

## **STATE LAND USE PLANNING ADVISORY COUNCIL**

### MINUTES

July 31, 2015

At the following location:

169 US50

Stateline, Nevada 89449

### **Members Present**

Eleanor Lockwood, Churchill County  
Jim French, Humboldt County  
Steven Stienmetz, Lander County  
Austin Osborne, Storey County  
Jeanne Herman, Washoe County  
Roger Mancebo, Pershing  
Jake Tibbitts, Eureka County (Chair)  
Randy Brown, Elko County  
Nancy Boland, Esmeralda County  
Dagny Stapleton, NACO  
Dr. Don Miner, Douglas  
Lorinda Wichman, Nye County (Vice Chair)  
Harold Ritter, Lyon County  
Nancy Amundsen, Clark County  
Varlin Higbee, Lincoln County (term pending)

### **Members Absent**

Lee Plemel, Carson City  
Jerrie Tipton, Mineral County  
Laurie Carson, White Pine County

### **Others Present**

Charlie Donohue, Nevada Division of State Lands (NDSL)  
Skip Canfield, Nevada Division of State Lands, State Land Use Planning Agency  
Lori Story, Deputy Attorney General, Nevada Attorney General's Office  
Sam Routson, Winnemucca Farms, Inc.  
David Pritchett, BLM

### **CALL TO ORDER**

The meeting was called to order at 9:05 AM and self-introductions were made. The Agenda was approved unanimously. The Draft Minutes of the April 10, 2015 meeting in Elko were also approved unanimously with minor changes made by **Austin Osborne**.

### **PUBLIC COMMENTS**

None.

### **AGENCY REPORT**

**Charlie Donohue** stated that NDSL has secured 400 acres (R&PP patent) next to the US Ecology site south of Beatty. This land will allow for expansion of the facility in the future. The Lake Tahoe Restoration Act was introduced by Senator Heller with a request for \$415 million as the Federal share of the Environmental Improvement Program (EIP) Phase 2. As part of that legislation, the State has requested the transfer of some Federal lands, in particular at Van Sickle Bi-State Park to perfect access between two portions of the park. Another transfer is 90-acre in holding by Marlette Peak. End goal is ease of management between the US Forest Service and the State. On another topic, as a result of the 2015 Session, the State was instructed to

dispose of a number of properties. AB 202 transferred the old National Guard facility in Hawthorne to Mineral County. Guard activities at the site had been inactive for years and Mineral County could better use the facility. AB 404 transferred a number of underutilized Nevada Division of Forestry fire stations to the counties. One vacant site was transferred to Storey County in the Virginia City Highlands. Kyle Canyon station was transferred to Clark County as well as one station (Mt. Rose) in Washoe and one in Elko.

### **TAHOE CHAMBER ACTIVITIES**

**Steve Teshara, Tahoe Chamber of Commerce, Sustainable Communities Advocates, and Jason Drew, Tahoe Chamber of Commerce** presented some highlights of Tahoe Chamber activities:

A focus of the Chamber is to develop, promote and represent businesses on the south shore, in both states. High priorities are creating a strong local economy and representing businesses with government. The Chamber has formed a government affairs committee recognizing that in the Tahoe basin there has been a lot of planning in the past, with all kinds of vision documents. Problem was that these processes were driven by government and special interest groups, little focus was given to the business community perspective. The Tahoe Future 2020 document was developed by the Chamber to better address this disconnect and provide a business community vision. TRPA recently conducted their Regional Plan update, however it is currently in litigation. The business community recognized they had to be proactive in these types of updates, get engaged and involved early. Funds were raised to do an outreach campaign. The Chamber provided tangible examples of how previous policy positively or negatively affected the business community, to help guide new policies in the update. Chamber goal was to balance economic development needs with environmental protection needs.

Keeping track of Federal issues in the basin is a challenge as well, 78% of the basin is federally managed. Tracking is done through the Lake Tahoe Partnership, a diverse membership. The Lake Tahoe Restoration Act is a prime example of Federal legislation that must be carefully tracked and supported. This act has expired and the partnership has been working to get it reauthorized. There are two versions currently under Congressional review. Funding authorized from a new act would implement the Environmental Improvement Program (EIP), linked to the TRPA requirement to maintain environmental thresholds. EIP lays out a Federal share, California and Nevada shares, local government shares, and private sector share. Chamber's role is to help ensure all the partners have the financial resources to participate in their share of the EIP.

The Basin is a metropolitan planning organization (MPO). The transportation planning challenge in the Basin is magnified by the amount of national and international tourism. However, the Basin does not meet the Census Bureau criteria for a "full" MPO. The Basin receives planning funds, but no money to do projects. S1647 is in Congress now to, among other things, address the funding shortfall by making the Basin into an actual MPO.

### **TAHOE EIP**

**Elizabeth Kingsland, Program Manager, Nevada Tahoe Resource Team** gave an update on activities associated with her program:

#### **Summary of Power Point:**

#### ***Tahoe Environmental Improvement Program***

- ***NRS 321: The Division may establish and carry out programs to preserve, restore and enhance the natural environment of the Lake Tahoe Basin.***
  - ✓ ***1986 Tahoe Basin Act: \$31 million for sensitive property protection and erosion control***
  - ✓ ***1996 Tahoe Bond Act: \$20 million for erosion control and restoration***
  - ✓ ***1999 Lake Tahoe Basin Act: Authorized \$56.4 million to complete NV share of EIP Phase I***
  - ✓ ***2009 Assembly Bill 18: Authorized \$100 million to complete NV share of EIP Phase II***

#### ***Nevada Tahoe Resource Team***

- ***Multi-Agency team housed in State Lands to protect the environment of Lake Tahoe***
  - ✓ ***Members include State Lands, State Parks, Forestry, & Wildlife; Other State partners include NDEP, NDOT & NTCD***
  - ✓ ***Coordinate closely with Local, State, and Federal partners***

- ✓ Funded and implemented 130 projects in Nevada, of over 445 projects basin-wide since 1997

#### **Program Focus: Fuels Reduction**

- 2 Team Foresters work to create a seamless fire safe landscape in the Tahoe Basin
  - ✓ Leverage State funds against more than \$2.7 million federal SNPLMA funds (9 grants)
  - ✓ Coordinate with Local Fire Protection Districts and USFS
  - ✓ Cost-effectively engage NDF fire crews for large projects in Lake Tahoe Nevada State Park
  - ✓ 65% of critical landscapes within Lake Tahoe State Park have received fuels treatment

#### **Program Focus: Water Quality**

- Team Specialist works with local jurisdictions, NDOT, USFS, and private parties
  - ✓ Over \$61 million in stream restoration, storm water treatment, and erosion control projects
  - ✓ Leverage Federal, local and private environmental restoration and transportation funds
  - ✓ Create comprehensive solutions encompassing public and private parcels
  - ✓ 55 miles of roads treated preventing millions of pounds of sediment from reaching the Lake
  - ✓ Investment in aquatic invasive treatment, research and planning efforts

#### **Program Focus: Parks**

- Exceptional recreational access at Sand Harbor, North Canyon/Spooner, Van Sickle & Cave Rock
  - ✓ Infrastructure investments at Cave Rock for enhanced accessibility and visitor enjoyment, water quality improvements and scenic enhancements
  - ✓ Upgrades to North Canyon, Tunnel Creek and Marlette roads for recreational access and improved water quality treatment
  - ✓ Facility improvements at Sand Harbor including new scenic overlooks, a boat ramp extension and new comfort stations
  - ✓ Coordination on the implementation of the Stateline to Stateline Bikeway

#### **High Priority Projects**

- Funded projects are under way; unfunded projects were previously identified but are on hold due to lack of Nevada bonding capacity.

#### **Funded** SR 28 East WQIP

Central Incline WQIP Phase II

East Incline Village WQIP

Zephyr Cove GID WQIP

Burke Creek Restoration

North Canyon Creek Restoration construction

Lake Tahoe Nevada State Park Fuels

Third and Incline Creek Restoration Phase IV

Cave Rock Recreation Enhancements Phase I and II

Sand Harbor Comfort Station Construction

Highway 50 Phase B Water Quality Improvement Project

#### **Unfunded**

Incline Village Water Quality Improvement Projects

Tunnel Creek Road Water Quality Improvements

Sand Harbor, Lake Tahoe Nevada St. Park Boat Parking

Cave Rock Recreation Enhancements Phase III

Sand Harbor Comfort Station Construction Phase II-VIII

#### **Positioning for Future EIP Success**

- The established EIP partnership collaborates and leverages funds across multiple layers to achieve critical environmental goals.
  - ✓ 674 miles of roadways and 55,690 forest acres treated; nationally recognized AIS Program launched
  - ✓ Lake Tahoe Restoration Act effort continues with input from Federal Advisory Committee (LTFAC)-bill was introduced
  - ✓ Support of research and project implementation to enhance the near-shore of Lake Tahoe
  - ✓ Partners in the Lake Tahoe Basin Multi-Jurisdictional Fuel Reduction & Wildfire Prevention Strategy
  - ✓ Nevada's share of the EIP is committed as bonding capacity allows for sales
  - ✓ Public-private partnerships like the Tahoe Fund to build broad support for the EIP

#### **Nevada Division of State Lands**

State Land Use Planning Agency  
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Carson City, Nevada 89701-5246

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**NEVADA STATE ENGINEER UPDATE**

Rick Felling, Deputy Administrator, Nevada Division of Water Resources

**Summary of Power Point on Nevada Drought Forum:**

- *Need*
  - *Current conditions*
  - *Forecasts*
- *Goals and objectives*
  - *Build on activities of Drought Response Committee*
  - *Incorporate findings of WGA Drought Forum Final Report*
  - *Gather input from stakeholders*
- *Drought Summit*

September 21-23, 2015

Nevada Legislative Building

- *Prepare a final report to the Governor*

May 2015

- *State agencies provide summary of current and planned actions, and related authorities pertaining to drought to Nevada Drought Forum*
- *Municipal water providers and Federal agencies provide summary of current and planned actions related to drought and drought conditions to the Nevada Drought Forum*

June 2015

- *Nevada Drought Forum Summarizes Agency Reports of Current Action*
- *Western Governors' Drought Forum Final Report Released*

July and August 2015

- *Nevada Drought Forum outlines topics and objectives for stakeholder discussions, and issues additional call for specific information*
- *Interested stakeholders respond to call for information from Nevada Drought Forum and provide Nevada Drought Forum current actions and challenges relevant to WGA drought recommendations*

September 2015

- *21-23: Drought Summit in Carson City*

November 1, 2015

- *Nevada Drought Forum delivers final written report to the Governor*
- *Eight-member committee*
- *Three Drought Forum public meetings*
  - *June 11 – Carson City*
    - *Organization and planning*
    - *Review of current conditions*
  - *July 17 – Las Vegas*
    - *Presentations by Gaming, Tourism, Industry, Mining, Energy*
    - *Conservation practices implemented for many years and have resulted in significant reductions in water use*
    - *Need a regulatory framework that is flexible*
    - *Air-cooled power plants*
    - *Need more incentives*

**Current and Planned Actions: State Agencies**

- *CRC NV Allocation 300,000 afa*
  - *Lowest Lake Mead storage in 78 years Current Elev. 1076 ft (lowest since 1937)*
    - *1050 - 1075 ft: 287,000 afa*
    - *1025 - 1050 ft: 283,000 afa*
    - *< 1025 ft: 280,000 afa*
  - *Hydro power impacts*
- *Department of Agriculture*
  - *Heavily impacted by ongoing drought*

- Promoting increase in efficiency through technology
- Department of Wildlife
  - Increasing assessment of water supplies for wildlife
  - Prioritize new construction, emergency water hauls
  - Reducing wetlands acreage at WMAs
  - Numerous wildlife-specific issues and actions

*Current and Planned Actions: State Agencies*

- Division of Emergency Management
  - Monitors drought status and publishes monthly drought situation report
- Division of Environmental Protection
  - Increased use of treated wastewater
  - Increase in projects to augment drinking water supplies
- Division of Water Resources
  - Significantly reduced surface water supplies/increased groundwater pumping
  - Expediting change applications for water rights
  - Groundwater curtailment Orders for Walker River in 2015 and 2016
    - Increased staff presence to audit groundwater usage, enforce meter requirements, identify illegal uses
  - Held public workshops throughout State
  - Increased level of scrutiny of pumpage and crop inventories
- Division of State Parks
  - Lower lake levels and associated problems

*Current and Planned Actions: Water Purveyors*

- Water purveyors generally well-prepared for drought
- Overall reduced supply
- Water levels declining in wells
  - Increased pumping costs
  - Decreasing production rates
- Increased use of storage reserves/groundwater
- Implementing mandatory and voluntary water reduction programs
- Extensive public outreach/workshops/community engagement
- Increase enforcement
- New projects to enhance supply (ASR, importation)
- Purveyors utilizing solely groundwater better able to weather short-term drought due to relatively large storage of aquifers

*Current and Planned Actions: Federal Agencies*

- BLM
  - Have Drought EAs
  - Initiating management actions – grazing limitations, water supply
- USDA
  - Inundated with requests for drought disaster assistance
  - Livestock and forage loss, water restoration, Livestock Assistance Program
  - Reductions in livestock use (USFS)
  - Wildfire risk/preparedness

**Nevada Drought Forum information:** <http://drought.nv.gov/>

**Discussion/Questions:**

**Jake Tibbitts** asked if the pumpage and crop inventories by basin/county figures were consumptive or overall pumpage of groundwater. **Rick Felling** said that the pumpage inventories are based on a compilation of commercial, municipal, irrigation and domestic. A surface water use estimate will be available by September 2015. Mining is the only category that is broken out for consumptive pumpage. Most of the mining use is for dewatering.

**Nancy Boland** asked about stock water use. **Rick Felling** said that pumping for stock water is almost never metered but the assumption is the stock consume all of the water. Figures are based on “duty” estimates.

**Eleanor Lockwood** asked about the public process for aquifer storage and recovery (ASR) where in times of surplus, water is put in the ground for use later. **Rick Felling** said there are three existing ASRs in the Reno area. The Truckee Meadows Water Authority has two new projects under review for ASR at Spanish Springs and South Truckee Meadows. There is a permit process and protest process, criteria are established by statute.

### Summary of Power Point on AB198:

#### Assembly Bill 198

- *Requires Legislative Committee on Public Lands to conduct a study concerning water conservation and alternative sources of water for Nevada communities, to include, without limitation, a comprehensive review of:*
    - *Issues relating to water resources in this State*
      - *Studies quantifying water use*
        - *surface water resources*
        - *groundwater resources*
        - *increased water supply through conservation*
      - *The total consumptive use of water in this State in gallons per capita per day*
      - *Efforts that may be taken to ensure equitable apportionment of groundwater in basins shared with adjacent states*
    - *Alternative sources of water, including*
      - *Desalination*
      - *Interbasin transfers of groundwater*
      - *Conservation of water in agricultural and urban areas*
      - *Cloudseeding*
      - *Reuse*
        - *Wastewater*
        - *Gray water*
        - *Rain water*
    - *Submit a report of findings and recommendations by February 1, 2017 to LCB for the 79<sup>th</sup> legislative session*
  - *Committee has not taken any action at this time*
  - *Possible formation of sub-committee*
  - *May wait until after Drought Forum to gain additional focus*
  - *Not to be confused with AB 455*
- Legislative Committee on Public Lands Bill*  
*Directs the Legislative Commission to appoint a committee to conduct an interim study regarding the present and future supplies of water and allocation levels in this State*

#### Discussion/Questions:

**Austin Osborne** asked why the Division of Water Resources does not place a moratorium on domestic wells and cited the severe well problems in Virginia City Highlands. **Rick Felling** replied that there is no permit required to drill a well on an existing, legally created lot and the well can pump 2 acre feet per year.

**Jim French** asked how the Division of Water Resources curtailment order on the Walker River could affect Senator Reid’s efforts for Walker Lake restoration. **Rick Felling** replied that there is no link since the curtailment order is groundwater and Senator Reid’s efforts deal with federally managed surface water.

## **ACEC PROCEDURES**

The SLUPAC members held a roundtable discussion on ACECs. **Skip Canfield** reviewed ACEC information provided to SLUPAC. **Nancy Boland** stated that SLUPAC would be a good avenue for addressing ACECs since the BLM does not listen to the counties. **Varlin Higbee** used the example of Ash Springs being closed contrary to the desires of Lincoln County. A number of members expressed frustration with the NEPA consultation process and the need to remove ACEC designations in some instances. A discussion was held on formalizing the definition of an ACEC on Federal and State lands, developing a mechanism, process and criteria for reviewing ACECs, if one is proposed, and sending a letter to the Governor stating that SLUPAC will look forward to reviewing ACEC proposals in the future after careful development of the process and criteria. This topic will be a standing item on future agendas as the process is developed.

## **RS 2477 ROADS**

The SLUPAC members held a roundtable discussion on RS2477 roads as a result of SB456 to develop a consistent protocol for all of Nevada's counties for perfection of those rights-of-way through quiet title or other means. SB456 designates SLUPAC, in coordination with NACO and the State Attorney General's office to conduct this process. **Jake Tibbitts** stated that it is very important to have the State as a partner because the statute of limitations is different for a county or individual versus a state, making it more favorable to have the State involved.

The RS2477 1866 mining law simply said "rights of way are hereby granted" in establishing roads. In 1976, FLPMA essentially overruled that law for BLM lands. The Tenth Circuit decision (and Ninth Circuit concurrence) said that Federal agencies are not required to recognize those rights unless adjudicated in Federal Court. Before October 1976 (FLPMA), any road constructed was considered a valid and existing right. Since then it has been difficult for counties to assert their right for roads.

A discussion ensued on how to develop the process and protocol. **Lorinda Wichman** detailed Nye County's exhaustive mapping process for over 5000 miles of roads and explained the County's protocol and Procedures Manual as an example. All 1900 roads that were mapped have a file that includes all information required by State law. Each file was prepared with the intent that if there was a challenge, the issues could be put in front of a judge for summary judgement, rather than spending taxpayer money on quiet title action. US Forest Service reserve date of 1906 was also considered in the development of the procedures and files, to address roads on US Forest Service lands.

**Jake Tibbitts** suggested outreach to the Utah public lands coordination office to make a presentation to SLUPAC, held at NACO so that videoconferencing can be utilized. Utah has set most of the case law and would be a good place to start. **Dagny Stapleton** stated that NACO, as a partner under SB456, could accommodate that request.

**Varlin Higbee** stressed that the process needs to be "bottom up" approach with strong local voice. The roads in question belong to the county and were built by the county or private equipment, not the Federal government.

**Eleanor Lockwood** stressed the importance in identifying the qualifying roads first so that once the RMP update is completed and BLM moves into the travel management planning phase, the counties can be ready to work with them on mapping and including the roads. Also it is important to know how to keep the counties in the loop as planning and decisions are being made.

**Jake Tibbitts** said that getting every county to the status of Nye County in mapping and road identification would be a good goal, and having the information recorded with the State. Ultimately it will be up to each county to determine how far they want to go and if court is an option.

**Charlie Donohue** asked about NDOT involvement. **Lorinda Wichman** said it would be beneficial to have staff from NDOT at a future meeting and mentioned that Nye County had been working with **Bob Madewell**. SB49 of the 2011 Session *"allows a county to file a map that includes a county road located on a certain right-of-way constitutes the establishment of the existence and location of a right-of-way that is open for public use;*

*providing that acceptance by the Department of Transportation of that map constitutes acknowledgment by the Department of the establishment of the existence and location of a right-of-way that is open for public use; authorizing the board of county highway commissioners in certain counties to locate and determine the width of certain rights-of-way and to open those rights-of-way for public use.”* Under SB49, NDOT Roadway Systems Division reviews the roads documentation submitted by Nye County and recognizes them as eligible under RS2477 guidelines and has written this via letters to Nye County. However, the letters do not validate the RS2477 roads, but at least gets State-level acknowledgement.

### **SLUPAC GOALS**

Roundtable discussion ensued on SLUPAC goals for the coming two years. **Jake Tibbitts** discussed SLUPAC’s role in the Statewide Water Management Plan (AB198). SLUPAC had voted to have a prominent role in review and commenting on the Plan and water issues in general in Nevada. Land use planning needs to be tied to water. The Plan will be developed through a subcommittee of the Legislative Committee on Public Lands. **Jake Tibbitts** suggested SLUPAC write a letter to the Legislative Committee on Public Lands voicing SLUPAC’s interest in having a high level of participation on the Plan and outlining to them SLUPAC’s statutory obligations and how SLUPAC provides guidance related to public lands. **Nancy Boland** said that she felt the Legislative Committee on Public Lands doesn’t really know that each county typically has their own public land policy plan and water plan and it would be good for them to be aware of SLUPAC’s role in public land planning and NEPA consistency review. **Jake Tibbitts** said it would be prudent for county commissioners to make sure all local level public land plans and water plans are brought forward in the beginning of the process in developing the Plan. **Jim French** said that it was important to inventory all county plans, quantify use per capita and identify consumptive versus non consumptive uses.

Consensus was reached that the letter should wait until it is determined who is the Chair of the Legislative Committee on Public Lands.

### **COUNTY PLANNING ISSUES**

Due to time constraints, this item was cancelled.

Next meeting will be October 23, 2015 at the NACO office in Carson City. The NACO Board meets in the morning. SLUPAC will attend the end of their meeting, join them for lunch and then hold the SLUPAC meeting after lunch.

### **PUBLIC COMMENT**

None.

### **ADJOURNMENT FOR FIELD TRIP**

The meeting was adjourned at 1:00pm to attend a field trip to the Heavenly Epic Discovery Project.

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.