

STATE LAND USE PLANNING ADVISORY COUNCIL
MINUTES

June 1, 2018
White Pine Aquatic Center
1111 Veterans Blvd., Ely, NV 89301

Members Present

Lee Plemel, Carson City
Dean Patterson, Churchill County (Alt)
Sami Real, Clark County
Jake Tibbitts, Eureka County (Chair)
Jim French, Humboldt County
Austin Osborne, Storey County
Lorinda Wichman, Nye County (Vice Chair)
Varlin Higbee, Lincoln County
Jerrie Tipton, Mineral County
Jeanne Herman, Washoe County
Laurie Carson, White Pine County
Art Clark, Lander County
Don Alt, Lyon County

Members Absent

Nancy McDermid, Douglas County
Delmo Andreozzi, Elko County
Roger Mancebo, Pershing County

Others Present

Lori Story, Nevada Attorney General's Office
Skip Canfield, State Land Use Planning Agency
Frank Whitman, Lander County
William Miller, White Pine County

CALL TO ORDER

The meeting was called to order at 9:00am and self-introductions were made. The Agenda was reviewed and approved, motion by **Jerrie Tipton**, second by **Varlin Higbee**, approved unanimously.

PUBLIC COMMENTS

None.

AGENDA/APPROVAL OF MINUTES

The Draft Minutes of the February 9, 2018 meeting in Las Vegas were approved as presented, motion by **Jerrie Tipton** and seconded by **Laurie Carson**. **Austin Osborne** and **Jim French** abstained.

RS2477 ROADS WORK SESSION

Jake Tibbitts led the discussion and referenced the original SB 456 designating SLUPAC, NACO and the State Attorney General's Office to work together in developing a protocol for resolving RS2477 road status in Nevada. Also referenced was the court case in Storey County, "*Thomas v. Storey County Commissioners*". The dispute is over an RS2477 road and whether or not once land is privatized the right-of-way ceases. The private landowner wanted to block off a road that has been used for decades by the public. The judge stepped through RS2477 history and some of the standards to be made in designating a public right-of-way through RS2477 before ruling for the County. The importance here is that this case is Nevada-specific. **Austin Osborne** stated that the County had map documentation going back to 1867 and other back-up that

helped defend the argument for RS2477 status, even though it must only be proven that the road has been in continuous use since five years prior to 1976.. **Jake Tibbitts** said that the 9th Circuit decision also cited the 10th Circuit process in Utah and represented a positive precedent.

Jake Tibbitts also mentioned that the District Attorneys' Association is involved with RS2477 protocols. The association is aware of the efforts underway by SLUPAC/NACO and the AG Office. The DA's association met on April 18, 2018 and there will be follow up by the Nevada AG's Office with provision of a more comprehensive draft protocol (**Wayne Howle**). It was also stressed that the Nye County process is consistent with the process in this court case although in a broad, multiple-road orientation and SLUPAC's mandate includes looking at a resolution that avoids a piecemeal one road at a time scenario. A case-by-case process can become much more expensive then tackling multiple roads at once. It is important for all counties to assemble a comprehensive road inventory of those roads each county believes are most important to pursue prior to undertaking the quiet title action process. Of notable importance with quiet title actions is that there is a 12-year statute of limitations. However, a particular benefit to the counties is that the statute of limitation on a road only begins when that county is officially notified about the subject road. SLUPAC's role with NACO and the AG's Office is to develop the protocol. After that the quiet title process can proceed.

Jake Tibbitts reminded the members that the 10th Circuit Court (and concurred by the 9th Circuit) agree that rights-of-way over Federal land can only be adjudicated in a Federal Court. Counties do not have a vested right in a road until it is adjudicated in Federal Court, all they have prior to that is a claim. BLM cannot therefor officially recognize RS2477 roads until adjudication. BLM has no authority to say any road qualifies under RS2477.

Jim French mentioned the importance of coordinating with the BLM on their travel management planning efforts to ensure that the county road concerns are recognized proactively, and especially related to sage grouse focal areas.

Jake Tibbitts mentioned the difference between public use and permitted use, where established uses need to be documented to prove RS2477 roads. Documentation of permitted use does not qualify for establishing public continuous use of a road. Documentation should include all available historic maps, depositions from users and descendants and any other means necessary to prove use.

Sami Real mentioned a very good way to document roads is through GPS tracking, since many recreational groups have a wealth of information.

During the discussion it was agreed that a special RS2477 workshop in Carson City would be most prudent whereby SLUPAC, NACO and the AG could get together and collaborate. (Note: this workshop will take place on Wednesday August 29, 2018 between 1100am and 200pm at the Nevada Attorney General's Office in Carson City).

COUNTY EXPERIENCES WITH REGULATION OF MARIJUANA

Lee Plemel and Sami Real gave perspectives from Carson City and Clark County.

Recreational sales have been legal in Carson City since January 1, 2018 so data is just beginning to be collected. So far there has been no apparent correlation between these activities and an increase in driving while impaired or crime, and the Sheriff is monitoring this. Medical marijuana facilities have been allowed since 2014. Two licenses are allowed and already approved for general sales within City limits. There is no limit on the number of cultivation, product manufacturing or distribution facilities but those uses are limited to Industrial zones only. A Special Use Permit is required for all establishments and the City and State have regulations for signs. A 3% business license fee is collected. In the first quarter of 2018, Carson City has collected \$152,672 in taxes out of the gross revenue from the local businesses of \$5,089,086.

In Clark County, these sales establishments are not allowed along the Strip but licensees want to be located as close as possible. Recently the County allowed for 24-hour sales since the operators were having costly efforts shutting down and re-opening in the morning, also, security during closed hours was expensive. This is a very privileged license and many operators are not conducting themselves in a responsible manner when

it comes to operation, maintenance and monitoring their conditions of approval. For example, production can cause odors that negatively affect neighbors. Many operators fail to practice timely maintenance of their air filters. The challenge for Clark County is keeping the dispensaries equally distributed since currently there are no separation laws. Sometime soon the State could release additional licenses for marijuana sales and the Clark County Commissioners have no appetite currently to entertain additional applicants.

A discussion ensued and **Lee Plemel** mentioned that legalization of recreational use of marijuana has caused a negative impact on the employee pool since THC can stay in the blood stream for up to 20 days. Any prospective employee of a firm or agency where a drug test is required will not apply for fear of failing the test. Existing employees have the same fear.

Jim French mentioned the fact that State law cannot preempt Federal law and that all counties are operating under a certain cloud when they take payment of their business tax funds from these sales. He also mentioned that because this is a cash business, Colorado has seen a large increase in crime around the stores. He then asked a question about Indian reservations. Humboldt County zoned marijuana sales out but had interest from businesses wanting to locate on the County's two reservations. He has a letter from the Federal attorney general's office stating that retail sale of marijuana on the reservations will be prohibited. He said that the Federal attorney would intervene if the County prohibited sales and a reservation proceeded to allow sales.

DEPARTMENT OF INTERIOR REGIONALIZATION

A roundtable discussion ensued on the potential regionalization of the Department of Interior (DOI) and how it may affect Nevada. **Jake Tibbitts** said that the Omnibus Appropriations Bill just passed has funding (@\$13 million) for this proposal to move the headquarters of BLM to the West. Secretary Zinke at the Western Governors' Association went on record that under this regionalization he is NOT considering BLM to be regionalized. Other DOI agencies will be regionalized. For BLM, other than HQ being moved to the West, their structure will not be regionalized.

An action item was moved by **Jerrie Tipton**, seconded by **Lorinda Wichman** (all in favor) to write a letter to the Secretary of Interior and copying the agencies (BLM USGS, Reclamation, US Fish and Wildlife Service, State of Nevada) stating that SLUPAC is aware of the proposal and recognizes that there has not been a lot of progress to date other than some funding approval for the regionalization. SLUPAC asks that the State of Nevada, counties and SLUPAC are actively coordinated with as this process moves forward. There was consensus that the tone of the letter be encouraging and that **Skip Canfield and Jake Tibbitts** would develop the final letter like they have done for letters in the past, and send it out, copying the SLUPAC members.

BLM'S DIRECTIVE TO STREAMLINE

A roundtable discussion ensued on the status of BLM's directive to streamline the NEPA and Resource Management Plan process (an overhaul of the previous "Planning 2.0" proposal that was rescinded). SLUPAC held a special meeting on August 14, 2017 to review and provide an official comment letter. **Jake Tibbitts** stated that nothing has been done at the Washington D.C. level to follow through on this directive.

An action item was moved by **Jerrie Tipton**, seconded by **Lorinda Wichman** (all in favor) to write a letter to the Secretary of Interior and copying BLM stating that SLUPAC was actively engaged in the streamlining process, noting that comments were submitted as part of the official State of Nevada comment package, SLUPAC has received the BLM report to the Secretary, and SLUPAC is keenly interested in if those recommendations that went to Washington D.C. will be implemented and when. SLUPAC would like to be closely involved in the process as it moves forward. The letter will be written under the same tone guidelines and protocol as agreed by consensus in the previous item.

PUBLIC LAND POLICY PLAN UPDATE ASSISTANCE AND OUTREACH

A focus area for SLUPAC, a roundtable discussion was had on public land policy planning efforts and ways to increase outreach and coordination. **Jim French and Jerrie Tipton** stated that Humboldt and Mineral are moving forward with their updates. **Jake Tibbitts** stated that Eureka's plan was adopted in 2010 and is due

for an update. **Skip Canfield** stated that he had worked with multiple counties over the years to update their plans, and to incorporate them as elements of the master plan. Adopting as an element of the master plan is important for NEPA consultation with BLM and other agencies. Federal agencies look closely at adopted plans and their elements when conducting EA's and EIS's. Since this is a focus area of SLUPAC, an important role can be had by elevating county level issues to the State level. **Skip Canfield** had prepared a Draft Resolution (#2018-1) for SLUPAC's consideration, explaining the importance of public land planning efforts in Nevada, the role of SLUPAC as an elevator of county local voice to the State level, and the willingness of SLUPAC to support and assist in public land policy planning efforts. After a discussion and additional wording proposed by **Jake Tibbitts**, there was a motion by **Lorinda Wichman**, second by **Jerrie Tipton**, (all in favor), to approve with edits SLUPAC Resolution #2018-1. The resolution will be sent to the SLUPAC members, County Clerks requesting that it be forwarded to the respective county commissions and planning commissions.

It was also mentioned the importance of getting different stakeholders together to talk about public land policy planning and the fact that NACO will be holding a workshop on the issue in Carson City on July 20, 2018.

UPDATE ON STATEWIDE MILITARY LAND WITHDRAWAL EFFORTS

Two large military land withdrawal efforts are currently underway, at NAS Fallon and at the Nellis – Nevada Test and Training Range. The NAS Fallon DEIS will be available later this summer and the Nellis DEIS is already available. SLUPAC provided comment letters on both proposal as part of the official State of Nevada comment packages.

A discussion ensued about drafting a SLUPAC letter and **Lorinda Wichman** asked that it would be important to include in the letter a statement about Payment in Lieu of Taxes (PILT) so that the any Federal legislation associated with the withdrawals specifically includes the provision for the continuation of PILT payments relative to the withdrawn lands. Nye County stands to lose a significant amount of PILT subject to these withdrawal. **Jake Tibbitts** mentioned that most counties are PILT-constrained by population cap. **Lorinda Wichman** stated that Nye County is a "Class B" county and will lose PILT payments as a result of any special legislation. **Jake Tibbitts** said that the impacts are broader and include such multiple use examples such as grazing allotment losses that are not mitigated. An amendment to the Taylor Grazing Act requires monetary compensation by Congress, but this is an unfunded mandate.

A letter was proposed to the Congressional delegation and relevant Department of Defense and appropriations committees and contacts, motion by **Jerrie Tipton**, second by **Varlin Higbee**, (all in favor) making the aware that with these two proposed land withdrawals, there are substantial impacts to various existing multiple uses on public lands including PILT receipts to affected counties. Mitigation is needed to compensate for the negative impacts of the proposed land withdrawal. This will require through the acts of Congress the proper appropriations to pay for the mitigation. SLUPAC asks that progress be made as soon as possible to ensure that adequate funding is included.

COUNTY PLANNING ISSUES

Brief summaries:

Jake Tibbitts, Eureka County:

Diamond Valley Groundwater Management Plan is final with the goal of reducing pumping. The Plan will be submitted to the State Engineer who would approve the Plan with an "Order". Diamond Valley water serves 2/3 of the Eureka County population.

The Nevada Rural Housing Association has walked away from a townhome development in Eureka, now the County owns the property. McCuin Mining Company plans to use the housing for some of their 150 employees and is looking at the purchase.

EPA's \$13 million residential lots lead cleanup is in the final phase.

Jim French, Humboldt County:

The County Public Lands and Natural Resources Master Plan is almost completed. County Water Management Plan is complete and will be an amended element of the Master Plan. County has submitted the sage grouse EIS comments, with an emphasis on BLM Travel Management planning impacts and need to coordinate. Need attention on the Sage Grouse Focal Area changes.

Varlin Higbee, Lincoln County:

County is pursuing a 15-20 year lease with a company to do pinyon/juniper processing plant.

Sami Real, Clark County:

County struggling in some areas with annexation and need for de-annexation (no legislation for de-annexation). City of Las Vegas has been pursuing multiple areas for annexation that has caused citizen opposition.

Don Alt, Lyon County:

County experiencing growth issues and possible negative impacts to Lake Lahontan (water quantity). That basin upstream from Lahontan in the Silver Springs/Stagecoach area is over allocated by six times.

Jeanne Herman, Washoe County:

The neighborhoods in Lemmon Valley around the playa are still flooded more than a year later.

Jerrie Tipton, Mineral County:

Notice to Construct has been issued for the Isabella Pearl Walker Lane Tungsten Mine. There will be employee housing issues.

Laurie Carson, White Pine County:

County will update its GIS system in 2019 in coordination with purchasing a new 911 system. County is taking another look at the Silver State Trail as part of a potential re-evaluation of the Ely BLM RMP. Coordinated Resource Management Plan meetings will look at trail needs and other affects as a result of the sage grouse plans and revisions. A lease is approved for a solar farm north of the airport, to be constructed in three years with a 30-year operations life. Camp Success has been reopened for conferences, weddings, other events, camping. First ever Formula 1 Air Race in White Pie County will occur at the airport June 13-16. A 10-year wild horse gather plan is approved for the Seaman/White River herd in Lincoln and Nye Counties with a goal of improving the watersheds and rangeland health.

Art Clark, Lander:

Infrastructure improvements are ongoing county-wide thanks to a large receipt of mining net proceeds payments for this fiscal year. (\$42.7 million)
Issues in Austin regarding the historic township lots, mapped in a grid, but not necessarily developed that way due to topography. There are multiple access issues and structures existing in locations that do not comply with mapped lot lines.
Austin Water Department in need of \$2.5 million for infrastructure (this entity is separate from the County).
County Recreation Center is completed and open for business.
The Austin Airport runway is being improved and Jet "A" fuel will be available there for the first time.
Potential for development at the Battle Mountain industrial park adjacent to the Battle Mountain Airport.
Firecreek Mine is online with significant potential (Gold)
County in good shape with its water, new infrastructure will deliver non potable water to County parks.

Lee Plemel, Carson City:

City has obtained TIGER grants and tax increment financing for a "Complete Streets" project on South Carson Street to be completed in 2019.

Dean Patterson, Churchill County:

County will see geothermal plant expansion with a component of solar.
Coordination ongoing with NAS Fallon on the proposed military land withdrawal expansion.

A planned unit development proposal of 2,500 homes is possible on north US 95, there are concerns about ability to fund urban-level development, infrastructure and maintenance. All of this needs to be coordinated with the builders through development agreements. Staff has also consulted with UNR's economic development office to look at what are the County's responsibilities for maintaining more rural roads compared with urban streets.

Austin Osborne, Storey County:

Blockchain has purchased 80% of the Tahoe Reno Industrial Center and is in the process of determining development plans and timing. The County is looking at the existing development agreement. Google is another large land owner and SWITCH has just completed its 1 million square foot facility, a first phase with more to come.

The County is working with lobbyists in Washington D.C. for strategies to get the lands bill moving forward. Focus is to attach it to a noncontroversial bill that doesn't attract NEPA and resolve the clouded title issues in Virginia City. Similar problems exist in Austin, Lander County. This bill is different than common bills in other counties that include wilderness components and economic development aspects.

The Zip Code bill is being pursued. Some zip codes from adjacent counties overlap into Storey County and create multiple problems.

County looking at purchasing an effluent line connecting to Reno/Sparks/Washoe so Storey can utilize unwanted effluent from the western urban areas. Potential to use to cool the servers at the TRI SWITCH facility, Tesla, and other users.

20-year timeline for proposed 4,800 home mixed use development at Painted Rock. At buildout, this would increase the County's population of 4,000 to 12,000. The adopted master plan supports this.

Need to create a regional transportation commission that can look at issues at a wider scale.

Highlands 1293 Order (no new wells unless dedicated water is available), wells in the area are drying up and there is the need for some new mechanism like a GID to address the issues there. Looking at a parcel map ordinance update to address the dedication of water.

County in need of an additional Planner.

Lorinda Wichman, Nye County:

The Groundwater Management Plan was accepted and approved by the State Engineer.

The Nye-REMSA agreement has been very good for the County.

Commissioners are looking at a controversial county-wide Special Use Permit ordinance.

COUNCIL MEMBER COMMENTS

COUNCIL DISCUSSION AND RECOMMENDATIONS/CHECK IN ON SLUPAC GOALS

The members acknowledged the focus areas for 2018-2020:

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

Next meeting will be Friday September 7, 2018 in Battle Mountain.

PUBLIC COMMENT

None.

ADJOURNMENT

The meeting was adjourned at 1:15 pm for voluntary field trip to Comins Lake and Camp Success.

Respectfully submitted,

Skip Canfield

/s/

Meeting Recorder

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

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