

Title 9

NATURAL RESOURCES AND LAND USE

**Title 9: Natural Resources and Land Use**  
**Chapter 10: Natural Resources Advisory Commission**  
**Sections: .010 through .080**

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## Chapter 10 - NATURAL RESOURCES ADVISORY COMMISSION

### .010 Created

There is established a Eureka County Natural Resources Advisory Commission made up of nine (9) non-elected County residents drawn from the diverse interests of Eureka County. The Natural Resources Advisory Commission shall have members representing each of the following interests: ranching (2), farming (2), mining (1), wildlife (2), business (1), and recreation (1).

### .020 Duties

The Natural Resources Advisory Commission shall advise the Board of County Commissioners regarding the goals and policies established in the Eureka County Public Lands Use Plan and other natural resources and public lands issues.

### .030 Funding

The Natural Resources Advisory Commission shall be funded under the budget of the Board of County Commissioners.

### .040 Standing committees

The Natural Resources Advisory Commission may establish standing committees utilizing Commission members and other volunteers representing Eureka County's natural resources interests.

### .050 Temporary committees

The Natural Resources Advisory Commission may establish temporary committees to address specific issues or problems.

### .060 Recommendation of ordinances

The Natural Resources Advisory Commission may recommend passage of new ordinances or revisions of existing ordinances to the Board of County Commissioners to implement the Public Land Use Plan or for other natural resources issues facing Eureka County.

### .070 Oversight of the Public Land Use Plan

The Natural Resources Advisory Commission will oversee implementation and maintenance of the Eureka County Land Use Plan.

.080 Term of office

The initial term of office shall be three (3) years for four (4) Commissioners; two (2) years for three (3) Commissioners and one (1) year for two (2) Commissioners. After the initial term, the term of office shall be four (4) year.

## Chapter 20 - DEPARTMENT OF NATURAL RESOURCES

### .010 Definitions

For the purposes of this chapter, the following definitions apply:

“Natural resources” means all renewable and nonrenewable resources of commercial or noncommercial nature to which private title of ownership has not attached, including but not limited to: forage, timber, minerals, wildlife, recreational opportunities, fishing, unappropriated streams, springs, seeps and wetlands, ground water, geothermal reservoirs, oil and gas and all other similar resources.

### .020 Department of Natural Resources created

- A. There is created a Department in the government of Eureka County under the direction of the Board of Eureka County Commissioners to be known as the Department of Natural Resources.
- B. The position of Natural Resources Manager for Eureka County is created. The Natural Resources Manager may be either an independent contractor or an unclassified management position in the County personnel system.
  - 1. The Natural Resources Manager shall be a person generally qualified by education and experience to inventory, make plans for and manage the County’s natural resources under the direction of the Board of Eureka County Commissioners, and to advise the Board about matters involving the County’s natural resources.
  - 2. The Natural Resources Manager shall serve as Executive Secretary to the Eureka County Natural Resources Advisory Commission and as liaison between the Board of Eureka County Commissioners and the Eureka County Wildlife Advisory Board.
- C. Compensation and express duties of the Natural Resources Manager shall be as from time to time determined by the Board of Eureka County Commissioners and adopted by the Board by resolution or minute order.
  - 1. The Natural Resources Manager may be either part time or full time, as the Board of Eureka County Commissioners may from time to time determine.

## Chapter 30 - NATURAL RESOURCES AND LAND USE PLAN

### .010 Definitions

The following definitions apply to this chapter:

**Animal unit month** - A measure of forage consumption. The forage necessary to support one (1) cow and her calf, one (1) horse or five (5) sheep for one (1) month. Often abbreviated as AUM.

**Compensable property right** - Any type of right to specific property, personal or real, tangible or intangible, which, when reduced or taken for public purpose, is due just compensation under the Fifth Amendment of the U.S. Constitution.

**Customary usage right** - A right based in custom, usage or practice of the people, which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of law with respect to the place or subject-matter to which it relates.

**Federal lands** - All land and associated natural resources owned and managed by the United States. Federal lands include, but are not limited to, public lands, federally reserved lands, federal mineral leases, federal geothermal leases, federal forage leases and federally reserved water rights, federal rights-of-way, but categorically exempted are lands or resources to which private interest or title is attached.

**Multiple-use** - Balanced and diversified management of public lands and their various public resources to best meet present and future economic and environmental needs of the American people.

**Natural resources** - All renewable and nonrenewable material in its native state which when extracted has economic value. Natural resources may be of commercial or noncommercial nature, including, but not limited to forage, timber, minerals, wildlife, recreational opportunities, fishing, unappropriated streams, springs, seeps and wetlands, ground water, geothermal reservoirs, oil and gas and all other similar resources.

**Peer-review** - Evaluation of the scientific quality and pertinence of research by other experts in the same field. Peer-review is used by editors in deciding whether submissions meet standards for publication in scientific journals.

**Private property** - As protected from being taken for public uses. Property that belongs absolutely to an individual, and of which he has the exclusive right of disposition.

**Public lands** - Lands open to sale or other disposition under the general land laws to which no claims or rights of others have attached.

## .020 Purpose

The purpose of this Chapter is to (1) guide County policy with respect to natural resource issues facing Eureka County, (2) provide a framework to guide federal agencies in land-use planning on federal lands as per the National Environmental Policy Act of 1969, the Federal Lands Policy and Management Act of 1976, the National Forest Management Act of 1976, the Threatened and Endangered Species Act of 1973, and other applicable laws and executive orders, and (3) safeguard property rights and other customary usage rights of the citizens of Eureka County, the State of Nevada, and the United States against any and all encroachments upon those rights by individuals, groups, corporations, public agencies, non-governmental organizations, or any other entity which may attempt to take private property, trespass upon private property or infringe upon other customary rights as have been established by the constitutions, laws and customs of the United States, the State of Nevada, and Eureka County. This title is meant to complement and supplement the constitutions and laws of the United States, the State of Nevada, and Eureka County with additional means of protection and enforcement. This Chapter is not intended to create new rights nor is it intended to in any way supplant the lawful authority of individuals, groups, organizations, corporations, governments or other entities which act pursuant to the laws of constitutions of the United States, the State of Nevada, and Eureka County.

## .030 Adoption of the Eureka County Natural Resources and Land Use Plan

- A. Holding that the American people are best served when government affairs are conducted as closely to the people as possible (i.e., at the County level), the citizens of Eureka County, through the Eureka County Board of Commissioners, adopt the Eureka County Natural Resources and Land Use Plan as provided in this chapter.
- B. The Eureka County Natural Resources and Land Use Plan shall serve as the primary guide for the use and management of all natural resources and state and federal lands within Eureka County.

## .040 Custom and culture

- A. Since the time that aboriginal peoples inhabited what is now Eureka County, local custom and culture has revolved around beneficial use of natural resources. Aboriginal peoples harvested native plants, animals and geologic material to provide nearly all the raw material for their tools, shelter and sustenance. What was not found locally was traded with other communities in and around the Great Basin. In similar fashion, early European miners, ranchers and farmers lived largely within the bounds of what they could obtain from the natural environment.

- B. With the early gold and silver finds in the mid-1800s came Cornish and Irish miners, Italian charcoal burners (Carbonari), Germans, Swiss, French, Russians, Chinese, and others contributing to mining and support industries, and defining the early custom and culture of Eureka County. The signing of the Treaty of Guadalupe-Hidalgo in 1848 concluded the Mexican-American War and enlarged the borders of the United States to include what is now Eureka County. Upon ratification of the Treaty, the United States acquired and managed this territory as sovereign and proprietor under the Property Clause of the U.S. Constitution. Legal traditions of property rights that existed under Mexican law prior to the establishment of Nevada as a Territory of the United States remain intact today as they are consistent with the U.S. Constitution and laws of the United States. Prior existing property rights including, but not limited to water rights based on the doctrine of prior appropriation, forage rights based on the ownership of water rights and land, rights-of-way, and ownership of real property, are explicitly preserved by all federal land laws. Preservation of these rights demonstrates their importance to the custom, culture and economy of Eureka County and the west.
- C. The burgeoning mining camps brought Basque sheepmen who ran sheep in most of the mountains and valleys in Eureka County. On their heels came cattlemen and other settlers who, with the help of the 1877 Desert Lands Act, the Act of 1888, the Act of 1890, the 1891 Creative Act, and the 1916 Stock Raising Homestead Act, established privately-owned base properties to support permanent range livestock operations and farms. Competition among livestock interests resulted in the passage of the 1925 Nevada Livestock Watering Law. A component of this law, locally known as the Three Mile Rule, made it a misdemeanor for a stockman to allow his animals to graze within three miles of a watering site owned by another stockman. The federal government responded to disputes among stockmen and over-use of the federal ranges by passing the 1934 Taylor Grazing Act. The Taylor Grazing Act superseded Nevada's Livestock Watering Law; however, it did not extinguish any prior existing property rights. These property rights withstanding, the Taylor Grazing Act gave the Secretary of the Interior broad discretion to manage public land through rules and regulations and provided that all future grazing on public land be allowed only via grazing permits. The system of management adopted by the Secretary of Interior under the Act provided for (1) adjudication of federal ranges, (2) issuance of revocable licenses with preference given to existing grazers owning commensurate base property, and (3) establishment of Grazing Districts. Graziers in Eureka County and Elko County established the N-1 Grazing District in 1935. Graziers in Eureka County, Lander County, and Nye County established the N-6 Grazing District in 1951. Early efforts of the State of Nevada to preserve customary grazing rights (e.g., 1925 Nevada Livestock Watering Law) and recognition of these rights by subsequent federal laws (e.g., TGA, FLPMA, and PRIA) demonstrate the importance of livestock grazing to the region's custom and culture. The continued importance of livestock grazing and impacts of federal lands

management decisions to citizens of contemporary Eureka County is reflected in establishment of the Eureka County Public Lands Advisory Commission in 1994 and the Eureka County Department of Natural Resources in 1995.

- D. Commensurate with development of arable land and distributed water in Eureka County, livestock numbers grew steadily until their peak in the 1940s and 1950s. With these changes came increased wildlife. Populations of mule deer increased across the state until they peaked in the 1940s and 1950s. Similar trends are observed for sage grouse. Downward trends in these wildlife species, beginning in the 1960s, are commensurate with declines in permitted livestock on federal ranges and continues into the present decade.
- E. Access to resources on federal lands and the right to pass uninhibited across federal lands are important historical components of the Eureka County's custom and culture. In 1859 Captain James Simpson of the U.S. Corps of Topographical Engineers surveyed the Simpson Wagon Road north of present day Eureka to supplant the earlier-established and longer Humboldt Route. In 1860 the Simpson Route was established as the Pony Express Trail. The 1866 Mining Act and the 1897 Reservoir Siting Act, protected miners, ranchers and others to whom access to federal lands was the basis of their livelihood. The portion of the 1866 Act codified as Revised Statute 2477 provided simply that "[t]he right-of-way for the construction of highways over public land, not reserved for public uses, is hereby granted." Although Revised Statute 2477 was repealed by the Federal Land Management and Policy Act of 1976, miners, ranchers, hunters and fishermen still use these early rights-of-way and rely on Revised Statute 2477 to protect their economic welfare and recreational opportunities.
- F. Water rights in Eureka County date back to the mid 1800s. Early miners, ranchers and farmers established surface water rights through the common law doctrine of prior appropriation. The State of Nevada codified this doctrine for surface water in 1905 and extended the law to ground water in 1939. Efforts by Nevada's largest municipalities to import water resources from rural communities is causing contemporary owners of agricultural and stockwatering rights in Eureka County to fear for the future of economically viable beneficial uses of water in Eureka County.
- G. Farming has been an important component of Eureka County's industry since the early days of land settlement. Farming was limited to native sub-irrigated meadows and lands irrigated by diverted surface water until supplemental flowing wells were drilled on the Romano Ranch in 1948 and the Flynn Ranch in 1949. In 1949 two irrigation wells were drilled in Diamond Valley in an effort to develop land under Desert Land Entry. By the mid 1950s, pumped irrigation wells were being developed in southern Diamond Valley, Crescent Valley and Pine Valley. By 1965, some 200 irrigation wells had been drilled in Diamond Valley alone. Today, Eureka County's farming districts support

a robust grass, alfalfa and meadow hay industry.

- H. While standards of living have changed dramatically since the mid-1800s, miners, ranchers and farmers remain the core of the Eureka County community. The shift from strictly local food hunting and fishing to sport hunting and fishing and other natural resource recreation activities has added a small, but viable, recreation and tourism component to the County's natural resource-based culture. Custom and culture of today's Eureka County citizens remain steeped in their mining, farming and ranching heritage. Eureka County is and will ever be dependent upon natural resources for its economic existence.

.050 Community stability

- A. Economic and social stability of Eureka County are inseparably tied to the use of natural resources. Over ninety percent (90%) of the County's employment is in the Natural Resources and Mining sector (including agriculture). Mining presently contributes the major portion of the County's personal income and tax revenue stream; however, the "boom and bust" nature of the mine activity periodically brings farming, ranching and agricultural services back to the forefront of the economy. When mining activity lulls, the community relies on its other traditional industries to maintain its viability.
- B. State and federal lands make up eighty-one percent (81%) of Eureka County's land area. Given (1) that the community's viability remains largely dependent on business and recreational activities conducted on or in concert with state and federal lands and (2) that many of these activities are inseparably tied to the economic viability of private lands in Eureka County, the community remains particularly sensitive to state and federal planning decisions.
- C. Community stability in Eureka County is a symbiosis between the small private land base and the much larger federal land base. Private property interests in minerals, water, forage, rights-of-way and other natural resource attributes of federal lands enhance social and economic values of Eureka County's private lands. Reductions in the private land base or erosion of private property interests in federal lands, including, but not limited to real property, personal property and mixed property; split estates, easements, rights-of-way, mineral rights, water rights and customary usage rights; fee interest, tenancy and possessory interest, adversely affect the social and economic stability of the County.

- D. Certain provisions in a number of federal laws, including the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), the Threatened and Endangered Species Act of 1973 and the Wild Horse and Burro Protection Act of 1971, have spawned sweeping changes to federal land policy that have proven detrimental to economic and social stability in Eureka County. Repeal of Revised Statute 2477 has denied access to large tracts of federal land, thereby negatively impacting a wide range of economic and recreational users. Department of Interior regulations commonly known as “Range Reform ‘94” have substantially reduced viability of cattle and sheep ranches. Zealous and overreaching expansion of Clean Water Act regulations to isolated springs and seeps and ephemeral streams threatens many activities on federal lands. The threat of listing sage grouse, other wildlife and plant species under the Threatened and Endangered Species Act may severely limit economic and recreational use of private, state and federal land in Eureka County, particularly where such listing occurs without adequate peer-reviewed scientific analysis.
- E. As the previous observations attest, stability of the Eureka County community, its industries, commerce, schools, health care, police protection, and other services, rests squarely on (1) protection of private property rights, (2) sound and balanced management of natural resources, and (3) continued multiple-use and economic-use of state and federal lands.

.060 Primary planning guidance

- A. **Private property and property rights.** Where the Board of Eureka County Commissioners determines that it is in public interest of the citizens of Eureka County, Eureka County will evaluate state or federal actions related to private property and private property interests, including investment backed expectations. The County will use as its primary guidance the Fifth Amendment to the United States Constitution, which prohibits the taking of private property for public use without just compensation. The County will also pursue the principles of Executive Order 12630 which requires federal agencies to prepare a Takings Implication Assessment prior to initiating any action, issuing any rule, or making any decision which would constitute a taking of private property or private property interest, including investment backed expectation.
- B. **Tax base.** It is critical to the welfare of the citizens of Eureka County that the Board of Eureka County Commissioners pursue a stable source of tax revenue based on economic use of natural resources. In order to build a broad tax base, the County supports privatizing certain state and federal lands for commercial, residential, industrial and agricultural and mining uses. In the face of considerable reductions in Ad Valorem tax revenues caused by transfer of

private land to public ownership, Eureka County maintains a policy of no net reduction in Ad Valorem taxes related to land tenure changes unless the reductions are adequately mitigated by agreement with the Board of Eureka County Commissioners after public hearing. In addition, Eureka County promotes the concept of split-estate taxation wherein the various components of an estate in real property are taxed as a function of their relative value rather than being accrued only in the surface estate.

**C. Water resources.**

1. Eureka County affirms support for the doctrine of prior appropriation as established by state law; that the right to appropriate water is a compensable property right available to individuals and municipalities. Ownership of the right to use water has, as key principals, those provisions set forth in Nevada Revised Statutes 533.0010 through 533.085, including, but not limited to, first right, first use, beneficial use, and point of diversion.
2. Eureka County promotes private development of water resources on state and federal land for beneficial use in Eureka County, including, but not limited to geothermal reservoirs, power generation, municipal water supplies, irrigation and stock water.
3. Eureka County mandates the use of peer-reviewed science in the assessment of impacts related to water resource development.
4. The County discourages out-of-basin water transfers and will adamantly oppose such transfers that do not (1) pass the highest test of scientific rigor in demonstrating minimal impacts to existing water rights and (2) show a long-term benefit to the economic viability and community stability of the County. Out-of-basin and out-of-county transfers of water shall be accorded full attention of N.R.S. 533.370, N.R.S. 533.438 and other applicable state laws.
5. Eureka County will work to maintain its water resources in a condition that will render it useable by future generations for the full range of beneficial uses that further a viable and stable economic and social base for its citizens. The County supports retaining authority of States to protect water quality under the Clean Water Act. The County does not support abrogation of that authority to any other governmental or non-governmental entity. The County promotes water quality standards that are **i)** consistent with actual uses for which a particular water source or body is lawfully appropriated, and **ii)** based on accurate information regarding its natural state and range of variability. The County will demand coordination among all responsible and affected interests when considering water quality actions.

D. **Air resources.** Eureka County will work to maintain its air resources in a condition that will render them useable by future generations for the full range of beneficial uses that further a viable and stable economic and social base for its citizens.

1. The County supports retaining authority of States to protect air quality under the Clean Air Act. The County does not support abrogation of that authority to any other governmental or non-governmental entity. The County promotes air quality standards that are **i)** consistent with actual uses for which a particular airshed is lawfully appropriated, and **ii)** based on accurate information regarding its natural state and range of variability.
2. The Naval Strike and Air Warfare Center at Naval Air Station Fallon affects airspace over Eureka County by operating the Fallon Range Training Complex (FRTC). As a Cooperating Agency in the January 2000 Environmental Impact Statement analyzing changes to operations of the FRTC, Eureka County demonstrated its intention to protect its interests in the public air space. That interest persists today. The County will demand coordination among all responsible and affected interests when considering actions that may impact air quality and air space.

E. **Mining.** It is critical to the welfare of the citizens of Eureka County and the nation that mining on state and federal lands remains an open and free enterprise. Eureka County upholds the tenet that mining claims are compensable property belonging to individuals or groups of individuals. Eureka County supports:

1. retention of and compliance with the 1872 Mining Law as amended;
2. mine reclamation activities as per Nevada Revised Statutes Chapter 519A;
3. streamlining of the permitting process;
4. reasonable bonding requirements that promote small business investment in mine exploration, development, and reclamation;
5. use of the best available science and technology to ensure adequate protection of land, air, and water resources;

6. mitigation of mining activities that may impair the economic future of Eureka County citizens through bilateral or multi-lateral consultations with the Board of Eureka County Commissioners;
7. disposal of mine dewatering water in a manner that returns water to the ground in the same basin it is withdrawn with minimal evaporation and transpiration loss;
8. immediate curtailment of temporary dewatering rights at the cessation of permitted mining and reversion of all temporary change applications supporting dewatering to the permitted use of the originating water right.

F. **Agriculture.** Eureka County recognizes (1) the importance of agriculture to the stability of the local economy and (2) the historic and contemporary influence of agriculture on the community's custom and culture. Farms and ranches have played and continue to play a fundamental role in the social and economic well-being of our County. Eureka County recognizes that increasing regulatory pressures are reducing the viability of farms and ranches. In order to reverse such trends, Eureka County supports, encourages and promotes policies that will lead to the long-term economic strength of family farming and ranching.

1. With respect to farm production, Eureka County supports:
  - a. private investment in and ownership of agriculturally productive land;
  - b. economically and scientifically sound agricultural practices;
  - c. coordination and consultation of state and federal conservation, wildlife and planning activities with local farm organizations and Eureka County.
2. With respect to livestock production and federal lands, Eureka County supports:
  - a. private investment in and private ownership of range improvements and water developments;
  - b. economically and scientifically sound grazing practices;
  - c. increasing grazing capacity and other economic incentives to promote private investment in range improvements including, but not limited to, fencing, seeding, water development, improved grazing systems, brush control, pinion/juniper eradication, proper fire management and noxious weed control;
  - d. restoring Voluntary Non-Use AUMs and suspended AUMs to active preference;
  - e. a grazing fee formula that accounts for all non-fee costs of

- f. producing livestock on state and federal land;
- f. subleasing of grazing rights;
- g. multiple-use concepts;
- h. active management of range resources by permittees rather than by public agencies;
- i. limiting the role of public agencies to monitoring range condition as per the 1984 Nevada Rangeland Monitoring Handbook and determining compliance with applicable laws;
- j. coordination and consultation of state and federal conservation, wildlife, land management and planning activities with permittees, local livestock organizations and Eureka County.

G. **Wildlife.** Management of wildlife, including fish, game animals, non-game animals, predatory animals, sensitive species, Threatened and Endangered Species, under all jurisdictions whatsoever, must be grounded in peer-reviewed science and local input. Wildlife management plans must identify and plan for mitigation of negative impacts to local economies, private property interests and customary usage rights.

1. Eureka County supports wildlife management that:
  - a. is responsive to the County Wildlife Advisory Board, the Natural Resources Advisory Commission, and the Board of County Commissioners;
  - b. enhances populations of game and non-game species native to Eureka County;
  - c. recognizes that enhancing non-native game and non-game species may negatively impact native species and rangeland and forest ecosystems;
  - d. increases wildlife numbers where practicable and not in conflict with existing economic uses or ecosystem health;
  - e. avoids managing wildlife at population levels that exceed those reported in historical records and established by peer-reviewed scientific investigation;
  - f. recognizes that large game animals compete for forage and water with other economic uses;
  - g. recognizes that federal agencies are mandated to maintain or improve conditions on federal forests and ranges;
  - h. recognizes that wildlife damage mitigation may encumber existing interests and properties to future damages.
2. Eureka County will actively participate in wildlife management decisions that affect the welfare of its citizens via state wildlife planning efforts and county, state and federal land-use planning. Eureka County will work to ensure proper implementation of wildlife plans.
3. Eureka County is adamantly opposed to listing any species of wildlife

under the Threatened and Endangered Species Act unless the highest level of scientific rigor (*i.e.*, peer-reviewed research based on publicly accessible data sets and methodology) demonstrates that the species warrants listing. The County shall consider all reasonable actions to avoid listings under the Threatened and Endangered Species Act, including, but not limited to, state and local conservation planning and legal recourse.

4. To maintain agriculture as a productive part of the local economy and to enhance the environment for ecologically and economically important wildlife, Eureka County supports sound predator control programs.
5. Eureka County generally opposes the introduction, gradual encroachment and institutionalization of wildlife not native to Eureka County.
6. Eureka County recognizes that the Bureau of Land Management is mandated by Congress to manage all multiple-uses of federal lands, including wildlife, in a manner that maintains or improves the conditions of federal ranges. The County will pursue federal intervention in wildlife management situations in which range conditions are inadequately protected.

H. **Recreation.** Recreation is important to the citizens of Eureka County. The unique outdoor recreational opportunities found in Eureka County are many of its greatest assets. Eureka County values the opportunity and freedom these lands provide and encourages balanced management goals that include hiking, camping, wildlife viewing, and other outdoor recreation activities. Eureka County strongly advocates the rights of recreationists to continued lawful access to public lands.

I. **Utility rights and public consumption.** As per 43 U.S.C. § 315(e), Eureka County supports individual citizen's acquisition of rights-of-ways for roads, ditches, pipelines, canals, power lines, telephone lines and stock driveways. Eureka County adamantly supports the protection of vested rights that may limit other uses of state and federal lands. As per 43 U.S.C. § 315(d) Eureka County recognizes rights of local citizens to utilize natural resources for personal consumption (e.g., firewood, posts, sand, gravel, etc.).

J. **Land disposition and land tenure adjustments.**

1. Eureka County will respect and uphold private property interests in land, including, but not limited to, land patents, mining claims, easements, rights-of-way, and forage rights.

2. Eureka County maintains a no-net-loss policy with respect to private land and private property rights, and is opposed to public acquisition of private property, except where the acquisition is **A)** clearly in the public interest of the citizens of Eureka County and **B)** appropriately mitigated in value and in land area by transfer of property from the public domain to private ownership as per this Chapter. Determination that such a transaction is in the public interest of the citizens of Eureka County and that proposed mitigation is appropriate shall be determined by the Board of Eureka County Commissioners after proper public hearing.
3. Eureka County recognizes that the imbalance of the private/public land ownership inhibits new economic activity in Eureka County and is detrimental to Eureka County's long-term viability. The County encourages state and federal agencies to aggressively pursue land disposal to the maximum extent allowed by law. State and federal land transfers to local governments will be given priority consideration in any disposal of state or federal land.
4. If any public entity intends to acquire an estate in land, water, minerals, forage or any other private property in Eureka County, the proposed acquisition shall first be presented to the Board of Eureka County Commissioners. The Board shall determine likely impacts to the County's human and natural environment and render an opinion about the suitability of the acquisition.

**K. Riparian habitat and wetlands.**

1. Riparian areas and wetlands are critically important to well-balanced and productive rangeland ecosystems. Eureka County encourages consultation, cooperation and coordination as provided under Section 8 of the Public Rangelands Improvement Act of 1978 for riparian areas and wetlands under the jurisdiction of a federal agency.
2. The bulk of riparian areas and wetlands in Eureka County exist on private ranches and farms. Eureka County supports retaining riparian areas and wetlands in private ownership by improving the economic environment for the ranching and farming community.

**L. Wilderness, wilderness study areas, parks and refuges.** To the extent that multiple-use of federal lands is vital to the economy of Eureka County, the County is opposed to the designation of any Wilderness Areas or Wilderness Study Areas within its geographic boundaries. The County calls for removal of Wilderness Study Area designations and re-introduction of active stewardship of these lands that do not meet the suitability criteria of the 1964 Wilderness Act. Eureka County demands local input and decision-making in the designation and management of parks, refuges, Areas of Environmental

Concern, roadless areas or any other legislative action, regulatory decision or policy that limits access to or use of federal land or resources within the geographic boundaries of the County.

- M. **Wild horses.** Eureka County recognizes that horses protected under the Wild Free-Roaming Horse and Burro Act of 1971 are properly classified as feral animals. The County recognizes that in passing the Wild Free Roaming Horse and Burro Act, Congress failed to account for prior adjudication of the nation’s public ranges, thereby disenfranchising livestock grazers and wildlife of existing forage allocations without compensation. The County recognizes that the Department of Interior is mandated by Congress to manage Wild and Free Roaming Horses in a manner that is consistent with legislative intent and will hold the agencies accountable under all applicable laws. Poor management of feral horse herds has resulted in sustained over-population of horses in Eureka County. Over-population has caused long-term damage to range vegetation and water sources, and has resulted in starvation of horses during periods of drought and severe winters. Eureka County encourages federal legislation and policies that promote scientifically-sound and responsible management of feral horse herds. Eureka County advocates economically beneficial uses for feral horses and advocates public sale of excess horses. The County opposes the cost-ineffective policy of long-term pasturing for excess horses where the policy conflicts with the stated intent of the 1971 Wild Free-Roaming Horse and Burro Act to manage horses “...in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.”
- N. **Access.** Eureka County supports the right of public access through state and federal lands inasmuch as access does not conflict with private property rights (as per the Eureka County Public Roads Resolution of March 7, 1994).
- O. **Pinyon and juniper control.** Eureka County encourages active management of pinyon/juniper woodlands and removal of woodlands where they exist at unhealthy densities and beyond their historic range. Eureka County supports economic use of these resources.
- P. **Wildfire.** Eureka County supports the right for local citizens to protect their property from fires originating on state and federal lands. The County advocates active fire management on federal lands, including, where appropriate and in consultation with grazing permit holders, adjacent landowners, local volunteer fire fighters and Eureka County, a let-burn policy. The County is opposed to arbitrary and inequitable restriction of post-fire land use for recreation and livestock grazing. The County insists that all post-fire land use restrictions be adequately justified and based on peer-reviewed science.
- Q. **Other federal land use regulations.** Many land-use regulations have the potential to adversely impact Eureka County’s economy. Eureka County

mandates involvement in all federal actions that may impact the local economy according to this Title.

## Chapter 40 - COOPERATIVE PUBLIC LANDS MANAGEMENT

### .010 Findings of fact

The Board of Commissioners of Eureka County, a political subdivision of the State of Nevada, finds as follows:

- A. The government of the United States of America exercises control over 2,100,000 acres (eighty-one percent) of the land and the majority of natural resources within the geographic boundaries of Eureka County;
- B. Decisions governing federal lands in Eureka County have a history of negative impact on the interrelated heritage of cultural, environmental and economic well-being and stability of County residents;
- C. The Congress of the United States has expressed intent, codified in 42 U.S.C. §4331, to act in cooperation with County governments while using all practicable means to create and maintain conditions on federal lands allowing for productive harmony between man and nature while fulfilling the social, economic, environmental and cultural requirements of present and future generations;
- D. The efforts of Congress seeking to coordinate federal plans with County government, maintaining a balance between population and resources, and encouraging high standards of living and a wide sharing of life's amenities, as contemplated by 42 U.S.C. §4331(b)(5), can be enhanced by:
  1. Increasing cooperation between Eureka County, State of Nevada, and those federal officials involved with the administration of federal lands situated within the County; and
  2. Full consideration by the Federal Government of the needs of Eureka County citizens who will be directly or indirectly impacted by federal agency decisions regarding the use of federal lands and the management of water, fish and wildlife in Nevada;
- E. There now exists a substantial and urgent need to increase the involvement of Eureka County in the management of federal lands and in the development of criteria that are meaningful in any decision-making process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a), Section 219.7(c), Section 219.7(d).

.020 Procedures adopted

Based upon consideration of the findings set forth in section .010 of this chapter, Eureka County adopts the following procedures to ensure that there is full and complete disclosure and cooperation by federal entities to the County regarding decisions affecting federal lands located within the County and, reciprocally, that federal entities be made aware of the impact of their actions and decision-making on the interrelated heritage of cultural, environmental and economic well-being and stability of the County. The adopted procedures apply to all decisions undertaken by any agency, department or other federal entity including, but not limited to, the Department of Interior, Department of Agriculture, Environmental Protection Agency, Department of Defense, or Department of Energy (hereinafter known as "federal entities") that do or will have a direct or indirect impact on federal and private lands within the geographic confines of the County.

.030 Specific procedures

Within thirty (30) days after adoption of this chapter, and at the beginning of each calendar year thereafter, the Chairman of the Board of Eureka County Commissioners, on behalf of the Board, or his designee, shall give to federal entities written notice as follows:

- A. That the County government of Eureka County demands, pursuant to adopted federal statutes and regulations, full and complete notice and opportunity for involvement in the decision making processes of the federal entity that:
  - 1. are being taken or are being proposed to be taken regarding federal lands located within the State of Nevada,
  - 2. involve listing, de-listing, classification or reclassification of a threatened or endangered species or any designated habitat within the County, or
  - 3. involve any major federal action significantly affecting the quality of the human and natural environment within the County;
- B. That failure of federal entities to afford Eureka County complete notice and opportunity for involvement beyond that afforded individuals, or to limit State and County government involvement, input to or comment at public hearings, is presumed to be prejudicial to the government of Eureka County and its residents, and that the Board of Eureka County Commissioners is authorized and empowered by this chapter to authorize and instruct the Eureka County District Attorney to seek redress for such prejudice in the federal courts and through administrative hearings;

- C. That, within the County's budgetary constraints, the County will notify federal entities of any other evidence of our interrelated historic, cultural and environmental heritage, as well as the anticipated impact on the same of any use of federal or private lands situated within the County.

**.040 Presumption of negative impact**

If implementation of a habitat designation or other federal policy or practice over federal lands located within the geographic boundaries of this County:

- A. causes alteration of present County land use regulations without such changes having been initiated voluntarily by the County and
- B. makes it unfeasible for existing, lawful businesses to continue their current operations, then the proposed federal action will be presumed by the County to create a negative impact on the interrelated environmental, cultural and economic well-being of this County and its residents, and not to be a preferred alternative acceptable to the County as it relates to resolving the environmental and other concerns of the federal entities.

**.050 Quarterly reports required**

On a quarterly basis, the Chairman of the Board of Eureka County Commissioners, or his designee, shall report to the County Commission and the public on the activity of the County taken under this chapter, and actions taken or proposed to be taken by the federal or state governments regarding federal lands in the County.

**.060 Savings clause**

Nothing herein is intended to conflict with any lawful federal statute or regulation that governs federal lands within Eureka County. Any section, paragraph, sentence, phrase or word that is found to do so as a matter of law may be severed from this chapter without limiting the enforceability of the non-conflicting portion. The Board of Eureka County Commissioners expressly declares that it would have enacted the non-conflicting portion without enacting any portion found to be in conflict or otherwise unlawful.

## Chapter 50 - PUBLIC ROADS

### .010 Declaration of policy and intent

- A. Eureka County, a political subdivision of the State of Nevada, holds title, as trustee for the public, to all public roads, trails, pathways, traces, highways, byways, and similar public travel corridors situated in the County, of every kind whatsoever, except for State and federal highways, however such roads may have come into being. Title to those roads commonly known as R.S. 2477 roads, irrevocably granted to the public by act of congress (Mining Law of 1866), is held in trust by the County as the unit of government closest to the people.
- B. The County will:
1. Protect and defend against all interference the right of the public to travel and use the public roads within the County;
  2. Oppose closure of any public roads except as authorized by this chapter; and
  3. Maintain the public roads by conventional or other appropriate means, as from time to time authorized by the Board of County Commissioners, or designate certain public roads as roads to be maintained only by passage and use without liability to the County, as permitted by Nevada Revised Statutes.

### .020 Definitions as used in this section

**Construction** means the establishment of a road by mechanical or other means, including repeated use.

**County road** means any public road situated within Eureka County, except for designated State and federal highways; also, any road maintained by the County for County purposes which is not open to the public.

**Highway - Modern usage**: Any state or federally designated road, usually paved or graveled; or **Traditional (R.S. 2477) usage**: Any road, trace, trail, canal, navigable waterway, or other route used by humans for travel by wheeled vehicle, horseback, foot or boat, or otherwise. This definition applies to all highways established across public lands pursuant to the Mining Law of 1866 (R.S. 2477) between the enactment of the statute in 1866 and its repeal by the enactment of the Federal Lands Policy Management Act (FLPMA) in 1976.

**Maintenance** means construction, reconstruction and repair of a road by mechanical or other means, including repeated use.

**Public road** means any road open to travel by the general public. The term includes, without limitation, roads (1) on land held in fee simple absolute by the County, (2) on easements across land held or claimed by others, (3) pursuant to express or implied permit or license on lands held or claimed by others, (4) canals or navigable waterways. Roads established pursuant to the grant of right-of-way by the Mining Law of 1866 (R.S. 2477 roads) are public roads.

**Right-of-way** means the entire fee, easement or licensed or permitted area for a road; the traveled way, together with such adjoining land as may be required for construction or maintenance of a road.

**Road** means any highway (traditional usage), road, trail, trace, footpath, canal, navigable water, or other route, whether constructed or created by repeated use, when used by humans for transportation by wheeled vehicle, horseback, foot or boat, or otherwise.

#### .030 Map of County roads

- A. The Department Public Works may prepare and maintain a map or series of maps showing the location of all County roads as hereinabove defined.
- B. Any such map or series of maps of County roads prepared by the Department of Public Works, as from time to time amended, is made a part of this Title by reference. Revised editions of the map of County roads may be accepted by the Board of Commissioners, and upon adoption shall become a part of this chapter by reference and shall constitute evidence that such roads and highways exist and belong to the County.
- C. Copies of the map of County roads shall be available for purchase at cost by the public.
- D. Due to the large number of roads in the County and the difficulty of mapping them all, the failure of a highway or road to appear upon such a map or series of maps shall not constitute a waiver of such highway or road, nor shall it be used as evidence of such road's or highway's nonexistence.

#### .040 Interference with travel

It is a misdemeanor, punishable as provided for misdemeanors in the Nevada Revised Statutes, for any person to interfere with the right of the public to travel the public roads, except:

- A. Public roads may be closed temporarily by the Board of Commissioners for

reasons of public safety, and the County Sheriff and/or director of emergency management may effect temporary closures for reasons of public safety pending an emergency meeting of the Board of Commissioners to ratify such closure.

- B. Public roads may be closed permanently by the Board of Commissioners only after thirty (30) days notice of intent to close and a public hearing on the proposed closure.
- C. The Board of Commissioners may grant temporary exclusive licenses to use, or place lesser restrictions on the public use of, a public road to accommodate mining activity; provided, (1) an alternate route offering reasonable public access to the areas served by the public road is provided at the licensee's expense, (2) the licensee maintains the public road and returns it to the County at the conclusion of mining activity in as good or better condition than at the time of licensing, (3) thirty (30) days' notice is given of intent to temporarily limit use of the public road for mining activity and calling a public hearing thereafter on the proposed limitation(s).
- D. The Board of Commissioners may grant temporary exclusive licenses to use a public road or highway to accommodate short-term special events such as parades, races, walkathons and similar activities.

.050 Public authorized to maintain roads

The public is authorized to maintain, by use or by mechanical means, public roads which are not regularly maintained by the County. The public is not authorized to reconstruct or reroute a public road outside its original right-of-way.

.060 County authorized to accept roads as gifts

The Board of Commissioners is authorized to accept by gift, bequest or otherwise, private roads for addition to the system of County roads. Such transfers may be by fee, easement, license or permit.

## Chapter 60 - REVERSION OF PUBLIC LANDS

### .010 Findings of fact

The Board of Eureka County Commissioners, a political subdivision of the State of Nevada, finds as follows:

- A. The government of the United States of America exercises control over 2,100,000 acres (eighty-one percent) of the land and the majority of natural resources within the geographic boundaries of Eureka County;
- B. Decisions governing federal lands in Eureka County have a direct impact on the interrelated heritage of cultural, environmental and economic well-being and stability of County residents;
- C. The interest of the citizens of Eureka County is best served when government is conducted as close to the people as possible;
- D. Authority to management of natural resources located on state and federal lands within the geographic boundaries of Eureka County should be vested in the Board of Eureka County Commissioners.

### .020 Procedures adopted

- A. At such time as the Nevada Legislature shall authorize Eureka County to manage public lands situated within the County's exterior boundaries, the Board of Eureka County Commissioners is authorized to take all actions and do all things reasonably necessary to assume management of said public lands.
- B. The Board of Eureka County Commissioners is authorized to develop plans and take all other reasonable actions preparatory to future assumption of management of the natural resources of the County's public lands.
- C. The grant of authority set forth in this section includes the power and duty to protect and further all traditional commercial and noncommercial uses of public lands within the County, and to provide for continued general access to and multiple use of the public lands by all traditional users, and the power to do all things reasonably necessary to effect the purposes of this section.
- D. The Board of Eureka County Commissioners is expressly authorized to:
  - 1. Impose and collect fees and charges for use of the county's public lands natural resources as defined in 9.20.010 for commercial or noncommercial purposes;

2. To use the fees and charges collected to finance management and improvement of those natural resources and for the general purposes of the County;
3. To determine when and if certain public lands should be devoted to special purposes rather than multiple use in order to better utilize the particular natural resources found on those lands, and to provide for orderly transfer of special purpose public lands to private ownership if that will effect more desirable utilization of the resources