
P.O. Box 831
Elko, Nevada 89801

Dear Mr. Harris:

This letter concerns the Preliminary Environmental Assessment for the Mary's River Land Exchange Proposal.

At its meeting in Fallon, Nevada, on September 7, 1990, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) received a report on the assessment from Dave Vandenberg of your office. In the course of discussing the assessment with Mr. Vandenberg, members of the committee expressed serious reservations about certain information in the document, such as the status of the mineral and water rights on the land in Elko County which BLM would acquire and the appraisal process used in valuing the parcels. We are concerned that the report is not as complete as it should be.

However, we and others have not had sufficient time for thorough analysis to provide comments by September 14, 1990. We, therefore, request that the comment period be extended for 60 days to allow a careful and thoughtful study of the Preliminary Environmental Assessment.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dean A. Rhoads".

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/gj: LANDS, L-25

APPENDIX K

Letters Concerning Adoption Of A
Facilitator Committee To Consider Issues
In The White Pine Grazing District

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

September 11, 1990

Fred Wolf, Acting Director
United States Department of the Interior
Bureau of Land Management (BLM)
Nevada State Office
P.O. Box 12000
Reno, Nevada 89520-0006

Dear Mr. Wolf:

At its meeting on September 7, 1990, in Fallon, Nevada, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) was disturbed to hear about the conflict between the BLM and several ranchers in the Ely, Nevada, district. At this meeting, Daniel Rathbun, Deputy State Director, asked for ideas for a facilitator that would allow for an objective meeting on the area's problems.

During the public testimony period of the meeting, Doug Busselman, Executive Vice President of the Nevada Farm Bureau, suggested the creation of a technical review team. He proposed that the committee be composed of representatives from the following groups:

Commission for the Preservation of Wild Horses
Legislative Committee on Public Lands
Society For Range Management
Nevada Department of Wildlife
Cooperative Extension Service
University of Nevada Department of Agriculture

This committee would meet in Ely to actually visit the sites in question and receive input from all parties affected by the decisions on the allotments, including an overview of the process used by BLM to reach those decisions. Of course, with the November 1, 1990, deadline fast approaching, the group would need to meet immediately.

The committee believes that Mr. Busselman's suggestion is thoughtful and reasonable. Although Mr. Rathbun discussed finding a neutral party to review the situation, Mr. Busselman noted that a purely objective facilitator would not have

Page 2

sufficient knowledge to adequately analyze the problem. Therefore, a committee of knowledgeable individuals balanced between all of the interest groups involved appears to be an important concept. We urge your speedy consideration of this recommendation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dean A. Rhoads".

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

DAR/gj: LANDS, L-27



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
NEVADA STATE OFFICE
850 HARVARD WAY
P.O. BOX 12000
RENO, NEVADA 89520-0006



IN REPLY REFER TO:
4000
(NV-910)

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

SEP 14 1990

Dear Dean:

We have received your proposal for a technical review team made up of the Commission for the Preservation of Wild Horses, Legislative Committee on Public Lands, Society for Range Management, Nevada Department of Wildlife, Cooperative Extension Service and UNR Department of Agriculture. These are organizations we work with often, and sometimes daily, and appreciate their technical support.

In the case of the Tippet, Chin Creek and Samson Allotments, we have already issued a final decision which is now under IBLA appeal from permittee and wild horse and burro interests. We delayed this decision several months in order to work with NDOA and did receive a report from them on the Chin Creek Allotment. Currently, we are going to meet with Hank Vogler to address his concerns and search for any short-term measures that would allow us to meet our objectives while alleviating his situation. In the long term, we would like to still pursue, as we did in 1987, a grazing plan that would allow us to develop range improvement projects to increase the suitability and usability of this 206,000 acre allotment. Our 1987 effort involved proposals of \$360,000 worth of improvements including water development and 4,000 acres of seeding in order to avoid the downward trends. Technical support in this regard would be of great assistance.

We are in the planning process to deal with affected interests which include the permittee, USFWS, Nevada Department of Wildlife, several wild horse and burro groups, the Sierra Club, and NRDC that were involved in the consultation, cooperation and coordination process, to present our data, the evaluation process used, the rationale for decisions, and other discussion pertinent to this situation or to the appeals now filed. We will be looking for feedback that will help us further address the Chin Creek, Tippet and Samson Allotments. Our plan is to have this occur prior to November 1.

We appreciated appearing at the Nevada Legislature's Committee on Public Lands meeting. The agenda discussed key issues on the public lands of Nevada.

Sincerely,

Fred Wolf
Acting State Director, Nevada

APPENDIX L

Letter To Acting Governor Robert J. Miller
Requesting An Additional Staff Position
In The Division Of State Lands
For The Land Inventory Process

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

September 12, 1990

Acting Governor Robert J. Miller
State Capitol Building
Capitol Complex
Carson City, Nevada 89710

Dear Governor Miller:

At its meeting on September 7, 1990, in Fallon, Nevada, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) discussed the gradual land acquisition process.

The gradual land acquisition process is a proposal to identify federal lands needed now and in the future in Nevada primarily for expanding population centers to allow the state and its local governments to adequately plan for growth and development within the constraints of available resources.

The committee had discussed hiring a nationally known consultant to prepare an inventory of lands desired by the counties and cities of Nevada. However, the committee has decided that the best long-term approach is to place an additional planner in the Division of State Lands to work with local governments to prepare the inventory. Discussions at the meeting with various county commissioners and Pamela B. Wilcox, Administrator of the Division of State Lands, upheld this concept.

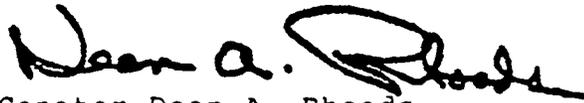
Therefore, please be advised that the Committee on Public Lands advocates and fully supports the addition of a planner to the Division of State Lands as included in its budget proposal recently submitted to the Department of Administration. Representatives from several counties also indicated that they

Page 2

prefer this method of preparing a land inventory over any other plan the committee has considered on this issue.

Should you have any questions on this matter, I would be happy to discuss them with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean A. Rhoads". The signature is written in a cursive style with a large, prominent loop at the end of the last name.

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/gj: LANDS, L-26
cc: Judy Matteucci, Director
Department of Administration

APPENDIX M

Letters Regarding The United States Bureau
Of Land Management Visitation Of Range
Monitoring Stations On Allotments

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR, BRIAN L. DAVIE (702) 687-6825

October 12, 1990

Cy Jamison, Director
United States Department of the Interior
Bureau of Land Management
Main Interior Building
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Jamison:

At its meeting on September 7, 1990, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) discussed the process of notification by Bureau of Land Management (BLM) employees before they check range monitoring stations.

As you know, BLM representatives are required to notify a permittee of their plan to check range monitoring stations on an allotment so that the permittee or a representative may accompany the BLM employee to the site. However, it has come to the committee's attention, through public testimony and committee members' personal experiences, that permittees are not being notified early enough to include the visit in their schedules.

Therefore, the committee requests that BLM district representatives consider that ranchers often establish their schedules at least a week in advance. Representatives of BLM should plan their range monitoring station visits accordingly. Grazing permittees consider these visits important and would appreciate every opportunity to accompany the BLM to the sites.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean A. Rhoads".

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

DAR/gj: LANDS, L-28
cc: Fred Wolf, Acting State BLM Director
Michael J. Penfold, Assistant Director, BLM



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:
4400(221)

OCT 25 1990

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

Dear Mr. Chairman:

Thank you for your letter of October 12, 1990, to Mr. Cy Jamison, Director of the Bureau of Land Management (BLM) concerning site visits to range monitoring stations. Director Jamison has asked us to respond.

We also consider coordinated rangeland monitoring site visits very important. We are pleased that you are receiving support for joint visits from the grazing allotment permittees. The importance of cooperative relationships and the understanding of each interested party during joint site visits cannot be stressed enough. We will continue to emphasize to our Field Offices the importance of providing adequate lead time for other participants when we plan site visits.

Thank you again for your interest in, and support of, coordinated resource monitoring.

Sincerely,

Chief, Division of Rangeland
Resources

APPENDIX N

Letter To The United States Bureau Of Land
Management Regarding The Environmental
Assessment In The Mary's River
Land Exchange

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

November 2, 1990

Rodney Harris, District Manager
United States Department of the Interior
Bureau of Land Management
Elko District Office
P.O. Box 831
Elko, Nevada 89801

Dear Mr. Harris:

In response to the preliminary Environmental Assessment (EA) on the Mary's River Land Exchange Proposal, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) has the following concerns:

- It appears that the appraisal process used to value the lands involved in the exchange proposal did not consider the change in value when the uses of the land and water on the Rafter-Diamond Ranch are altered. In addition, the appraisals are not clear on the actual value of the lands or the size of the parcel in Las Vegas that would be acquired.
- The EA does not contain enough information on the mineral rights percentage which will be acquired by the BLM with the Elko County land, such as the availability of those rights to prospectors.
- The assessment is lacking in substantive discussions on the use of the water rights that the BLM would acquire. It is unclear if the change in the use of the water will result in the availability of water for appropriation by downstream users or if the change will impact the wetlands in the region. It appears that additional studies are needed in this important area.
- The EA reflects an analysis of the economic loss to Elko County that is much lower than would be indicated by the application of certain studies that have been done on the value of a cattle ranching operation to a rural community. The figures in the assessment appear to be incorrect and should be reevaluated.

In addition to these specific items, the committee is concerned about the Mary's River Land Exchange Proposal in general. It appears that the completion of this exchange would set an unfortunate precedent. If Olympic Management, Inc., is successful, other companies or individuals may seek to acquire urban land by relinquishing rural land to the Federal Government in exchange for the desired parcels rather than by purchasing them. Future exchanges similar to the Mary's River proposal may lead to a loss of jobs and a degradation of the tax base in rural areas.

Thank you for providing the committee the opportunity to comment further on this document.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean A. Rhoads". The signature is fluid and cursive, with a large, stylized initial "D".

Senator Dean A. Rhoads
Chairman, Committee on Public Lands

DAR/gj: LANDS, L-30

APPENDIX O

Letter To The Director Of The United States
Bureau Of Land Management Concerning
Takings Implication Assessments

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



SENATOR DEAN A. RHOADS, Chairman
ASSEMBLYMAN MATTHEW Q. CALLISTER, Vice Chairman
SENATOR VIRGIL M. GETTO
ASSEMBLYMAN JAMES A. GIBBONS
ASSEMBLYMAN JOHN W. MARVEL
SENATOR JOHN M. VERGIELS
CLARK COUNTY COMMISSIONER KAREN W. HAYES

STAFF DIRECTOR: BRIAN L. DAVIE (702) 687-6825

May 14, 1990

Cy Jamison, Director
Bureau of Land Management
Main Interior Building
18th and C Streets NW.
Washington, D.C. 20240

Dear Director Jamison:

In 1989, the Nevada Legislature's Committee on Public Lands (Nevada Revised Statutes 218.536, et seq.) created a Subcommittee to Study Takings. This subcommittee has been reviewing Federal Executive Order 12630, signed in 1988 by President Ronald Reagan, as a model for state legislation requiring Nevada agencies to prepare a takings implications assessment (TIA) similar to that required of the federal agencies.

In the process of studying this issue, the subcommittee became aware of three recent actions in Nevada which may have required the preparation of a TIA. These actions are:

1. The designation of six Back Country Byways;
2. The introduction of elk into the Jarbidge Mountains; and
3. The listing of the desert tortoise as a threatened species.

The subcommittee would like to know if TIAs were completed for these projects. If a TIA for each action was not done, the subcommittee requests the reason for that decision.

Your assistance in this effort and any information you can provide are most appreciated. The members of the subcommittee look forward to receiving your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dean A. Rhoads".

Dean A. Rhoads
Nevada State Senator (R)
Chairman, Nevada Legislature's
Committee on Public Lands

DAR/gj: Lands, L-6



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:

2200 (321)

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

Dear Senator Rhoads:

This is in further response to your letter of May 14, 1990, regarding the preparation of takings implications assessments in accordance with Executive Order 12630. The Nevada Subcommittee to Study Takings has been reviewing certain Federal activities and is questioning several specific actions taken in Nevada.

Your concerns will be addressed in the order presented.

1. The designation of six back country byways.

Dedication of a back country byway is merely a notice to the public that a road or trail (usually rural) has certain scenic qualities or other resource values that merit public interest or attention. Such a dedication may or may not generate increased traffic but, in either case, cannot be construed as a taking of private property. The rights for public use of these roads and trails already have been obtained.

2. The introduction of elk into the Jarbidge Mountains.

The decision to reintroduce elk into the Jarbidge Mountains, which are located within the Humboldt National Forest, was made and implemented by the Nevada Department of Wildlife (NDOW). During severe winters, the elk will potentially occupy public lands administered by the Bureau of Land Management (BLM). The Federal Land Policy and Management Act of 1976 reaffirms the primary responsibility of the State for management of the resident fish and wildlife populations on public lands. The BLM has primary responsibility for management of the habitat upon which fish and wildlife are dependent. Both the BLM and the Forest Service resource management plans have examined the appropriateness of elk transplants. The decision of NDOW to reintroduce elk was consistent with those plans. Further, there was no taking of private property required to implement this decision.

3. The listing of the desert tortoise as a threatened species.

The desert tortoise was listed by the U.S. Fish and Wildlife Service (FWS) and not by the BLM. The determination by FWS to list a species is made solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts (50 CFR 424.11). The BLM is also affected by the listing and is required to protect and recover the listed species. Any takings implications would have to be assessed by the FWS.

The March 15, 1988, Executive Order requires consideration of the impacts of government actions on private property rights. We support this requirement and will continue our policy of acquiring property only after just compensation is paid when private property interests are necessary to the implementation of BLM programs. We do not feel that there has been a taking of any private property in the program areas outlined in your letter.

If you have any additional questions regarding the BLM's implementation of this Executive Order, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Tom Allen".

Acting Deputy Director

APPENDIX P

Proposal For Wild Horse Management Program

9/7/90

PROPOSAL FOR
WILDHORSE MANAGEMENT PROGRAM

Since the passage of the Wild Horse and Burro Act in 1972, the management of these animals has been a matter of concern to the parties effected, being composed of horse interest groups, conservationists, commercial users of the public lands and those responsible for financing such a program. In the past 16 years there has not been established an effective program for such management due to a number of factors, including funding, a number of legal actions by horse groups, public reactions to proposed actions and the vastness of the area encompassed by wild horse areas.

At the time that Senator Reid took office, he had the opportunity to review this matter and was concerned over the expense of the program now in place, in view of the current concern over the Federal budget deficit. However, he is aware of the support by many of the public to the continuation of the preservation of the wild horse. He expressed an interest in the support of a program which would be more cost effective and yet meet the desire for the preservation of the wild horse.

As we have been concerned over the wild horse management for some time, with this encouragement, we decided to attempt to propose a program which would preserve and manage the wild horse in a manner which would be generally acceptable to the animal groups, the commercial users, the conservationists and general public.

BACKGROUND

Although, most people concerned with the use of public lands are entirely familiar with the origination of the wild horse program, it is felt that a short summary is helpful.

The most romantic concept of the origin of the present day wild horse, is that they are descendants of the horses introduced to the Americas by the Spanish conquistadors. It is doubtful that the wild horse has any more such breeding than the general horse population in the United States.

At the time horses were used in all agricultural fields, it was the common practice to turn work horses upon the public lands for the period of year they were not needed upon the private lands. Normally, in the Spring enough horses were gathered to do the summer work, with some being left on the range. Periodically the numbers on the range became excessive and were gathered to be disposed through sale. In addition, during World War I, the Army

instituted the Remount Program, in which the Army provided stallions of the type required for remounts to participants in the program. In many instances, large ranches entered into the program and the stallions were turned on the open range with existing herds of breeding animals. This practice continued until World War II. The result of this was better breeding for some of the wild horse herds.

Until about the end of World War II, the practice of gathering excess numbers continued and the populations of wild horse herds were controlled. However, at about that time, public concern was expressed as to the general procedure, especially as to the cruelty during such gatherings and the desire to preserve herds as part of the national heritage. Continued pressure by interest groups effectively slowed and finally stopped the past procedure for management until by 1960, there was very limited population control. By the passage of the Wild Horse and Burro Act, there was an estimated 60,000 horses upon the Western Public Lands, and that number continued to increase to approximately 67,000 in 1978. By 1987, the BLM estimated that this number had been reduced to 37,822. However, this was done at a tremendous cost and a continuing cost at about a rate of as high as 16 million dollars per year.

The wild horse is certainly one of the many American phenomenas. The charisma of this animal effects all ages and walks of life. To the younger school children they generate visions of Bambi and Black Beauty. To the working age American, they are a symbol of the living West with an expression of the freedom and independence which many envy. To the older American, it is a tie to their agricultural past and the fond memories. For the environmentalist and preservationist, the wild horse is akin to the Bald Eagle and the buffalo. To the commercial user of the public lands, this animal is an interloper and a competitor which previously had been regarded as little more than a large varmint with limited uses. With this mixture, any decisions effecting the animal becomes an emotional problem tied to all of the dreams and desires of great number of the general public and economics.

ANALYSIS OF PROBLEM

1. Resource

In any program dealing with a natural resource, it has had as its prime management objective preservation of that resource coupled with use by the public or commercial enterprises for the benefit of the general public. Thus, public forests are managed with the objective of sustained yield in a manner which allows economic use and the various environmental and recreational uses of the public. The objective of public range lands is much the same, with livestock being substituted as the means of harvesting the resource. In both instances, manipulation by man of the resource is an accepted means of obtaining the desired objective. The management of wild horses is very similar to the management of big game in that numbers must be very carefully managed for the

protection of the resource, both the animals and the vegetation. However, as in the case of big game management, manipulation of numbers to match the forage resource has not been effective which has resulted in areas being damaged by overpopulation before a positive program could be carried out to bring the population in line with the available forage.

2. Area

The area encompassed by wild horse areas is staggering. The BLM reports that in 1986, the areas classified as wild horse areas in 10 Western States was 34,903,228 acres or 5.2% of the total area of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Wyoming. For comparison, this is an area almost half the size of Nevada, which has 28% of its area classified as wild horse areas. In domestic livestock operations, a number of economic studies have clearly shown that as the area of management increases, the cost per animal also increases, to the point that it is not possible to afford continued operation.

In addition, as the area of management increases, the personnel required to effectively manage and monitor the condition and status of the resource increases dramatically. As to wild horses, the effect of supervision of that population by one person is probably limited to a greater extent by the area which must be covered than by number of animals.

3. Cost

The present cost of management is burdensome and of prime interest to Senator Reid as a legislator. The total program of approximately 13.3 million dollars for a 1987 population of 37,822 horses gives an average cost per horse of \$351.64. This would vary to individual horses from a nominal management amount for the horse which is simply observed during a fiscal year to the horse in an adoption center which has a round-up cost of from \$40 to \$80, processing costs for adoption of \$35 to \$40, room and board costs of \$2 per day plus additional care costs for general physical maintenance and veterinary services. It is felt that the cost of present program should be carefully reviewed with the goal to be to accomplish the management at a much more favorable cost for the benefit derived.

In discussions held with various interest groups and the BLM it has been pointed out that a large portion of the present cost has been in the phase of reducing the numbers in the herd areas, which includes the cost of holding the horses for adoption. It appears that this will decrease as the herds are brought to the optimum numbers, but that such operations will be a continuing portion of the present program as areas overpopulate. There will be a continuing high expenditure for gathering, holding and adopting the horses to maintain a population at the target levels.

4. Public Benefit

At the present time, the majority of the wild horses exist in areas which are not accessible to the general public. In order to provide the greatest benefit to the public, a manner of access to the areas of use which is available to the average person would be desirable. This not only would provide an opportunity for enjoyment of the animals by more people but also the possibility of an economic return to the State involved in tourism.

5. Maintenance of Animals

In any public range area, conditions occur which place great stress upon grazing animals. Drought, such as experienced in 1988, not only reduce the area available for use due to the lack of water in a number of places, but also adversely effects the production of forage. Winter conditions may make it impossible for animals to obtain forage for some time. At the present time, due to the large area encompassed by the horse ranges, it is impossible to provide aid to alleviate these conditions. In addition, disease in the animals cannot be treated. It has been estimated that the death loss of animals may be up to 10% per year, and it is conceivable that it may far exceed that in extreme weather conditions.

6. Preservation of Wild Horses

There is a continuing strong demand by interest groups in the public to maintain wild horse herds. These groups generally oppose any changes in the present management system due to the fear that it will result in a reduction of the numbers or possibly total elimination of the animals. They strongly oppose any proposal that requires elimination of unadoptable horses by euthanasia or sale to commercial enterprises.

CRITERIA FOR EFFECTIVE MANAGEMENT

It is pointed out by the above analysis, that in order to reach a solution to the problems, it is necessary to arrive at some innovative solutions. These solutions must include the following criteria:

1. Protection of Resource

The first and foremost objective must be to provide effective management to the resources, both plant and animal. In the past, effective management of forage plants and large grazing animals has been accomplished only through establishment of definite areas of use and control of the number of grazing animals in the defined area. For domestic livestock this has required fenced allotments, pasture systems and strict control of the numbers. Buffalo ranges require fences in many instances as a method of control and management. Elk, being a large animal, have continually posed a problem for the reason that it is not

possible to definitely define the area of use and effectively control the numbers, which at times requires special hunts in specific areas to cure a grazing problem. Past experience with wild horses has shown that numbers are controlled only in problem areas with excess animals which are overgrazing an area, not only to the detriment of the forage resource but also to the detriment of the animals. In important big game areas, populations of horses causes competition between the two classes of animals for forage, and where water is limited, such competition may be severe. In view of the present management systems available for large grazing animals, positive definition of the area of use by horses is mandatory, with fenced, controlled areas being that generally used.

2. Preservation of Wild Horse Herds

In order to be acceptable to the interest groups, a system must provide assurance that wild horse numbers and herds will be perpetuated. It is not understood if these interest groups insist that the numbers and herds continue in the present location.

For effective management, there must be an opportunity to effectively control the numbers, probably on an annual basis to arrive at a stable population which is in line with the forage resource and its continued conservative management. It appears that this criteria points to the necessity of clearly defined areas of wild horse herds which will allow constant monitoring of the animals and a cost effective manner of gathering excess animals.

In addition, to the management of the herds, some system for care of unadoptable which is more economical than the present necessity to hold in existing facilities must be devised. At the present time, two sanctuaries are in operation in South Dakota for this purpose, with an additional sanctuary being proposed. The cost of these is initially borne by private funds and Federal funds for not to exceed three years at \$1.00 per day per animal. It is possible that as management of the existing herds is accomplished, that through class management of the animals, the number of unadoptable animals can be reduced. This would be accomplished by annual gathering of each herd and selection of the younger animals for adoption purposes. This could probably result in younger herds and less death loss among the herds. However, as time went on, some of the older horses would have to be culled and classed as unadoptable. Therefore, it appears that there will be a continuing need for sanctuaries for an unknown number of animals.

3. Cost of Management

As discussed above, the present cost of management of the animals seems excessive when compared to that of domestic animals, both cattle and horses. To accomplish the goal of effective management, it is necessary to devise a much more cost effective system. It has been the experience in the past, that management by private industry has been the most efficient. In order to determine a possible cost, the budget of a Northern Nevada ranch which is primarily a range operation, was obtained. This ranch has a total carrying capacity of 54,339 aum's with an indicated

carrying capacity of cattle of 4,500 cattle of various classes. By considering each horse as equivalent to 16 animal unit months per year for size of the animals and conservation of the area, there becomes an estimated carrying capacity for horses of 3,396. That number is reduced by 10% for conservation purposes and rounded to 3,000 horses. The operating budget of the ranch has varied over the past several years from a low of \$227,000 to a high of \$275,000. With a minimal amount of improvements, the ranch, which is composed of private and public lands, would meet most of the criteria being considered by the BLM as necessary for horse sanctuaries. Without considering the cost of such improvements, there is an indicated annual cost of \$91.67 per horse, which would include feed and management. This figure roughly represents the same service which is presently costing \$351.64 per horse. It is felt that this example illustrates the desirability of consideration of private enterprise as a means of preservation of wild horse herds at a reasonable cost.

4. Economic Development

As discussed above, private industry could be considered as an alternative to Federal management of the wild horse herds. However, in private industry, economics dictate that such an operation must be self supporting and probably return a profit to the owner. On the property being used in this example, it was determined that the value was approximately \$3,000,000.00. To that value is added a minimum additional improvement cost of \$240,000.00.

By using a fair rate of return on the investment in the sum of \$295,000 per year, plus the annual operation cost of \$230,000 per year, a total cost of \$525,000 per year for 3000 horses is indicated, or a per head cost of \$175 per head per year. This would amortize out the value of the real estate and improvements over a 15 year period at the rate of 4.17%, which although not the most desirable investment, would be attractive over the long period. The cost of \$175 would not include required veterinary services, gathering costs, or costs involved in adoption for animals which should be added in order to analyze the cost effectiveness of such a system. It is felt that in most cases, to assure horse interest groups that the animals were adequately protected that these segments of the horse program would have to be under BLM administration. As the entire cost of the program is now supported by the Federal government, it is felt that this practice would continue under private management. However, this would not preclude the possibility of such cost to be borne by private foundation funds. Due to the adverse effect on the tax base of rural counties, it is felt that ownership of the lands used for such an operation under a tax exempt foundation, it is felt that such an alternative should be carefully reviewed.

In addition to the return for care of the horses, there would be a possibility for an economic return by providing facilities for the public to view the animals. This could be as elaborate as lodges for the public, tours of the area, holding facilities for

adoption of excess horses, training facilities for the animals if desired or as simple as access for the public to the range area.

5. Western States Program

At the present time, populations in the various Western States varies greatly from a high reported in Nevada in 1987 of 27,015 to a low in New Mexico of 70. It appears that consideration should be given to provide distribution of wild horse herds in such numbers and places that access would be available to more of the general public. This would entail establishment of herds in other states, preferably within easy travelling distance of population centers.

PROGRAM

To arrive at a viable program in view of the above discussion, an innovative and totally different concept of management must be developed.

It is believed that this program must address two major segments, being the unadoptable horses as one and the most controversial being the continued management and preservation of the wild horse herds.

Unadoptable horses.

At the present time, there is a large portion of the cost of the wild horse program being absorbed in the holding facilities for the care of the unadoptable horses. One solution which is being attempted, is the establishment of private sanctuaries for these animals, with the requirement that all of the use be on private lands and that Federal support continues for no more than three years. It is understood that the capacity of the present sanctuaries in South Dakota is approximately 1,600 horses and an additional sanctuary is being proposed for 2,000 animals. It is difficult to assess the effect of this program on the total wild horse management cost.

Statistics developed by the BLM show that during the period of 1980 through 1987, a total of 39,491 horses were gathered in Nevada, with 19,882 horses being adopted in and out of Nevada, being 50.3% of those gathered. Statistics on the complete disposition of the balance of the animals is not available. Death loss reported is 9.1% of the animals gathered, with another .01% being animals privately owned. This leaves a remainder of 40.5% of the animals gathered which have been held in holding facilities for some time or 15,993 animals during the eight year period. It is assumed that during the period, the number of unadoptable animals exceeded the carrying capacity of the proposed sanctuaries. The gathering of 39,491 for the period of 1980 thru 1987 resulted in a decrease of the population in Nevada from 32,333 to 27,188. With the goal for management under the present criteria to reduce wild horse herds from 27,000 as reported for 1987 to 18,000 as detailed in Land Use Management Plans, being a much higher reduction than in the past seven years, it is apparent that the

number of unadoptable will exceed the capacity of existing and planned sanctuaries.

Therefore, consideration must be given to enlarging the sanctuary concept. Two proposals have been made in connection with unadoptable horses. One would be to provide an opportunity for many of the smaller land owners to take a small number of horses under a contract payment basis to maintain them until their death. Under this concept, an owner would have to meet criteria for maintenance of the animals which would include adequate forage and water, adequate fences and supplemental feeding as necessary. No specific requirement as to location is contemplated, therefore allowing horses to be kept not only in the Western States, but also in the Eastern States. It is proposed that under this program, the cost of the care of the animals be borne entirely by the Federal government. Administration of such a program, in the event it became popular could become quite expensive. In order to keep the cost of administration acceptable, some existing government administrative system would have to be used. As the Agricultural Stabilization program has a system for distribution of funds and supervision of activities throughout the United States, it may be a logical choice for the administration of a program of this scope.

The second proposal is simply an enlargement of the present sanctuary program being instituted with one addition, being the establishment of sanctuaries upon existing ranches which include private and public lands. In requiring present sanctuaries to be entirely upon private lands, it appears to be the goal to ensure that the unadoptable horses living on the sanctuaries do not have the opportunity to escape and again use public lands. Therefore, any ranch being considered as a sanctuary which is composed of private and public lands would have to be required to provide totally adequate fences around the exterior boundaries. In addition, there has been the problem as to payment to an individual operating upon public lands as it may relate to grazing fees. At the present time, the BLM subsidizes animals upon a sanctuary at the rate \$1.00 per day for not too exceed three years. When this is compared to the a present grazing fee base of \$1.35 per month, it appears that it could be a basis of an increase of the base rate for the grazing fee. This comparison is totally invalid for the reason that the criteria set forth for sanctuaries requires many more items at additional cost than represented by the current grazing fee.

In the sanctuary proposals, there is an economic opportunity for marginal farming and ranching operations to supplement current income. In addition, there appears to be a possible savings to the government, particularly if payment is made on the bid basis. It is believed that the cost per animal would be more than the current cost of pasture rental for cows and calves, roughly \$120.00 per year, but still much lower than the average cost per horse now being experienced. The purpose of such a program is to remove these animals from the high cost holding facilities to less expensive and probably more healthy surroundings.

This proposal would not preclude the present program of the

requirement that certain sanctuaries be privately supported after three years.

Wild Horse Herds

As previously discussed, it does not appear that effective management can be accomplished under the present system of providing areas and forage over the recognized wild horse areas. In order to accomplish the objectives, it is proposed that a program be initiated which would enlarge upon the present sanctuary system.

This would entail selection of offered ranch operations, either the total operation or a portion, under a contract for the care and partial management of existing wild horse herds. It is proposed that a pilot program be initiated to determine if this is a viable solution, to define the problems which will be encountered and to particularly define the cost. This proposal considers that whole herds now running in an area, be removed to a selected, contract range. One of the problems which would be encountered would be to hold the animals on an area strange to them. Therefore, one of the objectives of a pilot program would be to determine the type of fence necessary.

The procedure would be to call for bids for a long term contract for the care of wild horses. The invitation for bids would contain the criteria for the type of forage, water availability, improvements, facilities for management of the animals and any other matters considered necessary. This could include a requirement for facilities for supervisory personnel and visitor facilities. Upon receipt of the bids, a careful inspection of the offered property would be conducted to ensure that it could meet the criteria required and a time schedule established for completion of any required improvements. At the time all conditions were met, it would then be possible to remove existing herds from the open range and place them upon the accepted range. At this time, it would seem appropriate to cull the herd and have adoption facilities at the range operation. Unadoptable horses could be incorporated into the range herd or transferred to an existing sanctuary.

In this concept, Nevada would not be the only State considered for such ranges. For example, if some entity bid upon this program in the State of New Mexico, they should be considered. This would provide a means of distribution of the animals in other areas for better public access. As they do not now have the population to stock such a range, it may be possible that it would be stocked from existing herds in Nevada.

As to the cost, it is felt that this would vary from area to area, primarily dependent upon the market value in each area. However, it appears that an average cost would be near \$250 per animal per year, exclusive of veterinarian services and administrative costs. This would be a much lower per horse cost than at present. In addition, it would allow the establishment of final desired numbers and determination of a definite continued cost.

In this, the ultimate objective would be to have all wild horses on such Federally supported ranges, this to be reached over a period of time.

A proposal such as outlined above presents a number of questions which must be resolved. The first that comes to mind is as to what arrangements could be made to ensure continuation of a particular range. First, the contract must be fairly long term, 10 years or more, with the option to extend for incremental periods if care and management has been satisfactory, with costs adjustments based on an index. In addition, a bond may be required of the owner which would be for the purpose of ensuring sufficient funds to provide any supplemental care required in the contract. At the end of a contract period, if not renewed, a procedure must be established for replacing the range in another location. There are any number of other questions which will arise, but with acceptance of the concept and an acceptable pilot program initiated, there would be an opportunity to provide solutions to these problems.

The great advantage to this range program is that it does provide a positive means to manage the resources, both forage and animal at an apparent reduced cost. Under the concept, holding facilities as now known would be terminated as each range would have holding facilities to take care of the excess animals in the herds. Adoption could be conducted from the holding facilities and as there would be greater distribution of the animals, which after culling would be of better quality, it is believed that a greater percentage would be adopted.

The biggest advantage appears to be the opportunity to continually monitor the condition of the animals and to provide assistance in times of need.

SUMMARY

The program as proposed herein will meet with opposition from all interested groups. However, there is no known additional program which meets the criteria which appears necessary for proper management of the wild horses. Some groups feel that all competitive use should be removed from the existing wild horse ranges and the herds allowed to reach natural population levels without interference by man. This would result in severe death losses at some time accompanied by probably irreparable damage to some areas. Management under the present system has been very expensive and has not been able to reach goals set. Therefore, it is felt that it is necessary to seek an additional solution that has some certainty of success, and the above is proposed on that basis. In the event, the concept is accepted, it is felt that with the establishment of a pilot program, problems which will arise can be met, resolved and definite criteria established which will result in a Western wide program which will benefit the range, the economy, the wild horse and the public.

SUPPLEMENT TO PROPOSED WILD HORSE RANGE PROGRAM

At the time of discussions with various interested groups on the concept of establishing wild horse ranges upon existing ranch operations under a contract basis with the Federal Government, it was briefly pointed out, that such type of program with its accompanying income through payments by the United States could possibly be used to assist disadvantaged minority groups.

At the present time, it is understood that at least one group of Indians within a reservation have expressed an interest in participating in this program. In essence, the reservation would take in a number of wild horses to be managed as wild horse herds under the same contract basis as a private individual.

This proposal certainly has merit for further consideration. A number of tribal councils located on reservations in the West are continually attempting to locate an enterprise upon the land which will serve to employ a number of their people, use the resource available to them and provide an income to the Council and tribe members. In many reservations, the forage resource is not being used to its conservative potential and it is believed that there is forage available for such use. In addition, the location of reservations throughout the West, would provide a distribution of wild horses which would provide easier access to interested people from population centers who may wish to see wild horses.

Wild horse herds on reservations would provide a number of opportunities for employment and income. A small number of personnel would be needed to maintain improvements, such as waters and fences for the management of the horses. In addition, the agency responsible for the horses, presently the Bureau of Land Management, would require additional personnel at such times as it was necessary to gather, sort and provide adoption for the increase of the herds. It is suggested that Indian personnel be considered for this work, on a part time basis. This would reduce the personnel expense to the Bureau of Land Management in that permanent personnel would not have to be used in this work. In addition, it is conceivable that within the reservation, visitor centers could be established with facilities for camping or lodging with accompanying guided tours for visitors to observe wild horse herds. Each of these activities would provide employment for the reservation residents.

All wild horse herds, either managed as proposed or unmanaged as is the present case, must have the increase removed periodically. In the removal of the increase on a reservation, there is an additional employment opportunity. At the present

time, some States have a program within their prison of training some of the most desirable horses for sale to the general public. It is suggested that this also be considered as a means of employment within the reservation. At the time, excess horses are removed, desirable horses could be selected for training as saddle horses. This would in turn, provide additional employment. It is proposed that at the end of the training program, the horses could be placed for adoption in much the same manner as now practiced, but in addition to the usual adoption fee, a fee would be charged for training, which would go to the trainer or the Council, as each reservation would decide.

In summary, the following employment and income opportunities would be generated within a reservation:

1. Payment from the Federal Government to grazing the animals.
2. Employment within the reservation for management of the wild horse herds which would be a portion of the expenses of operation, with payment to be from the funds received from the Federal Government for grazing much the same as the costs to be borne by a private individual.
3. Possible employment for members at such time as gathering, culling and adoption is in progress on a part time basis.
4. Employment in conjunction with visitor centers and tours.
5. Employment associated with the training of horses for income.

In considering this proposal, there may be some problems. The first is the matter of administration of the reservation lands by the Bureau of Indian Affairs. It would be necessary to coordinate such a program with that agency and obtain their approval. It is believed that agency would primarily be concerned with the proper use of the resource. Jurisdiction over the horses would have to be determined. At the present time, the Bureau of Land Management would have no authority to enter a reservation for purposes of inspection to determine if the terms of the contract were being observed. This matter would have to be resolved in order to assure wild horse interest groups that the animals were being properly maintained. It is believed that this could be done by agreement between the Bureau of Land Management and the Bureau of Indian Affairs to allow supervision by the Bureau of Land Management or that the responsibility could be placed upon the Bureau of Indian Affairs entirely. Once the concept was approved, it is felt this matter could be resolved. One further problem which must be resolved is the matter of unadoptable horses which come into the herd. The question arises as to whether they should be eliminated from the herd by placing in other areas away from the reservation, disposed of in a humane manner or placed back on the reservation. In this proposal, it is suggested that the unadoptable horses be returned to the reservation range with the stallions being sterilized in order to maintain a more desirable stallion-mare ratio.

It is felt that a program such of this should have certain criteria for the establishment of wild horse herds upon any reservation. First, the tribal government should express an interest in the program by bidding for horse herds. The area proposed for the program should meet the same criteria for a wild horse herd as any ranch area, that is have sufficient forage and water to maintain the number specified and be of sufficient area to preserve the wild horse characteristics.

In placing horses upon reservation lands, it is suggested that entire existing horse herds be gathered and placed on these lands. Priority should be given to those horse herds which are trespassing upon private lands, those which are competing with big game populations and those which are causing problems around populated areas. At such time as the horse herd is removed, the designated herd area should be placed in an inactive status, with the intent that it would not be repopulated unless the reservation to which that herd went decided to discontinue the program. This would provide an area for those horses to be placed.

In a philosophical vein, this concept adds to the romance of the preservation of the wild horse. The Plains and the Southwest Indians were famous for their horses, which came from wild horse herds. Therefore, this concept is a partial return to the historical use of the horse by the American Indian. In addition, the reservations have the areas favored by the horse and many of the reservation residents are experienced and have a genuine interest in horse management. This coupled with a means of preservation of the wild horse and possible income to this minority group certainly justifies serious consideration of the proposal.

UPDATE OF INFORMATION
CONTAINED IN
WILDHORSE AND BURRO MANAGEMENT PROGRAM

The initial summary of the proposal for a wildhorse management program was completed in November, 1988 and the information contained in that proposal has been presented to legislative committees and interested groups. However, recent information obtained requires updating of some of the information presented in the original proposal and supplement.

At the time of the original proposal, it was stated that the cost of the wildhorse and burro program for the year 1987 was 13.3 million dollars. This was a figure believed to be conservative so that costs and savings presented in the proposal would be favorably slanted to support the program. At this time, the Seventh Report to Congress, 1988, upon the Administration of the Wild Free-Roaming Horse and Burro Act has become available. This report shows that the cost estimate was indeed conservative. It is reported that the total appropriated amount for the program upon both the Forest Service and Bureau of Land Management was in the amount of \$18,116,00.00, with \$280,000.00 to the Forest Service and \$17,936,000 to the Bureau of Land Management. However, there was a total net received from the adoption program of \$302,000. The Bureau of Land Management reports in the publication entitled "Public Land Statistics" a total population of horses and burros in 1987 of 43,286 animals which computes to be an expenditure of \$407.38 per animal for that year instead of the amount of \$351.64 as originally computed.

The report to Congress states that during fiscal year 1987 a total of 11,521 horses and burros were removed. The breakdown of the cost of removal, maintenance and disposition of the animals shows a total expenditure \$14,326,000, or an average cost during the year for removal, maintenance and disposition of \$1,243.47 per animal. It is realized that this would not be an entirely correct figure as it would include the costs of maintenance of some unadoptable animals previously gathered, however, it does begin to provide an indication of the cost in the process of gathering, maintaining and disposing of animals.

It is interesting to attempt to determine the effect of the current gathering program on bringing the population of wild horses and burros to the estimated appropriate management level upon the Bureau of Land Management lands to 30,207 animals from the 1988 reported population of 43,286 animals. Population as shown in the Report to Congress at the beginning of fiscal year 1986 was 50,421 animals. The report also shows that during fiscal year 1986 and 1987 a total 21,647 excess animals were removed. The population

figures shown at the beginning of fiscal year 1988 is 43,286 animals or a reduction during the two year period of 7,135 animals. From this it is apparent that the reproduction of the animals produced a net of (21,747 removed - 7,135 reduction of population) 14,612 animals in a two year period. In an attempt to determine the number of animals which must be removed to reduce the 1988 population of 43,286 animals to the optimum of 30,207 animals, it is necessary reduce the population by 13,079 animals. However, in order to reduce the population by 1 animal it is necessary to remove 2.05 animals as computed from the two year period reviewed above. Therefore, it would be necessary to remove 26,811 animals. At a conservative cost of \$1,000 per animal instead of the \$1,243.00 per animal as computed above, it shows an estimated cost of \$26,811,000.00. This would be in addition to other management costs.

The above computed net gain of animals computes to be a net production rate or survival rate of 14% of the herd. This applied to the optimum population of 30,207 animals shows that it would be necessary to have a continuing program of for the removal 4225 animals per year at a minimum cost of \$4,225,000 per year, which again would be in addition to the usual management costs. This illustrates that a continuing high cost will be incurred even if optimum numbers are reached.

The original proposal states the present program is ineffective as to cost, management and proper care of the animal and forage resource. It is interesting to note that in the Report to Congress by the Forest Service and the Bureau of Land Management the following statement is made:

It is time to re-evaluate this legislation as a basis for humane and cost-effective protection, management and control of wild horses and burros in the broader context of overall public land management.

Although the program as proposed may be not be a final solution, it is believed that it contains enough merit that it should be considered by Congress in the hope that a more viable and effective program will be devised after input by the various interest groups. Concern as to a viable program is voiced by the average citizen daily, some members of Congress have expressed their feelings as to the effectiveness of the program and the above statement by the land managing agencies involved certainly expresses the need of revisions. It is hoped that Nevada, being the State having the vast majority of the population of the animals can, through action by the Legislature, encourage such a re-evaluation and contribute to the solution of the present problem.

PROPORTION OF PUBLIC LAND FORAGE PRODUCTION
USED BY WILD HORSES AND BURROS IN NEVADA

In several instances it has been stated that the proportion of the use of the public ranges in Nevada is minimal when compared to the domestic livestock uses. Apparently this has been derived from PROGRESS REPORT, BUREAU OF LAND MANAGEMENT, NEVADA STATE OFFICE.

This report gives the following figures for 1986 for domestic livestock:

Cattle	305,922	
Horses	1,502	
Sheep	330,222	
TOTAL	637,746	all animals.

NOTE: The above figures taken from 1988 Nevada Statistical Report, prepared by State of Nevada Office of Community Services, page 367.

The Nevada Statistical Report, page 326, shows the following numbers for wild horses and burros:

Wild Horses	26,764
Burros	1,473
TOTAL	28,237

The comparison of 28,237 wild horses and burros to 637,747 licensed, domestic animals has been used to illustrate the point that the use allotted to wild horses and burros is minimal. The use of these "raw" figures produces an invalid comparison as it does not consider the forage consumption or the length of time each class of animal is upon the public range. In order to arrive at a valid comparison, it is necessary to convert each class of animal to a comparable figure and then arrive at the total consumption of forage for each. This is done by converting each class to a common denominator, which has been an ANIMAL UNIT. For computation of use purposes, the Bureau of Land Management defines an animal unit as an adult cow, considering any weaned animal as an adult, five sheep being the equivalent of 1 adult cow, and for billing purposes, 1 horse being equivalent to 2 adult cows. The basis of 5 sheep being equivalent to 1 cow is fairly valid, but the comparison of 1 horse being equivalent to 2 cows is not. Feed consumption studies indicate that 1 horse weighing approximately 1200# will require 1.8 times the feed as an average horse. As most wild horse weigh considerably less, for the purposes of this review, a horse will be considered equivalent to 1.5 of adult cows. As a wild horse will weigh on the average of 900#, this weight indicates that they would consume three-fourths of the feed of a 1200# horse, but other feed studies show that it is not a direct proportion to weight and that body surface will also enter into forage consumption. In addition, the wild horses being present on

a year-long basis would have the effect of increasing the total effect on forage consumption.

When these equivalents are applied, it results in the following comparable figures

DOMESTIC LIVESTOCK

Cattle	305,922	Animal units
Horses	2,253	Animal units
Sheep	66,044	Animal units
TOTAL	374,219	Animal Units

WILD HORSES AND BURROS

Horses	40,146	Animal Units
Burros	1,473	Animal Units
TOTAL	41,619	Animal Units

The number of animals comparison shows that wild horses and burros only make up 4.2% of the population of large grazing animals upon the public lands, but when all classes are converted to the equivalent of an animal month, it shows that wild horses and burros are 10% of the total population.

In order to fully evaluate the comparison between domestic livestock and wild horses and burros, it is still necessary to consider the length of time spent on the public land to arrive at the total forage consumed. This is customarily done on the basis of an ANIMAL UNIT MONTH, being the forage consumed by one Animal Unit in 1 month. For domestic livestock, the total animal unit months consumed are reported annually. For Nevada in 1986, this was 1,805,630 animal unit months. (See Nevada Statistical Report, 1988, page 367). For wild horses and burros, the report does not show the animal unit months, but that can be arrived at by simply multiplying the Animal Units of this class by 12 months, which is the time they must spend upon the public lands. Therefore, their annual forage consumption becomes (41,619 animal units x 12 months) or 499,428 animal unit months.

This makes the total forage consumption by large grazing animals upon the public lands being as follows for 1986:

Domestic animals	1,805,630	animal unit months
Wild horses and Burros	499,428	animal unit months
TOTAL	2,305,058	animal unit months

with wild horses and burros consuming 21.7% of forage produced on public lands in the State of Nevada.

The equivalents given above are generally used, but there are any number of refinements which could be applied. In addition, a small portion of the wild horse use would be made upon the unfenced private land interspersed with the public land. A detailed study of each horse area use coupled with a detailed analysis of age, size and class of livestock could be used to arrive at a more accurate comparison. However, the above clearly illustrates the invalidity of comparing total numbers of domestic livestock to total number of wild horses and burros.

This brief analysis also points out the tremendous impact which wild horse and burro use is having upon the natural resource of forage production in the State of Nevada. This 21% use of the forage is primarily unmanaged in that it is year-round use with very little control on the area of use. That amount of uncontrolled or unmanaged use by domestic livestock would be totally unacceptable to the government agencies and private individuals upon their own land.

SUMMARY OF COSTS
OF WILD HORSE MANAGEMENT
BUREAU OF LAND MANAGEMENT

PRESENT PROGRAM

Estimated population of 1987-37,822 horse
1988 budget-13.3 million dollars
Average cost per animal-\$351.64
Cost to gather a horse-\$40 to \$80 per head
Adoption costs-\$35 to \$40 per animal
Facilities costs for holding animals-feed and facility-
\$2.00/day
(Above cost figures from BLM memo 4700(NV-017) dated
January 7, 1988

Public Lands News addition of November 10, 1988 states that BLM reports about 3,600 presently held in facilities which from above represents a cost of \$144,000 to \$288,000 to gather and a daily cost \$7,200 to hold for an annual cost of \$2,628,000 exclusive of additional care, maintenance and administrative expenses.

It is reported that BLM has a target population of 31,000 horses. By applying the above figures, the possible cost after the target is reached is as follows:

Budget - 31,000 horses at \$351.64 per head = \$10,900,840.
It is assumed that this would include gathering costs, holding costs, adoption costs and administration costs.

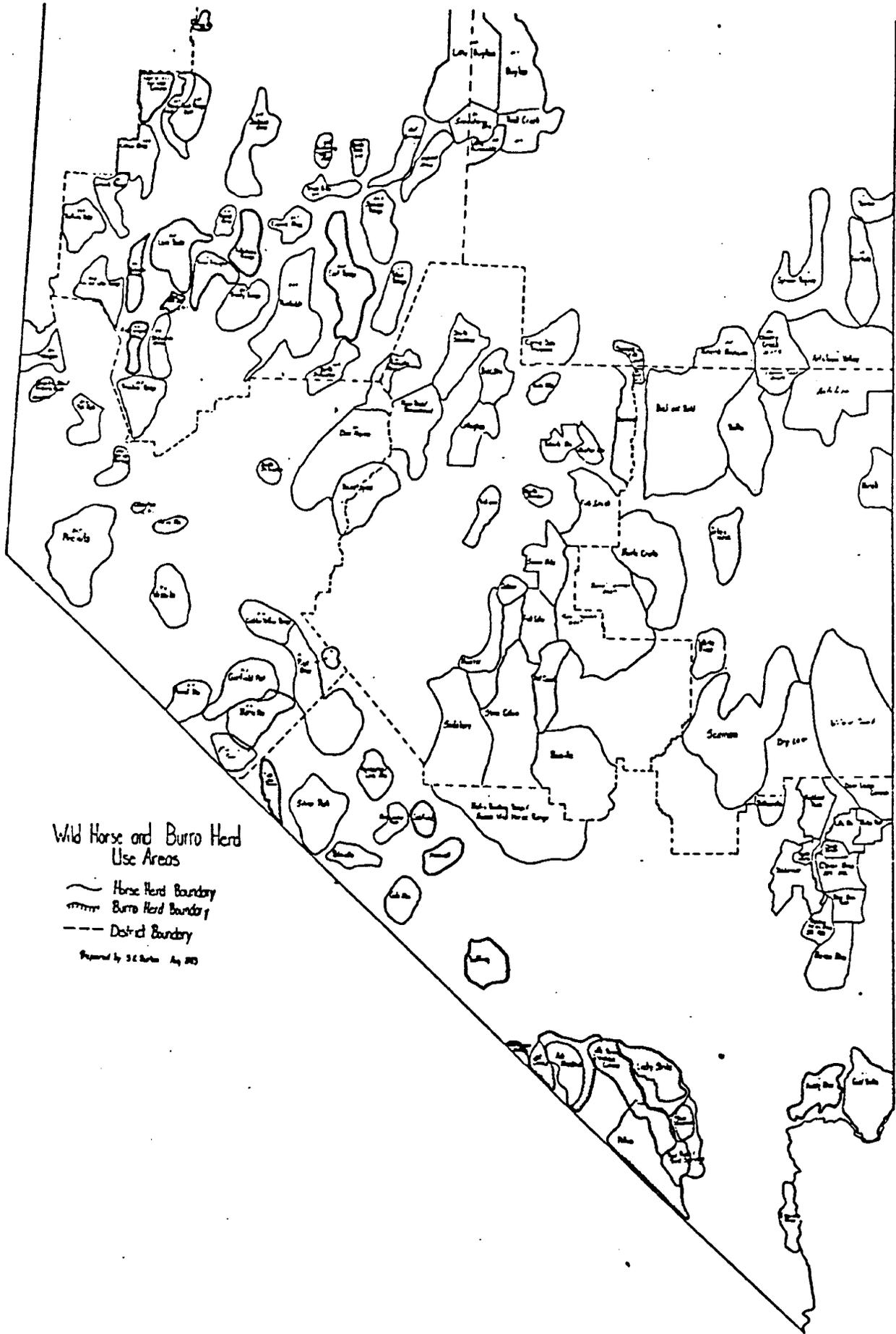
PROPOSED PROGRAM

So-called start up costs are difficult to assess. For the purposes of this comparison the goal of 31,000 head is used.

Contract ranges - 31,000 horses at an annual cost of
a low of \$175 and a high of \$250 per head per year
gives an indicated cost of \$5,425,000 to \$7,775,000.

Horses held in sanctuaries (unadoptables) the number based on the present population of 37,822 head with 3,600 now held or 9.5%. Therefore on a goal of 31,000 animals, 2,945 animals would be held in the sanctuaries at a low annual cost of \$515,375.00 and a high of \$736,625.00

The total estimated cost of the proposed program then becomes a low of \$5,940,375 and a high of \$8,511,625.00, exclusive of administrative costs. No estimate is made as to the possible economic benefits to a local economy for tourism, support of a local industry or benefit to the resource.



Wild Horse and Burro Territories and Herd Areas
Nevada vs. Western States
1986

State	U. S. Forest Service		Bureau of Land Management		Total State Acreage	% of State Acreage
	Territories	Acres	Territories	Acres		
Arizona	3	42,964	11	2,011,000	72,688,000	2.8
California	9	431,189	35	4,479,622	100,206,720	4.9
Colorado	0	0	6	637,514	66,485,760	1.0
Idaho	1	4,246	7	424,150	52,933,120	0.8
Montana	1	3,350	2	44,813	93,271,040	0.1
Nevada	18	1,250,421	120	18,394,838	70,264,320	28.0
New Mexico	9	142,434	2	44,238	77,766,400	0.2
Oregon	2	100,660	34	3,589,848	61,598,720	6.0
Utah	2	40,356	28	2,095,502	52,696,960	4.1
Wyoming	0	0	12	3,181,703	62,343,040	5.1
Total	45	2,015,620	257	34,903,228	710,254,080	5.2

SOURCE: U.S. Forest Service and Bureau of Land Management, Administration of the Wild, Free-Roaming Horse and Burro Act, 6th Report to Congress, 1986 and U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics, 1987.

Wild, Free-Roaming Horses and Burros on Public Lands
in Nevada by BLM District
1979 to 1987

(Federal Fiscal Year)

Horses

BLM District	1979	1980	1981	1982	1983	1984	1985	1986	1987
Battle Mountain	6,037	6,033	5,289	6,176	5,804	6,454	7,301	6,169	5,627
Carson City	6,440	5,290	4,323	4,834	5,419	5,460	6,495	4,794	4,920
Elko	2,479	1,164	1,688	1,376	1,030	1,479	1,304	1,367	1,675
Ely	2,277	1,697	2,003	2,598	2,931	3,099	2,475	2,699	3,448
Las Vegas	4,830	8,200	5,494	5,444	6,198	5,422	4,522	4,789	3,522
Winnemucca	12,075	9,949	7,254	6,696	7,395	9,382	7,336	6,946	7,996
Total	34,138	32,333	26,051	27,124	28,777	31,296	29,433	26,764	27,188

Burros

Battle Mountain	-	-	18	18	18	236	351	333	333
Carson City	300	250	246	264	130	130	130	139	163
Elko	-	-	-	-	1	-	-	-	-
Ely	-	-	-	-	-	-	-	-	-
Las Vegas	1,150	1,250	866	1,157	1,157	839	736	736	736
Winnemucca	116	241	200	222	222	540	251	265	298
Total	1,566	1,741	1,330	1,661	1,528	1,745	1,468	1,473	1,530

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Nevada Progress Report, various years.

Forage Provided and Number
of Livestock Grazing on BLM Lands in Nevada
1970 to 1986

Fee Year	Number of Operators	Animal Unit Months	Number of Cattle	Number of Horses	Number of Sheep
1970	935	2,112,993	348,982	*	452,128
1971	892	2,100,384	452,128	*	402,598
1972	835	1,977,768	342,381	*	315,735
1973	822	2,020,741	336,838	*	342,978
1974	801	1,979,686	348,963	*	333,415
1975	797	1,962,317	356,619	*	254,554
1976	706	1,963,165	329,057	*	210,735
1977	706	1,726,903	388,182	*	230,325
1978	720	1,890,060	318,079	*	210,213
1979	693	1,840,916	304,170	1,372	194,443
1980	607	1,489,964	292,103	1,172	201,393
1981	715	1,651,936	284,374	1,216	191,780
1982	705	1,607,754	259,523	1,250	315,083
1983	636	1,706,319	390,991	1,373	281,952
1984	681	1,872,983	391,981	1,334	290,973
1985	639	1,806,239	317,279	1,343	253,912
1986	699	1,805,630	305,922	1,502	330,222

* Included in "Number of Cattle" category.

a) The "Number of Sheep" only reflects the utilization of BLM grazing allotments and not the current inventory of sheep. Sheep may be shifted from allotment to allotment and be imported from California or Utah for temporary grazing in Nevada.

NOTE: Fee year runs from March 1st of indicated year to February 1st of following year.

SOURCE: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Progress Report, various years.

APPENDIX Q

Letters From Nevada's Congressional Delegation
Supporting Funding A Consultant For An
Inventory Of Federal Lands Needed
By Local Governments

RICHARD BRYAN
NEVADA

COMMITTEES
BANKING, HOUSING, AND
URBAN AFFAIRS
COMMERCE, SCIENCE, AND
TRANSPORTATION
JOINT ECONOMIC

United States Senate

WASHINGTON, DC 20510

November 21, 1989

Senator William J. Raggio, Chairman
Interim Finance Committee
Nevada Legislature
Legislative Building
Carson City, Nevada 89710

Dear ~~Senator Raggio~~:

During a recent visit to Washington, D.C. the Nevada Legislature's Committee on Public Lands briefed me on its proposal for gradually acquiring federal land to accommodate growth and economic development around Nevada's cities and counties. This proposal would include a comprehensive inventory of land needs, by county to identify federal lands for specific purposes. These purposes primarily would consist of lands needed around rapidly expanding communities to accommodate population growth and economic development.

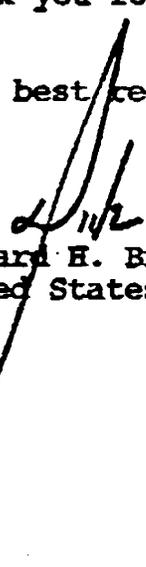
Senator Dean A. Rhoads, Chairman of the Public Lands Committee, advised that he intends to request the Nevada Legislature's Interim Finance Committee to approve funding to hire a consultant to conduct the comprehensive inventory and develop a consolidated proposal for congressional consideration.

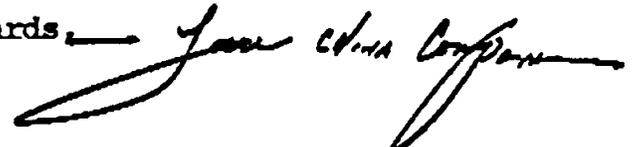
The purpose of this letter is to lend my support to this effort and to urge favorable consideration by the Interim Finance Committee to fund the lands inventory process. This approach appears to offer a reasonable and realistic method of assisting the state and its local governments in planning for future land needs. Such an inventory would provide credibility for a consolidated proposal to Congress and would also be helpful to the federal land management agencies in addressing the state's land planning needs.

Senator William J. Raggio
November 21, 1989
Page Two

I would encourage you and the members of the Interim Finance Committee to review and grant approval to the Public Lands Committee's request for funding to implement this land identification process. Thank you for your consideration and attention.

With best regards,


Richard E. Bryan
United States Senator



HARRY REID
NEVADA

United States Senate

WASHINGTON, DC 20510

December 8, 1989

RECEIVED
RAGGIO, WOOSTER, & LINDELL, LTD.
DEC 19 1989

The Honorable William Raggio
Chairman, Interim Finance Committee
Nevada State Legislature
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Bill:

This past October, I was pleased to meet with the Nevada Legislature's Committee on Public Lands concerning its proposal for land aquisition. This proposal would include a comprehensive inventory, county by county, of land needs to accommodate expanding populations and economic development.

I understand that Public Lands Committee Chairman Dean Rhoads plans to ask you and the other members of your committee to approve funding for the employment of a consultant to conduct the inventory and prepare a proposal for Congress.

Our state is growing at a rapid rate, and with that growth comes the need for more land. I will, when the time comes, do what I can to facilitate the land aquisition process. Of course, we first must know what is needed and where. I therefore urge you to support Senator Rhoads' request for funding for the land needs assessment.

Thank you for your consideration of this important matter.

With all best wishes,

Sincerely,



HARRY REID
United States Senator

HMR:mxh

JAMES H. BILBRAY
1ST DISTRICT, NEVADA

COMMITTEE ON
ARMED SERVICES

COMMITTEE ON
SMALL BUSINESS

SELECT COMMITTEE
ON AGING



319 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5965

DISTRICT OFFICE:
1701 W. CHARLESTON, SUITE 300
LAS VEGAS, NV 89102
(702) 477-7000

Congress of the United States
House of Representatives
Washington, DC 20515

December 13, 1989

Senator William J. Raggio, Chairman
Interim Finance Committee
Nevada Legislature
Legislative Building
Carson City, Nevada 98710

Dear Senator Raggio:

During a visit to Washington, D.C., on October 26 and 27, 1989, the Nevada Legislature's Committee on Public Lands briefed me on its proposal for a gradual land acquisition process. This proposal would include a comprehensive inventory of certain federal lands which the State of Nevada wished to acquire, and would also set forth the specific purposes for the acquired lands.

Senator Dean A. Rhoads, Chairman of the Public Lands Committee, informed me that he intends to request the Nevada Legislature's Interim Finance Committee to approve funding to hire a consultant to conduct a comprehensive land inventory and to develop a consolidated land acquisition proposal for consideration by Congress. Such an inventory by a nationally recognized consulting firm would provide Congress and other federal land management agencies with important information to address the State of Nevada's land planning needs.

As Chairman of the Interim Finance Committee, I hope that you will give serious consideration to this land acquisition proposal. Thank you for your consideration.

Sincerely,

James H. Bilbray
Member of Congress

JHB:brh

BARBARA F. VUCANOVICH
2ND DISTRICT, NEVADA

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

COMMITTEE ON HOUSE
ADMINISTRATION

SELECT COMMITTEE ON
CHILDREN, YOUTH AND FAMILIES

CONGRESSIONAL TRAVEL AND
TOURISM CAUCUS

ENVIRONMENTAL AND ENERGY
STUDY CONFERENCE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

February 5, 1990

206 CANNON BUILDING
WASHINGTON, D.C. 20515
(202) 225-6155

FEDERAL BUILDING
300 BOOTH STREET, SUITE 3038
RENO, NEVADA 89509
(702) 784-5003

401 RAILROAD ST. #307
ELKO, NEVADA 89801
(702) 738-4064

2200 CIVIC CENTER DRIVE
POST OFFICE BOX A
NORTH LAS VEGAS, NV 89030-1320
(702) 389-3555

The Honorable William J. Raggio
Chairman
Interim Finance Committee
Nevada Legislature
Legislative Building
Carson City, Nevada 89710

Dear Senator Raggio:

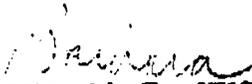
During a visit to Washington, D.C., on October 26 and 27, 1989, the Nevada Legislature's Committee on Public Lands briefed me on its proposal for a gradual land acquisition process. This proposal would include a comprehensive inventory of land needs, by county, in the state to identify federal lands for specific purposes. These purposes primarily would consist of lands needed around rapidly expanding communities to accommodate population growth and economic development.

Senator Dean A. Rhoads, Chairman of the Public Lands Committee, advised me that he intends to request the Nevada Legislature's Interim Finance Committee to approve funding to hire a consultant to conduct the comprehensive inventory and develop a consolidated proposal for congressional consideration.

The purpose of this letter is to lend my support to this effort and to urge favorable consideration by the Interim Finance Committee to fund the lands inventory process. This approach appears to offer a reasonable and realistic method of assisting the state and its local governments in planning for future land needs. Such an inventory by a nationally recognized consulting firm would provide credibility for a consolidated proposal to Congress and would also be helpful to the federal land management agencies in addressing the state's land planning needs.

I would encourage you and the members of the Interim Finance Committee to review and grant approval to the Public Lands Committee's request for funding to implement this land identification process. Thank you for your consideration and attention.

Sincerely,


BARBARA F. VUCANOVICH
Member of Congress

APPENDIX R

Letter From Manuel Lujan, Jr., Secretary Of
The Interior Concerning The Gradual Land
Acquisition Proposal



THE SECRETARY OF THE INTERIOR
WASHINGTON

DEC 12 1989

Chairman Dean A. Rhoads
Public Lands Committee
Nevada State Legislature
Tuscarora, Nevada 89834

Dear Chairman Rhoads:

Thank you for the opportunity to meet with you and other Public Lands Committee members to discuss some of Nevada's important natural resources issues. As a former U.S. Congressman, I recognize the importance of input from local elected officials when land-related issues are being considered.

I appreciate your concern regarding land exchanges that might result in a net loss of privately-owned lands in Nevada. With approximately 87 percent of the state's land area already in public ownership, we should be sensitive to your concerns. In this regard, I will work with you to the extent that I can to ensure the protection of Nevada's economic growth and the public's interest.

During our meeting, we discussed options for maintaining the amount of Nevada land available for private use. Specifically, you suggested that the Bureau of Land Management (BLM) sell some of its Nevada land to the private sector at fair market value. If you can identify the appropriate BLM lands to be sold at fair market value, we will review your proposals, both for Clark County and the rest of the state. Please contact Mr. Cy Jamison, Director of the BLM.

We look forward to receiving your proposal. I assure you that the Bureau of Land Management will take your thoughts into consideration.

Again, thank you for your interest in this important matter.

Sincerely,

Samuel Ragan Jr.

APPENDIX S

Recommendation, Nevada State Multiple Use
Advisory Committee On Federal Lands, #90-5,
Gradual Land Acquisition Proposal

R E C O M M E N D A T I O N

NEVADA STATE MULTIPLE USE ADVISORY COMMITTEE ON FEDERAL LANDS

#90 - 5

GRADUAL LAND ACQUISITION PROPOSAL

WHEREAS, the State Multiple Use Advisory Committee on Federal lands has been monitoring the activities and efforts of the Nevada Legislature's Committee on Public Lands to develop a proposal for gradually acquiring federal land to accommodate growth and economic development around Nevada's cities and in its counties; and

WHEREAS, the current proposal includes a comprehensive inventory of land needs by county to be conducted by a nationally recognized consulting firm to identify federal lands for specific purposes; and

WHEREAS, these purposes primarily would consist of lands needed around rapidly expanding communities to accommodate population growth and economic development; and

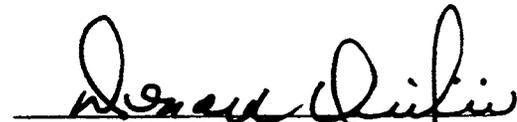
WHEREAS, Nevada's congressional delegation and federal administration officials have expressed support of this approach which appears to offer a reasonable, logical and realistic method of assisting the state and its local governments in planning for future land needs; and

WHEREAS, such an inventory would provide credibility for a consolidated proposal to Congress and would also be helpful to the federal land management agencies in addressing the state's land planning needs.

NOW THEREFORE BE IT RECOMMENDED by the State Multiple Use Advisory Committee on Federal Lands that the concept of the gradual land acquisition process under development by the Nevada Legislature's Committee on Public Lands be supported; and

BE IT FURTHER RECOMMENDED that the Public Lands Committee be encouraged to continue its efforts to secure funding to conduct a comprehensive inventory of land needs in the state; and

BE IT FURTHER RECOMMENDED that ample opportunities be provided for public comment and input throughout the inventory and land acquisition process.


DONALD QUILICI, Chairman

APPENDIX T

Resolution, Nevada Commission On Economic
Development Supporting A Gradual
Land Acquisition Proposal



STATE OF NEVADA
Commission
on
Economic Development

GOV. BOB MILLER
Chairman
Commission on Economic Development

Commissioners:

MAJ. GEN. R. G. TAYLOR
Vice-Chairman, Commission on
Economic Development
First Western Savings Association
Chairman of the Board
Las Vegas, Nevada

LYNN S. ATCHESON
Director of Public Affairs
Harrah's
Reno, Nevada

KEVIN T. DAY
Vice President of Corporate Affairs
First Interstate Bank of Nevada
Reno, Nevada

LARRY J. DUNTON
Eastern Nevada Medical Group
Ely, Nevada

FRED D. GIBSON, JR.
President
Pacific Engineering & Production
Henderson, Nevada

CESAR J. MARTINEZ
Chartered Life Underwriter
Massachusetts Mutual Life Insurance
Las Vegas, Nevada

Staff:

JAMES L. SPOO
Executive Director

ROBERT M. HIRSCH
Director, Motion Picture Division

R E S O L U T I O N

NEVADA COMMISSION ON ECONOMIC DEVELOPMENT

WHEREAS, The Commission on Economic Development has been informed of the activities and efforts of the Nevada Legislature's Committee on Public Lands to develop a proposal for gradually acquiring federal land to accommodate growth and economic development in Nevada's counties and cities; and

WHEREAS, The current proposal includes a comprehensive inventory of land needs by county to be conducted by a nationally recognized consulting firm to identify federal lands for specific purposes; and

WHEREAS, These purposes primarily would consist of lands needed around rapidly expanding communities to accommodate population growth and economic development; and

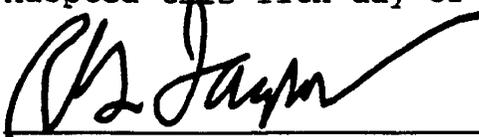
WHEREAS, Federal administration officials and Nevada's congressional delegation have expressed support of this approach which appears to offer a reasonable, logical and realistic method of assisting the state and local governments in planning for future land needs; and

WHEREAS, Such an inventory would provide credibility for a consolidated proposal to the Congress of the United States and would also be helpful to the federal land management agencies in addressing the state's land planning needs; now, therefore, be it

RESOLVED BY THE NEVADA COMMISSION ON ECONOMIC DEVELOPMENT, That the need for developing a gradual land acquisition process exists and that the Nevada Legislature's Committee on Public Lands should be supported in identifying ways to meet that need; and be it further

RESOLVED, That the Nevada Legislature's Committee on Public Lands be encouraged to continue its efforts to conduct a comprehensive inventory of land needs in the state.

Adopted this 11th day of April, 1990



R. G. Taylor, Vice Chairman
Commission on Economic Development

RGT/pr
resolutn

APPENDIX U

Recommendation, Nevada State Multiple Use
Advisory Committee On Federal Lands,
#90-8, Assistance In Gradual Land
Acquisition Proposal

R E C O M M E N D A T I O N

NEVADA STATE MULTIPLE USE ADVISORY COMMITTEE ON FEDERAL LANDS

#90 - 8

ASSISTANCE IN GRADUAL LAND ACQUISITION PROPOSAL

WHEREAS, the estimated cost to the state to prepare and present the gradual land acquisition proposal to Congress will be approximately \$250,000; and

WHEREAS, this expense could possibly be reduced if each County would present their own federal land requirements to the Legislative Committee on Public Lands; and

WHEREAS, each local entity is in a better position to know their land requirements for future growth; and

WHEREAS, we recognize that after material is received the Legislative Committee would go ahead with plans for presentation to Congress.

NOW THEREFORE BE IT RECOMMENDED, that the Legislative Committee on Public Lands request the Nevada Association of Counties, the Nevada League of Cities and school districts to provide this material and to set a deadline as to when information has to be before the Legislative Committee.

ADOPTED: June 1, 1990


DONALD QUILICI, Chairman

APPENDIX V

Suggested Legislation

<u>Bill Draft Request</u>	<u>Page</u>
BDR 18-260	Requires executive branch of state government to prepare assessment of takings implications on private property for certain governmental actions.... 225
BDR 45-1200	Requires commission for the preservation of wild horses to establish wild horse range study program..... 233
BDR R-1168	Urges Secretary of Interior to remove Lahontan cutthroat trout from list of threatened species..... 237
BDR R-1282	Urges Secretary of Interior to remove Cui-ui fish from list of endangered species..... 239

SUMMARY--Requires executive branch of state government to prepare assessment of takings implications on private property for certain governmental actions. (BDR 18-260)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the state executive department; requiring the departments of the executive branch of state government to prepare an assessment of the takings implications on private property for certain governmental actions; and providing other matters properly relating thereto.

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

Section 1. Title 18 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act, have the meanings ascribed to them in those sections.

Sec. 3. "Department" means an agency, bureau, board, commission, division, officer or employee of the executive branch of state government. The term includes, without limitation, the Nevada Tahoe regional planning agency.

Sec. 4. "Governmental action" means:

1. A regulation proposed by a department.
2. Legislation proposed by a department.
3. Comments of a department on a proposed state or federal regulation or proposed legislation.
4. The application of a state regulation or legislation to private property, which may cause, among other things:
 - (a) The physical invasion or occupancy of private property.
 - (b) The physical damaging of private property.
 - (c) Interference with the use and enjoyment of private property.
 - (d) Interference with access to private property.
 - (e) Interference with or acquisition of title to or an interest in private property.
5. Any statement of policy or a proceeding concerning the regulation, acquisition, physical invasion or occupancy of private property by the state.

Sec. 5. "Private property" means all property protected by Amendments V and XIV of the Constitution of the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 6. "Taking" means any uncompensated damaging or deprivation of private property in violation of Amendment V or XIV of the Constitution of

the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 7. "Takings implications" means the possibility that a governmental action, if implemented or enacted, could effect a taking, such as regulations that propose or implement licensing, permitting or other requirements on the use of private property or that require a dedication or an exaction from an owner of private property.

Sec. 8. The provisions of this chapter do not apply to:

1. Governmental action that modifies a regulation in a manner that lessens interference with the use of private property, abolishes a regulation, discontinues a governmental program or discontinues the use of a facility; or

2. Action by a law enforcement agency that involves the seizure of property for forfeiture or evidence in criminal proceedings.

Sec. 9. The attorney general shall:

1. After consultation with the various departments, adopt regulations for the evaluation of the risk and avoidance of unanticipated takings. The regulations must:

(a) Require each department to prepare a written assessment of the takings implications of its governmental actions; and

(b) Specify the information that must be included in the assessment, including, without limitation:

(1) An estimate of the probability that the governmental action will result in a taking of private property; and

(2) If the estimate prepared pursuant to subparagraph (1) indicates that any probability of a taking exists:

(I) The potential fiscal impact on the department if the governmental action is found to result in a taking of private property; and

(II) Alternatives to the governmental action that would accomplish the purposes of the governmental action without resulting in a taking of private property.

2. Modify the regulations after changes occur in state and federal law concerning takings.

3. Send the regulations and any modifications to the departments.

Sec. 10. 1. The departments shall cooperate and consult with the attorney general to formulate the regulations pursuant to section 9 of this act.

2. Each department:

(a) Shall comply with the regulations adopted by the attorney general in proceeding with a governmental action.

(b) May adopt such additional regulations concerning takings as may be appropriate for the department after approval by the attorney general.

3. The head of each department shall designate an officer who will be responsible for ensuring compliance by the department with the provisions of this chapter.

Sec. 11. 1. Upon completion of an assessment prepared in compliance with the regulations adopted pursuant to section 9 of this act, the department shall publish a notice stating that the assessment was performed. The notice must

include a list of the property for which takings implications were identified, if any.

2. The contents of the assessment, other than the information contained in the notice, are a confidential work product of the department. The officers and employees of the department shall not disclose the contents of the assessment unless ordered to do so by a court of competent jurisdiction.

Sec. 12. The assessment of a department prepared in compliance with the regulations adopted pursuant to section 9 of this act must not be admitted as evidence in any proceeding brought by the owner of an interest in private property against the department seeking compensation for an unauthorized taking of private property or as evidence by the department in such an action.

Sec. 13. The attorney general and the departments shall consider the following standards when adopting regulations pursuant to section 9 of this act and when the departments identify and evaluate governmental actions for takings implications pursuant to those regulations:

1. A taking may result from governmental action that:
 - (a) Causes a physical invasion or occupancy of or damage to private property.
 - (b) Causes interference with the use and enjoyment of or access to private property.
 - (c) Causes interference with or acquisition of title to or an interest in private property.

(d) Regulates the use of private property when the actions substantially affect the value of property or its use or unduly interfere with reasonable expectations concerning investment.

(e) Is temporary or does not result in complete deprivation of all use or value or of all of the separate interests in the private property.

(f) Regulates the use of private property and fails to advance legitimate governmental objectives substantially.

(g) Is an arbitrary and capricious abridgment of the right to make reasonable use of private property.

(h) Causes undue delay in making a decision if that delay interferes with use of private property.

2. If a proposed governmental action places conditions on the use of private property, the conditions must:

(a) Serve the same legitimate objective that would have been served by a lawful prohibition of the proposed use;

(b) Substantially advance the objective; and

(c) Not be disproportionate to the extent to which the proposed use contributes to the problem that the conditions propose to redress.

3. If a proposed governmental action involves a study, or a planning or other process that will interfere with or prohibit the use of private property pending the completion of the process, the length of the process must be kept to the minimum necessary.

Sec. 14. 1. Each officer designated pursuant to section 10 of this act shall:

(a) Identify any regulation of the department against which a claim based on a taking is pending; and

(b) Compile and send an itemized list of any award or claim based on a taking for each fiscal year to the chief of the budget division of the department of administration at the end of the fiscal year.

2. For the purposes of this section, an award or a claim is based on a taking if it is made or brought to compensate a person for damage to or deprivation of private property which is taken for public use without just compensation pursuant to Amendment V or XIV of the Constitution of the United States or section 8 of article 1 of the constitution of the State of Nevada.

Sec. 15. The chief of the budget division of the department of administration shall, to the extent permitted by law, ensure that any award levied against a department based on a taking is considered in the budget submitted by that department.

Sec. 16. The director of the department of administration shall, to the extent permitted by law, ensure that the policies and regulations of each department are consistent with the provisions of this chapter.

Sec. 17. 1. The attorney general shall adopt regulations pursuant to section 9 of this act on or before June 1, 1992.

2. The attorney general shall send the regulations to each department on or before August 1, 1992.

3. Each department shall submit the list of awards pursuant to paragraph (b) of subsection 1 of section 14 of this act to the chief of the budget division

of the department of administration for the fiscal years 1989-90, 1990-91 and 1991-92 on or before August 1, 1992.

SUMMARY--Requires commission for the preservation of wild horses to establish wild horse range study program. (BDR 45-1200)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to wild horses; requiring the commission for the preservation of wild horses to establish a wild horse range study program; and providing other matters properly relating thereto.

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

Section 1. Chapter 504 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The commission shall contract with one or more private landowners to provide a suitable area of privately owned land or a combination of privately owned land and federal land for which a grazing permit is held to establish a controlled range for two or more bands of wild horses. The contract must be renewable on an annual basis, by consent of both parties, and require the private landowner to:

(a) Provide adequate forage and water for the horses, as determined by the commission; and

(b) Construct and maintain fences to ensure that the horses remain on the range.

2. The commission shall, if practicable, enter into an agreement with the Bureau of Land Management to provide suitable bands of horses for placement on the range.

3. The commission shall contract for the completion of a study of the horses placed on the range which includes, without limitation:

(a) The characteristics, health and patterns of change of the horses;

(b) The habitat of wild horses in this state, including requirements for desirable forage, distribution of water, shelter and total living space;

(c) The proper ratio of stallions to mares for minimum and maximum production;

(d) The successfulness of transplanting bands of horses to new ranges;

(e) The reproduction and survival rates of the horses;

(f) The interaction between bands of horses;

(g) Appropriate census methods;

(h) The desirability of having the wild horses in an area accessible to the public;

(i) Appropriate management techniques for such a range, including appropriate culling practices; and

(j) The total cost per horse of operating such a range.

Sec. 2. NRS 504.430 is hereby amended to read as follows:

504.430 [For the purposes of] *As used in NRS 504.430 to 504.490, inclusive [:], and section 1 of this act:*

1. "Heil bequest" means the money bequeathed to the state by Leo Heil for the preservation of wild horses in Nevada.
2. "Trust fund" means the trust fund for the preservation of wild horses.
3. "Wild horse" means a horse, mare or colt which is unbranded and unclaimed and lives on public land.

SUMMARY--Urges Secretary of Interior to remove Lahontan cutthroat trout from list of threatened species. (BDR R-1168)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging the Secretary of the Interior to remove the Lahontan cutthroat trout from the list of threatened species.

WHEREAS, The Lahontan cutthroat trout (*salmo clarki henshawi*) is included on the list of threatened species adopted by the United States Department of the Interior; and

WHEREAS, Artificial propagation programs and recent efforts to manage and restore the population of this species have produced a sufficient amount of fish to ensure the preservation of the species; and

WHEREAS, Lahontan cutthroat trout are no longer being used for commercial, educational, scientific or sporting purposes at levels that detrimentally affect their continuing existence; and

WHEREAS, Adequate plans for the conservation and survival of this species have been adopted to prevent the future decline of their population, protect their habitat and supplies of food and ensure the continued development of the species; and

WHEREAS, The continued classification of these fish as threatened interferes with the conservation, development and enjoyment of water and land resources in the State of Nevada; now, therefore, be it

RESOLVED BY THE AND THE OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby urges the Secretary of the Interior of the United States to remove the Lahontan cutthroat trout from the list of threatened species adopted by the United States Department of the Interior; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives, the Secretary of the Interior and each member of the Nevada Congressional Delegation; and be it further

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

SUMMARY--Urges Secretary of Interior to remove Cui-ui fish from list of endangered species. (BDR R-1282)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging the Secretary of the Interior to remove the Cui-ui fish from the list of endangered species.

WHEREAS, The Cui-ui fish (*chasmistes cujus*) is included on the list of endangered species adopted by the United States Department of the Interior; and

WHEREAS, Artificial propagation programs and recent efforts to manage and restore the population of this species have produced a sufficient amount of fish to ensure the preservation of the species; and

WHEREAS, The Cui-ui fish is no longer being used for commercial, educational, scientific or sporting purposes at levels that detrimentally affect their continuing existence; and

WHEREAS, Adequate plans for the conservation and survival of this species have been adopted to prevent the future decline of the population, protect their habitat and supplies of food and ensure the continued development of the species; and

WHEREAS, The continued classification of these fish as endangered interferes with the conservation, development and enjoyment of water and land resources in the State of Nevada; now, therefore, be it

RESOLVED BY THE AND THE OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby urges the Secretary of the Interior of the United States to remove the Cui-ui fish from the list of endangered species adopted by the United States Department of the Interior; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives, the Secretary of the Interior and each member of the Nevada Congressional Delegation; and be it further

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