

**Minutes of the
EUREKA COUNTY NATURAL RESOURCES ADVISORY COMMISSION**

The Eureka County Natural Resources Advisory Commission (NRAC) held a public meeting on October 11, 2017, at 6:00 p.m. at the County Administrative Facility, Eureka, Nevada.

Members Present: Jim Baumann, Carl Slagowski, Paul Etzler, Jerry Todd, Jim Wise, Ari Erickson, Gary McCuin, and Ken Conley

Members Absent: Mike Rebaleati

Others Present: Jake Tibbitts- Eureka County Natural Resources Manager and Jessica Santoyo- Natural Resources Secretary

Call to Order

The meeting was called to order by Chairman Baumann at 6:01 p.m., a quorum was determined to be present.

Public Comment

None.

Commission Business

Review and approve minutes from the September 13, 2017 meetings.

Jerry Todd moved to approve the minutes from the September 13, 2017 meeting. Gary McCuin seconded, motion carried unanimously.

Member Updates and Reports.

Mr. McCuin stated that he recently attended a conservation district meeting in Ely and the agencies that were present at that meeting provided reports on their activities. The reports that were reviewed during that meeting were more in-depth than the reports that NRAC is receiving and they should request similar reports in order to stay better informed.

Jim Wise stated that he is officially resigning from his position on the Board due to the sale of his ranch and moving out of town.

Discuss correspondence and natural resource issues affecting Eureka County and consider action items for the next agenda.

Jake Tibbitts covered the following correspondence and natural resources issues.

- The Eureka Conservation District Annual Dinner is scheduled for November 2, 2017 and they are all invited, its \$20.00 a person/plate. If any of the board members would like to attend the dinner, please let him know as soon as possible.
- Earlier today, there was a huge marijuana plant bust in Railroad Valley; Railroad Valley is located in Northern Central NV. They found 2,300 plants on Forest Service (FS) land and the growers were using water from the stream for a drip irrigation system.
- The Agua Caliente Band of Cahuilla Indians asserted a federal reserved water right for the groundwater on the Indian Reservation. Typically, federal reserved water has always been for the Indian Reservations and it can be applied to any federal reservation of land, wilderness study area, forest reserve, or any place that is an official reservation of land. The District Court in California agreed with the tribe and said that the tribe does have the right to the groundwater rights located underneath the reservation. After that decision was made, the Coachella Valley District appealed it all the way up to the Ninth Circuit Court and the court agreed with the lower courts saying that any federal reservation of land has an implied water right for all of the water whether it be below or

above the ground. The first step in this process was to determine if the tribe truly had a right and the Ninth Circuit Court determined that they do have a right. The litigation that will follow is to determine the amount of water that the tribe will get, there is a lot of case law regarding this and a lot of that case law is from NV. The conclusion from the court states that the Winters Doctrine is dependent upon the tribe's demonstrated need. The water district is arguing that the tribe already has appropriated water rights under state law through the water district to satisfy their water needs. The decision has been appealed to the Supreme Court, the State of NV took the lead on this issue, they are asking that the Supreme Court take up this case in court, and they are arguing the same points that the Coachella Water District is arguing. The argument is that groundwater was never contemplated as being part of the Federal Water Reserve; they cannot expect Congress to exploit groundwater when the technology didn't even exist and they didn't know how much groundwater was tied to that specific reservation. This will also subvert the states authority over water especially groundwater since it is already over appropriated and if a tribe or the FS assert their groundwater rights under a Federal Reservation then they become primary water right holders. This would affect senior water right holders because they no longer would be senior water right holders, this would push them under the line. By the end of it all, the attorneys all came to the same conclusion that there were no expressed reservations of water rights for groundwater at that time. They are citing the act that created specific reservations, it does not reference water at all and Congress never contemplated for groundwater. Currently, the hope is that the Supreme Court will take the case on and bring clarity to the issue.

- Southern NV Water Authority (SNWA) submitted their applications for Spring Cave, Del Mar, and Spring Valley, which were originally remanded back to the State Engineer for additional hearings regarding their Monitoring, Management and Mitigation (3-M) plans. If the title of the litigation was changed, it would be exactly the same as the General Moly case because they have identical issues and the cases will have a lot of bearing on each other moving forward. The State Engineer held two full weeks of hearings and after the hearings; he opened everything up for a public comment period. Eureka County was able to provide comments before the deadline but they were limited to only five pages of comments. The comments they submitted focused on the questionable use of 3-M plans because when there is a known conflict with mitigation they cannot contingently approve water rights on potential future mitigation that is unproven. During this whole deal, the Supreme Court ruled on General Moly's applications and upheld the District Court's decision to vacate all of their permits, which leaves General Moly with no water rights at all. In the county's comments, they also asked the State Engineer look over the guidance that the Supreme Court just released on this issue. Eureka County also commented on SNWA's 3-M Plans and their plans on how to replace the water once a spring dries up. They are proposing to put in a well in place of the dried up spring, this could work but that decision should be up to the impacted individual to put in a well, not SNWA.

**A copy of all correspondence is available upon request.*

Discuss, approve, or deny formal recognition for former NRAC member Leo Damele recognizing his many years of service to NRAC and Eureka County.

Mr. Tibbitts stated that he wrote an appreciation letter for Leo Damele to say thanks for his many years of service on the board. Mr. Tibbitts recommended that the Board approve the letter.

Mr. McCuin moved to approve Mr. Damele's appreciation letter. Ken Conley seconded, motion carried unanimously.

Agency Reports

Reports and updates from various natural resources and land management agencies in attendance.

None.

Mining

Discuss other mining projects and activities in and affecting Eureka County, including but not limited to the Barrick Deep South Expansion, McEwen Mining Gold Bar Project, GRP Resources Gold Rock Project, Gullsil Prospect Project, Halliburton Ann Barite Project, all Carlin Trend operations and consider response to any related issues or comment periods.

Mr. Tibbitts stated that the Halliburton Ann Barite Project that is located in Nye County and has a laydown yard in Eureka County has decided to stop their permitting for the time being due to the low price of barite. The Bureau of Land Management (BLM) recently published the Notice of Availability in the Federal Registry for the Final Environmental Impact Statement (FEIS) for the McEwen Mining Gold Bar Project and that starts a 30-day wait period. Once that period is over, the Record of Decision (ROD) will be released and if no one files for an injunction or stay during that 30-day period then McEwen can move forward with breaking ground. Barrick' Deep South Expansion is still in the permitting process. Midway went bankrupt and was purchased by another company and that company has chosen to keep GRP name. The FEIS for the Gold Rock Project was just published and this project will be similar to the McEwen project with only 100-120 employees.

Ari Erickson stated that bats are bubbling up at the environmental level at the Diamond Mine, which has caused a delay of about two and a half months. He found out that bats are not that interesting at the federal level so this is really a NV Department of Wildlife (NDOW) deal and they have interjected themselves in the permitting process.

Sage Grouse

Discuss and consider response to recent activities and issues related to sage grouse including, but not limited to Secretarial Order 3353, Federal Land Use Plan Amendments, and current and potential litigation, NV Sagebrush Ecosystem Program and NV Greater Sage-Grouse Conservation Plan.

Mr. Tibbitts stated that recently an article was published saying that the BLM is cancelling the 10 million acre sage grouse focal area withdrawal in the northern part of NV. If they recall, the Land Use Plan Amendments (LUPA's) were completed a few years ago and that amended all of the BLM plans in the West. All of the amended plans established sagebrush focal areas that the BLM said were the last strongholds of sage grouse in NV and they needed to be protected. Currently, BLM is cancelling their withdrawal of the acreage but they are not removing sagebrush focal areas from their plans and there is still implications on grazing management within those areas. At one point, BLM proposed to do a mineral withdrawal within those 10 million acres to cancel all mineral exploration and not allow any new staking of claims in that area. A year ago, the BLM released an EIS that studied the impacts of mineral exploration in that area, then there was a change in administration and the EIS sat on the shelf. Now the BLM is cancelling the withdrawal which can only mean that the BLM found that mining only affected less than one percent of sage grouse occupied range in that area, so they cancelled the EIS. On that same day, another press release was published that said that the BLM invites public comment on the sage grouse conservation plans to help further state collaboration. Mr. Tibbitts

stated that Eureka County is at the top of this, during litigation Eureka County was found to have standing when no other entities had standing and if it wasn't for Eureka County this whole case wouldn't have moved forward. Therefore, the court remanded this back to BLM to fix certain issues and the current administration decided to not only fix the issues imposed by the court but to open it up and address the entire thing. The Notice of Intent will be published in the Federal Registry and that will start a 45-day scoping comment period through November 27, 2017. The comments that they submit will be the same as before and they have plenty of time to get those done. Mr. Tibbitts stated that there is no action required today but he will be working on getting some comments put together which they can approve in November.

BLM Planning

Discuss and consider additional response on effort to streamline BLM planning and NEPA processes.

Mr. Tibbitts stated that in March, Secretary Zinke wrote a memo to BLM telling them to look over the Land Use Plans and asked them to provide a report outlining how they thought they could improve BLM Planning and the National Environmental Policy Act (NEPA) process since Planning 2.0 got overturned. The memo asked BLM to explain how they could improve their good neighbor policy, review certain issues, and they had 90 days to provide him a report of their findings. Eureka County was very engaged in this process and provided many comments. The BLM had to submit their report by September 2017 and when the report was finalized, all of the stakeholders asked BLM to see the draft report and BLM said that they couldn't show them the report but that they would be able to see it once it was submitted. They still have not seen the report and what was submitted to the secretary. Mr. Tibbitts stated that he sent a request to Cynthia Moses-Nedd asking her to share the report and she informed him that he would need to request it from the secretary's office because it has already been submitted. So as of today, they have not seen the report, they have not seen what was recommended and they do not know if the BLM actually provided the comments that all of the stakeholders brought forward.

Wild Horses

Discuss and consider response regarding BLM wild horse management actions and excess horse populations affecting Eureka County.

Mr. Tibbitts stated that when the BLM National Wild Horse and Burro (WH&B) Advisory Board met last year they recommended that the BLM consider euthanasia, sale without limitation and asked the BLM to move forward with implementation of these recommendations. During that time, Neil Kornze was the Director of the BLM and he immediately said that they would not follow the recommendations provided by the National WH&B Advisory Board. Today, they are working with a different BLM and a different administration that wants to find solutions. The BLM National WH&B Advisory Board will be meeting next week in Colorado and they're asking for comments from various groups/people on the issue. The Eureka County Board of County Commissioners (BOCC) will be submitting comment but this case is so important that having various boards from Eureka County submit comments would be great. Mr. Tibbitts went over the comment letter that will be submitted to the WH&B Advisory Board. The letter discusses whom the NRAC board is, it discusses emergency conditions on the rangelands, it explains that on average Eureka County is at least 320% over Appropriate Management Levels (AML), the letters says that something needs to be done, and the letter also thanks them for their recommendation that they made last year.

Mr. Slagowski moved that they approve and send the letter to the BLM National WHB Advisory Board regarding wild horse impacts to Eureka County. Mr. Todd seconded, motion carried unanimously.

Grazing

Discuss and consider response on recent grazing actions and decisions affecting Eureka County, including on Roberts Mountain Allotment Management Plan and fire closures.

Ken Conley asked Mr. Tibbitts if he knows anything about the outcome based grazing authorizations that have a deadline of October 27, 2017.

Mr. Tibbitts stated that an individual has to sign up to in order to be considered for the test case. Mr. Tibbitts stated that he can honestly say that they have already picked their test cases/locations and it's a lot of the mining ranches.

Mr. McCuin stated that he has been attending these discussions and they are only taking 3-12 test cases nationwide. They asked the State of NV to submit one to two names for each district but Mr. Tibbitts is correct they already picked who the test cases will be. This is just the pilot program in order to get the program started and move it forward, eventually everyone will get to do it.

Wildfire

Discuss and consider response on recent wildfires affecting Eureka County, including associated Emergency Stabilization and Rehabilitation (ES&R) treatments.

Mr. Tibbitts stated that he has had various conversations with the BLM regarding the decisions that were sent out recently because two of those decisions are within Eureka County. Both of those decisions are from the BLM Elko District for the most recent summer fires, which are the Rooster Comb Fire and the Potato Fire. The Potato Fire burned 823 acres of BLM land and of those 832 acres, 773 of them were priority habitat for sage grouse. The ES&R explains the things that need to be done immediately to stabilize the area; they will begin by aerial seeding with a sage grouse mix that contains Wyoming and black sagebrush, western yarrow and blue flax. The issue with that is that there are no grasses in the mix or any native plants and he doesn't know why. Mr. Tibbitts stated that he tried to contact the BLM Elko District with questions about the treatment plan but they have not called him back. He wanted to ask them why there weren't any perennial grasses in the mix, how did they determine that this is the best seed mix for the area, and where are the fall monitoring objectives because they are not in the document. In Range Science 101, all management is based on what the objectives are and before a seed mix is decided they need to know the objectives. Throughout the treatment plan, they talk about conformance with the sage grouse plan and they include direct quotes from the sage grouse plan such as: in sage grouse areas where the probability of success and adaptive seed availability is low non-native seeds may be used as long as they support habitat objectives. Mr. Tibbitts stated that there is an ecological site description for that area and he doesn't know if BLM even looked it up or not since they are not responding. BLM has a database where it shows the fire map boundaries, they can take those boundaries and plot them into the NRCS soil survey database, and then they get the ecological site description. The ecological site description says that 97% of the burned area is one ecological site and there are native species in that site. The BLM is saying that their decision is in accordance with the sage grouse plans but the sage grouse plan itself says that if they use native species, they should use the ones outlined in the ecological site description. BLM is also saying that they will use ecological site descriptions and state transition models if available, and they are available for that area but it seems like BLM didn't use those either. Mr. Tibbitts stated that the issue is that this is a full force and effect decision that doesn't allow for public comment beives it's not a proposed decision. Mr. Tibbitts stated that he tried to get some answers for the board but that didn't happen, he invited Melanie

Peterson from the BLM Elko District to attend the next meeting and hopefully provide some clarification.

Next Meeting-

Items suggested for the agenda include: updates on motions made and ongoing agenda items. The board should get any other desired agenda items to Mr. Tibbitts for the next meeting. The next meeting is scheduled for November 14, 2017 at 6:00 P.M.

Public Comment

None.

Adjourn– The motion was made by Mr. McCuin and seconded Mr. Erickson to adjourn the meeting. There being no further discussion, the meeting was adjourned at 7:56 p.m.

Approved this _____ day of _____, 2018.

Respectfully submitted: _____

Jessica Santoyo, Secretary

Approved: _____

Jim Baumann, Chairman

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