

EUREKA COUNTY MASTER PLAN

Chapter 6. NATURAL RESOURCES & LAND USE ELEMENT

6.1 INTRODUCTION

- 6.1.1 Background
- 6.1.2 Authority
- 6.1.3 Natural Resources and Land-Use Planning as a continuing process
- 6.1.4 Adoption of the Eureka County Natural Resources and Land Use Plan

6.2 PRIMARY PLANNING GUIDANCE

Title 9, NATURAL RESOURCES AND LAND USE PLAN

6.3 GOALS, OBJECTIVES, MONITORING, AND EVALUATION BY TOPIC

- 6.3.1 Primary Ecological Resources: Soil, Vegetation, and Watershed
- 6.3.2 Forage and Livestock Grazing
- 6.3.3 Water Quality, Riparian Areas, and Aquatic Habitats
- 6.3.4 Wildlife and Wildlife Habitat
- 6.3.5 Land Tenure
- 6.3.6 Locatable Mineral, Fluid Mineral, and Mineral Materials
- 6.3.7 Cultural, Historic, and Paleontological Resources
- 6.3.8 Woodland Resources
- 6.3.9 Hunting, Fishing, and Outdoor Recreation
- 6.3.10 Wilderness, Areas of Critical Environmental Concern, and other Restrictive Land Classifications
- 6.3.11 Air Quality
- 6.3.12 Standards of Conduct
- 6.3.13 Law Enforcement

6.4 RESOURCE SPECIFIC PLANS, STANDARDS, AND GUIDELINES

- 6.4.1 Threatened and Endangered Species (under development)
- 6.4.2 Water Quality Management (under development)
- 6.4.3 Rangeland Monitoring (under development)
- 6.4.4 Standards and Guidelines for Rangelands (under development)
- 6.4.5 Invasive Weed and Insect Pest Abatement (under development)

6.5 FEDERAL LAWS, STATE LAWS, AND OTHER LEGAL CITATIONS

- 6.5.1 Federal laws regulating resource use, conservation, and land management
 - 6.5.1.01 Bureau of Land Management land use planning
 - 6.5.1.02 Federal Land Policy and Management Act (FLPMA)
 - 6.5.1.03 Public Rangelands Improvement Act of 1978 (PRIA)
 - 6.5.1.04 Taylor Grazing Act of 1934 (TGA)
 - 6.5.1.05 Forest Service Land Use Planning
 - 6.5.1.06 Forest Service Organic Act (FSOA) June 4, 1897

- 6.5.1.07 National Forest Management Act (NFMA)
 - 6.5.1.08 Clean Air Act
 - 6.5.1.09 Clean Water Act
 - 6.5.1.10 Endangered Species Act
 - 6.5.1.11 National Environmental Policy Act (NEPA)
 - 6.5.1.12 Revised Statute 2477 (R.S. 2477)
 - 6.5.1.13 Wild and Free-Roaming Horse and Burro Act
 - 6.5.1.14 Wild and Scenic Rivers Act
- 6.5.2 Federal laws about data standards, intergovernmental cooperation, information quality and sharing
- 6.5.2.01 Federal Advisory Committee Act, October 6, 1972
 - 6.5.2.02 Federal Data Quality Act (FDQA)
 - 6.5.2.03 Federal Data Access Act
 - 6.5.2.04 Freedom of Information Act (FOIA)
 - 6.5.2.05 Intergovernmental Cooperation Act (ICA)
 - 6.5.2.06 Racketeer Influenced and Corrupt Organization Act (RICO)
 - 6.5.2.07 Regulatory Flexibility Act
 - 6.5.2.08 Resource Conservation Act of 1981
 - 6.5.2.09 Soil and Water Resources Conservation Act
- 6.5.3 Federal Laws Related to Law Enforcement on Public Lands and Forest Reserves
- 6.5.4 Presidential Executive Orders
- 6.5.4.01 Presidential Executive Order 12372 as amended by EO12416 - Intergovernmental Review of Federal Programs
 - 6.5.4.02 Presidential Executive Order 12630 - Governmental Actions and Interference with Constitutionally Protected Property Rights
 - 6.5.4.03 Presidential Executive Order 12866 - Regulatory Planning and Review
 - 6.5.4.04 Presidential Executive Order 13352 - Facilitation of Cooperative Conservation August 26, 2004
- 6.5.5 State Laws Related to Planning
- 6.5.5.01 Nevada Constitution and standing of County Government
 - 6.5.5.02 Nevada Administrative Procedures Act
 - 6.5.5.03 Nevada Statewide Policy Plan for Public Lands
- 6.5.6 Court Cases and Decisions
- 6.5.6.01 Decisions upholding local land use planning
 - 6.5.6.02 Court cases upholding compensation for takings of private property such as Hage vs. United States

1 **EUREKA COUNTY MASTER PLAN**

2
3 **Chapter 6. NATURAL RESOURCES & LAND USE ELEMENT**

4
5
6 **6.1. INTRODUCTION**

7
8 The Natural Resources & Land Use Element of the Eureka County Master Plan
9 (hereafter, Natural Resource and Land-Use Plan or Land-Use Plan) is an
10 executable policy for natural resource management and land use on federal and
11 state administered lands in Eureka County. This Land-Use Plan (1) provides a
12 scientifically and culturally sound framework for establishing community
13 planning goals and (2) details goals and actionable objectives for a number of
14 high-priority issues. This chapter is not intended to regulate, zone or otherwise
15 reduce private property rights, in as much as this plan seeks to protect private
16 property rights. Where private property such as water rights, rights-of-way,
17 easements, forage rights, mineral rights, and other property occur within lands
18 administered by federal and state agencies, the Land-Use Plan may prompt
19 decisions that indirectly affect property rights. This Natural Resources & Land
20 Use Element has been developed, in part, because regulatory decisions that
21 diminish the value of private property or deprive citizens of access to natural
22 resources are likely to have substantial effects on the culture and economy of
23 Eureka County.

24
25 This Land-Use Plan is designed to: (1) protect the human and natural environment
26 of Eureka County, (2) facilitate federal agency efforts to resolve inconsistencies
27 between federal land use decisions and County policy, and (3) provide strategies
28 and policies for progressive land and resource management.

29
30 The natural and human environment of Eureka County includes, but is not limited
31 to, air, water, soil, minerals, plants, fish, wildlife, livestock and people. Eureka
32 County citizens place great importance on features of the human environment that
33 shape their community, its custom and its culture. These features include, but are
34 not limited to:

- 35 ➤ Economic stability, security and growth that contributes to a diverse
36 economy including business and industry, crop and livestock production,
37 mining, recreation and tourism;
- 38 ➤ Social stability as demonstrated by a civic-minded populace whose
39 involvement and well-being are essential for successful functioning of the
40 community;
- 41 ➤ Business owners who invest their capital back into the community and
42 provide jobs for the people of Eureka County;
- 43 ➤ Private property as a component of a free market economy and as a tax
44 base that supports County services;

- Local and private management of resources for profit based on the community’s traditional sense of responsibility, stewardship and sustainability for future generations;
- Continued outdoor recreational opportunities;
- Transportation and utility infrastructure necessary for business and recreational activity;
- Easements and rights of way that support this infrastructure;
- Access for residents and visitors alike in order to enjoy and use the natural resources of these federal and state managed areas.

13 6.1.1 Background

15 As detailed in Chapter 1, development of the Eureka County Master Plan began in
16 1973. The Master Plan and this Natural Resources & Land Use Element was
17 expanded in the late 1990’s in response to legislative direction commonly known
18 as SB40. This effort included extensive public meetings to seek the views and
19 concerns of Eureka County citizens. Since 1973, few changes in the distribution
20 of land ownership and administration among private, federal, state, and local
21 entities have occurred in the County. The Bureau of Land Management continues
22 to administer approximately 82% of land in the County. Private land holdings
23 continue to be concentrated in valley bottoms and used for agriculture or
24 associated with former railroad lands (“checkerboard”) in the northern reaches of
25 the County.

27 What has changed since the 1990s planning effort is the scope of federal and state
28 land issues that demand county attention. Oil and gas leases, expanding mining
29 operations, ground water development and distribution, electrical generation and
30 transmission and other industrial land-users are rapidly overtaking livestock
31 grazing and recreational access as principle demands on county resources. In
32 addition, changes in federal and state laws have substantially increased the
33 regulatory burden on economic activities that support the Eureka County
34 population. With these changes in mind, the 2005 Board of County
35 Commissioners directed the Natural Resources Advisory Commission and the
36 Natural Resources staff to expand the 1998 Land-Use Plan to provide policy
37 direction and where appropriate, specific management objectives, as the basis for
38 County-preferred land uses and management practice on federally and state
39 administered lands.

43 6.1.2 Authority

45 Authority for this Master Plan is found in NRS 278.150 through 278.220.
46 Additional authority is derived from passage of SB40 by the Nevada Legislature

1 in 1983 and the resulting portions of NRS 321, particularly NRS 321.640 through
2 NRS 321.770. Nevada law directs counties to develop plans and strategies for
3 resources that occur within lands managed by federal and state agencies. Upon
4 presentation, the Natural Resources & Land Use Element of the Eureka County
5 Master Plan allows federal agencies to fully comply with the intent of Congress as
6 specified in the various federal laws referenced herein, by incorporating the
7 policies of Eureka County into agency documents and activities and resolving
8 inconsistencies between federal proposals and County plans. This Land-Use Plan,
9 together with Title 9 of the Eureka County Code (contained herein at 6.2),
10 satisfies the requirements of NRS 278.243 and NRS 278.246 regarding local
11 determination.
12
13
14

15 6.1.3 Natural Resource and Land-Use Planning as a continuing process

16
17 A plan is variously defined as "a detailed and systematic formulation of a large
18 scale program" and "an orderly arrangement of parts in terms of an overall design
19 or objective."
20

21 The Board of Eureka County Commissioners and the Eureka County Natural
22 Resource Advisory Commission recognize that formulating planning for a
23 community is a continuing process. As Eureka County's effort continues,
24 scientific studies and reports, empirical observations, expertise offered by
25 committee members and consultants, reports of subcommittees tasked with review
26 and research of specific issues, team evaluations, and other information will be
27 compiled and added to this document. When approved by the Board of Eureka
28 County Commissioners, this information will be used to support a growing county
29 presence in state and federal decision making.
30

31 Eureka County expects that all decisions regarding natural resource management
32 and land-use and all goals and objectives incorporated into this plan and, by
33 extension, into state and federal agency plans, will be realistic and attainable.
34 Solutions to problems and recognition of opportunities require factual and
35 dependable information (data). Accumulation of information, including empirical
36 observations, is a key part of this plan. Personal opinions, feelings, visions, and
37 hunches may form a basis to justify more intensive and objective study but will
38 rarely, if ever, be acceptable as a basis for establishing a policy or deciding a
39 course of regulatory action. Analysis and interpretation of facts is an important
40 part of the process. Interpretation of facts allows citizens to choose a successful
41 course of action, specify a strategy to be followed until a need for more specific
42 action arises, or to evaluate the success of actions already completed.
43

44 Analysis of technical information requires that managers, elected officials and
45 community members have adequate council and practical experience at their
46 disposal. The present document reflects such an analysis, drawing on numerous

1 outside experts but always vetting expert recommendations back through the local
2 community. The end result is a strong and resilient vision of Eureka County’s
3 relationship with its natural resources and publicly-managed lands.

4
5 Finally, successful implementation of this Plan requires that the Eureka County
6 Natural Resource Advisory Commission and the Board of Eureka County
7 Commissioners stay involved with analysis and evaluation through all stages of
8 federal, state and local planning efforts. County involvement must include, at
9 minimum, review of data for scientific and factual soundness, plan development,
10 implementation, monitoring, and evaluation of plan implementation.

11
12
13
14 6.1.4 Adoption and Implementation of the Eureka County Natural Resource and Land
15 Use Plan

16 [See Eureka County Code 14.12.010.A]

17
18 By adoption of this Natural Resources & Land Use Element of the Master Plan in
19 accordance with NRS 278.020 and NRS 278.150-220, the Board of Eureka
20 County Commissioners hereby records its intention to engage in decision making
21 that pertains to any and all publicly owned and managed lands and natural
22 resources within its jurisdiction, as provided under law. The statement of purpose
23 includes the recognition of the duties of state and federal agencies to comply with
24 plans adopted under the concept of a local comprehensive plan; this also
25 facilitates the coordination of state and federal planning efforts with the local
26 planning efforts of Eureka County.

27
28 Per this plan, it is the policy of Eureka County to make progress towards
29 improved resource quality, greater multiple uses of the federal lands, preservation
30 of custom, culture and economic stability of Eureka County, and protection of the
31 rights of citizens. So long as this progress is evident, Eureka County will
32 continue to urge state and federal employees to participate in this effort to
33 coordinate. Should hesitance on their part substantially interfere with this
34 progress, then Eureka County may seek judicial intervention to compel agencies
35 to obey the mandates of Congress.

36 This Natural Resources & Land Use Element of the Eureka County Master Plan
37 will be implemented as follows:

- 38 ➤ The plan will be provided to each federal agency as a formal notice that the
39 plan exists and is available for reference by the respective agencies. This is
40 necessary to enable the agencies to formally seek consistency with the policies
41 of Eureka County when proposing management or regulation of resources.
42 ➤ When agency plans and documents are presented to the Board of Eureka
43 County Commissioners, the material will be read or reviewed first by the
44 Eureka County Natural Resource Advisory Commission. This Commission

1 will provide comments and recommendations to the Board of Eureka County
2 Commissioners. Agencies may deliver their material directly to the Eureka
3 County Natural Resource Advisory Commission, knowing that the Board of
4 Eureka County Commissioners will not consider their proposal without a prior
5 review by the Eureka County Natural Resource Advisory Commission.

6 Successful implementation of this Plan requires that the Eureka County Natural
7 Resource Advisory Commission and the Board of Eureka County Commissioners
8 stay involved with analysis and evaluation through all stages of federal, state and
9 local planning efforts. County involvement must include, at minimum, review of
10 data for scientific and factual soundness, plan development, implementation,
11 monitoring, and evaluation of plan implementation.

12
13 This procedure may, from time to time, impose substantial burden on members of
14 the Eureka County Natural Resource Advisory Commission and other county
15 advisory boards. To promote adequate and timely review of land use plans and to
16 obtain current information needed for sound decisions, the Board of Eureka
17 County Commissioners will, as necessary and within reasonable limits, provide
18 financial support for the implementation of this plan.
19

1 **6.2 PRIMARY PLANNING GUIDANCE**

2
3
4 Primary guidance for natural resource and land-use planning is found in Title 9, Chapters
5 30, 40 and 50 of the Eureka County Code, as amended.

6
7
8 Chapter 30 - NATURAL RESOURCES AND LAND USE PLAN

9
10 .010 Definitions

11
12 The following definitions apply to this chapter:

13
14 **Animal unit month** - A measure of forage consumption. The forage necessary to
15 support one (1) cow and her calf, one (1) horse or five (5) sheep for one (1) month, often
16 abbreviated as AUM.

17
18 **Compensable property right** -Any type of right to specific property, personal or real,
19 tangible or intangible, which, when reduced or taken for public purpose, is due just
20 compensation under the Fifth Amendment of the U.S. Constitution.

21
22 **Customary usage right** - A right based in custom, usage or practice of the people, which
23 by common adoption and acquiescence, and by long and unvarying habit, has become
24 compulsory, and has acquired the force of law with respect to the place or subject-matter
25 to which it relates.

26
27 **Federal lands** - All land and associated natural resources owned and managed by the
28 United States. Federal lands include, but are not limited to, public lands, federally
29 reserved lands, federal mineral leases, federal geothermal leases, federal forage leases
30 and federally reserved water rights, federal rights-of-way, but categorically exempted are
31 lands or resources to which private interest or title is attached.

32
33 **Multiple-use** - Balanced and diversified management of public lands and their various
34 public resources to best meet present and future economic and environmental needs of
35 the American people.

36
37 **Natural resources** - All renewable and nonrenewable material in its native state which
38 when extracted has economic value. Natural resources may be of commercial or
39 noncommercial nature, including, but not limited to forage, timber, minerals, wildlife,
40 recreational opportunities, fishing, unappropriated streams, springs, seeps and wetlands,
41 ground water, geothermal reservoirs, oil and gas and all other similar resources.

42
43 **Peer-review** - Evaluation of the scientific quality and pertinence of research by other
44 experts in the same field. Peer-review is used by editors in deciding whether submissions
45 meet standards for publication in scientific journals.

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

3
4 **Public lands** - Lands open to sale or other disposition under the general land laws to
5 which no claims or rights of others have attached.

6
7 .020 Purpose

8
9 The purpose of this Chapter is to (1) guide County policy with respect to natural
10 resource issues facing Eureka County, (2) provide a framework to guide federal agencies
11 in land-use planning on federal lands as per the National Environmental Policy Act of
12 1969, the Federal Lands Policy and Management Act of 1976, the National Forest
13 Management Act of 1976, the Threatened and Endangered Species Act of 1973, and
14 other applicable laws and executive orders, and (3) safeguard property rights and other
15 customary usage rights of the citizens of Eureka County, the State of Nevada, and the
16 United States against any and all encroachments upon those rights by individuals, groups,
17 corporations, public agencies, non-governmental organizations, or any other entity which
18 may attempt to take private property, trespass upon private property or infringe upon
19 other customary rights as have been established by the constitutions, laws and customs of
20 the United States, the State of Nevada, and Eureka County. This title is meant to
21 complement and supplement the constitutions and laws of the United States, the State of
22 Nevada, and Eureka County with additional means of protection and enforcement. This
23 Chapter is not intended to create new rights nor is it intended to in any way supplant the
24 lawful authority of individuals, groups, organizations, corporations, governments or other
25 entities which act pursuant to the laws of constitutions of the United States, the State of
26 Nevada, and Eureka County.

27
28 .030 Adoption of the Eureka County Natural Resources and Land Use Plan

29
30 A. Holding that the American people are best served when government
31 affairs are conducted as closely to the people as possible (i.e., at the
32 County level), the citizens of Eureka County, through the Eureka County
33 Board of Commissioners, adopt the Eureka County Natural Resources and
34 Land Use Plan as provided in this chapter.

35
36 B. The Eureka County Natural Resources and Land Use Plan shall serve
37 as the primary guide for the use and management of all natural resources
38 and state and federal lands within Eureka County.

39
40 .040 Custom and culture

41
42 A. Since the time that aboriginal peoples inhabited what is now Eureka
43 County, local custom and culture has revolved around beneficial use of
44 natural resources. Aboriginal peoples harvested native plants, animals and
45 geologic material to provide nearly all the raw material for their tools,
46 shelter and sustenance. What was not found locally was traded with other

1 communities in and around the Great Basin. In similar fashion, early
2 European miners, ranchers and farmers lived largely within the bounds of
3 what they could obtain from the natural environment.
4

5 B. With the early gold and silver finds in the mid-1800s came Cornish
6 and Irish miners, Italian charcoal burners (Carbonari), Germans, Swiss,
7 French, Russians, Chinese, and others contributing to mining and support
8 industries, and defining the early custom and culture of Eureka County.
9 The signing of the Treaty of Guadalupe-Hidalgo in 1848 concluded the
10 Mexican-American War and enlarged the borders of the United States to
11 include what is now Eureka County. Upon ratification of the Treaty, the
12 United States acquired and managed this territory as sovereign and
13 proprietor under the Property Clause of the U.S. Constitution. Legal
14 traditions of property rights that existed under Mexican law prior to the
15 establishment of Nevada as a Territory of the United States remain intact
16 today as they are consistent with the U.S. Constitution and laws of the
17 United States. Prior existing property rights including, but not limited to
18 water rights based on the doctrine of prior appropriation, forage rights
19 based on the ownership of water rights and land, rights-of-way, and
20 ownership of real property, are explicitly preserved by all federal land
21 laws. Preservation of these rights demonstrates their importance to the
22 custom, culture and economy of Eureka County and the west.
23

24 C. The burgeoning mining camps brought Basque sheepmen who ran
25 sheep in most of the mountains and valleys in Eureka County. On their
26 heels came cattlemen and other settlers who, with the help of the 1877
27 Desert Lands Act, the Act of 1888, the Act of 1890, the 1891 Creative
28 Act, and the 1916 Stock Raising Homestead Act, established privately-
29 owned base properties to support permanent range livestock operations
30 and farms. Competition among livestock interests resulted in the passage
31 of the 1925 Nevada Livestock Watering Law. A component of this law,
32 locally known as the Three Mile Rule, made it a misdemeanor for a
33 stockman to allow his animals to graze within three miles of a watering
34 site owned by another stockman. The federal government responded to
35 disputes among stockmen and over-use of the federal ranges by passing
36 the 1934 Taylor Grazing Act. The Taylor Grazing Act superseded
37 Nevada's Livestock Watering Law; however, it did not extinguish any
38 prior existing property rights. These property rights withstanding, the
39 Taylor Grazing Act gave the Secretary of the Interior broad discretion to
40 manage public land through rules and regulations and provided that all
41 future grazing on public land be allowed only via grazing permits. The
42 system of management adopted by the Secretary of Interior under the Act
43 provided for (1) adjudication of federal ranges, (2) issuance of revocable
44 licenses with preference given to existing grazers owning commensurate
45 base property, and (3) establishment of Grazing Districts. Graziers in
46 Eureka County and Elko County established the N-1 Grazing District in

1 1935. Graziers in Eureka County, Lander County, and Nye County
2 established the N-6 Grazing District in 1951. Early efforts of the State of
3 Nevada to preserve customary grazing rights (*e.g.*, 1925 Nevada Livestock
4 Watering Law) and recognition of these rights by subsequent federal laws
5 (*e.g.*, TGA, FLMPA, and PRIA) demonstrate the importance of livestock
6 grazing to the region’s custom and culture. The continued importance of
7 livestock grazing and impacts of federal lands management decisions to
8 citizens of contemporary Eureka County is reflected in establishment of
9 the Eureka County Public Lands Advisory Commission in 1994 and the
10 Eureka County Department of Natural Resources in 1995.

11
12 D. Commensurate with development of arable land and distributed water
13 in Eureka County, livestock numbers grew steadily until their peak in the
14 1940s and 1950s. With these changes came increased wildlife.
15 Populations of mule deer increased across the state until they peaked in the
16 1940s and 1950s. Similar trends are observed for sage grouse. Downward
17 trends in these wildlife species, beginning in the 1960s, are commensurate
18 with declines in permitted livestock on federal ranges and continues into
19 the present decade.

20
21 E. Access to resources on federal lands and the right to pass uninhibited
22 across federal lands are important historical components of the Eureka
23 County’s custom and culture. In 1859 Captain James Simpson of the U.S.
24 Corps of Topographical Engineers surveyed the Simpson Wagon Road
25 north of present day Eureka to supplant the earlier-established and longer
26 Humboldt Route. In 1860 the Simpson Route was established as the Pony
27 Express Trail. The 1866 Mining Act and the 1897 Reservoir Siting Act,
28 protected miners, ranchers and others to whom access to federal lands was
29 the basis of their livelihood. The portion of the 1866 Act codified as
30 Revised Statute 2477 provided simply that “[t]he right-of-way for the
31 construction of highways over public land, not reserved for public uses, is
32 hereby granted.” Although Revised Statute 2477 was repealed by the
33 Federal Land Management and Policy Act of 1976, miners, ranchers,
34 hunters and fishermen still use these early rights-of-way and rely on
35 Revised Statute 2477 to protect their economic welfare and recreational
36 opportunities.

37
38 F. Water rights in Eureka County date back to the mid 1800s. Early
39 miners, ranchers and farmers established surface water rights through the
40 common law doctrine of prior appropriation. The State of Nevada
41 codified this doctrine for surface water in 1905 and extended the law to
42 ground water in 1939. Efforts by Nevada’s largest municipalities to
43 import water resources from rural communities is causing contemporary
44 owners of agricultural and stockwatering rights in Eureka County to fear
45 for the future of economically viable beneficial uses of water in Eureka
46 County.

1
2 G. Farming has been an important component of Eureka County’s
3 industry since the early days of land settlement. Farming was limited to
4 native sub-irrigated meadows and lands irrigated by diverted surface water
5 until supplemental flowing wells were drilled on the Romano Ranch in
6 1948 and the Flynn Ranch in 1949. In 1949 two irrigation wells were
7 drilled in Diamond Valley in an effort to develop land under Desert Land
8 Entry. By the mid 1950s, pumped irrigation wells were being developed
9 in southern Diamond Valley, Crescent Valley and Pine Valley. By 1965,
10 some 200 irrigation wells had been drilled in Diamond Valley alone.
11 Today, Eureka County’s farming districts support a robust grass, alfalfa
12 and meadow hay industry.
13

14 H. While standards of living have changed dramatically since the mid-
15 1800s, miners, ranchers and farmers remain the core of the Eureka County
16 community. The shift from strictly local food hunting and fishing to sport
17 hunting and fishing and other natural resource recreation activities has
18 added a small, but viable, recreation and tourism component to the
19 County’s natural resource-based culture. Custom and culture of today’s
20 Eureka County citizens remain steeped in their mining, farming and
21 ranching heritage. Eureka County is and will ever be dependent upon
22 natural resources for its economic existence.
23

24 .050 Community stability
25

26 A. Economic and social stability of Eureka County are inseparably tied to
27 the use of natural resources. Over ninety percent (90%) of the County’s
28 employment is in the Natural Resources and Mining sector (including
29 agriculture). Mining presently contributes the major portion of the
30 County’s personal income and tax revenue stream; however, the “boom
31 and bust” nature of the mine activity periodically brings farming, ranching
32 and agricultural services back to the forefront of the economy. When
33 mining activity lulls, the community relies on its other traditional
34 industries to maintain its viability.
35

36 B. State and federal lands make up eighty-one percent (81%) of Eureka
37 County’s land area. Given (1) that the community’s viability remains
38 largely dependent on business and recreational activities conducted on or
39 in concert with state and federal lands and (2) that many of these activities
40 are inseparably tied to the economic viability of private lands in Eureka
41 County, the community remains particularly sensitive to state and federal
42 planning decisions.
43

44 C. Community stability in Eureka County is a symbiosis between the
45 small private land base and the much larger federal land base. Private
46 property interests in minerals, water, forage, rights-of-way and other

1 natural resource attributes of federal lands enhance social and economic
2 values of Eureka County’s private lands. Reductions in the private land
3 base or erosion of private property interests in federal lands, including, but
4 not limited to real property, personal property and mixed property; split
5 estates, easements, rights-of-way, mineral rights, water rights and
6 customary usage rights; fee interest, tenancy and possessory interest,
7 adversely affect the social and economic stability of the County.
8

9 D. Certain provisions in a number of federal laws, including the Federal
10 Land Policy and Management Act of 1976, the Public Rangelands
11 Improvement Act of 1978, the Federal Water Pollution Control Act
12 Amendments of 1972 (Clean Water Act), the Threatened and Endangered
13 Species Act of 1973 and the Wild Horse and Burro Protection Act of
14 1971, have spawned sweeping changes to federal land policy that have
15 proven detrimental to economic and social stability in Eureka County.
16 Repeal of Revised Statute 2477 has denied access to large tracts of federal
17 land, thereby negatively impacting a wide range of economic and
18 recreational users. Department of Interior regulations commonly known
19 as “Range Reform 94” have substantially reduced viability of cattle and
20 sheep ranches. Zealous and overreaching expansion of Clean Water Act
21 regulations to isolated springs and seeps and ephemeral streams threatens
22 many activities on federal lands. The threat of listing sage grouse, other
23 wildlife and plant species under the Threatened and Endangered Species
24 Act may severely limit economic and recreational use of private, state and
25 federal land in Eureka County, particularly where such listing occurs
26 without adequate peer-reviewed scientific analysis.
27

28 E. As the previous observations attest, stability of the Eureka County
29 community, its industries, commerce, schools, health care, police
30 protection, and other services, rests squarely on (1) protection of private
31 property rights, (2) sound and balanced management of natural resources,
32 and (3) continued multiple-use and economic-use of state and federal
33 lands.
34

35 .060 Primary planning guidance
36

37 A. **Private property and property rights.** Where the Board of Eureka
38 County Commissioners determines that it is in public interest of the
39 citizens of Eureka County, Eureka County will evaluate state or federal
40 actions related to private property and private property interests, including
41 investment backed expectations. The County will use as its primary
42 guidance the Fifth Amendment to the United States Constitution, which
43 prohibits the taking of private property for public use without just
44 compensation. The County will also pursue the principles of Executive
45 Order 12630 which requires federal agencies to prepare a Takings
46 Implication Assessment prior to initiating any action, issuing any rule, or

1 making any decision which would constitute a taking of private property
2 or private property interest, including investment backed expectation.
3

4 **B. Tax base.** It is critical to the welfare of the citizens of Eureka County
5 that the Board of Eureka County Commissioners pursue a stable source of
6 tax revenue based on economic use of natural resources. In order to build a
7 broad tax base, the County supports privatizing certain state and federal
8 lands for commercial, residential, industrial and agricultural and mining
9 uses. In the face of considerable reductions in Ad Valorem tax revenues
10 caused by transfer of private land to public ownership, Eureka County
11 maintains a policy of no net reduction in Ad Valorem taxes related to land
12 tenure changes unless the reductions are adequately mitigated by
13 agreement with the Board of Eureka County Commissioners after public
14 hearing. In addition, Eureka County promotes the concept of split-estate
15 taxation wherein the various components of an estate in real property are
16 taxed as a function of their relative value rather than being accrued only in
17 the surface estate.
18

19 **C. Water resources.**
20

- 21 1. Eureka County affirms support for the doctrine of prior appropriation
22 as established by state law; that the right to appropriate water is a
23 compensable property right available to individuals and municipalities.
24 Ownership of the right to use water has, as key principals, those
25 provisions set forth in Nevada Revised Statutes 533.0010 through
26 533.085, including, but not limited to, first right, first use, beneficial
27 use, and point of diversion.
28
- 29 2. Eureka County promotes private development of water resources on
30 state and federal land for beneficial use in Eureka County, including,
31 but not limited to geothermal reservoirs, power generation, municipal
32 water supplies, irrigation and stock water.
33
- 34 3. Eureka County mandates the use of peer-reviewed science in the
35 assessment of impacts related to water resource development.
36
- 37 4. The County discourages out-of-basin water transfers and will
38 adamantly oppose such transfers that do not (1) pass the highest test of
39 scientific rigor in demonstrating minimal impacts to existing water
40 rights and (2) show a long-term benefit to the economic viability and
41 community stability of the County. Out-of-basin and out-of-county
42 transfers of water shall be accorded full attention of N.R.S. 533.370,
43 N.R.S. 533.438 and other applicable state laws.
44
- 45 5. Eureka County will work to maintain its water resources in a condition
46 that will render it useable by future generations for the full range of

1 beneficial uses that further a viable and stable economic and social base
2 for its citizens. The County supports retaining authority of States to
3 protect water quality under the Clean Water Act. The County does not
4 support abrogation of that authority to any other governmental or non-
5 governmental entity. The County promotes water quality standards
6 that are i) consistent with actual uses for which a particular water
7 source or body is lawfully appropriated, and ii) based on accurate
8 information regarding its natural state and range of variability. The
9 County will demand coordination among all responsible and affected
10 interests when considering water quality actions.

11
12 **D. Air resources.** Eureka County will work to maintain its air resources
13 in a condition that will render them useable by future generations for the
14 full range of beneficial uses that further a viable and stable economic and
15 social base for its citizens.

- 16
17 1. The County supports retaining authority of States to protect air quality
18 under the Clean Air Act. The County does not support abrogation of
19 that authority to any other governmental or non-governmental entity.
20 The County promotes air quality standards that are i) consistent with
21 actual uses for which a particular airshed is lawfully appropriated, and
22 ii) based on accurate information regarding its natural state and range
23 of variability.
- 24
25 2. The Naval Strike and Air Warfare Center at Naval Air Station Fallon
26 affects airspace over Eureka County by operating the Fallon Range
27 Training Complex (FRTC). As a Cooperating Agency in the January
28 2000 Environmental Impact Statement analyzing changes to
29 operations of the FRTC, Eureka County demonstrated its intention to
30 protect its interests in the public air space. That interest persists today.
31 The County will demand coordination among all responsible and
32 affected interests when considering actions that may impact air quality
33 and air space.

34
35 **E. Mining.** It is critical to the welfare of the citizens of Eureka County
36 and the nation that mining on state and federal lands remains an open and
37 free enterprise. Eureka County upholds the tenet that mining claims are
38 compensable property belonging to individuals or groups of individuals.
39 Eureka County supports:

- 40
41 1. retention of and compliance with the 1872 Mining Law as amended;
42
43 2. mine reclamation activities as per Nevada Revised Statutes Chapter
44 519A;
45
46 3. streamlining of the permitting process;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

- 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

1 incentives to promote private investment in range
2 improvements including, but not limited to, fencing,
3 seeding, water development, improved grazing systems,
4 brush control, pinion/juniper eradication, proper fire
5 management and noxious weed control;
6 d. restoring Voluntary Non-Use AUMs and suspended
7 AUMs to active preference;
8 e. a grazing fee formula that accounts for all non-fee costs
9 of producing livestock on state and federal land;
10 f. subleasing of grazing rights;
11 g. multiple-use concepts;
12 h. active management of range resources by permittees
13 rather than by public agencies;
14 i. limiting the role of public agencies to monitoring range
15 condition as per the 1984 Nevada Rangeland Monitoring
16 Handbook and determining compliance with applicable
17 laws;
18 j. coordination and consultation of state and federal
19 conservation, wildlife, land management and planning
20 activities with permittees, local livestock organizations and
21 Eureka County.

22
23 **G. Wildlife.** Management of wildlife, including fish, game animals, non-
24 game animals, predatory animals, sensitive species, Threatened and
25 Endangered Species, under all jurisdictions whatsoever, must be grounded
26 in peer-reviewed science and local input. Wildlife management plans
27 must identify and plan for mitigation of negative impacts to local
28 economies, private property interests and customary usage rights.

- 29
30 1. Eureka County supports wildlife management that:
- 31 a. is responsive to the County Wildlife Advisory Board,
32 the Natural Resources Advisory Commission, and the
33 Board of County Commissioners;
 - 34 b. enhances populations of game and non-game species
35 native to Eureka County;
 - 36 c. recognizes that enhancing non-native game and non-
37 game species may negatively impact native species and
38 rangeland and forest ecosystems;
 - 39 d. increases wildlife numbers where practicable and not in
40 conflict with existing economic uses or ecosystem health;
 - 41 e. avoids managing wildlife at population levels that
42 exceed those reported in historical records and established
43 by peer-reviewed scientific investigation;
 - 44 f. recognizes that large game animals compete for forage
45 and water with other economic uses;
 - 46 g. recognizes that federal agencies are mandated to

1 maintain or improve conditions on federal forests and
2 ranges;

3 h. recognizes that wildlife damage mitigation may
4 encumber existing interests and properties to future
5 damages.
6

7 2. Eureka County will actively participate in wildlife management
8 decisions that affect the welfare of its citizens via state wildlife
9 planning efforts and county, state and federal land-use planning.
10 Eureka County will work to ensure proper implementation of
11 wildlife plans.
12

13 3. Eureka County is adamantly opposed to listing any species of
14 wildlife under the Threatened and Endangered Species Act unless
15 the highest level of scientific rigor (*i.e.*, peer-reviewed research
16 based on publicly accessible data sets and methodology)
17 demonstrates that the species warrants listing. The County shall
18 consider all reasonable actions to avoid listings under the
19 Threatened and Endangered Species Act, including, but not limited
20 to, state and local conservation planning and legal recourse.
21

22 4. To maintain agriculture as a productive part of the local
23 economy and to enhance the environment for ecologically and
24 economically important wildlife, Eureka County supports sound
25 predator control programs.
26

27 5. Eureka County generally opposes the introduction, gradual
28 encroachment and institutionalization of wildlife not native to
29 Eureka County.
30

31 6. Eureka County recognizes that the Bureau of Land
32 Management is mandated by Congress to manage all multiple-uses
33 of federal lands, including wildlife, in a manner that maintains or
34 improves the conditions of federal ranges. The County will pursue
35 federal intervention in wildlife management situations in which
36 range conditions are inadequately protected.
37

38 **H. Recreation.** Recreation is important to the citizens of Eureka County.
39 The unique outdoor recreational opportunities found in Eureka County are
40 many of its greatest assets. Eureka County values the opportunity and
41 freedom these lands provide and encourages balanced management goals
42 that include hiking, camping, wildlife viewing, and other outdoor
43 recreation activities. Eureka County strongly advocates the rights of
44 recreationists to continued lawful access to public lands.
45

46 **I. Utility rights and public consumption.** As per 43 U.S.C., Sec. 315(e),

1 Eureka County supports individual citizen’s acquisition of rights-of-ways
2 for roads, ditches, pipelines, canals, power lines, telephone lines and stock
3 driveways. Eureka County adamantly supports the protection of vested
4 rights that may limit other uses of state and federal lands. As per 43
5 U.S.C., Sec. 315(d) Eureka County recognizes rights of local citizens to
6 utilize natural resources for personal consumption (e.g., firewood, posts,
7 sand, gravel, etc.).
8

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

10
11 1. Eureka County will respect and uphold private property
12 interests in land, including, but not limited to, land patents, mining
13 claims, easements, rights-of-way, and forage rights.
14

15 2. Eureka County maintains a no-net-loss policy with respect to
16 private land and private property rights, and is opposed to public
17 acquisition of private property, except where the acquisition is a)
18 clearly in the public interest of the citizens of Eureka County and
19 b) appropriately mitigated in value and in land area by transfer of
20 property from the public domain to private ownership.
21 Determination that such a transaction is in the public interest of the
22 citizens of Eureka County and that proposed mitigation is
23 appropriate shall be determined by the Board of Eureka County
24 Commissioners after proper public hearing.
25

26 3. Eureka County recognizes that the imbalance of the
27 private/public land ownership inhibits new economic activity in
28 Eureka County and is detrimental to Eureka County’s long-term
29 viability. The County encourages state and federal agencies to
30 aggressively pursue land disposal to the maximum extent allowed
31 by law. State and federal land transfers to local governments will
32 be given priority consideration in any disposal of state or federal
33 land.
34

35 4. If any public entity intends to acquire an estate in land, water,
36 minerals, forage or any other private property in Eureka County,
37 the proposed acquisition shall first be presented to the Board of
38 Eureka County Commissioners. The Board shall determine likely
39 impacts to the County’s human and natural environment and
40 render an opinion about the suitability of the acquisition.
41

42 **K. Riparian habitat and wetlands.**

43
44 1. Riparian areas and wetlands are critically important to well-
45 balanced and productive rangeland ecosystems. Eureka County
46 encourages consultation, cooperation and coordination as provided

1 under Section 8 of the Public Rangelands Improvement Act of
2 1978 for riparian areas and wetlands under the jurisdiction of a
3 federal agency.
4

5 2. The bulk of riparian areas and wetlands in Eureka County exist
6 on private ranches and farms. Eureka County supports retaining
7 riparian areas and wetlands in private ownership by improving the
8 economic environment for the ranching and farming community.
9

10 **L. Wilderness, wilderness study areas, parks and refuges.** To the
11 extent that multiple-use of federal lands is vital to the economy of Eureka
12 County, the County is opposed to the designation of any Wilderness Areas
13 or Wilderness Study Areas within its geographic boundaries. The County
14 calls for removal of Wilderness Study Area designations and re-
15 introduction of active stewardship of these lands that do not meet the
16 suitability criteria of the 1964 Wilderness Act. Eureka County demands
17 local input and decision-making in the designation and management of
18 parks, refuges, Areas of Environmental Concern, roadless areas or any
19 other legislative action, regulatory decision or policy that limits access to
20 or use of federal land or resources within the geographic boundaries of the
21 County.
22

23 **M. Wild horses.** Eureka County recognizes that horses, protected under
24 the Wild Free-Roaming Horse and Burro Act of 1971, are properly
25 classified as feral animals. The County recognizes that in passing the
26 Wild Free Roaming Horse and Burro Act, Congress failed to account for
27 prior adjudication of the nation’s public ranges, thereby disenfranchising
28 livestock grazers and wildlife of existing forage allocations without
29 compensation. The County recognizes that the Department of Interior is
30 mandated by Congress to manage Wild and Free Roaming Horses in a
31 manner that is consistent with legislative intent and will hold the agencies
32 accountable under all applicable laws. Poor management of feral horse
33 herds has resulted in sustained over-population of horses in Eureka
34 County. Over-population has caused long-term damage to range
35 vegetation and water sources, and has resulted in starvation of horses
36 during periods of drought and severe winters. Eureka County encourages
37 federal legislation and policies that promote scientifically-sound and
38 responsible management of feral horse herds. Eureka County advocates
39 economically beneficial uses for feral horses and advocates public sale of
40 excess horses. The County opposes the cost-ineffective policy of long-
41 term pasturing for excess horses where the policy conflicts with the stated
42 intent of the 1971 Wild Free-Roaming Horse and Burro Act to manage
43 horses “...in a manner that is designed to achieve and maintain a thriving
44 natural ecological balance on the public lands.”
45

46 **N. Access.** Eureka County supports the right of public access through

1 state and federal lands inasmuch as access does not conflict with private
2 property rights (as per the Eureka County Public Roads Resolution of
3 March 7, 1994).

4
5 **O. Pinyon and juniper control.** Eureka County encourages active
6 management of pinyon/juniper woodlands and removal of woodlands
7 where they exist at unhealthy densities and beyond their historic range.
8 Eureka County supports economic use of these resources.
9

10 **P. Wildfire.** Eureka County supports the right for local citizens to protect
11 their property from fires originating on state and federal lands. The
12 County advocates active fire management on federal lands, including,
13 where appropriate and in consultation with grazing permit holders,
14 adjacent landowners, local volunteer fire fighters and Eureka County, a
15 let-burn policy. The County is opposed to arbitrary and inequitable
16 restriction of post-fire land use for recreation and livestock grazing. The
17 County insists that all post-fire land use restrictions be adequately justified
18 and based on peer-reviewed science.
19

20 **Q. Other federal land use regulations.** Many land-use regulations have
21 the potential to adversely impact Eureka County's economy. Eureka
22 County mandates involvement in all federal actions that may impact the
23 local economy according to this Title.
24
25

26 Chapter 40 - COOPERATIVE PUBLIC LANDS MANAGEMENT

27 28 .010 Findings of fact

29
30 The Board of Commissioners of Eureka County, a political subdivision of the
31 State of Nevada, finds as follows:
32

33 A. The government of the United States of America exercises control
34 over 2,100,000 acres (eighty-one percent) of the land and the majority of
35 natural resources within the geographic boundaries of Eureka County;
36

37 B. Decisions governing federal lands in Eureka County have a history of
38 negative impact on the interrelated heritage of cultural, environmental and
39 economic well-being and stability of County residents;
40

41 C. The Congress of the United States has expressed intent, codified in 42
42 U.S.C. §4331, to act in cooperation with County governments while using
43 all practicable means to create and maintain conditions on federal lands
44 allowing for productive harmony between man and nature while fulfilling
45 the social, economic, environmental and cultural requirements of present
46 and future generations;

1
2 D. The efforts of Congress seeking to coordinate federal plans with
3 County government, maintaining a balance between population and
4 resources, and encouraging high standards of living and a wide sharing of
5 life's amenities, as contemplated by 42 U.S.C. §4331(b)(5), can be
6 enhanced by:

7
8 1. Increasing cooperation between Eureka County, State of
9 Nevada, and those federal officials involved with the
10 administration of federal lands situated within the County; and

11
12 2. Full consideration by the Federal Government of the needs of
13 Eureka County citizens who will be directly or indirectly impacted
14 by federal agency decisions regarding the use of federal lands and
15 the management of water, fish and wildlife in Nevada;
16

17 E. There now exists a substantial and urgent need to increase the
18 involvement of Eureka County in the management of federal lands and in
19 the development of criteria that are meaningful in any decision-making
20 process, as contemplated by 43 C.F.R. Section 1610.3-1(a), Section
21 1610.3-1(b), Section 1620.3-2(a); 36 C.F.R. Ch. II, Section 219.7(a),
22 Section 219.7(c), Section 219.7(d).
23

24 .020 Procedures adopted

25
26 Based upon consideration of the findings set forth in section .010 of this chapter,
27 Eureka County adopts the following procedures to ensure that there is full and complete
28 disclosure and cooperation by federal entities to the County regarding decisions affecting
29 federal lands located within the County and, reciprocally, that federal entities be made
30 aware of the impact of their actions and decision-making on the interrelated heritage of
31 cultural, environmental and economic well-being and stability of the County. The
32 adopted procedures apply to all decisions undertaken by any agency, department or other
33 federal entity including, but not limited to, the Department of Interior, Department of
34 Agriculture, Environmental Protection Agency, Department of Defense, or Department of
35 Energy (hereinafter known as "federal entities") that do or will have a direct or indirect
36 impact on federal and private lands within the geographic confines of the County.
37

38 .030 Specific procedures

39
40 Within thirty (30) days after adoption of this chapter, and at the beginning of each
41 calendar year thereafter, the Chairman of the Board of Eureka County Commissioners, on
42 behalf of the Board, or his designee, shall give to federal entities written notice as
43 follows:
44

45 A. That the County government of Eureka County demands, pursuant to
46 adopted federal statutes and regulations, full and complete notice and

1 opportunity for involvement in the decision making processes of the
2 federal entity that:

- 3
- 4 1. are being taken or are being proposed to be taken regarding
5 federal lands located within the State of Nevada,
6
 - 7 2. involve listing, de-listing, classification or reclassification of a
8 threatened or endangered species or any designated habitat within
9 the County, or
 - 10 3. involve any major federal action significantly affecting the
11 quality of the human and natural environment within the County;
12

13

14 B. That failure of federal entities to afford Eureka County complete
15 notice and opportunity for involvement beyond that afforded individuals,
16 or to limit State and County government involvement, input to or
17 comment at public hearings, is presumed to be prejudicial to the
18 government of Eureka County and its residents, and that the Board of
19 Eureka County Commissioners is authorized and empowered by this
20 chapter to authorize and instruct the Eureka County District Attorney to
21 seek redress for such prejudice in the federal courts and through
22 administrative hearings;
23

24 C. That, within the County's budgetary constraints, the County will
25 notify federal entities of any other evidence of our interrelated historic,
26 cultural and environmental heritage, as well as the anticipated impact on
27 the same of any use of federal or private lands situated within the County.
28

29 .040 Presumption of negative impact
30

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

- 33
- 34 A. causes alteration of present County land use regulations without such
35 changes having been initiated voluntarily by the County and
36
 - 37 B. makes it unfeasible for existing, lawful businesses to continue their
38 current operations, then the proposed federal action will be presumed by
39 the County to create a negative impact on the interrelated environmental,
40 cultural and economic well-being of this County and its residents, and not
41 to be a preferred alternative acceptable to the County as it relates to
42 resolving the environmental and other concerns of the federal entities.
43

44 .050 Quarterly reports required
45

46 On a quarterly basis, the Chairman of the Board of Eureka County Commissioners, or

1 his designee, shall report to the County Commission and the public on the activity of the
2 County taken under this chapter, and actions taken or proposed to be taken by the federal
3 or state governments regarding federal lands in the County.
4

5 .060 Savings clause
6

7 Nothing herein is intended to conflict with any lawful federal statute or regulation
8 that governs federal lands within Eureka County. Any section, paragraph, sentence,
9 phrase or word that is found to do so as a matter of law may be severed from this chapter
10 without limiting the enforceability of the non-conflicting portion. The Board of Eureka
11 County Commissioners expressly declares that it would have enacted the non-conflicting
12 portion without enacting any portion found to be in conflict or otherwise unlawful.
13

14
15 Chapter 50 - PUBLIC ROADS
16

17 .010 Declaration of policy and intent
18

19 A. Eureka County, a political subdivision of the State of Nevada, holds
20 title, as trustee for the public, to all public roads, trails, pathways, traces,
21 highways, byways, and similar public travel corridors situated in the
22 County, of every kind whatsoever, except for State and federal highways,
23 however such roads may have come into being. Title to those roads
24 commonly known as R.S. 2477 roads, irrevocably granted to the public by
25 act of congress (Mining Law of 1866), is held in trust by the County as the
26 unit of government closest to the people.
27

28 B. The County will:
29

- 30 1. Protect and defend against all interference the right of
31 the public to travel and use the public roads within the County;
32
- 33 2. Oppose closure of any public roads except as
34 authorized by this chapter; and
35
- 36 3. Maintain the public roads by conventional or other
37 appropriate means, as from time to time authorized by the Board of
38 County Commissioners, or designate certain public roads as roads
39 to be maintained only by passage and use without liability to the
40 County, as permitted by Nevada Revised Statutes.
41

42 .020 Definitions as used in this section
43

44 **Construction** means the establishment of a road by mechanical or other means, including
45 repeated use.
46

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

4
5 **Highway - Modern usage**: Any state or federally designated road, usually paved or
6 graveled; or **Traditional (R.S. 2477) usage**: Any road, trace, trail, canal, navigable
7 waterway, or other route used by humans for travel by wheeled vehicle, horseback, foot
8 or boat, or otherwise. This definition applies to all highways established across public
9 lands pursuant to the Mining Law of 1866 (R.S. 2477) between the enactment of the
10 statute in 1866 and its repeal by the enactment of the Federal Lands Policy Management
11 Act (FLPMA) in 1976.

12
13 **Maintenance** means construction, reconstruction and repair of a road by mechanical or
14 other means, including repeated use.

15
16 **Public road** means any road open to travel by the general public. The term includes,
17 without limitation, roads (1) on land held in fee simple absolute by the County, (2) on
18 easements across land held or claimed by others, (3) pursuant to express or implied
19 permit or license on lands held or claimed by others, (4) canals or navigable waterways.
20 Roads established pursuant to the grant of right-of-way by the Mining Law of 1866 (R.S.
21 2477 roads) are public roads.

22
23 **Right-of-way** means the entire fee, easement or licensed or permitted area for a road; the
24 traveled way, together with such adjoining land as may be required for construction or
25 maintenance of a road.

26
27 **Road** means any highway (traditional usage), road, trail, trace, footpath, canal, navigable
28 water, or other route, whether constructed or created by repeated use, when used by
29 humans for transportation by wheeled vehicle, horseback, foot or boat, or otherwise.

30
31 **.030 Map of County roads**

32
33 A. The Department Public Works may prepare and maintain a map or
34 series of maps showing the location of all County roads as hereinabove
35 defined.

36
37 B. Any such map or series of maps of County roads prepared by the
38 Department of Public Works, as from time to time amended, is made a
39 part of this Title by reference. Revised editions of the map of County
40 roads may be accepted by the Board of Commissioners, and upon adoption
41 shall become a part of this chapter by reference and shall constitute
42 evidence that such roads and highways exist and belong to the County.

43
44 C. Copies of the map of County roads shall be available for purchase at
45 cost by the public.

1 D. Due to the large number of roads in the County and the difficulty of
2 mapping them all, the failure of a highway or road to appear upon such a
3 map or series of maps shall not constitute a waiver of such highway or
4 road, nor shall it be used as evidence of such road's or highway's
5 nonexistence.
6

7 .040 Interference with travel
8

9 It is a misdemeanor, punishable as provided for misdemeanors in the Nevada Revised
10 Statutes, for any person to interfere with the right of the public to travel the public roads,
11 except:
12

13 A. Public roads may be closed temporarily by the Board of
14 Commissioners for reasons of public safety, and the County Sheriff and/or
15 director of emergency management may effect temporary closures for
16 reasons of public safety pending an emergency meeting of the Board of
17 Commissioners to ratify such closure.
18

19 B. Public roads may be closed permanently by the Board of
20 Commissioners only after thirty (30) days notice of intent to close and a
21 public hearing on the proposed closure.
22

23 C. The Board of Commissioners may grant temporary exclusive licenses
24 to use, or place lesser restrictions on the public use of, a public road to
25 accommodate mining activity; provided, (1) an alternate route offering
26 reasonable public access to the areas served by the public road is provided
27 at the licensee's expense, (2) the licensee maintains the public road and
28 returns it to the County at the conclusion of mining activity in as good or
29 better condition than at the time of licensing, (3) thirty (30) days' notice is
30 given of intent to temporarily limit use of the public road for mining
31 activity and calling a public hearing thereafter on the proposed
32 limitation(s).
33

34 D. The Board of Commissioners may grant temporary exclusive licenses
35 to use a public road or highway to accommodate short-term special events
36 such as parades, races, walkathons and similar activities.
37

38 .050 Public authorized to maintain roads
39

40 The public is authorized to maintain, by use or by mechanical means, public roads
41 which are not regularly maintained by the County. The public is not authorized to
42 reconstruct or reroute a public road outside its original right-of-way.
43

44 .060 County authorized to accept roads as gifts
45

46 The Board of Commissioners is authorized to accept by gift, bequest or otherwise,

1 private roads for addition to the system of County roads. Such transfers may be by fee,
2 easement, license or permit.

3
4
5 Chapter 60 - REVERSION OF PUBLIC LANDS
6

7 .010 Findings of fact
8

9 The Board of Eureka County Commissioners, a political subdivision of the State of
10 Nevada, finds as follows:
11

12 A. The government of the United States of America exercises control
13 over 2,100,000 acres (eighty-one percent) of the land and the majority of
14 natural resources within the geographic boundaries of Eureka County;
15

16 B. Decisions governing federal lands in Eureka County have a direct
17 impact on the interrelated heritage of cultural, environmental and
18 economic well-being and stability of County residents;
19

20 C. The interest of the citizens of Eureka County is best served when
21 government is conducted as close to the people as possible;
22

23 D. Authority to management of natural resources located on state and
24 federal lands within the geographic boundaries of Eureka County should
25 be vested in the Board of Eureka County Commissioners.
26

27 .020 Procedures adopted
28

29 A. At such time as the Nevada Legislature shall authorize Eureka County
30 to manage public lands situated within the County's exterior boundaries,
31 the Board of Eureka County Commissioners is authorized to take all
32 actions and do all things reasonably necessary to assume management of
33 said public lands.
34

35 B. The Board of Eureka County Commissioners is authorized to develop
36 plans and take all other reasonable actions preparatory to future
37 assumption of management of the natural resources of the County's public
38 lands.
39

40 C. The grant of authority set forth in this section includes the power and
41 duty to protect and further all traditional commercial and noncommercial
42 uses of public lands within the County, and to provide for continued
43 general access to and multiple use of the public lands by all traditional
44 users, and the power to do all things reasonably necessary to effect the
45 purposes of this section.
46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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.

1 **6.3 GOALS, OBJECTIVES, MONITORING, AND EVALUATION BY TOPIC**

2
3 6.3.1 Primary Resources: Soil, Vegetation, and Watersheds

4
5 GOAL: To maintain or improve the soil, vegetation and watershed resources in a manner
6 that perpetuates and sustains a diversity of uses while fully supporting the custom,
7 culture, economic stability and viability of Eureka County and its individual citizens.
8

9
10 PRIMARY PLANNING GUIDANCE ADDRESSED:

- 11 ◆ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 12 ◆ Water Resources, Eureka County Code 14.12.010.D.3
- 13 ◆ Air Resources, Eureka County Code 14.12.010.D.4
- 14 ◆ Mining, Eureka County Code 14.12.010.D.5
- 15 ◆ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 16 ◆ Wildlife, Eureka County Code 14.12.010.D.7
- 17 ◆ Recreation, Eureka County Code 14.12.010.D.8
- 18 ◆ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 19 ◆ Wilderness, Wilderness Study Areas, Parks and Refuges,
20 Eureka County Code 14.12.010.D.12
- 21 ◆ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 22 ◆ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
- 23 ◆ Wildfire, Eureka County Code 14.12.010.D.16

24
25 GUIDANCE: The BLM and Forest Service must comply with the multiple use goals and
26 objectives of the Congress as stated in the various statutory laws, such as: Taylor Grazing
27 Act, Federal Lands Policy & Management Act, Public Rangelands Improvement Act,
28 National Environmental Protection Act, Mining Laws of 1866 and 1872, Mining &
29 Mineral Policy Act of 1970, National Materials and Minerals Policy, Research &
30 Development Act of 1980, and other related federal and state laws concerning
31 recreational and other multiple use of natural resources which impact the soils,
32 vegetation, and watersheds. The National Environmental Policy Act requires
33 consideration of all environmental actions on the culture, heritage and custom of local
34 government (16 U.S.C. sec. 4331 (a)(4))

35 Development of AMPs, as an objective, will include completion of technically sound
36 inventories; ecological status inventory (ESI) is a minimum, with other techniques as
37 appropriate such as use pattern mapping as a measure of animal distribution, actual use
38 records, detailed weather records, stream channel morphology, woodland features
39 including age structure and density of trees, and other studies using standardized
40 techniques. So-called “rapid assessment” techniques are permitted and in fact
41 encouraged in Eureka County as a way to identify specific technical studies that are
42 needed. Rapid assessment includes such techniques as the DOI Rangeland Health
43 approach and the Riparian Functional Condition.

1 Goals and objectives will be set relative to the ecological potential of each location and
2 will include descriptions of future ecological status, desired plant communities, livestock
3 productivity and health, wildlife habitat attributes, wildlife population levels, acceptable
4 levels of soil erosion, stream channel stability, and additional items specific to various
5 land uses. Rangeland Health ratings, Riparian Functional Condition ratings, and
6 utilization levels are not suitable for goals or objectives that measure management
7 success. But, the completion of each of these subjective techniques as a precursor to
8 design of additional studies is a reasonable objective within an AMP. Selection of the
9 proper inventory or monitoring technique and interpretation of the data will only be
10 acceptable when performed by people whose judgement is the result of successful
11 experience and well developed skills.

12 Technical guidance as found within peer reviewed scientific publications and various
13 agency or interagency handbooks and manuals serves as reference material and may be
14 incorporated into this document upon approval by the Board of Eureka County
15 Commissioners. Suitable reference material is included as attachments to this plan or by
16 reference within the text. Reference material includes, for example: the Nevada Best
17 Management Practices, Nevada Rangeland Monitoring Handbook, Standards and
18 Guidelines for Grazing Administration as written by the Association of Rangeland
19 Consultants, March 12, 1996, Standards and Guidelines as written by the Northeast Great
20 Basin Resource Advisory Council. Section 6.4 is reserved for a Water Quality Strategy,
21 Endangered or Threatened Species Strategy and similar documents as directed by the
22 Board of Eureka County Commissioners.

23 OBJECTIVES:

24 1) Develop a systematic procedure to coordinate all federal and state land use inventory,
25 planning, and management activities with Eureka County, to assure that consideration is
26 given to the County natural resource strategies and the County land use plans, and to
27 assure that agency land use plans are consistent with the Eureka County Natural
28 Resources & Land Use Element of the Master Plan to the extent required by Federal law.

29 2) Develop and implement Allotment Management Plans (AMP's) as follows: Within five
30 (5) years on all "I" category high priority allotments that do not already have current
31 AMPs; within eight (8) years on all "I" category medium priority allotments; within ten
32 (10) years on all other allotments.

33 3) Review and adjust livestock (grazing) stocking levels only in accordance with
34 developed AMPs and/or trend in ecological status. Monitoring data, as obtained through
35 the use of standardized rangeland studies such as ecological status inventory and
36 frequency/trend monitoring completed at five (5) year intervals following implementation
37 of AMPs, will be required for stocking level adjustments. Other studies such as
38 Rangeland Health evaluation, Riparian Functional condition, and livestock utilization
39 may be useful as indicators of the need for additional examination and objective
40 monitoring techniques.

- 1 4) Assure that adjudicated grazing preference held by permittees is authorized according
2 to the governing Federal statutes and that Temporary Non Renewable use is authorized in
3 a manner that allows for use of excess forage when available.
- 4 5) Develop prescribed fire and wildfire management plans to re-establish historic fire
5 frequencies for appropriate vegetation types and include in such plans livestock grazing
6 techniques as a tool for fire fuel management related to both wildfires and prescribed
7 fires.
- 8 6) Include with fire line and site rehabilitation plans, identification, utility and limitations
9 of native or exotic vegetation capable of supporting watershed function and habitat for
10 wildlife and livestock.
- 11 7) Develop grazing management plans following wild or prescribed fire through careful
12 and considered consultation, coordination and cooperation with all affected permittees
13 and affected landowners to provide for use of grazing animal management to enhance
14 recovery.
- 15 8) Develop and implement an aggressive pinyon pine, juniper, and shrub abatement and
16 control plan for all sites where invasion and/or senescence due to age of a stand is
17 adversely affecting desirable vegetation and/or wildlife. Development of such plans will
18 include technical references to Woodland or Rangeland Ecological Sites and other
19 appropriate interpretations of specific soil series within a Soil Survey. Whenever
20 possible, plans to reduce the density of Pinyon or Juniper will emphasize removal and use
21 of the material for firewood, posts, or commercial products including chips for energy
22 production. This item depends on continued access to all areas that are subject to future
23 woodland manipulations.
- 24 9) Develop surface disturbance mitigation plans on soils with a high or very high erosion
25 hazard rating within plans for multiple recreation use, road building, timber harvest,
26 mechanical range treatments, prescribed fires, range improvements and vegetation
27 manipulation.
- 28 10) Manage wildlife at levels (population numbers) that preclude adverse impacts to soil,
29 water and vegetation until monitoring studies and allotment evaluations demonstrate that
30 population adjustments are warranted by changing resource conditions.
- 31 11) Manage wild horse and burro populations within Herd Management Areas (HMAs)
32 at levels (population numbers) that preclude adverse impacts to soil, water and vegetation
33 until monitoring studies and allotment evaluations demonstrate that population
34 adjustments are warranted by changing resource conditions.
- 35 12) Integrate recreational uses into all planning efforts to preclude adverse impacts to
36 soil, water and vegetation.

1 13) Prevent the introduction, invasion or expansion of undesirable plants and noxious
2 weeds into native rangelands and improve the ecological status of sites that are currently
3 invaded by undesirable plants or noxious weeds by integrating, through consultation with
4 the Eureka County Weed District and Eureka County Department of Natural Resources,
5 appropriate control methods into all planning efforts. Prescriptions for control of
6 undesirable plants and noxious weeds may include, but are not limited to burning,
7 grazing, mechanical, manual, biological and chemical methods.

8 Monitoring:

- 9 • Document ecological status and trend data obtained through rangeland studies
10 supplemented with actual use, utilization (use pattern mapping), and climatic
11 data in accordance with the Nevada Rangeland Monitoring Handbook.
- 12 • Document progress in the development and implementation of Allotment
13 Management Plans.
- 14 • Document the development and implementation of Pinyon pine, juniper, and
15 shrub abatement, control, or harvest plan(s).
- 16 • Document the development and implementation of Management Plan(s) for
17 control of noxious weeds and other undesirable species.
- 18 • Inspect mining activities and other significant surface disturbing activities for
19 compliance with statutory law and relevant reclamation plan.
- 20 • Annually review and document wild horse herd population inventories, and
21 conduct inventories when necessary, including reports of wild horse
22 movement, grazing habits, numbers and other data provided by permittees,
23 lessees and landowners.

24 Evaluation:

- 25 • Determine whether documentation shows that AMP's and other activity plans
26 are being developed and implemented as necessary to achieve objectives.
27 Make adjustments in priorities as required.
- 28 • Determine the degree to which monitoring, including trend data, indicates
29 Desired Plant Community features have been attained, or significant progress
30 is being made towards that goal(i.e., high seral plant communities are
31 remaining stable, lower seral communities are improving, etc.). Review and
32 modify management plans as necessary.
- 33 • Determine the degree to which surface disturbing activities are occurring and
34 their response to reclamation actions.
- 35 • Determine the degree to which wild horse, livestock and/or wildlife use is
36 impacting soil and vegetation resources and modify management plans
37 accordingly.

38
39 6.3.2 Forage and Livestock Grazing

1 Substantial changes have occurred in Eureka County's economic base as a result of
2 regulatory actions against livestock grazing on federal lands. At a time when the
3 community should benefit from the combined wealth created by all sectors of the
4 economy, decreases in the economic contribution from the livestock industry have been
5 egregious. Data reported annually in the Nevada Agricultural Statistics indicate that
6 cattle numbers in Eureka County rose from 30,000 in 1971 to 41,000 in 1982, then
7 declined to 13,000 head by 1995 (from T. Lesperance, 1996, Cowboys, Bureaucrats and
8 the Long Rope of Justice, 12 p.). The 2001 Nevada Grazing Statistics Report and
9 Economic Analysis for Federal Lands in Nevada confirms this gross decline in livestock
10 numbers and estimates that between 1980 and 1999, Nevada lost \$25,000,000 from the
11 loss of over 473,000 AUMs.

12 GOAL: Provide for landscape vegetation maintenance and improvement that will: 1)
13 support restoration of suspended AUM's; 2) support allocation of continuously available
14 temporary non-renewable use as active preference and; 3) support allocation of forage
15 produced in excess of the original adjudicated amounts where greater amounts of forage
16 are demonstrated to be present.

17 PRIMARY PLANNING GUIDANCE ADDRESSED:

- 18 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
 - 19 ♦ Tax Base, Eureka County Code 14.12.010.D.
 - 20 ♦ Water Resources, Eureka County Code 14.12.010.D.3
 - 21 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
 - 22 ♦ Wildlife, Eureka County Code 14.12.010.D.7
 - 23 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
 - 24 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
 - 25 ♦ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
 - 26 ♦ Wildfire, Eureka County Code 14.12.010.D.16
- 27
28

29 GUIDANCE: Congress mandates stabilization of the local livestock industry in such
30 laws as the Taylor Grazing Act (TGA) and the Forest Service Organic Act (FSOA) by
31 providing for the orderly use, improvement, and development of the range in a manner
32 which adequately safeguards vested grazing and water rights, and in a manner that will
33 not impair the value of the grazing unit of the permittee when such unit is pledged as debt
34 security by the permittee. Public Rangeland Improvement Act (PRIA) provides that the
35 Bureau of Land Management administered lands be managed in accordance with the
36 Taylor Grazing Act. PRIA further provides that the range should be made "as productive
37 as feasible" in accordance with the Congressional objective of preventing "economic
38 disruption and harm to the western livestock industry". PRIA mandates improvement of
39 the rangelands in order to expand the forage resource and increase the resulting benefits
40 to livestock and wildlife production. In the Federal Land Policy & Management Act
41 (FLPMA) the Congress directs that the BLM administered lands be managed in a manner
42 which "recognizes the Nation's need for domestic sources of minerals, food, timber, and
43 fiber from the public lands". The National Environmental Policy Act requires
44 consideration of all environmental actions on the culture, heritage and custom of local

1 government (16 U.S.C. sec. 4331 (a)(4). Current active preference and continuously
2 available supplemental use is considered the established allowable use for livestock
3 grazing. The Forest Service is obligated to consider and provide for "community
4 stability", in accordance with the National Forest Management Act (NFMA) and other
5 National Forest related legislation dating back to the 1890's.

6
7 Essentially all rangeland use and value is dependent upon maintenance and enhancement
8 of the primary landscape resources of soils, vegetation, and watersheds. August L.
9 Hormay in "Principles of Rest-Rotation Grazing and Multiple-Use Land Management",
10 1970, page 3, states that "...all renewable rangeland values stem directly or indirectly
11 from vegetation. Sustained high-level production of these values therefore depends on
12 proper management of the vegetation. The principal tool the rangeland manager has for
13 managing vegetation is livestock grazing. It is the only force under firm control of the
14 manager that can be applied on practically the entire range area....desirable vegetation
15 and the overall productive capacity of rangelands can be increased more rapidly with
16 livestock grazing than without...Livestock can be used to trample seed into the soil
17 thereby promoting more forage and a better soil cover; to remove stifling old growth on
18 plants, thus increasing plant vigor and production of useable herbage; to stimulate
19 adventitious growth and higher quality forage; and to reduce fire hazard." Hormay
20 explained that grazing management that is based on the physiological status and
21 phenological development of the plants is the basis for keeping plants healthy and
22 vigorous. Utilization levels have essentially no bearing on the longevity of the plants and
23 very little value in management decisions. The principles of plant physiology as the basis
24 for vegetation management taught by Hormay and other experts are a sound basis for
25 grazing management in Eureka County. Eureka County natural resource strategy
26 includes management based on the renewable nature of Eureka County's vegetation
27 resources.

28
29 OBJECTIVES:

- 30 1) Implement rangeland improvement programs, including but not limited to; water
31 developments, rangeland restoration, pinyon-juniper and shrub control, and weed control
32 to increase forage production, improve livestock grazing management, raise stocking
33 rates, and achieve other multiple use goals.
- 34 2) Identify and develop off-stream water sources where such opportunities exist, in all
35 allotments pastures with sensitive riparian areas and in all allotments where improved
36 livestock distribution will result from such development.
- 37 3) Identify and implement all economically and technically feasible livestock
38 distribution, forage production enhancement, and weed control programs before seeking
39 changes in livestock stocking rates.
- 40 4) Identify and initiate reductions in stocking levels only when monitoring data
41 demonstrates that grazing management supported by range improvements and specialized
42 grazing systems are not supporting basic soil, vegetation and watershed goals.

1 5) Assure that all grazing management actions and strategies fully consider impact on
2 property rights of inholders and adjacent private land owners and consider the potential
3 impacts of such actions on grazing animal health and productivity.

4 6) Where monitoring history, actual use or authorization of TNR demonstrates that
5 supplemental use is continuously available, and can or should be used to improve or
6 protect rangelands (e.g., reduction of fuel loads to prevent recurring wildfire), initiate a
7 process to allocate such use to permittees as active grazing preference.

8 7) Authorize use of supplemental forage during those years when climatic conditions
9 result in additional availability.

10 8) Temporary “voluntary non-use” of all or a portion of adjudicated forage is necessary
11 on occasion due to drought, economic difficulties, animal health, etc., and is an
12 acceptable management strategy. “Voluntary non-use” for the purpose of long-term or
13 permanent retirement of a grazing allotment is detrimental to the economic stability of
14 Eureka County and will be opposed by the Board of Eureka County Commissioners.

15 Monitoring:

- 16 • Document the amount of livestock use through review of actual use, authorized
17 active use, suspended use and temporary nonrenewable use.
- 18 • Document livestock production or performance when available.
- 19 • Document all rangeland and livestock management improvement programs as to
20 acres affected by vegetation manipulation, water development, specialized
21 grazing systems and weed control.
- 22 • Document grazing use in each allotment through use pattern mapping.
- 23 • Document the direction of rangeland trend and seral class acreage changes that
24 support changes in the amount of use being authorized or denied.
- 25 • Document all decisions or agreements resulting in changes in active preference
26 and approvals or denial of applications for supplemental use.

27 Evaluation:

- 28 • Determine from monitoring data, trend studies and ecological status rangeland
29 studies, the amount of authorized use that can be sustained.
- 30 • Determine the degree to which, data supported requests for increases in active
31 preference, return of voluntary non-use, and applications for supplemental use are
32 approved and authorized.
- 33 • Determine the degree to which identified vegetation manipulation projects, range
34 improvement practices, specialized grazing systems, and weed control projects
35 are being authorized and implemented.

1 Further guidance and comment

2 Eureka County will evaluate each issue regarding "takings" of private property on
3 a basis of whether it is personal and individual, or if a given incident has a
4 potential affect on the County as a whole. Each "takings" claim will be evaluated
5 in view of what is known of the affected business such as a ranch operation,
6 irrigated agricultural operation, mining, or other property as set forth in this plan.
7 Eureka County will consider that the economic value of a (ranch) base operation
8 is dependent upon its relationship to adjacent or nearby federal or state managed
9 lands. That relationship is often evidenced by a grazing permit. The existence of
10 such permit causes County Assessors in many areas to appraise the taxable value
11 of the private property which serves as the base operation at a higher rate than it
12 would be appraised if no permit existed. Thus, for taxation purposes the grazing
13 permit is considered a part of the realty upon which an individual must be taxed.
14 The Internal Revenue Service also considers the permit as a taxable property
15 interest. Financing institutions, whose support is critical to continued livestock
16 grazing and agricultural operations in Eureka County, consider the existence of
17 the permit, and the reasonable expectation of land use which emanates therefrom,
18 as an indispensable factor in determining to extend and continue financial support.
19 Grazing permits are capitalized into the value of a ranch, so that when a buyer
20 purchases a ranch, he actually pays for livestock production stemming from the
21 private and federally managed lands, as well as additional property in the form of
22 water rights, rights of way, and improvements also on both private and federally
23 managed land areas.¹

24
25 The grazing permit was recognized as having the character of a property right,
26 interest or investment backed expectation by the Congress when it enacted that
27 portion of the Taylor Grazing Act which is found in 43 U.S.C § 315 (b)
28 guaranteeing renewal of permits if denial of the permit would "impair the value of
29 the grazing unit of the permitter, when such unit is pledged as security for any
30 bonafide loan."

31
32 The Congress also recognized the importance of the permit to the ranch operator
33 when it enacted 43 U.S.C. § 1752 (c) [a portion of the Federal Land Policy
34 Management Act] which afforded to the "holder of the expiring permit or lease"
35 the "first priority for receipt of the new permit or lease." Such priority renewal
36 recognizes the investment of time, energy and money by the ranch owner in
37 reliance upon the land use of the federally managed lands which becomes an
38 integral part of the ranch operation. Stewards of the Range attorney, Fred Kelly
39 Grant quotes Marc Valens as having "succinctly analyzed the importance of the
40 priority renewal both to the ranch operator and to all members of the American
41 public who collectively own the federally managed lands. In Federal Grazing
42 Lands: Old History, New Directions (1978), (an unpublished manuscript), cited at

¹ Angus McIntosh, 2002, Ph.D. Dissertation, New Mexico State Univ. "Property Rights on Western Ranches: Federal Rangeland Policy and a Model for Valuation.

1 page 707 of Coggins Wilkinson Leshy, Federal Public Land and Resources Law
2 (3rd Edition 1993), Valens states:
3

4 'Priority renewal does have advantages. A permittee becomes intimately
5 familiar with the range. * * * [H]igh turnover of federal grazers does not
6 permit them to get to know the range nearly as well. Only long use can
7 teach an operator where the thicket is that hides the stubborn bull late in
8 the fall. The seasonal pattern of drying up of the range and water holes
9 must be known to fully utilize the range resource. If the first areas to dry
10 are not used early in the season, they will be wasted. The rancher who
11 expects to use the same range for many years in the future will be careful
12 not to hurt the resource. The range cattle themselves get to learn the range.
13 An old range cow can find hidden water holes and meadows that a new
14 cow would not. And with the first snows of fall, the old cows will lead the
15 herd back to the home ranch.'"
16

17 Federal land ranchers in Eureka County operate within allotments originally
18 identified and adjudicated on the basis of water ownership. Their "right to graze"
19 is a property interest appurtenant to livestock watering rights, most of which
20 existed long before the Forest Organic Act and the Taylor Grazing Act were
21 passed. All property, including water rights, is founded in the power of the State,
22 even property existing within lands controlled by federal agencies. The nature of
23 Nevada water rights reflects the split estate concept developed on western lands
24 under Mexican law and continued with the establishment of the United States.
25 The interest created in and owned by each Eureka county ranchers' predecessors
26 in interest in allotments of grazing lands or forage lands is a portion of the
27 "surface estate" of the split estate. McIntosh (2002) further describes this right in
28 terms of the travel by livestock to the place where a livestock watering right is
29 used has established livestock grazing rights-of-way for access to each water
30 source that is based on the normal travel of livestock that are grazing as they
31 approach or leave the water location. The ranchers have the right to graze on the
32 surface of the land, a right which they developed through settlement and
33 development.
34

35 As described in the Introduction (Section 6.1), property ownership includes a
36 "bundle-of-rights". McIntosh (2002) quotes a legal dictionary in defining the
37 bundle-of-rights as: "This term is used to describe the collection of rights that
38 constitute *fee* ownership in an object or realty (or interests in real estate). The
39 bundle-of-rights includes, but is not limited to, the right to: sell, lease, use, give
40 away, exclude others from and to retain. The bundle-of-rights is the list of
41 options that an owner can exercise over his property." The term "*fee*" refers to
42 the quality and character of ownership in a property.
43

44 A long series of decisions by the United States Supreme Court set forth the
45 position that when a validating or confirming statute is passed, the legal title to
46 the possessory right passes as completely as though a patent had been issued.

1 Title to allotments of federal land for grazing have been validated or confirmed
2 for over a century, and the boundaries of those allotments have been adjudicated.
3 The Stock Raising Homestead Act of 1916 culminated development of the
4 settlement acts regarding the lands "chiefly valuable for grazing and raising
5 forage crops" when it completely split the surface estate from the mineral estate in
6 order to allow for the disposal of legal surface title to ranchers, while retaining
7 undiscovered mineral wealth to the United States. The grazing right owned by
8 Eureka County ranchers was acknowledged and secured by passage of the Forest
9 Organic Act in 1897 and the Taylor Grazing Act in 1934. Every subsequent Act
10 regarding management of the federal lands has protected and preserved all
11 "existing rights" such as the grazing right.

12
13 Property rights related to the federal lands are split between a number of parties
14 and users, private and governmental. The rights possessed by the various parties
15 include water rights, grazing rights, mineral rights, wildlife rights, petroleum
16 exploration rights and timber harvest rights. Each of the rights has been validated
17 and secured by statute or court decision.

18
19 In *Public Lands Council v. Babbitt*, supra, the United States District Court
20 acknowledged the "right" of a permittee to his adjudicated grazing preference, and
21 held that such "right" could not be removed by a regulation issued by the
22 Secretary of Interior. Such recognition of a "right" forms the base for a "taking"
23 when that "right" is taken by regulation. It is the goal of this Plan that
24 management activities be instituted which prevent such "taking" and which foster
25 effective implementation of the "right" to adjudicated grazing preferences.

26
27 The split estate is further demonstrated by the stock watering right possessed by
28 each rancher to water existing on federal land. Each rancher who grazes livestock
29 on federal lands has the right to use water existing on the federal lands even
30 though he or she is not the title holder to the lands themselves. The effective date
31 of the right to water the livestock grazing on those lands is the date of first
32 appropriation by the rancher or any predecessor in title who conveyed the
33 stockwater right.

34
35 Eureka County will plan for and take positive action to assure that private
36 property rights and private property interests including, investment backed
37 expectations, are protected in light of the standard set forth above.

38

39 6.3.3 Water Quality, Riparian Areas, and Aquatic Habitats

40 GOALS: Meet the requirements for water quality contained in the Nevada Administrative
41 Code (NAC) Section 445, to the extent they can be met while complying with
42 constitutional and statutory law as to vested water rights, maintain or improve riparian
43 areas and aquatic habitat that represents a range of variability for functioning condition.

1 PRIMARY PLANNING GUIDANCE ADDRESSED:

- 2 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 3 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 4 ♦ Mining, Eureka County Code 14.12.010.D.5
- 5 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 6 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 7 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 8 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 9 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 10 ♦ Wildfire, Eureka County Code 14.12.010.D.16

11 GUIDANCE: Determination of proper functioning condition, stream channel
12 morphology, and quality of riparian and aquatic habitats will always include a technically
13 accurate determination of stream flows being perennial, ephemeral, or intermittent.
14 Determination of water quality or riparian evaluation based on water quality means water
15 quality as suited to the beneficial use for which the water is designated. Streams or
16 springs that provide irrigation water and livestock water do not require human drinking
17 water quality standards. Some agency actions may claim to be based on the Clean Water
18 Action Plan. However, EPA, in a letter to Karen Budd-Falen dated October 29, 2002
19 explained that this act does not include enforcement authority. Water quality laws that
20 are legally enforceable still depend on authority under the Clean Water Act and several
21 related laws. Stream morphology developed by Rosgen² and his associates is the
22 acceptable technique; any other approach requires evaluation and approval of the Natural
23 Resource and Land Use Commission. Identification of goals for riparian vegetation
24 attributes must be realistic and attainable based on the dependability of surface or
25 subsurface water regimes, climate as determined by elevations, soil and substrate
26 characteristics, and the likelihood of unacceptable impacts on other uses within the
27 riparian area and surrounding uplands. For example, quaking aspen reproduction is
28 desirable in Eureka County and aspen reproduction that replaces an aspen stand in
29 increments over about 100 years while grazing, wildlife populations, and recreation
30 continue in the vicinity is preferable to techniques of riparian wide aspen stand
31 regeneration that excludes customary uses.

32
33 OBJECTIVES:

34 1) Select or develop site specific Best Management Practices (BMP's) through allotment
35 management plans for those riparian areas and aquatic habitats which have been
36 specifically identified and documented as exceeding State water quality standards for the
37 actual use the particular water is intended for.

² Rosgen, David L. developed the geomorphological classification of stream channels and published the preliminary results as "A Stream Classification System" in 1991. Dr. Sherman Swanson, University of Nevada Reno collaborated on development and application of this technique. See also, Rosgen, D.L., 1996. Applied River Morphology. Wildland Hydrology. Pagosa Springs, Colorado.

1 2) BMP's include but are not limited to: prescribed grazing systems, off-site water
2 development, shrub and juniper control, livestock salting plans, establishment of riparian
3 pastures and herding.

4 3) Develop and utilize standardized forms and procedures for all monitoring data related
5 to riparian and aquatic habitat, condition and trend.

6 4) Develop management plans for multiple recreation uses in high erosion hazard
7 watersheds, or watersheds where accelerated erosion is occurring, which assure that
8 planning documents and/or other agreements which alter multiple recreation use are
9 formulated through coordination with the Natural Resource and Land Use Commission
10 which includes representatives of recreational groups.

11 5) Develop and implement a management plan for wild horses, livestock and wildlife to
12 minimize surface disturbance and erosion adversely affecting riparian areas.

13 6) Provide for the development and maintenance of water conveyance systems.

14 Monitoring:

- 15 • Document progress in the development of AMP's including site specific BMP's
16 and their implementation.
- 17 • Document the development and implementation of multiple recreational use plans
18 for specific high erosion areas.
- 19 • Document impacts of wild horses, wildlife, and multiple recreation use on
20 riparian and aquatic habitat.
- 21 • Document impacts of decisions regarding state water plan(s) and changes in State
22 water quality standards on various uses of federal or state managed lands.
- 23 • Document the status of water rights in renewal of permits and developing AMPs.

24 Evaluation:

- 25 • Track the development of AMP's and implementation of BMP's to determine their
26 impact on improvement of riparian areas and water quality. Identify the need to
27 re-evaluate the design and effectiveness of BMP's.
- 28 • Review the degree of use and effectiveness of standardized procedures to obtain
29 and record data to determine the condition and trend of riparian and aquatic
30 habitat in areas identified as being adversely affected by wild horses, wildlife, and
31 recreational use.
- 32 • Evaluate the records of grazing permit renewal for their impact on private
33 property rights, including water rights.
- 34 • Interpret riparian monitoring data in view of technical limitations that may be
35 present such as intermittent or ephemeral stream flows, soils or substrate
36 susceptibility to erosion, expected stream flow of perennial waters, and site
37 specific base data for water quality.

1 6.3.4 Wildlife and Wildlife Habitat

2 GOAL: Maintain, improve or mitigate wildlife impacts to habitat in order to sustain
3 viable and harvestable populations of big game and upland game species as well as
4 wetland/riparian habitat for waterfowl, fur bearers and a diversity of other game and non-
5 game species.

6 PRIMARY PLANNING GUIDANCE ADDRESSED:

7

8 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1

9 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b

10 ♦ Wildlife, Eureka County Code 14.12.010.D.7

11 ♦ Recreation, Eureka County Code 14.12.010.D.8

12 ♦ Water Resources, Eureka County Code 14.12.010.D.3

13 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11

14

15

16 GUIDANCE: The Federal Land Policy and Management Act provides that it is the policy
17 of the United States that BLM administered lands be managed in a manner that will
18 protect the quality of multiple resources, will provide food and habitat for fish and
19 wildlife and domestic animals, and will provide for outdoor recreation and human
20 occupancy and use. The Public Rangeland Improvement Act directs improvement of
21 rangeland conditions and provides for rangeland improvements which include habitat for
22 wildlife. The authority for management of wildlife rests solely with the State of Nevada
23 by virtue of the equal footing doctrine set forth in Article One of the Admissions Act, and
24 the Tenth Amendment of the U.S. Constitution.

25 OBJECTIVES:

26 1) Consult with the Eureka County Wildlife Advisory Board, Eureka County
27 Natural Resources Advisory Commission, Nevada Department of Wildlife,
28 affected private property interests, lessees and permittees to develop specific
29 wildlife population targets, harvest guidelines, depredation mitigation and
30 guidelines for future site specific management plans affecting upland, water fowl
31 and big game habitat.

32 2) Manage wildlife populations at levels commensurate with those existing at the
33 time of European settlement unless local community economic concerns and
34 quality-of-life values dictate otherwise. Evidence of wildlife populations existing
35 at the time of European settlement must include historical observations and
36 archeological interpretation. Representations of community economic concerns
37 include, but are not limited to, recommendations by the Eureka County Wildlife
38 Advisory Board, Eureka County Natural Resources Advisory Commission,
39 Eureka County Economic Development Board and the Board of Eureka County
40 Commissioners.

- 1 3) Where it is in the best interest of the local community for wildlife populations
2 to substantially exceed pre-settlement conditions, develop population
3 management plans that analyze and, where necessary mitigate, harmful impacts to
4 rangelands, woodlands, native wildlife species and economically desirable non-
5 native wildlife species. Mitigation must accommodate impacts that have
6 accumulated since initial resource allocation.
- 7 4) Manage wildlife populations and wildlife habitat to enhance species native to
8 Eureka County habitats. Exceptions to this objective must be founded on a clear
9 public benefit attributed to the introduction, enhancement or propagation of a non-
10 native species or a species native to Nevada, but not historically found in Eureka
11 County. Public benefit is demonstrated through affirmation by the Eureka County
12 Wildlife Advisory Board and Eureka County Natural Resources Advisory
13 Commission.
- 14 5) Conduct rangeland studies, pellet group plots, breeding bird transects and other
15 appropriate studies to monitor wildlife relationships to available habitat as well as
16 impacts of vegetation manipulation projects on wildlife.
- 17 6) Identify specific wildlife habitat attributes that are required by various wildlife
18 species. Use objective techniques to measure and record habitat characteristics of
19 wildlife species; assume that the wildlife select habitat that best meets the needs
20 of the species. Develop technical descriptions of habitat attribute requirements
21 for each species.
- 22 7) Accelerate the planning, approval and completion of multiple-use water
23 developments, rangeland treatment projects and prescribed burns that include
24 objectives for enhancement of big game and other wildlife habitat. Wildlife
25 developments must be cooperative in nature, respecting the rights and interests of
26 existing resource users.
- 27 8) Include considerations of wildlife habitat requirements in the design and
28 reclamation of mineral development projects through approved Plan(s) of
29 Operations.
- 30 9) Assure that management agencies provide all necessary maintenance of
31 enclosure fences not specifically placed for improved management of livestock.
- 32 10) Initiate cooperative studies with willing private land owners, of wildlife
33 depredation and related concerns regarding wildlife habitat on private land.
- 34 11) Develop records of wildlife losses to predators and support predator control
35 efforts designed to protect specified wildlife species.

36

1 Monitoring:

- 2 • Document the participation of affected parties in the development and
3 establishment of population targets and management guidelines for upland game,
4 water fowl, and big game species.
- 5 • Document the inclusion of wildlife habitat objectives in activity plans and BLM
6 approved Reclamation Plans.
- 7 • Document the location and extent of water developments and vegetation
8 manipulation projects and prescribed fires for wildlife habitat improvement and
9 provide timely notification to all affected parties.
- 10 • Periodically monitor range improvement projects, rights-of-way, woodcuts,
11 mining activities, multiple recreation uses, and materials leases, to document
12 habitat improvement or disturbance.
- 13 • Document the incidents of wildlife depredation and extent of game animal harvest
14 in designated management areas of both land and wildlife management agencies.
- 15 • Document visitor use of wildlife and fish in terms of hunter or fisherman
16 questionnaire contents, business reports of sales to visitors to the area, etc.

17 Evaluation:

- 18 • Track the participation of agencies, landowners and sportsmen and their progress
19 in development of designated management area plans.
- 20 • Reconcile wildlife population fluctuation related to both habitat condition and
21 non-habitat impacts on reproduction and survival.
- 22 • Track the numbers and time required for the initiation and completion of water
23 developments, prescribed burns and range treatment projects for wildlife habitat
24 improvement.
- 25 • Track the incidents and disposition of wildlife depredation on private lands and
26 property.

27

28 6.3.5 Land Tenure

29 GOAL: Utilize, to the greatest extent possible, agricultural or mining entry, land
30 exchange, and or land sale for disposal of all public lands which by virtue of their size or
31 location render them difficult and expensive to manage and do not serve a significant
32 public need or where disposal will serve important public objectives. Authorize as needed
33 the use of those lands, not currently authorized, for rights-of-way, leases and permits.

34 PRIMARY PLANNING GUIDANCE ADDRESSED:

35

- 36 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 37 ♦ Tax Base, Eureka County Code 14.12.010.D.2
- 38 ♦ Mining, Eureka County Code 14.12.010.D.5
- 39 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b

- 1 • Document all applications for rights-of-way, leases and permits and the actions
2 taken on each.
- 3 • Document access needs and procedures and methods utilized to achieve such
4 access.

5 Evaluation:

- 6 • Determine annually the degree of progress in achieving disposal of lands
7 classified for priority disposal.
- 8 • Evaluate the degree to which access needs are being met.

9

10 6.3.6 Locatable Minerals, Fluid Minerals, and Mineral Materials

11 GOAL: Facilitate environmentally responsible exploration, development and
12 reclamation of oil, gas, geothermal, locatable minerals, aggregate and similar resources
13 on federal lands.

14 PRIMARY PLANNING GUIDANCE ADDRESSED:

15

- 16 ♦ Tax Base, Eureka County Code 14.12.010.D.2
- 17 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 18 ♦ Air Resources, Eureka County Code 14.12.010.D.4
- 19 ♦ Mining, Eureka County Code 14.12.010.D.5
- 20 ♦ Utility Rights and Public Consumptions, Eureka County Code 14.12.010.D.9]
- 21 ♦ Land Disposition/Land Tenure Adjustments, Eureka County Code 14.12.010.D.10
- 22 ♦ Access, Eureka County Code 14.12.010.D.14
- 23 ♦ Other Federal Land Use Regulations, Eureka County Code 14.12.010.D.17

24

25 GUIDANCE: The Mineral Leasing Act of 1920 as amended, Geothermal Steam Act of
26 1970, as amended, the Mining and Mineral Policy Act of 1970, all declare that it is the
27 continuing policy of the federal government to foster and encourage private enterprise in
28 the development of domestic mineral resources. The 1872 Mining Law along with the
29 Mining and Mineral Policy Act of 1970 declares that it is the continuing policy of the
30 United States to foster and encourage private enterprise in the development of domestic
31 mineral resources. The Federal Land Policy & Management Act, reiterates that the
32 Mining and Minerals Policy Act of 1970 is to be implemented and directs that the BLM
33 administered lands are to be managed in a manner which recognizes the nation's need for
34 domestic sources of minerals and other resources. The National Materials and Minerals
35 Policy, Research and Development Act of 1980 restates the need to implement the 1970
36 Act and requires the Secretary of the Interior to improve the quality of minerals data in
37 land use decision making. The Mining Law of 1866 guaranteed certain rights which
38 allow for orderly and efficient use of the public lands for commerce.

39 OBJECTIVES:

1 1) In coordination with federal agencies and state and local government planning
2 agencies and in cooperation with interested members of the public, develop a land
3 management mineral classification plan to evaluate, classify and inventory the
4 potential for locatable mineral, oil, gas and geothermal, and material mineral
5 exploration or development, to insure that lands shall remain open and available
6 unless withdrawn by Congress or federal administrative action. To the extent
7 practicable, land with high mineral or oil and gas values shall remain open for
8 economic use.

9 2) Develop an evaluation program that relies upon and uses all available data,
10 including, but not limited to reviewing existing data, geochemical and
11 geophysical testing, geological mapping and sampling, and, where appropriate,
12 drilling testing.

13 3) Provide for mineral material needs through negotiated sales, free use permits
14 and community pits.

15 4) Actively engage in NEPA analysis of environmental and community impacts
16 related to proposed mineral, oil and gas development.

17 Monitoring:

- 18 • Document all exploration activity and requests for and the issuance of patents
19 through a system of tracking paper work associated with such activity.

20 Evaluation:

- 21 • Determine the degree to which mineral exploration and development are
22 occurring as compared to needs and potential for the County.
23 • Determine whether the time required to obtain necessary permits and approvals is
24 excessive.

25

26 6.3.7 Cultural, Historic, and Paleontological Resources

27 GOAL: In coordination with federal state and local government planning agencies, tribal
28 leadership and interested members of the public, determine the significance of cultural
29 resource sites according to condition, content and relevance and increase the opportunity
30 for educational, recreational, socio-cultural, and scientific uses of cultural and
31 Paleontological resources.

32 PRIMARY PLANNING GUIDANCE ADDRESSED:

33

- 34 ♦ Recreation, Eureka County Code 14.12.010.D.8
35 ♦ Utility Rights and Public Consumptions, Eureka County Code 14.12.010.D.9]

- 1 • Analyze the degree to which cultural resource management restrictions are
- 2 affecting or limiting multiple uses of the public lands in Eureka County.
- 3 • Review the data provided to and on file with the Eureka County Historical
- 4 Society and Eureka Sentinel Museum.

5

6 6.3.8 Woodland Resources

7 GOAL: Maintain or improve aspen and conifer tree health, vegetation diversity, wildlife
8 and watershed values through active management of sites with the ecological potential
9 for aspen, pinyon, or juniper woodlands and initiate thinning, removal, or other
10 management measures.

11 PRIMARY PLANNING GUIDANCE ADDRESSED:

12

- 13 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 14 ♦ Tax Base, Eureka County Code 14.12.010.D.2
- 15 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 16 ♦ Air Resources, Eureka County Code 14.12.010.D.4
- 17 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 18 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 19 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 20 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 21 ♦ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
- 22 ♦ Wildfire, Eureka County Code 14.12.010.D.16

23 GUIDANCE: The Public Rangelands Improvement Act directs that the condition of the
24 BLM administered rangelands be improved so that they become as productive as feasible
25 for all rangeland values. The Federal Land Policy Management Act mandates that BLM
26 administered lands be managed in a manner that will protect the quality of ecological and
27 other resource values and provide food and habitat for fish and wildlife and domestic
28 animals and recognizes the nation's need for domestic sources of minerals, food, timber,
29 and fiber from the BLM administered lands.

30 OBJECTIVES:

- 31 1) Plan and implement, where necessary and useful, selective fence post and
- 32 firewood harvesting programs to improve Pinion and juniper woodland health.

- 33 2) Plan and implement reclamation of disturbed forest sites.

- 34 3) Document woodland product harvest activities on the BLM and FS
- 35 administered lands as necessary to promote customary economic use of woodland
- 36 resources (i.e. pine nuts, firewood, posts, Christmas trees, etc...).

1 4) Plan and implement wildlife habitat improvements and grazing management
2 strategies designed to enhance woodland or forest goals.

3 5) Document, report to responsible agencies and ensure mitigating management
4 actions for the occurrence of insects and diseases that threaten the health of
5 woodland resources.

6 Monitoring:

- 7 • Record the presence of insects or diseases that threaten woodland health.
- 8 • Identify and document old and decadent stands of trees and the management
9 actions applied in each individual case.
- 10 • Identify and document the acres and severity of pinyon-juniper encroachment into
11 rangeland ecological sites as identified by soil survey, aerial photo interpretation,
12 or other techniques.
- 13 • Inventory aspen stands for such features as age class distribution, density, and
14 area.

15 Evaluation:

- 16 • Evaluate monitoring documentation to determine the degree to which woodlands
17 are affected by insect damage or disease.
 - 18 • Correlate aspen stand characteristics with recreational use, wildlife populations,
19 wild horses, livestock grazing and other multiple use activities.
- 20

21 6.3.9 Hunting, Fishing, and Outdoor Recreation

22 GOALS: Provide for multiple recreation uses on Eureka County federal and state
23 administered lands located within its boundaries for residents and visitors to the County.
24 Provide recreational uses including high quality recreational opportunities and
25 experiences at developed and dispersed/undeveloped recreation sites by allowing historic
26 uses and access while maintaining existing amenities and by providing new recreation
27 sites for public enjoyment. Pursue increased public access opportunities in both
28 motorized and non-motorized settings through the acquisition of rights-of-way or
29 easements across federal administered lands and private lands at the invitation of the
30 property owner. Recognize that multiple recreation uses are mandated by the multiple
31 use concepts and that adequate outdoor recreation resources must be provided on the
32 federal administered areas.

33

34 PRIMARY PLANNING GUIDANCE ADDRESSED:

35

- 36 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 37 ♦ Tax Base, Eureka County Code 14.12.010.D.2
- 38 ♦ Water Resources, Eureka County Code 14.12.010.D.3

- 1 ♦ Air Resources, Eureka County Code 14.12.010.D.4
- 2 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 3 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 4 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 5 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 6 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 7 ♦ Access, Eureka County Code 14.12.010.D.14
- 8 ♦ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
- 9 ♦ Wildfire, Eureka County Code 14.12.010.D.1
- 10

11 GUIDANCE: The Federal Land Policy & Management Act declares it to be the policy of
 12 the United States that BLM administered lands be managed on the basis of multiple use
 13 in a manner which provides for outdoor recreation and human occupancy and use, while
 14 at the same time protecting scenic, ecological, environmental, water, and archaeological
 15 values. The Act also mandates that outdoor recreation be considered one of the principle
 16 uses in the multiple use concept for the BLM administered lands. In 1963, Congress
 17 enacted the Outdoor Recreation Coordination Act declaring it "desirable that all
 18 American people of present and future generations be assured adequate outdoor
 19 recreation resources". See 16 U.S.C. ' 460L. The Secretary of Interior was authorized to
 20 prepare and maintain "a continuing inventory and evaluation of outdoor recreation needs
 21 and resources". 16 U.S.C. ' 460L-1. This Act also requires consideration of the plans of
 22 federal agencies, states, and the political subdivisions of states, and required the BLM to
 23 cooperate with states, political subdivisions of states and private interests with respect to
 24 outdoor recreation. ' 460L-1(c)(d). The Intermodal Surface Transportation Efficiency Act
 25 16 U.S.C. ' 1302; National Recreational Trails Fund, 26 U.S.C. ' 9511; and National
 26 Trails System Act, 16 U.S.C. ' 1241 provide for the preservation, development and
 27 funding of roads and trails for recreation use. These statutes mandate that trails for
 28 multiple recreation uses be made available for a diversity of motorized and non-
 29 motorized uses. Multiple recreation uses must also be provided for the elderly,
 30 physically challenged and very young in order to provide diversity of recreation
 31 opportunities. See, Americans with Disabilities Act, 42 U.S.C. ' 12111 et seq. All areas
 32 historically accessed by off-road recreational vehicles, mechanized vehicles, horses and
 33 boats should continue to be available for their historical uses. These historically accessed
 34 areas include roads, trails, sandwashes, and waterways identified as Revised Statute 2477
 35 rights-of-ways, including those areas where wild horses may be located.

36 OBJECTIVES

- 37 1) Provide for continued multiple recreation uses for residents and visitors to Eureka
 38 County. Provide recreation in special and extensive recreation management areas,
 39 including those areas where state, federal and/or private funds and materials were or are
 40 considered to be used to provide for recreational facilities.
- 41 2) In compliance with applicable local, state and federal laws, cooperatively plan
 42 trailhead facilities for both motorized and non-motorized access, development and/or

1 maintenance of roads and trails for both motorized and non-motorized access, restoration
2 of those areas that are open to the public for historical recreational uses, e.g. motorized
3 and equestrian access for recreational and competitive events, hunting, fishing, and
4 camping.

5 3) Provide for adequate outdoor recreation resources by revising the designated areas to
6 decrease or eliminate limitations and restrictions where the review and evaluation shows
7 that the limitations and restrictions are no longer appropriate and necessary.

8 4) Plan and establish designated equestrian, foot, and off-road vehicle trail systems for
9 compatible recreational, agricultural, and other multiple uses so that such uses can
10 continue unabated.

11 5) Maintain existing facilities at developed recreational sites and upgrade, reconstruct
12 and/or increase recreation facilities, when needs are indicated by monitoring data.

13 6) Describe methods of minimizing or mitigating documented use conflicts or damage
14 and define the manner in which each method is expected to accomplish minimization or
15 mitigation. All recreation promotion will include explanation of the contribution of
16 private property owners to wildlife habitat, recreation access, and recreation sites.
17 Recreation on private property without the approval of the owner is not permitted or
18 approved.

19 Monitoring:

- 20 • Collect, review and analyze data relating to the demand for recreation use, the
21 impact of the various recreation uses on land values, and any actual conflict or
22 damage caused by each of the multiple recreation uses.
- 23 • In coordination with federal agencies and state and local planning agencies,
24 review all data to determine whether temporary climatic conditions, wildlife
25 activities, or range conditions require temporary or seasonal restrictions or
26 limitations on historic and present recreation uses, and review data to determine
27 the earliest point at which temporary restrictions or limitations can be removed.
- 28 • Collect and maintain data obtained during meetings and discussions with
29 recreation users.
- 30 • Collect and maintain data obtained from community business owners concerning
31 business contacts, sales, and future expectations from recreationists.
- 32 • Collect and maintain records of all management actions taken specifically to meet
33 requirements of the Americans with Disabilities Act (ADA) and maintain records
34 of use and requests for use from ADA eligible individuals.
- 35 • Investigate, validate and document all user conflicts reported to Eureka County
36 and or federal agencies.

37

38

1 Evaluation:

- 2 • Meet annually with interested hunters, fishermen and other recreation users and
3 review the data regarding recreation demands, outdoor recreation resources, and
4 multiple recreation uses and their impact.
- 5 • Coordinate with federal agencies and state and local government planning
6 agencies, to annually review and analyze recreational inventory, classification and
7 designation information to validate the relevance and importance of criteria and
8 the impact on land values and on recreation uses, historic and present.
- 9 • Analyze data on multiple recreational uses in areas with special use designations
10 or which are under study for such designation to identify any adverse impacts on
11 multiple recreational uses.
- 12 • Review data regarding implementation of the Americans with Disabilities Act and
13 whether ADA implementation actions are adequate.

14

15 6.3.10 Wilderness, Areas of Critical Environmental Concern, and Other Restrictive
16 Land Use Classifications

17 GOAL: Seek immediate Congressional designation action on all WSAs and other
18 restrictive land classifications based on Eureka County policy to release these areas for
19 multiple use management and in the interim prevent, minimize or mitigate impairment or
20 degradation of such areas to the extent that Congressional actions are not pre-empted.
21 Provide the amenities promised by wilderness designation through multiple use
22 management that includes dispersed recreation where appropriate and opportunities for
23 solitude.

24

25 PRIMARY PLANNING GUIDANCE ADDRESSED:

26

- 27 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 28 ♦ Tax Base, Eureka County Code 14.12.010.D.2
- 29 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 30 ♦ Air Resources: Eureka County Code 14.12.010.D.4
- 31 ♦ Mining, Eureka County Code 14.12.010.D.5
- 32 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 33 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 34 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 35 ♦ Utility Rights and Public Consumptions, Eureka County Code 14.12.010.D.9
- 36 ♦ Land Disposition/Land Tenure Adjustments, Eureka County Code 14.12.010.D.10
- 37 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 38 ♦ Wilderness, Wilderness Study Areas, Parks and Refuges, Eureka County Code
39 14.12.010.D.12
- 40 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 41 ♦ Access, Eureka County Code 14.12.010.D.14

- 1 ♦ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
- 2 ♦ Wildfire, Eureka County Code 14.12.010.D.16
- 3 ♦ Other Federal Land Use Regulations, Eureka County Code 14.12.010.D.17

4

5 GUIDANCE: The Federal Land Policy and Management Act provide that the Secretary
6 shall review BLM administered lands and recommend those which he finds to meet
7 wilderness characteristics. Between submission of the Secretary's recommendations and
8 final Congressional action, the Act provides that the lands be managed in such manner so
9 as not to impair their wilderness characteristics, "subject, however, to the continuation of
10 existing mining and grazing uses and mineral leasing in the manner and degree in which
11 the same was being conducted on" October 21, 1976. The Act directs prevention of
12 "unnecessary or undue degradation of the lands and their resources" and implementation
13 of environmental protection. Enabling legislation will identify specific management
14 direction for each Wilderness Area or specify that these lands be placed under multiple
15 use management. The Federal Lands Policy & Management Act declares as the policy of
16 the United States that BLM administered lands will be managed in a manner that will
17 protect the quality of scientific, scenic, historical, ecological, environmental, air and
18 atmospheric, water resource and archaeological values, that will provide food and habitat
19 for fish and wildlife and domestic animals, that will provide for outdoor recreation and
20 human occupancy and use, and, where appropriate, will preserve and protect certain
21 BLM administered lands in their natural condition.

22 OBJECTIVES:

- 23 1) Develop comprehensive guidance to Congress seeking release of all WSAs deemed by
24 the Department Interior unsuitable for wilderness designation to multiple use
25 management.
- 26 2) Provide for optimum scenic value in Eureka County through achievement of
27 vegetation and soils watershed objectives and implementation of nondegrading,
28 nonimpairing range improvement activities, construction, use and maintenance of
29 livestock management facilities, and facilities for public enjoyment of the land.
- 30 3) Upon Congressional release, return management policies for the affected area to those
31 consistent with land use plans and the non-wilderness full multiple use concept mandated
32 by Congress in the Federal Land Policy & Management Act and Public Rangelands
33 Improvement Act.
- 34 4) Develop and establish objective scientific classifications of areas providing the
35 amenities of wilderness experience under multiple use management based upon
36 ecological site potential, desired plant community, and ecological condition and trend
37 criteria, soil stability, topography, and proximity of disturbance such as designated
38 military air space.

1 Monitoring:

- 2 • Track the development of Congressional recommendations and Congressional
3 action on WSA's recommendations.
- 4 • Track the data obtained from rangeland studies and document the location, pace,
5 and extent, of improving trends in rangeland vegetation and soil stability.
- 6 • Document the implementation of multiple use management on lands released
7 through Congressional action.
- 8 • Collect data regarding the multiple recreation uses occurring in areas designated
9 or being subjected to potentiality study for special designation such as ACEC or
10 wilderness.

11 Evaluation:

- 12 • Compare current WSA acres recommendations with those remaining at the end of
13 each decade.
- 14 • Determine the extent of change in condition class and trends for watershed
15 uplands and riparian habitat.
- 16 • Compare management of released land for compliance with multiple use guidance
17 provided in land use plans for adjacent land and the Federal Land Policy and
18 Management Act.

19

20 6.3.11 Air Quality

21 GOAL: Prevent significant deterioration of the superior air quality found in Eureka
22 County.

23 PRIMARY PLANNING GUIDANCE ADDRESSED:

24

- 25 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 26 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 27 ♦ Air Resources: Eureka County Code 14.12.010.D.4
- 28 ♦ Mining, Eureka County Code 14.12.010.D.5
- 29 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 30 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 31 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 32 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 33 ♦ Wilderness, Wilderness Study Areas, Parks and Refuges,
34 Eureka County Code 14.12.010.D.12
- 35 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 36 ♦ Pinyon and Juniper Control, Eureka County Code 14.12.010.D.15
- 37 ♦ Wildfire, Eureka County Code 14.12.010.D.16

38

1 GUIDANCE: The Federal Clean Air Act and State of Nevada air quality regulations
2 establish standards and provide guidance to management agencies regarding parameters
3 affecting air quality. Smoke management is one element (both prevention of significant
4 deterioration (PSD) and total suspended particulate (TSP)) of several elements in the
5 National Ambient Air Quality Standards established in the Clean Air Act (1967) and
6 amendments to the Act (1972, 1977).

7 OBJECTIVES:

8 1) Engage the State of Nevada and federal agencies in their industrial air quality
9 permitting process for proposed developments that are likely to diminish air quality in
10 Eureka County.

11 2) Manage smoke from prescribed burns through techniques of smoke avoidance, dilution
12 and emission reduction and limit unnecessary emissions from existing and new point and
13 nonpoint sources through development and implementation of Best Management
14 Practices.

15 3) Engage federal land management agencies in burn planning.

16 4) Conduct prescribed burning at maximum allowed by Clean Air Act and State
17 regulations.

18 Monitoring:

- 19 • Maintain records of both acreage and tonnage burned and compare to allowable
20 values.
21 • Review compliance with best management practices for point source emissions.

22 Evaluation:

- 23 • Review burn calculations and plans to assure that maximums are observed.
24 • Evaluate conformance of prescribed burning plans with requirements and
25 guidelines for air quality and smoke management being developed by the State of
26 Idaho.
27 • Review Best Management Practices as necessary to assure applicability and
28 compliance.
29 • Review annually the backlog of prescribed burns and applications and requests
30 for additional prescribed burns to incorporate them into the following year annual
31 plan.

32

33

34

1 6.3.12 Standards of Conduct

2 GOAL: Ensure that state and federal laws, regulations and policies that affect natural
3 resource and land use are administered in a fair, impartial and ethical manner.

4 PRIMARY PLANNING GUIDANCE ADDRESSED:

- 5
- 6 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
 - 7 ♦ Water Resources, Eureka County Code 14.12.010.D.3
 - 8 ♦ Air Resources: Eureka County Code 14.12.010.D.4
 - 9 ♦ Mining, Eureka County Code 14.12.010.D.5
 - 10 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
 - 11 ♦ Wildlife, Eureka County Code 14.12.010.D.7
 - 12 ♦ Recreation, Eureka County Code 14.12.010.D.8
 - 13 ♦ Utility Rights and Public Consumptions 14.12.010.D.9
 - 14 ♦ Land Disposition and Land Tenure Adjustments 14.12.010.D.10
 - 15 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
 - 16 ♦ Wilderness, Wilderness Study Areas, Parks and Refuges, Eureka County Code
17 14.12.010.D.12
 - 18 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
 - 19 ♦ Access, Eureka County Code 14.12.010.D.14
 - 20 ♦ Wildfire, Eureka County Code 14.12.010.D.16
 - 21 ♦ Other Federal Land Use Regulations 14.12.010.D.17

22 GUIDANCE: An expansive body of state and federal laws direct how government
23 agents may conduct themselves in the performance of their duties. General standards for
24 the ethical conduct of federal employees are found at 5 CFR 2635. These include:

25 Gifts from Outside Sources (Subpart B, § 2635.201). An employee is prohibited from
26 soliciting or accepting any gift from a prohibited source or given because of the
27 employee's official position. A prohibited source is defined as any person who is seeking
28 official action by an agency; who does business or seeks to do business with the agency;
29 who conducts activities regulated by the agency; or, who has interests that may be
30 substantially affected by the performance of an official duty.

31

32 Conflicting Financial Interests (Subpart D, § 2635.401, 18 U.S.C. § 208(a)). An
33 employee is prohibited from participating personally and substantially in an official
34 capacity in any particular matter in which, to his knowledge, he or any person whose
35 interests are imputed to him has a financial interest, if the particular matter will have a
36 direct and predictable effect on that interest.

37

38 Impartiality in Performing Official Duties (Subpart E, § 2635.501). An employee should
39 not participate in a particular matter involving specific parties which he knows is likely to
40 affect the financial interests of a member of his household, or in which he knows a person
41 with whom he has a covered relationship is or represents a party, if he determines that a

1 reasonable person with knowledge of the relevant facts would question his impartiality in
2 the matter. Covered relationships include active participation (which itself is further
3 defined) in an organization.

4
5 Misuse of Position (Subpart G, § 2635.701).

- 6 • An employee shall not use his public office for his own private gain, . . . or for the
7 private gain of friends, relatives, or persons with whom the employee is affiliated
8 in a nongovernmental capacity, including nonprofit organizations of which the
9 employee is an officer or member.
- 10 • An employee shall not engage in a financial transaction using nonpublic
11 information, nor allow the improper use of nonpublic information to further his
12 own private interest or that of another, whether through advice or
13 recommendation, or by knowing unauthorized disclosure.

14
15 Performing an act affecting a personal financial interest in violation of 18 U.S.C. § 208 is
16 punishable both by incarceration and imposition of financial penalties under 18 U.S.C. §
17 216. Violations of the government-wide standards regulations may be cause for
18 appropriate corrective or disciplinary action to be taken under applicable procedures. 5
19 C.F.R. § 2635.106(a). Possible discipline ranges from reprimand to removal. However,
20 a violation of the standards or of supplemental agency regulations, as such, does not
21 create any right or benefit, substantive or procedural, enforceable at law by any person
22 against the United States, its agencies, its offices or employees, or any other person. 5
23 C.F.R. § 2635.106(c).

24
25 The BLM ethics office instructs agency employees at regular training sessions that the
26 agency has “zero tolerance” for conduct which presents an appearance of a lack of
27 impartiality. Employees are also instructed at these sessions that if their views are so
28 divergent from the BLM policy, they should consider seeking employment elsewhere.
29 Analogous standards for US Forest Service employees are found at US Forest Service
30 Manual 6109.

31
32 General requirements for ethical conduct of state employees are found at NRS 281.481.
33 These requirements include, in part:

34
35 1. A public officer or employee shall not seek or accept any gift, service, favor,
36 employment, engagement, emolument or economic opportunity which would tend
37 improperly to influence a reasonable person in his position to depart from the faithful and
38 impartial discharge of his public duties.

39 2. A public officer or employee shall not use his position in government to secure or
40 grant unwarranted privileges, preferences, exemptions or advantages for himself, any
41 business entity in which he has a significant pecuniary interest, or any person to whom he
42 has a commitment in a private capacity to the interests of that person. As used in this
43 subsection:

44 (a) “Commitment in a private capacity to the interests of that person” has the meaning
45 ascribed to “commitment in a private capacity to the interests of others” in subsection 8
46 of NRS 281.501.

1 (b) "Unwarranted" means without justification or adequate reason.
2 3. A public officer or employee shall not participate as an agent of government in the
3 negotiation or execution of a contract between the government and any private business
4 in which he has a significant pecuniary interest.
5 4. A public officer or employee shall not accept any salary, retainer, augmentation,
6 expense allowance or other compensation from any private source for the performance of
7 his duties as a public officer or employee.
8 5. If a public officer or employee acquires, through his public duties or relationships, any
9 information which by law or practice is not at the time available to people generally, he
10 shall not use the information to further the pecuniary interests of himself or any other
11 person or business entity.
12 6. A public officer or employee shall not suppress any governmental report or other
13 document because it might tend to affect unfavorably his pecuniary interests.
14 7. A public officer or employee, other than a member of the Legislature, shall not use
15 governmental time, property, equipment or other facility to benefit his personal or
16 financial interest. This subsection does not prohibit:
17 (a) A limited use of governmental property, equipment or other facility for personal
18 purposes if:
19 (1) The public officer who is responsible for and has authority to authorize the
20 use of such property, equipment or other facility has established a policy allowing the use
21 or the use is necessary as a result of emergency circumstances;
22 (2) The use does not interfere with the performance of his public duties;
23 (3) The cost or value related to the use is nominal; and
24 (4) The use does not create the appearance of impropriety;
25 (b) The use of mailing lists, computer data or other information lawfully obtained
26 from a governmental agency which is available to members of the general public for
27 nongovernmental purposes; or
28 (c) The use of telephones or other means of communication if there is not a special
29 charge for that use.
30 If a governmental agency incurs a cost as a result of a use that is authorized pursuant to
31 this subsection or would ordinarily charge a member of the general public for the use, the
32 public officer or employee shall promptly reimburse the cost or pay the charge to the
33 governmental agency.
34
35 Additional standards are found at NRS 281.491 and NRS 281.501.
36

37 OBJECTIVES:

- 38 1) Engage the State of Nevada and federal agencies in ongoing dialog about ethical
39 performance of duties to minimize the opportunity for ethical violations.
- 40 2) Identify community concerns about violations of ethical standards before the concerns
41 become disruptive.

1 3) Request appropriate audience with supervisory personnel to investigate the merits of
2 ethics violations and resolve questions about ethical standards.

3 4) Pursue legal resolution where ethics violations are valid and agency response is
4 unsatisfactory.

5 Monitoring:

- 6 • Maintain records of reported violations.
- 7 • Document actions to resolve reported violations.

8 Evaluation:

- 9 • Periodically review the occurrence of ethics violations.

10

11 6.3.13 Law Enforcement

12 GOAL: Assert the maximum extent of local authority allowed under law in the
13 enforcement of laws limiting use of and access to natural resources on state and federal
14 lands.

15 PRIMARY PLANNING GUIDANCE ADDRESSED:

16

- 17 ♦ Private Property and Property Rights, Eureka County Code 14.12.010.D.1
- 18 ♦ Water Resources, Eureka County Code 14.12.010.D.3
- 19 ♦ Air Resources: Eureka County Code 14.12.010.D.4
- 20 ♦ Mining, Eureka County Code 14.12.010.D.5
- 21 ♦ Agriculture, Eureka County Code 14.12.010.D.6a and 6b
- 22 ♦ Wildlife, Eureka County Code 14.12.010.D.7
- 23 ♦ Recreation, Eureka County Code 14.12.010.D.8
- 24 ♦ Utility Rights and Public Consumptions 14.12.010.D.9
- 25 ♦ Land Disposition and Land Tenure Adjustments 14.12.010.D.10
- 26 ♦ Riparian Habitat, Eureka County Code 14.12.010.D.11
- 27 ♦ Wilderness, Wilderness Study Areas, Parks and Refuges, Eureka County Code
28 14.12.010.D.12
- 29 ♦ Wild Horses and Burros, Eureka County Code 14.12.010.D.13
- 30 ♦ Access, Eureka County Code 14.12.010.D.14
- 31 ♦ Wildfire, Eureka County Code 14.12.010.D.16
- 32 ♦ Other Federal Land Use Regulations 14.12.010.D.17

33

34 GUIDANCE: Authority of the Eureka County Sheriff and his deputies is found at NRS
35 248. Unless explicitly preempted in authority by state or federal law, the authority of
36 the Eureka County Sheriff shall be controlling for any law enforcement action in

1 Eureka County. With respect to federal access to private property or crossing private
2 property, Eureka County requires the following:

3
4 (1) oral or written permission of the owner or lessor of private property (with evidence
5 of the permission provided to the Sheriff);

6
7 (2) five day advance written notice to the Sheriff of the proposed crossing, said notice
8 to state the following:

9 (a) specific management purpose of the state and/or federal agency proposing the
10 crossing,

11 (b) the names of federal and non-federal persons to make the crossing,

12 (c) a statement of the specific status of any non-state and/or federal employee as
13 "interested public" to a specific grazing allotment;

14
15 (3) if the crossing is by vehicle, the vehicle must be owned by the Government and
16 operated by a state and/or federal official;

17
18 (4) if the crossing is on foot, state and/or federal employees "must be present and in
19 direct supervision and control" of the persons who are not state and/or federal
20 employees;

21
22 (5) the access must involve no activity on the private property other than movement
23 across it for access to federal land, thus prohibiting inspection, photographing or
24 videotaping of private property.

25 26 Law Enforcement

27
28 The County will continue positive planning for law enforcement in Eureka County,
29 urging consultation, cooperation and coordination between the Bureau of Land
30 Management, other federal and state agencies and local law enforcement personnel. The
31 County will provide to protect all Eureka County citizens, private property rights, and
32 natural resources located within the county while complying with Nevada laws, the
33 Nevada Constitution, county ordinances, Federal laws and The United States
34 Constitution.

35 Increasingly, the Bureau of Land Management and other Federal agencies have become
36 involved in law enforcement activities in Eureka County, acting as peace officers and
37 enforcing Federal laws and regulations in addition to state and local laws. These
38 activities have become of increasing concern to the citizens of Eureka County, who feel
39 that federal agencies have become increasingly difficult and dangerous to work with.
40 The Eureka County Natural Resources Advisory Commission, the Board of Eureka
41 County Commissioners, the Eureka County Sheriff and the Eureka County Prosecuting
42 Attorney have felt pressure from their constituents to protect the public and to address the
43 problem in a positive manner. The Eureka County Natural Resources Advisory
44 Commission; the Board of County Commissioners, the Prosecutor, and the Sheriff will
45 continue working with the BLM and other federal agencies to guarantee that both the
46 Constitutions of Nevada and the United States, and all statutes and laws are followed in

1 relation to federal law enforcement activities in Eureka County. As Eureka County has
2 been involved in land use planning for more than five years, the Eureka County
3 Prosecuting Attorney, in conjunction with the Eureka County Sheriff will begin planning
4 for law enforcement activities in the county on state and federal land.

5 The Federal Land Policy and Management Act of 1976 requires the Bureau of Land
6 Management and other agencies under the authority of the Secretary of Interior to
7 coordinate ALL land management activities with county and state governments involved
8 with land use planning USC 1712(c)(9). The Eureka County Sheriff is authorized as the
9 primary law enforcement agent in the County and the Eureka County Land use Natural
10 Resources Advisory Commission will assist the County Sheriff in his attempts to secure
11 coordination by federal agencies. Federal laws that simply duplicate existing state and
12 local laws are still within the primary law enforcement jurisdiction of the state, a field
13 Congress did not intend to usurp, but Congress did intend that any new laws it passed
14 should be enforceable.

15 The Federal Land Policy and Management Act of 1976 in USC 1733(c)(2) addressed the
16 issue by mandating that the Secretary of the Interior "authorize Federal personnel or
17 appropriate local officials to carry out his law enforcement with respect to the public
18 lands and their resources." The Act gives the AUTHORIZING discretion to the
19 Secretary of the Interior not so he can preempt police powers of the state, but so that he
20 can authorize local officials to enforce Federal laws and regulations on public lands. The
21 law becomes even more detailed on the issue when it provides in section 1733(c)(1) that:
22 "When the Secretary determines that assistance is necessary in enforcing Federal laws
23 and regulation relating to the public lands or their resources, he shall offer a contract to
24 appropriate local officials having law enforcement authority within their respective
25 jurisdictions with the view of achieving maximize feasible reliance upon local law
26 enforcement officials..."

27 Although Congress did direct the Secretary of the Interior to authorize the enforcement of
28 federal laws on federal lands, Congress did not attempt to preempt states' police powers.
29 Specifically, in 43 USC 1701 of the Federal Land Policy and Management Act, Congress
30 mandates that "Nothing in this Act shall be construed as...a limitation upon the police
31 power of the respective States, or as derogating the authority of a local police of flier in
32 the performance of his duties, or as depriving any State or political subdivision thereof of
33 any right it may have to exercise civil and criminal jurisdiction on the national resource
34 lands." The County will seek full consultation, coordination, and cooperation with the
35 Bureau of Land Management and other agencies, and will also work with the Eureka
36 County Sheriff to provide for the safety of Eureka County citizens and the protection of
37 the land and resources located on federally-managed land in Eureka County.

38 OBJECTIVES:

39 1) Ensure that the people of Eureka County are adequately represented in all law
40 enforcement activities that occur on state and federal lands within the County's borders
41 or involve federal actions affecting private property within the County's borders.

42 2) Identify and address community concerns about enforcement of state and federal laws
43 related to use of natural resources and access to state and federal lands.

1 3) Resolve questions of law regarding appropriate authority over the regulation of natural
2 resources on state and federal land and access to state and federal lands.

3 Monitoring:

- 4 • Maintain records of questionable law enforcement actions by state or federal
5 agents.
6 • Document actions to resolve reported violations of state or federal law
7 enforcement authority.

8 Evaluation:

- 9 • Periodically review the occurrence of transgressions of authority.

10

1 **6.4 RESOURCE SPECIFIC PLANS, STANDARDS, AND GUIDELINES**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

6.4.1 THREATENED AND ENDANGERED SPECIES
(under development)

6.4.2 WATER QUALITY MANAGEMENT
(under development)

6.4.3 RANGELAND MONITORING
(under development)

6.4.4 STANDARDS AND GUIDELINES FOR RANGELANDS
(under development)

6.4.5 INVASIVE WEED AND INSECT PEST ABATEMENT
(under development)

1 **6.5 FEDERAL LAWS, STATE LAWS, AND OTHER LEGAL CITATIONS**

2
3 Following are excerpts from various laws, regulations, and some supporting court
4 decisions that have been used to guide development of the Natural Resources & Land
5 Use Element of the Eureka County Master Plan. This section is not intended to be a
6 comprehensive source of reference, but is illustrative of the Federal and State laws and
7 regulations that may either benefit or burden the citizens of Eureka County.

8
9
10 Eureka County recognizes that each regulation in the Code of Federal Regulations (CFR)
11 has, as its authority, an original law recorded in the United States Code (USC) that
12 specifies or limits the scope of the regulation. Any reference to a portion of the CFR is
13 also, by inference, dependent on the specific language of the respective law(s).
14 Similarly, Nevada Administrative Code (NAC) is founded in an original law recorded in
15 Nevada Revised Statute (NRS). Section 6.3.2 guides state and federal proposals for land
16 use regulation or management, and Eureka County cooperation with these agencies.

17
18
19
20 6.5.1 Federal laws regulating resource use, conservation, and land management

21
22 6.5.1.01 Bureau of Land Management land use planning

23
24 In accordance with these Federal Acts - - - The Taylor Grazing Act, The Federal
25 Land Policy and Management Act and The Public Rangelands Improvement Act -
26 - - the Bureau of Land Management is required to preserve the stability of the
27 western livestock industry and to provide for multiple use management including
28 necessary range improvements for the benefit of livestock production, wildlife
29 habitat, watershed protection, and recreation. These federal mandates can be met
30 only by management of all federally managed lands within Eureka County in such
31 a way as to provide for continued use of allocated forage by permitted livestock
32 and to work toward the restoration of forages to recover suspended AUMs. The
33 Act requires management practices designed to improve the range so that it will
34 support "expansion of the forage resource" to the benefit of livestock production.
35 The mandate of the Act is not furthered by management practices designed to
36 reduce grazing in order to improve the range. Such practices reverse the
37 Congressional mandate set forth in the statute.

38 Range improvements necessary to maintain current levels of livestock production,
39 wildlife habitat, watershed protection, and recreation opportunity must be
40 identified by the Bureau of Land Management and either by BLM employees or
41 as identified by Eureka County. The Secretary of Interior, and therefore the
42 Bureau of Land Management, is committed by statute to preserving the stability
43 of the livestock industry. The stability of that industry as a whole is directly
44 related to the stability of the individual ranches that make up the industry,

1 including those in Eureka County. The stability of the livestock industry in the
2 County requires that the statutory mandates be followed.

3 The quality of economic life of Eureka County as well as the scientific, scenic,
4 historical, ecological, environmental, air and atmospheric, water resource, and
5 archaeological values which are part of life in the County protected by the Federal
6 Land Policy and Management Act require that the statutory mandates for
7 stabilizing the livestock industry be followed. This includes, in part: (1)
8 coordination of federal actions with the County; (2) federal agents resolving
9 inconsistencies between the federal proposal and the established County plan; and
10 (3) actions specifically designed to complete consultation, cooperation, and
11 coordination requirements.

12
13 6.5.1.02 Federal Land Policy and Management Act (“FLPMA”)
14

15 The Bureau of Land Management (“BLM”) must follow the consistency and
16 coordination requirements in FLPMA “when the Secretary is making decisions
17 directly affecting the actual management of the public lands,” whether formally
18 characterized as “resource management plan” activity or not. [Uintah County,
19 Utah v. Norton, Civ. No. 2:00-CV-0482J](#) (Memorandum Opinion, September 21,
20 2001) citing [State of Utah v. Babbitt, 137 F. 3d 1193, 1208 \(10th Cir. 1998\)](#).

21
22 In addition to public involvement, the BLM is obligated to coordinate its planning
23 processes with local government land use plans. [43 C.F.R. § 1610.3-1\(a\)](#).
24

25 In providing guidance to BLM personnel, the BLM State Director shall assure
26 such guidance is as "consistent as possible with existing officially adopted and
27 approved resource related plans, policies or programs of other Federal agencies,
28 State agencies, Indian tribes and local governments that may be affected. . . ." [43
29 C.F.R. § 1610.3-1\(c\)\(1\)](#).
30

31 The BLM is obligated to take all practical measures to resolve conflicts between
32 federal and local government land use plans. Additionally, the BLM must
33 identify areas where the proposed plan is inconsistent with local land use policies,
34 plans or programs and provide reasons why inconsistencies exist and cannot be
35 remedied. [43 C.F.R. §§ 1610.3-1\(c\),\(2\),\(3\)](#).
36

37 The BLM “shall provide other Federal agencies, State and local governments, and
38 Indian tribes opportunity for review, advice, and suggestion on issues and topics
39 which may affect or influence other agency or other government programs. To
40 facilitate coordination with State governments, State Directors should seek the
41 policy advice of the Governor(s) on the timing, scope and coordination of plan
42 components; definition of planning areas; scheduling of public involvement
43 activities; and the multiple use opportunities and constraints on public lands.” [43
44 C.F.R. § 1610.3-1\(b\)](#).
45

1 “A notice of intent to prepare, amend, or revise a resource management plan shall
2 be submitted, consistent with State procedures for coordination of Federal
3 activities, for circulation among State agencies. This notice shall also be
4 submitted to Federal agencies, the heads of county boards other local government
5 units and Tribal Chairmen or Alaska Native Leaders that have requested such
6 notices or that the responsible line manager has reason to believe would be
7 concerned with the plan or amendment. These notices shall be issued
8 simultaneously with the public notices required under § 1610.2(b) of this title.”
9 [43 C.F.R. § 1610.3-1\(d\)](#).

10
11 “Federal agencies, State and local governments and Indian tribes shall have the
12 time period prescribed under § 1610.2 of this title for review and comment on
13 resource management plan proposals. Should they notify the District or Area
14 Manager, in writing, of what they believe to be specific inconsistencies between
15 the Bureau of Land Management resource management plan and their officially
16 approved and adopted resources related plans, the resource management plan
17 documentation shall show how those inconsistencies were addressed and, if
18 possible, resolved.” [43 C.F.R. § 1610.3-1\(e\)](#)

19
20 The BLM plan must be consistent with officially approved and adopted local land
21 use plans, as long as such local plans are consistent with federal law and
22 regulations. [43 C.F.R. § 1610.3-2\(a\)](#).

23
24 Prior to BLM resource management plan or management framework plan
25 approval, the BLM shall submit a list of known inconsistencies between the BLM
26 plans and local plans to the governor. [43 C.F.R. § 1610.3-2\(e\)](#).

27
28 The BLM has no duty to make its plan consistent with a local government plan, if
29 the BLM is not notified by the local government of the existence of its local plan.
30 [43 C.F.R. § 1610.3-2\(c\)](#).

31 32 33 34 6.5.1.03 Public Rangelands Improvement Act of 1978 (PRIA)

35 (43 U.S.C. 1901-1908)

36
37 The Public Rangelands Improvement Act of 1978. 43 U.S.C. § 1901-1908,
38 provides that the Secretary of Interior "shall manage the public rangelands in
39 accordance with the Taylor Grazing Act, the Federal Land Policy and
40 Management Act of 1976 and other applicable law consistent with the public
41 rangelands improvement program pursuant to this Act." See 43 U.S.C. §1903,
42 which also provides that:

43 "the goal of such management shall be to improve the range conditions of
44 the public rangelands so that they become as productive as feasible in
45 accordance with the rangeland management objectives established through

1 the land use planning process, and consistent with the values and
2 objectives listed in [Section 1901]."

3 The values and objectives listed in Section 1901 by which the Secretary was to be
4 guided include a finding and declaration by the Congress that:

5 "to prevent economic disruption and harm to the western livestock
6 industry, it is in the public interest to charge a fee for livestock grazing
7 permits and leases on the public lands which is based on a formula
8 reflecting annual changes in the costs of production." 43 U.S.C. § 1901 (a)
9 (5)."

10
11 The Congress further found and declared that one of the reasons the Public
12 Rangelands Improvement Act was necessary is that segments of the public
13 rangelands were producing less "than their potential for livestock" and that
14 unsatisfactory conditions on some public rangelands prevented "expansion of the
15 forage resource and resulting benefits to livestock and wildlife production." 43
16 U.S.C. § 1901 (a) (3). The Act mandates improvement of the rangelands in order
17 to increase the potential for livestock development and to prevent economic harm
18 to the "western livestock industry."

19
20
21 6.5.1.04 Taylor Grazing Act of 1934 (TGA)
22 (43 U.S.C. 315)

23 The Taylor Grazing Act of 1934, 43 U.S.C. § 315, was passed primarily to
24 provide for stabilization of the western livestock industry. The Act authorized the
25 Secretary of Interior to establish grazing districts in those federally managed lands
26 which were "chiefly valuable for grazing and raising forage crops." The Secretary
27 was authorized to act in a way that would "promote the highest use of the public
28 lands." 43 U.S.C. § 315. The Act authorized the Secretary to issue grazing permits
29 on a preferential basis with preference to be given to those "land owners engaged
30 in the livestock business," "bona fide occupants or settlers," or "owners of water
31 or water rights." 43 U.S.C. § 315 (b). The Secretary was authorized to take action
32 to stabilize the livestock industry which was recognized as necessary to the
33 national well-being.

34 The Act also recognized the property interests of a permittee in the form of an
35 investment backed expectation in § 315 (b). That Section provided that no
36 preference would be given to any person whose rights were acquired during the
37 year 1934 except that the Secretary could not deny the renewal of any such permit
38 "if such denial will impair the value of the grazing unit of the permittee, when
39 such unit is pledged as security for any bona fide loan."

40
41 6.5.1.05 Forest Service Land Use Planning

42 Forest Service administered areas within Eureka County are regulated by either
43 the Tonopah Ranger District or the Austin Ranger District of the Humboldt-

1 Toiyabe National Forest. Land Use Plans for the grazing allotments within the
2 Monitor Mountain Range are scheduled for revision in 2006.

3
4 6.5.1.06 Forest Service Organic Act (FSOA) June 4, 1897

5
6 FSOA was preceded by the Forest Reserve Act of March 3, 1881 which
7 recognized the prior appropriation of water doctrine and expanded ditch rights-of-
8 ways. FSOA was followed by the Forest Service Rights-Of-Way Act of March 3,
9 1899 which authorized granting of rights-of-way through Forest Reserves.

10
11 The US Supreme Court in *United States vs. New Mexico* (1978) explained that
12 Forest Reserves (and later National Forests) were established by Congress to
13 “conserve the water flows and to furnish a continuous supply of timber for the
14 people.” The water was specifically to be used for “domestic, mining, milling, or
15 irrigation purposes” as specified in the Organic Administration Act of 1897, 316
16 U.S.C. Sect 481. The Court further stated that “As this provision and its
17 legislative history evidence, Congress authorized the national forest system
18 principally as a means of enhancing the quantity of water that would be available
19 to the settlers of the arid West.” As explained by McIntosh (2002) Congress
20 recognized that the split-estate settlement and development, the water, timber, and
21 associated rights-of-way were intended to be appropriated and used by the bona
22 fide residents, settlers, miners and prospectors for minerals. It was this class of
23 citizens, who were to be the beneficiaries of the forest reserves. As stated by the
24 Court in *U.S. v. New Mexico*, 1978, “They are not parks set aside for nonuse, but
25 have been established for economic reasons.” This history of the Forest Service
26 illustrates that National Forests have as a primary purpose the support of the
27 economic health of the nearby communities and as explained by McIntosh, they
28 were “...not been established for environmental preservation purposes.” Eureka
29 County supports the use of National Forest Administered lands for the purposes of
30 recreation, environmental protections, and other such amenities so long as those
31 objectives remain secondary to the purposes for which the National Forest
32 Reserves were established.

33
34
35
36 6.5.1.07 National Forest Management Act (“NFMA”)

37
38 [T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise
39 land and resource management plans for units of the National Forest System,
40 coordinated with the land and resource management planning processes of State
41 and local governments and other Federal agencies. [16 U.S.C. § 1604\(a\)](#).

42 The Forest Service is obligated to consider and provide for "community stability"
43 Forest Service, United States Department of Agriculture, *The Use Book*, 13 (1906
44 ed.) in its decision making processes. [36 C.F.R. § 221.3\(a\)\(3\)](#) See also S. Rept.
45 No. 105.22; 30 Cong. Rec. 984 (1897); *The Use Book* at 17.

1 The Forest Service is obligated to coordinate with equivalent and related planning
2 efforts of local governments. [36 C.F.R. § 219.7\(a\)](#).

3
4 The Forest Service is obligated to meet with local governments, to establish
5 process for coordination. At a minimum, coordination and participation with
6 local governments shall occur prior to Forest Service selection of the preferred
7 management alternative. [36 C.F.R. § 219.7\(d\)](#).

8
9 The Forest Service is obligated, after review of the county plan, to display the
10 results of its review in an environmental impact statement. [36 C.F.R. § 219.7\(c\)](#);
11 See also [40 C.F.R. §§ 1502.16\(c\)](#) and [1506.2](#).

12
13 The Forest Service is obligated to consider alternatives to its proposed alternative
14 if there are any conflicts with county land use plans. [36 C.F.R. § 219.7\(c\)\(4\)](#).

15
16 The Forest Service is required to implement monitoring programs to determine
17 how the agency's land use plans affect communities adjacent to or near the
18 national forest being planned. [36 C.F.R. § 219.7\(f\)](#).

19 20 6.5.1.08 Clean Air Act

21
22 [T]he prevention and control of air pollution "at its source is the primary
23 responsibility of States and local governments" [42 U.S.C. § 7401\(a\)\(3\)](#).

24
25 "[F]ederal financial assistance and leadership is essential for the development of
26 cooperative Federal, State, regional, and local programs to prevent and control air
27 pollution." [42 U.S.C. § 7401\(a\)\(4\)](#).

28
29 The federal government "shall encourage cooperative activities by the States and
30 local governments" [42 U.S.C. § 7402\(a\)](#).

31
32 Each State "shall provide a satisfactory process of consultation with general
33 purpose local governments" [42 U.S.C. § 7421](#).

34 35 36 6.5.1.09 Clean Water Act

37
38 "Federal agencies shall co-operate with State and local agencies to develop
39 comprehensive solutions to prevent, reduce and eliminate pollution in concert
40 with programs for managing water resources." [33 U.S.C. § 1251\(g\)](#).

41
42 The Environmental Protection Agency "shall, after careful investigation, and in
43 cooperation with other Federal agencies, State water pollution control agencies,
44 interstate agencies, and the municipalities and industries involved, prepare or
45 develop comprehensive programs for preventing" water pollution. [33 U.S.C. §](#)
46 [1252\(a\)](#).

1 Section 404 of the Clean Water Act regulates the placement of fill material into
2 wetlands, and defines what wetlands are for purposes of regulation. This section
3 is jointly administered by at least four federal agencies.
4

5 6.5.1.10 Endangered Species Act

6
7 “[N]ot less than ninety days before the effective date of the regulation,” the U.S.
8 Fish and Wildlife Service (“FWS”) is required to give actual notice to
9 local governments of its intent to propose a species for listing or change or
10 propose critical habitat. [16 U.S.C. § 1533\(b\)\(5\)\(A\)\(ii\)](#).
11

12 Once notified, the local government has the opportunity to comment on the
13 proposed species listing or critical habitat designation. [50 C.F.R. §](#)
14 [424.16\(c\)\(i\)\(ii\)](#).
15

16 The FWS must directly respond to the "State agency"^[2] comments. [16 U.S.C. §](#)
17 [1533\(i\)](#).
18

19 Other federal agencies must also consider local government and public comments
20 regarding the management of threatened or endangered species. [16 U.S.C. §](#)
21 [1533\(f\)\(5\)](#).
22

23 Section 2 (c)(2) instructs federal agencies to cooperate with State and local
24 agencies to resolve water resource issues in concert with conservation of
25 endangered species. [16 U.S.C. § 1531 \(c\)\(2\)](#)
26

27 The listing of a species as threatened or endangered by the FWS is to be based on
28 the “best scientific and commercial data available.” [16 U.S.C. § 1533\(b\)\(1\)\(A\)](#).
29

30 The FWS shall list species only after taking into account efforts of State or
31 political subdivisions to protect the species. [16 U.S.C. § 1533\(b\)\(1\)\(A\)](#).
32

33 Critical habitat designations must take economic impacts into account. Areas
34 may be excluded as critical habitat based upon economic impacts unless the
35 failure to designate the area as critical habitat would result in extinction of the
36 species. [16 U.S.C. § 1533\(b\)\(2\)](#).
37

38 The FWS is required to complete full NEPA documentation when designating
39 critical habitat. [Commission of Catron County v. U.S.F.W.S.](#), 75 F.3d 1429 (10th
40 Cir. 1996).
41

42 The Secretary “shall develop and implement [recovery] plans for the . . . survival
43 of endangered species . . . unless he finds that such a plan will not promote the
44 conservation of the species.” [16 U.S.C. § 1533\(f\)\(1\)](#).
45

1 According to the ESA section 7 consultation regulations, an applicant “refers to
2 any person . . . who requires formal approval or authorization from a Federal
3 agency as a prerequisite to conducting agency action. [50 C.F.R. § 402.02](#).
4 “Although early consultation is conducted between the Service [FWS] and the
5 Federal agency, the prospective applicant should be involved throughout the
6 consultation process. [50 C.F.R. § 402.11\(a\)](#). The Biological Assessment or
7 Biological Evaluation (“BA”), i.e., the document created by the federal agency
8 containing the proposed action, may be prepared by a non-Federal representative.
9 [50 C.F.R. § 402.12\(a\)](#) to (c).

10
11 The Sensitive Species Program was created on January 6, 1989 by the FWS and is
12 implemented by all federal agencies. These federal agencies are to give "special
13 consideration" to those plant and animal species that the FWS is considering for
14 listing but lacks the scientific data to list. 54 Fed. Reg. 554 (January 6, 1989).

15
16
17 6.5.1.11 National Environmental Policy Act (“NEPA”)

18
19 All federal agencies shall prepare an environmental impact statement (“EIS”) or
20 an environmental assessment (“EA”), (i.e. a NEPA document) for "every
21 recommendation or report on proposals for legislation and other major Federal
22 actions significantly affecting the quality of the human environment." [42 U.S.C.](#)
23 [§ 4332\(2\)\(c\)](#).

24
25 Such EIS or EA shall include, among other things, alternatives to the proposed
26 action. [42 U.S.C. § 4332\(C\)\(iii\)](#).

27
28 Each EIS or EA shall also contain a “no action” alternative which describes the
29 status quo. [Natural Resources Defense Council v. Hodel](#), 624 F.Supp. 1045, 1054
30 (D. Nev. 1985).

31
32 Culture is defined as the customary beliefs, social forms and material traits of a
33 group; an integrated pattern of human behavior passed to succeeding generations.
34 *Webster's New Collegiate Dictionary*, 277 (1975).

35
36 A custom is a usage or practice of the people, which, by common adoption and
37 acquiescence, and by long and unvarying habit, has become compulsory and has
38 acquired the force of law with respect to the place or subject-matter to which it
39 relates. *Bouvier's Law Dictionary*, 417 (1st ed. 1867).

40
41 Copies of comments by State or local governments must accompany the EIS or
42 EA throughout the review process. [42 U.S.C. § 4332\(C\)](#).

1 Federal agencies shall “consult [] early with appropriate state and local agencies
2 and Indian tribes and with interested private persons and organizations when its
3 own involvement is reasonably foreseeable.” [40 C.F.R. § 1501.2\(d\)\(2\)](#).

4
5 Local governments shall be invited to participate in the scoping process. [40](#)
6 [C.F.R. § 1501.7\(a\)\(1\)](#).

7
8 Federal agencies shall cooperate “to the fullest extent possible to reduce
9 duplication” with State and local requirements. Cooperation shall include:

- 10 (1) Joint planning
11 (2) Joint environmental research
12 (3) Joint hearings
13 (4) Joint environmental assessments. [40 C.F.R. § 1506.2](#)
14 [40 C.F.R. § 1506.2\(b\)](#).

15
16 Agencies shall cooperate with State and local agencies to the fullest extent
17 possible to reduce duplication between NEPA and comparable State and local
18 requirements, unless the agencies are specifically barred from doing so by law.
19 Such cooperation shall to the fullest extent possible include joint environmental
20 impact statements. In such cases one or more Federal agencies shall be joint lead
21 agencies. Where State laws or local ordinances have environmental impact
22 statement requirements in addition to but not in conflict with those in NEPA,
23 Federal agencies shall cooperate in fulfilling these requirements as well as those
24 of Federal laws so that one document will comply with all applicable laws. [40](#)
25 [C.F.R. § 1506.2\(c\)](#).

26
27 Federal, State, or local agencies, including at least one Federal agency, may act as
28 joint lead agencies to prepare an environmental impact statement. [40 C.F.R. §](#)
29 [1501.5\(b\)](#).

30
31 Any Federal agency, or any State or local agency or a private person substantially
32 affected by the absence of lead agency designation, may make a written request to
33 the potential lead agency that a lead agency be designated. [40 C.F.R. § 1501.5\(d\)](#).

34
35 A State or local agency of similar qualifications [one who has special expertise] . .
36 . may by agreement with the lead agency become a cooperating agency. [40](#)
37 [C.F.R. § 1508.5](#).

38
39 To better integrate EIS into State or local planning processes, such statement shall
40 discuss any inconsistency of a proposed action with any approved State or local
41 plan and laws (whether or not federally sanctioned). Where an inconsistency
42 exists, the statement should describe the extent to which the agency would
43 reconcile its proposed action with the plan or law. [40 C.F.R. § 1502.16\(c\)](#).

44
45 Environmental impact statements must discuss any "inconsistency of a proposed
46 action with any approved State or local plan and laws (whether or not federally

1 sanctioned). Where an inconsistency exists, the [EIS] should describe the extent
2 to which the agency would reconcile its proposed action with the plan or law.” [40](#)
3 [C.F.R. § 1506.2\(d\)](#).

4
5 Appropriate mitigation measures must be included in the EIS. [40 C.F.R. §](#)
6 [1502.14\(F\)](#). Mitigation includes (a) avoiding the impact altogether, (b) limiting
7 the degree of the impact, (c) repairing, rehabilitating or restoring the affected
8 environment, (d) reducing the impact by preservation opportunities, or (e)
9 compensating for the impact by replacing or providing substitute resources or
10 environments. [40 C.F.R. § 1508.20](#).

11
12 Federal agencies shall circulate the entire draft and final EIS, or if the EIS is
13 unusually long, a summary of the EIS, to State and local agencies authorized to
14 develop and enforce environmental standards. [40 C.F.R. § 1502.19\(a\)](#).

15
16 A local government, because of a concern for its environment, wildlife, socio-
17 economic impacts and tax base, has standing to sue federal agencies and seek
18 relief for violations of NEPA. [Commission of Catron County v. U.S.F.W.S., 75](#)
19 [F3d 1429 \(10th Cir. 1996\)](#).

20 21 22 6.5.1.12 Revised Statute 2477 (R.S. 2477)

23
24 Revised Statute 2477 provides that “the right of way for the construction of
25 highways over public lands, not reserved for public uses, is hereby granted.” The
26 Act of July 26, 1866, ch. 262, § 8, 14 STAT. 251, 253 (1866) (formerly codified
27 at 43 U.S.C. § 932).

28
29 The grant is self-executing; an R.S. 2477 right-of-way comes into existence
30 “automatically” when the requisite elements are met. See [Shultz v. Department of](#)
31 [Army](#), 10 F.3d 649, 655 (9th Cir. 1993).

32
33 One hundred and ten years after its enactment, R.S. 2477 was repealed with the
34 passage of the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43
35 U.S.C. § 1701 *et seq.* See 43 U.S.C. § 932, repealed by Pub. L. No. 94-579, §
36 706(a), 90 STAT. 2743, 2793 (1976). However, FLPMA explicitly preserved
37 any rights-of-way that existed before October 21, 1976, the date of FLPMA’s
38 enactment. See [43 U.S.C. § 1769\(a\)](#).

39 40 41 42 6.5.1.13 Wild and Free-Roaming Horse and Burro Act

43 The Wild and Free-Roaming Horse and Burro Act of 1971 (as amended by the
44 Public Range Land Improvement Act of 1978) requires the BLM to “immediately
45 remove excess animals from the range so as to achieve appropriate management
46 levels”. Congress defines ‘excess animals’ as “wild free roaming horses or burros

1 which must be removed from an area in order to preserve and maintain a thriving
2 natural ecological balance and multiple-use relationship." The 1978 Conference
3 Committee stated: "The goal of wild horse and burro management, as with all
4 Range Management Programs, should be to maintain a thriving ecological
5 balance between wild horse and burro populations, wildlife, livestock, and
6 vegetation, and to protect the range from the deterioration associated with over
7 population of wild horses and burros." There are no provisions in the Wild and
8 Free-Roaming Horse and Burro Act for allocating forage or water to horses and
9 burros protected under the law.

10
11 6.5.1.14 Wild and Scenic Rivers Act

12
13 NOTE: This law does not apply directly within Eureka County at this date. It
14 does illustrate the concern of Congress for property rights and local culture.

15
16 It is Congressional policy to protect "historic, cultural or other similar values . . ."
17 in free-flowing rivers or segments thereof. [16 U.S.C. § 1271](#).

18
19 Wild and scenic river designations on federal lands cannot affect valid existing
20 rights. [16 U.S.C. § 1279\(b\)](#).

21
22 The Secretary of the Interior, the Secretary of Agriculture, or the head of any other
23 Federal agency, shall assist, advise and cooperate with States or their political
24 subdivisions . . . to plan, protect, and manage river resources. Such assistance,
25 advice, and cooperation may be through written agreements or otherwise. [16](#)
26 [U.S.C. § 1282\(b\)\(1\)](#).

27
28 Under the Wild and Scenic Rivers Act, "any taking by the United States of a
29 water right which is vested under either State or Federal law . . . shall entitle the
30 owner thereof to just compensation." [16 U.S.C. § 1284\(b\)](#).

31
32 The study of any river for designation under the Act "shall be pursued in as close
33 cooperation with appropriate agencies of the affected State and its political
34 subdivisions as possible, [and] shall be carried on jointly, if request for such joint
35 study is made by the State" [16 U.S.C. § 1276\(c\)](#).

36
37 "The Federal agency charged with the administration of any component of the
38 national wild and scenic rivers system may enter into written cooperative
39 agreements with . . . the appropriate official of a political subdivision of a State
40 for State or local governmental participation in the administration of the
41 component." [16 U.S.C. § 1281\(e\)](#).

42
43 Wild and scenic river designations cannot affect valid existing leases, permits,
44 contracts or other rights. [16 U.S.C. § 1283\(b\)](#).

1 The federal government is precluded from condemning or taking private land
2 adjacent to a wild or scenic river so long as the local zoning ordinances protect
3 the value of the land. [16 U.S.C. § 1277\(c\)](#).
4
5
6

7 6.5.2 Federal laws about data standards, intergovernmental cooperation, information
8 quality and sharing
9

10 6.5.2.01 Federal Advisory Committee Act, October 6, 1972
11

12 Public Law 92-463 (86 Stat.770) is enforceable through the Administrative
13 Procedure Act (APA).
14

15 Committee requires clear designation of name, purpose, duties, and duration (time
16 it will be in place).
17

18 Each Advisory Committee meeting shall be open to the public, allow for
19 interested parties to attend, appear before the committee, and file statements.
20

21 Records, reports, transcripts, minutes, agendas, and other records shall be
22 available for public display.
23
24

25 6.5.2.02 Federal Data Quality Act (“FDQA”)
26 (See the Paperwork Reduction Act, also)
27

28 Congress originally included this process in the Paperwork Reduction Act of
29 1995. OMB and other levels of organization within the Executive Branch ignored
30 the law until, in 2000, Congress ordered specific actions and deadlines for the
31 Executive branch to complete by 2002. Some agencies refer to their compliance
32 with Data Quality as Information Quality.
33

34 The FDQA directs the Office of Management and Budget (“OMB”) to issue
35 government-wide guidelines that “provide policy and procedural guidance to
36 Federal agencies for ensuring and maximizing the quality, objectivity, utility and
37 integrity of information (including statistical information) disseminated by
38 Federal agencies.” [515\(a\) of Pub.L. No. 106, 554, 114 Stat. 2763 \(2000\)](#).
39

40 See Office of Management and Budget (OMB), “Guidelines for Office of
41 Management and Budget (OMB), “Guidelines for Ensuring and Maximizing the
42 Quality, Objectivity, Utility, and Integrity of Information Dissemination by
43 Federal Agencies,” *Federal Register*, Vol. 67, No. 2, January 3, 2002
44

45 The OMB guidelines apply to all federal agencies and require that information
46 disseminated by the Federal government will meet basic informational quality
47 standards. [66 Fed. Reg. 49719](#).

1 This “standard of quality” essentially requires that data used and published by all
2 Federal agencies meet four elements. These elements include:

- 3
4 (a) quality
5 (b) utility (i.e. referring to the usefulness of the data for its
6 intended purpose)
7 (c) objectivity (i.e. the data must be accurate, reliable, and unbiased)
8 (d) integrity
9

10 66 Fed. Reg. at 49719.

11
12 In addition to following the OMB guidelines, all federal agencies were to issue
13 data quality guidelines by October 1, 2002. (67 Fed. Reg. 9797). Each agency has
14 complied, and now has both the requirements for data quality assessment in
15 accordance with law, and in accordance with their specific policies.
16

17 Peer review, as a requirement to assure the quality and credibility of scientific
18 data, has been extensively discussed by the Office of Management and Budget in
19 the “Final Information Quality Bulletin for Peer Review”, 45 pages, as released
20 December 16, 2004 (file code M-05-03). OMB defines the term “Peer Review”,
21 and specifies the procedures each agency is to follow including the qualifications
22 required of peer reviewers.
23

24 OMB defines peer review as: “one of the important procedures used to ensure
25 that the quality of published information meets the standards of the scientific and
26 technical community. It is a form of deliberation involving an exchange of
27 judgments about the appropriateness of methods and the strength of the author’s
28 inferences. Peer review involves the review of a draft product for quality by
29 specialists in the field who were not involved in producing the draft. The peer
30 reviewer’s report is an evaluation or critique that is used by the authors of the
31 draft to improve the product. Peer review typically evaluates the clarity of
32 hypotheses, the validity of the research design, the quality of data collection
33 procedures, the robustness of the methods employed, the appropriateness of the
34 methods for the hypotheses being tested, the extent to which the conclusions
35 follow from the analysis, and the strengths and limitations of the overall product.”
36
37

38 6.5.2.03 Federal Data Access Act

39
40 Requires data obtained with federal funds be made available for analysis by
41 interested parties, in addition to the scientists who generated the data.
42

43 6.5.2.04 Freedom of Information Act (“FOIA”)

44
45 Under the FOIA, “each agency, upon any request for records which (A)
46 reasonably describes such records and (B) is made in accordance with published

1 rules stating the time, place, fees (if any), and procedures to be followed, shall
2 make the records promptly available to any person.” [5 U.S.C. § 552\(a\)\(3\)](#).

3
4
5 6.5.2.05 Intergovernmental Cooperation Act (“ICA”)

6
7 The Intergovernmental Cooperation Act, [31 U.S.C. §§ 6501-6506](#) and companion
8 [Executive Order 12372](#), require all federal agencies to consider local viewpoints
9 during the planning stages of any federal project. [31 U.S.C. § 6506\(c\)](#).

10
11 The obligation of federal agencies to consider local government concerns is a
12 legally enforceable right. [City of Waltham v. U.S. Postal Service](#), 11 F.3d 235,
13 245 (1st Cir. 1993).

14
15 Injunctive relief is available in those cases in which federal agencies fail to
16 comply with the ICA. [City of Rochester v. U.S. Postal Service](#), 541 F.2d 967,
17 976 (2nd Cir. 1976).

18
19 The consideration of local government plans and policies must occur on the
20 record. Federal agencies have an affirmative duty to develop a list of factors
21 which support or explain an agency’s decision to act in disharmony with local
22 land use plans. [Village of Palatine v. U.S. Postal Service](#), 742 F. Supp. 1377,
23 1397 (N.D. Ill. 1990).

24
25
26
27 6.5.2.06 Racketeer Influenced and Corrupt Organization Act (RICO)

28
29 18 USC Section 1961-1968 is most known for prosecution of violent criminals
30 who violate State criminal codes and do so repeatedly which establishes a pattern.

31
32 RICO also applies to criminal activity such as mail fraud, wire fraud, obstruction
33 of justice, an a number of similar crimes, again a criminal or a civil prosecution
34 requires that a pattern of the criminal behaviour has been identified

35
36 As of 2005, RICO lawsuits are underway in Wyoming, defendants are BLM
37 employees. Another civil suit in California is also underway with employees of
38 both federal and local government being the defendants.

39
40
41 6.5.2.07 Regulatory Flexibility Act see 5 U.S.C. §601 – 612

42
43 Includes requirements for agencies to publish notification of proposed rules that
44 are likely to have significant economic impact on small entities and complete a
45 regulatory flexibility analysis.

1 6.5.2.08 Resource Conservation Act of 1981

2
3 "It is the purpose of this subchapter to encourage and improve the capability of
4 State and local units of government and local nonprofit organizations in rural
5 areas to plan, develop, and carry out programs for resource conservation and
6 development." [16 U.S.C. § 3451](#).

7
8 "In carrying out the provisions of this subchapter, the Secretary [of Agriculture]
9 may . . . (2) cooperate with other departments and agencies of the Federal
10 Government, State, and local units of government, and with local nonprofit
11 organizations in conducting surveys and inventories, disseminating information,
12 and developing area plans" [16 U.S.C. § 3455](#).

13
14 The Secretary of Agriculture may provide technical and financial assistance only
15 if "the works of improvement provided for in the area plan are consistent with any
16 current comprehensive plan for such area." [16 U.S.C. § 3456\(a\)\(4\)](#).

17
18
19
20 6.5.2.09 Soil and Water Resources Conservation Act

21
22 "Recognizing that the arrangements under which the Federal Government
23 cooperates . . . through conservation districts, with other local units of government
24 and land users, have effectively aided in the protection and improvement of the
25 Nation's basic resources, . . . it is declared to be policy of the United States that
26 these arrangements and similar cooperative arrangements should be utilized to the
27 fullest extent practicable. . . ." [16 U.S.C. § 2003\(b\)](#).

28
29 "In the implementation of this [Act], the Secretary [of Agriculture] shall utilize
30 information and data available from other Federal, State, and local governments . .
31 . ." [16 U.S.C. § 2008](#).

32
33
34 6.5.3 Federal Laws Related to Law Enforcement on Public Lands and Forest Reserves

35
36 Federal law enforcement authority of the Bureau of Land Management over activities on
37 public lands is provided in the Federal Land Policy and Management Act of 1976 at 43
38 USC § 1733. Pertinent provisions are:

39
40 **§ 1733. Enforcement authority**

41
42 **(a) Regulations for implementation of management, use, and protection**
43 **requirements; violations; criminal penalties**

44 The Secretary shall issue regulations necessary to implement the provisions of this Act
45 with respect to the management, use, and protection of the public lands, including the
46 property located thereon. Any person who knowingly and willfully violates any such

1 regulation which is lawfully issued pursuant to this Act shall be fined no more than
2 \$1,000 or imprisoned no more than twelve months, or both. Any person charged with a
3 violation of such regulation may be tried and sentenced by any United States magistrate
4 judge designated for that purpose by the court by which he was appointed, in the same
5 manner and subject to the same conditions and limitations as provided for in section 3401
6 of title 18 of the United States Code.

7
8 **(b) Civil actions by Attorney General for violations of regulations; nature of relief;**
9 **jurisdiction**

10 At the request of the Secretary, the Attorney General may institute a civil action in any
11 United States district court for an injunction or other appropriate order to prevent any
12 person from utilizing public lands in violation of regulations issued by the Secretary
13 under this Act.

14
15 **(c) Contracts for enforcement of Federal laws and regulations by local law**
16 **enforcement officials; procedure applicable; contract requirements and**
17 **implementation**

18 **(1)** When the Secretary determines that assistance is necessary in enforcing Federal laws
19 and regulations relating to the public lands or their resources he shall offer a contract to
20 appropriate local officials having law enforcement authority within their respective
21 jurisdictions with the view of achieving maximum feasible reliance upon local law
22 enforcement officials in enforcing such laws and regulations. The Secretary shall
23 negotiate on reasonable terms with such officials who have authority to enter into such
24 contracts to enforce such Federal laws and regulations. In the performance of their duties
25 under such contracts such officials and their agents are authorized to carry firearms;
26 execute and serve any warrant or other process issued by a court or officer of competent
27 jurisdiction; make arrests without warrant or process for a misdemeanor he has
28 reasonable grounds to believe is being committed in his presence or view, or for a felony
29 if he has reasonable grounds to believe that the person to be arrested has committed or is
30 committing such felony; search without warrant or process any person, place, or
31 conveyance according to any Federal law or rule of law; and seize without warrant or
32 process any evidentiary item as provided by Federal law. The Secretary shall provide
33 such law enforcement training as he deems necessary in order to carry out the contracted
34 for responsibilities. While exercising the powers and authorities provided by such
35 contract pursuant to this section, such law enforcement officials and their agents shall
36 have all the immunities of Federal law enforcement officials.

37 **(2)** The Secretary may authorize Federal personnel or appropriate local officials to carry
38 out his law enforcement responsibilities with respect to the public lands and their
39 resources. Such designated personnel shall receive the training and have the
40 responsibilities and authority provided for in paragraph (1) of this subsection.

41
42 **(d) Cooperation with regulatory and law enforcement officials of any State or**
43 **political subdivision in enforcement of laws or ordinances**

44 In connection with the administration and regulation of the use and occupancy of the
45 public lands, the Secretary is authorized to cooperate with the regulatory and law
46 enforcement officials of any State or political subdivision thereof in the enforcement of

1 the laws or ordinances of such State or subdivision. Such cooperation may include
2 reimbursement to a State or its subdivision for expenditures incurred by it in connection
3 with activities which assist in the administration and regulation of use and occupancy of
4 the public lands.

5
6 **(e) Uniformed desert ranger force in California Desert Conservation Area;
7 establishment; enforcement of Federal laws and regulations**

8 Nothing in this section shall prevent the Secretary from promptly establishing a
9 uniformed desert ranger force in the California Desert Conservation Area established
10 pursuant to section 1781 of this title for the purpose of enforcing Federal laws and
11 regulations relating to the public lands and resources managed by him in such area. The
12 officers and members of such ranger force shall have the same responsibilities and
13 authority as provided for in paragraph (1) of subsection (c) of this section.

14
15 **(f) Applicability of other Federal enforcement provisions**

16 Nothing in this Act shall be construed as reducing or limiting the enforcement authority
17 vested in the Secretary by any other statute.

18
19 **(g) Unlawful activities**

20 The use, occupancy, or development of any portion of the public lands contrary to any
21 regulation of the Secretary or other responsible authority, or contrary to any order issued
22 pursuant to any such regulation, is unlawful and prohibited.

23
24 Similar, but more comprehensive provisions for U.S. Forest Service law enforcement
25 authority over activities on National Forest Lands are found at 16 USC § 559, et seq.
26 Pertinent provisions include:

27
28 **16 USC § 559. Arrests by employees of Forest Service for violations of laws and
29 regulations.** All persons employed in the Forest Service of the United States shall have
30 authority to make arrests for the violation of the laws and regulations relating to the
31 national forests, and any person so arrested shall be taken before the nearest United States
32 magistrate judge, within whose jurisdiction the forest is located, for trial; and upon sworn
33 information by any competent person any United States magistrate judge in the proper
34 jurisdiction shall issue process for the arrest of any person charged with the violation of
35 said laws and regulations; but nothing herein contained shall be construed as preventing
36 the arrest by any officer of the United States, without process, of any person taken in the
37 act of violating said laws and regulations.

38
39 **§ 559c. Powers of officers and employees of Forest Service**

40
41 For the purposes of sections 559b to 559f of this title, if specifically designated by the
42 Secretary and specially trained, not to exceed 1,000 special agents and law enforcement
43 officers of the Forest Service when in the performance of their duties shall have authority
44 to:

45 (1) carry firearms;

1 (2) conduct, within the exterior boundaries of the National Forest System, investigations
2 of violations of and enforce section 841 of title 21 and other criminal violations relating
3 to marijuana and other controlled substances that are manufactured, distributed, or
4 dispensed on National Forest System lands and to conduct such investigations and
5 enforcement of such laws outside the exterior boundaries of the National Forest System
6 for offenses committed within the National Forest System or which affect the
7 administration of the National Forest System (including the pursuit of persons suspected
8 of such offenses who flee the National Forest System to avoid arrest);

9 (3) make arrests with a warrant or process for misdemeanor violations, or without a
10 warrant or process for violations of such misdemeanors that any such officer or employee
11 has probable cause to believe are being committed in his presence or view, or for a felony
12 with a warrant or without a warrant if he has probable cause to believe that the person to
13 be arrested has committed or is committing such felony, for offenses committed within
14 the National Forest System or which affect the administration of the National Forest
15 System;

16 (4) serve warrants and other process issued by a court or officer of competent
17 jurisdiction;

18 (5) search with or without warrant or process any person, place, or conveyance according
19 to Federal law or rule of law; and

20 (6) seize with or without warrant or process any evidentiary item according to Federal
21 law or rule of law.

22 23 6.5.4 Presidential Executive Orders

24 25 6.5.4.01 Presidential Executive Order 12372 as amended by EO12416 --- 26 Intergovernmental Review of Federal Programs

27 See the discussion of Intergovernmental Cooperation Act (“ICA”), above.
28
29

30 6.5.4.02 Presidential Executive Order 12630 --- Governmental Actions and Interference 31 With Constitutionally Protected Property Rights see 62 Fed. Reg. 48,445 (1988) 32

33 "The Fifth Amendment of the United States Constitution provides that private
34 property shall not be taken for public use without just compensation Recent
35 Supreme Court decisions, however, in reaffirming the fundamental protection of
36 private property rights provided by the Fifth Amendment and in assessing the
37 nature of governmental actions that have an impact on constitutionally protected
38 property rights, have also reaffirmed that governmental actions that do not
39 formally invoke the condemnation power, including regulations, may result in a
40 taking for which just compensation is required." Section 1(a).
41

42 "The purpose of this Order is to assist Federal departments and agencies in
43 undertaking such reviews and in proposing, planning, and implementing actions
44 with due regard for the constitutional protections afforded by the Fifth
45 Amendment and to reduce the risk of undue or inadvertent burdens on the public
46 fisc resulting from lawful governmental action." Section 1(c).
47

1 "The Just Compensation Clause [of the Fifth Amendment] is self-actuating,
2 requiring that compensation be paid whenever governmental action results in a
3 taking of private property regardless of whether the underlying authority for the
4 action contemplated a taking or authorized the payment of compensation.
5 Accordingly, governmental actions that may have significant impact on the use of
6 value or private property should be scrutinized to avoid undue or unplanned
7 burdens on the public fisc." Section 3(e).

8
9 Agencies are required to prepare a Takings Implication Assessment prior to
10 taking any action, issuing any rule, or making any decision which would
11 constitute a taking of private property or private property interest including
12 investment backed expectation.

13
14 Note: although not specified in this EO, agency actions may partially Take
15 property as demonstrated in Loveladies Harbor Inc., et. al. vs. the United States,
16 21 C.L.C.T. 153 (1990) which have awarded compensation for partial takings
17 where the takings have frustrated reasonable investment backed expectations and
18 deprived the individual of the economically viable use of his land and property
19 rights and interests.

20
21
22 6.5.4.03 Presidential Executive Order 12866 --- Regulatory Planning and Review
23 see 58 Fed.Reg. 51,735 (1993)

24
25 "The American people deserve a regulatory system that works for them, not
26 against them: a regulatory system that protects and improves their health, safety,
27 environment, and well being and improves the performance of the economy
28 without imposing unacceptable or unreasonable costs on society; regulatory
29 policies that recognize that the private sector and private markets are the best
30 engine for economic growth; regulatory approaches that respect the role of State,
31 local and tribal governments; and regulations that are effective, consistent,
32 sensible, and understandable. We do not have such a regulatory system today."
33 Introduction.

34 "Wherever feasible, agencies shall seek views of appropriate State, local and
35 tribal officials before imposing regulatory requirements that might significantly or
36 uniquely affect those governmental entities. Each agency shall assess the effects
37 of Federal regulations on State, local, and tribal governments, including
38 specifically the availability of resources to carry out those mandates, and seek to
39 minimize those burdens that uniquely or significantly affect such governmental
40 entities, consistent with achieving regulatory objectives. In addition, as
41 appropriate, agencies shall seek to harmonize Federal regulatory actions with
42 related State, local and tribal regulatory governmental functions." Section
43 1(b)(9).

44
45 "State, local and tribal governments are specifically encouraged to assist in the
46 identification of regulations that impose significant or unique burdens on those

1 governmental entities and that appear to have outlived their justification or be
2 otherwise inconsistent with the public interest." Section 5(b).

3
4 "In particular, before issuing a notice of proposed rule making, each agency
5 should, where appropriate, seek the involvement of those who are intended to
6 benefit from and those who are expected to be burdened by any regulation
7 (including, specifically, State, local and tribal officials). Each agency also is
8 directed to explore and, where appropriate, use consensual mechanisms for
9 developing regulations, including negotiated rule making." Section 6(a)(1).

10
11
12 6.5.4.04 Presidential Executive Order 13352 --- Facilitation of Cooperative Conservation
13 August 26, 2004

14
15 "Purpose of this order is to ensure that the Departments of Interior, Agriculture,
16 Commerce, and Defense and the Environmental Protection Agency implement
17 laws relating to the environment and natural resources in a manner that promotes
18 cooperative conservation, with an emphasis on appropriate inclusion of local
19 participation in Federal decision making, in accordance with their respective
20 agency missions, policies, and regulations."

21
22 Cooperative conservation means collaborative actions that relate to use,
23 enhancement, and enjoyment of natural resources, protection of the environment,
24 or both. Federal agencies are to take appropriate account of and respect the
25 interests of persons with ownership or other legally recognized interests in land
26 and other natural resources; properly accommodate local participation in Federal
27 decision making; and provide that programs, projects, and activities are consistent
28 with protecting public health and safety.

29
30
31 6.5.5 State Laws Related to Planning

32
33
34 6.5.5.01 Nevada Constitution and standing of County Government

35
36 Nevada is among a handful of States which, according to the Nevada Association
37 of Counties, is not considered to be organized under the concept of County home
38 rule. Each County was originally organized in accordance with what became
39 known as Dillon's Rule. Named after Iowa Supreme Court Justice Dillon, who
40 argued in the late 1800's that local government is to be limited in authority. This
41 concept was largely a reaction to the widespread corruption among local officials
42 of the late 1800's and early 1900's that some believed could only be solved with
43 strict control by state legislatures. However, as the populations grew it was
44 apparent that Counties needed more flexibility to organize and finance the
45 functions of local government, including hiring individuals to serve in such
46 capacity as County Manager, and arranging intergovernmental agreements

1 between county and city governments. Home Rule of counties was developed to
2 meet this need either through a “Charter” or, in the case of Nevada through
3 legislation granting the necessary authority to the respective Counties.
4

5 Preparation of the Natural Resources & Land Use Element is governed by NRS
6 278.150 through 278.220. The land use plan is one element of the Eureka County
7 Master Plan. Collectively, the Master Plan is to be a comprehensive, long-term
8 general plan for the physical development of the County which in the Planning
9 Commission’s judgement is related to the planning thereof. This land use plan
10 was prepared and adopted by the Eureka County Planning Commission as a basis
11 for the development of the County into the foreseeable future.
12

13 According to NRS 278.160, the Natural Resources & Land Use Element to the
14 Eureka County Master Plan “may address a wide variety of issues as such are
15 deemed appropriate to the development of the County”. The plan shall be a map,
16 together with such charts, drawings, diagrams, schedules, reports, ordinances, or
17 other printed material, or any one of a combination of the foregoing as may be
18 considered essential to the purposes of the administration of land use within
19 Eureka County (NRS278.220).
20

21 Eureka County authority for components of this Master Plan also includes the
22 passage of SB40 by the Nevada Legislature in 1983 and the resulting portions of
23 NRS321, particularly NRS321.640 through NRS 321.770. Nevada law has
24 provided the authority for each County to develop of plans and strategies for
25 resources that occur within lands managed by federal and state agencies. In turn,
26 upon presentation of the Natural Resources & Land Use Element of the Eureka
27 County Master Plan this document will enable the federal agencies to fully
28 comply with the intent of Congress as specified in various federal laws by
29 incorporating the policies of Eureka County into agency documents and activities
30 and resolving inconsistencies between federal proposals and County plans.
31 Eureka County has done its part to meet the combined goals of the Nevada
32 Legislature and the United States Congress by completion of this 2006 update of
33 the Natural Resources & Land Use Element of the Eureka County Master Plan
34 and incorporating the most recent version of Title 9 of the Eureka County Code.
35

36 6.5.5.02 Nevada Administrative Procedures Act 37

38 Nevada Revised Statutes Chapter 233B specifies proper public notice, procedural
39 due process, and full due process obligations of a number of Nevada agencies as
40 they propose or adopt rules and regulations, orders, decisions, and take certain
41 other actions.
42

43 6.5.5.03 Nevada Statewide Policy Plan for Public Lands 44

45 Nevada Revised Statutes, Chapter 321 includes NRS321-640 through NRS 321-
46 770 which authorize each County to develop a plan such as the Natural Resources

1 & Land Use Element to the Eureka County Master Plan as authorized under SR
2 40.

3
4 NRS 321 also declares the sovereignty of the State of Nevada and authorizes the
5 Attorney General and the District Attorney of each County to take action to
6 safeguard the land and resources of Nevada.
7

8 9 6.5.6 Court Cases and Decisions

10 11 6.5.6.01 Decisions upholding local land use planning

12 State land use planning is allowed on federal lands as long as such land use
13 planning does not include zoning. Federal agencies cannot claim "Constitutional
14 Supremacy" if the agency can comply with both federal law and the local land use
15 plan. [California Coastal Commission v. Granite Rock Co., 480 U.S. 572 \(1987\).](#)

16
17 "When considering preemption, [the U.S. Supreme Court] starts with the
18 assumption that the State's historic powers are not superseded by federal law
19 unless that is the clear and manifest purpose of Congress." [Wisconsin Public U.S.
20 Intervenor v. Mortier, 501 U.S. 597 \(1991\).](#)
21

22 23 6.5.6.02 Court cases upholding compensation for takings of private property such as 24 Hage vs. United States

25 The Natural Resources Advisory Commission and the Board of Commissioners
26 have carefully followed the progress of Hage vs. United States, Civil No. 91-1470
27 L in which a Nevada rancher claims a taking of his property by restrictive actions
28 taken by federal regulatory agencies and seeks compensation in the United States
29 Court of Claims. In entering an order denying summary judgment to the
30 Government and ordering a trial on the merits, the Chief Judge of the Court of
31 Claims made it clear that the Constitution prevents "government from doing
32 through general regulation what it is prevented from doing through direct specific
33 action--taking private property for public use without just compensation."
34 Decision of March 8, 1996, page 25.

35 Trial of Hage vs. United States was completed as of November 2004. As a result,
36 the property owned by Hage was clearly identified, including water rights and
37 rights-of-way within Forest Service and BLM allotment areas. The Court of
38 Claims also found that in this situation, a grazing permit is not required for the
39 ranch to make beneficial use of its water rights. The extent of property that was
40 taken has been proven and its value described using several techniques illustrated
41 by McIntosh (2002). The final decision is being prepared by the Court of Claims
42 which is likely to include orders for the regulatory agencies to compensate the
43 property owner.
44

1 One of the arguments presented by Hage is based on the split estate nature of
2 property ownership within the federally administered lands, they argue that a
3 rancher is not obligated to obtain a permit to graze within the adjudicated
4 allotment that includes that ranch's property rights. However, agencies argue that
5 grazing requires a permit so long as the ranch and the respective government
6 agency have a contractual agreement that specifies this permitting process.
7

8 A summary of the Hage decision written by Stewards of the Range, does not
9 conclude that the Court of Claims ruled that grazing is possible without an agency
10 permit in the following material from the Stewards of the Range Internet Web
11 Site on May 15, 2005:

12 "The question of whether or not ranchers need a grazing permit must be read in
13 the context of the property rights opinion from which it is taken and the
14 argument the United States was raising. First, in the context of a takings
15 complaint, Judge Smith ruled that the permit was not necessary in order for the
16 Hages to recover. In other words the grazing permit does not give value to the
17 property claimed by Hages. The property right and its value predate any
18 permitting scheme. Moreover, Judge Smith said that if the permit were the
19 source of the Hages' rights then the property rights confirmed by the Congress
20 would be illusory. Judge Smith also said that the Hages would not need a permit
21 to access their water rights for a purpose other than grazing. He did not address
22 the issue of whether a permit was required to graze and access the water rights
23 for grazing.

24 We do not encourage anyone to turn in their grazing permits and then try to
25 access the water rights for grazing. There is a case, the Diamond Bar case out
26 of the Tenth Circuit, which is problematic because it held the cattlemen did not
27 have standing to challenge the federal agency decisions once they gave up their
28 permits. The better course is to maintain the permits and let the actions of the
29 U.S. dictate whether they take the property, even if this means they confiscate
30 the cattle."

31 A number of cases are proceeding through various Federal Courts that include
32 presentation of this argument. Eureka County intends to work with the regulatory
33 agencies and ranches so long as the system of permits remains the law. Eureka
34 County would welcome opportunities to work directly with individuals who are
35 lawfully grazing either with or without federal permits in order to accomplish the
36 multiple use goals and economic success.
37

38 Eureka County will also evaluate the standards set by United States Supreme
39 Court decisions in *First English Evangelical Lutheran Church of Glendale vs.*
40 *County of Los Angeles, California*, 107 S. Ct. 2378 (1987); *Nollan vs. California*
41 *Coastal Commission*, 107 S.Ct. 3141 (1987); *Preseault vs. Interstate Commerce*
42 *Commission*, 110 S.Ct. 914 (1990); *Lucas vs. South Carolina Coastal Council*,
43 *112 S.Ct. 2886 (1992)*; *Penn Central Transportation Co. vs. City of New York*,

1 438 U.S. 104, 98 S.Ct. 2646 (1978), and other decisions relating to consideration
2 of reasonable investment backed expectations as a compensable property interest.
3 The Land Use Committee and the Board will also review cases decided in the
4 United States Court of Claims including Loveladies Harbor Inc., et. al. vs. the
5 United States, 21 C.L.C.T. 153 (1990) which have awarded compensation for
6 partial takings where the takings have frustrated reasonable investment backed
7 expectations and deprived the individual of the economically viable use of his
8 land and property rights and interests.
9