

Nevada Land Management Task Force

(Established Pursuant to Assembly Bill 227 enacted in the 2013 Legislative Session)

Meeting Minutes

Nevada Association of Counties

304 South Minnesota Street
Carson City, NV 89703

January 24, 2014

CONTENTS

Summary of Motions Passed.....	4
Summary of Consensus Recommendations.....	4
Summary of Action Items Assigned.....	4
Call to Order	5
Roll call.....	5
Public Comment.....	5
Approval of Agenda.....	6
Approval of the December 6, 2013 Meeting Minutes of the Nevada Land Management Task Force	6
Remarks from Congressman Mark Amodei	6
Presentation on State Regulatory Mechanisms in Place for State Owned and Private Land.....	6
Discussion and Overview of Research Regarding the Cost to Transfer Federal Land to the State of Nevada and as well as Costs of Management	10
Update and Presentation on the Results of the Questionnaire Prioritizing and Identifying Issues Related to a Transfer of Public Land in Nevada.....	14
Discussion on Issues Related to a Transfer of Public Lands from the Federal Government to Nevada Including the Transfer of Multiple Uses and Valid Existing Rights.....	14
Discussion on Issues Related to a Transfer of Public Lands from the Federal Government to Nevada Including Options for Disposal and Sale of Lands.....	15
Discussion on Which Lands to Include in a Transfer of Public Lands from the Federal Government to the State of Nevada.....	17
Discussion on Timeline of Tasks to Accomplish by the Task Force Prior to Summer 2014, Including Discussion of Accomplishments to Date, Consensus Needed, and Tasks Outstanding	19
Discussion on Content and Presenters for the Task Force Update to the Nevada Legislature’s Interim Committee on Public Lands.....	20
Discussion on and Approval of Dates and Locations for Future Task Force Meetings.....	21
Discussion and Possible Approval of Topics for Future Task Force Meetings	21
Public Comment.....	21
Adjournment	21
Acronyms.....	22
Attachments	23

Attachment 1 – Meeting Attendance 23
Attachment 2 – Mountain States Legal Foundation Letter 24



SUMMARY OF MOTIONS PASSED

The following table provides a summary of the motions passed during the meeting.

January 24, 2014 Nevada Land Management Task Force

General Topic or Action	Motions Passed	Page of Meeting Minutes
Approval of the Meeting's Agenda	Chairman Dahl accepted a motion from Commissioner Jerri Tipton (Mineral County) which was seconded by Commissioner Virgil Arellano (Lyon County) with discussion to accept the agenda for the meeting. The motion passed unanimously.	6
December 6, 2013 Task Force Meeting Minutes	Chairman Dahl accepted a motion from Commissioner Virgil Arellano (Lyon County) which was seconded by Commissioner Vaughn Hartung (Washoe County) to accept the minutes from the December 6, 2013, Task Force meeting. The motion passed by a voice vote with two abstentions.	6
Meeting Adjournment	Chair Dahl accepted a motion from Commissioner Jerri Tipton (Mineral County) and seconded by Commissioner Patsy Waits (Lander County) to adjourn the meeting. The motion passed unanimously.	21

SUMMARY OF CONSENSUS RECOMMENDATIONS

The following table provides a summary of consensus recommendations reached during the meeting.

January 24, 2014 Nevada Land Management Task Force

Consensus Recommendation	Page of Meeting Minutes
The multiple uses and valid existing rights should transfer with the land.	15
The sale of land by the State be approved by the appropriate County Commission	16/17
There will not be a wholesale sale of lands transferred to the State from the federal government	16/17
Initial sales of transferred lands should include those lying within the railroad corridor (checkerboard.)	16/17

SUMMARY OF ACTION ITEMS ASSIGNED

The following action items were assigned during the meeting.

Action	Party Assigned Action	Page of Meeting Minutes
Forward the following items to Dagny Stapleton. <ul style="list-style-type: none"> Any discussion, ideas, or questions that should be shared with the Task Force addressing AB227 Section 6(a), (b), or (c); and, Items (including any pertinent information) to be included on the agenda for the February 21, 2014, meeting. 	Task Force	20
Prepare and distribute a press release and a one-page summary of this meeting.	Dagny Stapleton	20

CALL TO ORDER

Demar Dahl, Chairman of the Nevada Land Management Task Force and Elko County Commissioner, called the meeting to order at 1:03 PM by asking Humboldt County Commissioner Jim French to lead the participants in the Pledge of Allegiance and expressing his appreciation of the efforts and dedication the Task Force members have given to this effort.

Chair Dahl highlighted that the original intent was to hold Task Force meetings at various locations across the State enhancing the public's opportunity to participate in the process. Due to ongoing video conferencing issues, the decision was made to hold the meetings in Carson City where direct control of the video technology was possible. At this meeting, two Task Force members and no member of the public joined using that technology.

ROLL CALL

Dagny Stapleton, Deputy Director of the Nevada Association of Counties (NACO), conducted a roll call of the Task Force (Attachment 1) to ensure a quorum was present. Attachment 1 also identifies other individuals attending the meeting.

PUBLIC COMMENT

One speaker provided comment during the meeting's first public comment period.

Mr. Cliff Gardner representing the Rural Heritage Preservation Project opened his statement by indicating that he and his family live in Ruby Valley. Several years ago, he participated in a second sagebrush rebellion, which didn't go quite as far as the original sagebrush rebellion. From that participation, he learned of a long line of court cases addressing Article 4 jurisdiction that was exercised within the State, which took a long time, and is not quite a constitutional as one would think. Beginning at the time of the purchase of the Louisiana Purchase, Thomas Jefferson did not believe there was a provision under the United States Constitution to acquire land. Sometime later, the U. S. Supreme Court determined that land could be acquired under the Property clause (Article 4) of the Constitution and interpreted the Property clause as being a "species of jurisdiction that was without limitation." In addition, the Supreme Court defined "without limitation" to mean "people who are made subject to that jurisdiction are not accorded their constitutional protection." As interpreted by Mr. Gardner, people are protected to a degree with regards to Congress acting pursuant to public lands that you had such rights as granted by Congress. With that background, Mr. Clifford believes the problems being experienced on the public lands now are due to the fact that citizens are not afforded full due process rights particularly in regards to being under the common law. He made mention of a case that he personally took to Federal District Court and the Supreme Court from which he learned that when you have rights on the public land and not being under the common law, you don't have the same opportunity to go into court, have evidence weighed from both sides of the issue, and have a tribunal decide the outcome. Another thing Mr. Gardner learned was water rights administered by the State of Nevada are not recognized by the U. S. Supreme Court as being an obtained for steward of sovereignty. Water rights managed by the State of Nevada are viewed by the Supreme Court as being obtained pursuant to the 1866 Act, which places the State in a very vulnerable position where the right to have jurisdiction over those water rights will be undermined. If members of the Task Force would like to discuss these issues with Mr. Gardner or other individuals with whom he has worked in more detail, he would be glad to provide names and telephone numbers. Mr. Gardner encouraged the Task Force to do everything possible to have the State of Nevada gain full control over the public lands.

(The remainder of this page was left blank intentionally)

APPROVAL OF AGENDA

MOTION: Chairman Dahl accepted a motion from Commissioner Jerri Tipton (Mineral County) which was seconded by Commissioner Virgil Arellano (Lyon County) with discussion to accept the agenda for the meeting. The motion passed unanimously. Commissioner Patsy Waits (Lander County) asked if the date the agenda was published was required to be on the agenda. Dagny Stapleton indicated the agenda was posted within the required number of days prior to the meeting; however, including the publication date on the agenda was not a requirement.

Commissioner Virgil Arellano (Lyon County) asked that if there were no objections and it was allowable, he would like to have “possible action” added to the agenda item 7 (Update and Presentation on the Results of the Questionnaire Prioritizing and Identifying Issues Related to a Transfer of Public Land in Nevada (Information to be included in the Study Being Conducted by the Nevada Land Management Task Force.)) Chair Dahl indicated that adding “possible action” was not possible.

APPROVAL OF THE DECEMBER 6, 2013 MEETING MINUTES OF THE NEVADA LAND MANAGEMENT TASK FORCE

MOTION: Chairman Dahl accepted a motion from Commissioner Virgil Arellano (Lyon County) which was seconded by Commissioner Vaughn Hartung (Washoe County) to accept the minutes from the December 6, 2013, Task Force meeting. The motion passed by a voice vote with two abstentions.¹

REMARKS FROM CONGRESSMAN MARK AMODEI

Unfortunately, Congressman Amodei was unable to attend the meeting due to a recent eye surgery. In his stead, Ms. Megan Brown was to provide a presentation; however, she was sick and also could not make the meeting.

PRESENTATION ON STATE REGULATORY MECHANISMS IN PLACE FOR STATE OWNED AND PRIVATE LAND



Leo Drozdoff

Leo Drozdoff, Director of the Nevada Department of Conservation and Natural Resources (DCNR), provided an overview of the divisions within DCNR (inset to right) and their responsibilities on State and private lands within Nevada. Mr. Drozdoff introduced Jim Lawrence, Administrator of the Nevada Division of State Lands (DSL).

Key points emphasized in the presentation included:

- The organization and structure of the Department’s divisions have been established based on the amount of private and State land within Nevada;
- Significant change in the State’s land ownership pattern (as suggested under Assembly Bill (AB) 227) would require significant changes to the organizational structure and operational strategies of several State

Divisions within the Department of Conservation
and Natural Resources

Environmental Protection

Forestry

State Parks

State Lands

Water Resources

Conservation District Program

Nevada Natural Heritage Program

State Historic Preservation Office

¹ Commissioner Lorinda Wichman (Nye County) and Commissioner Dan Cassinelli (Humboldt County.)

- agencies (particularly the Nevada Division of Forestry (NDF) and the DSL) but not many statutory changes;
- Current programs are built to be robust but not duplicative of federal agency efforts; and,
 - A possible avenue for managing the transfer of public lands to the State would be sequential approach focusing first on areas where the interface between the State and federal agencies has been worked out such as the checkerboard land pattern along Interstate 80. As the State or Counties are ready for additional acreages, they could be requested.

To emphasize the first point, Mr. Drozdoff highlighted Nevada's land ownership pattern which is approximately 85 percent federally controlled land, 1 percent State land, and 14 percent private land. States containing significantly higher percentages of State and private land have State land agencies that are typically larger in staffing and more bureaucratic as compared to Nevada's DSL. Within NDF, which is responsible for wildfire suppression, fires rarely occur where there is not some level of federal involvement. Consequently, NDF's organizational structural and operational approach to fire suppression is built on the current mix of federal, State, and private land and on a level of federal involvement. A significant change in the land ownership pattern would require NDF to reconsider its current staffing structure and operational strategies to suppress wildfires.

Emphasizing the third key point, Mr. Drozdoff indicated that if a federal agency does one thing, the appropriate State division may focus its efforts in other areas thus reducing the duplicity of efforts. If there were a significant change in land ownership, the State would need to review their current 'Nevada centric' solutions or procedures to ensure it would continue to meet the demands in a different environment.

During his presentation, Mr. Drozdoff addressed questions from the Task Force.

Commissioner Vaughn Hartung (Washoe County) inquired as to how staffing levels within the DCNR would change with a significant change in the land ownership pattern. Commissioner Hartung indicated that the Bureau of Land Management (BLM) Nevada's staffing level is approximately one person per 55,000 acres as compared to Nevada's level of one person per 35,000 acres. **Mr. Drozdoff** indicated that he had not thought of this issue in those terms but a significant change in land ownership would dramatically affect staffing within his organization. **Commissioner Hartung** indicated that a fiscal analysis addressing staffing needs statewide would be needed to support the transfer of public lands to the State. **Mr. Drozdoff** suggested such an analysis would be beneficial and perhaps a sequential approach of transferring lands focusing first on areas where the interface between the State and federal agencies has been worked out such as the checkerboard land pattern along Interstate 80. He also suggested that it is important to understand the consequences of such a transfer. **Commission Hartung** stated that a stepped approach may include legislation allowing the transfer of lands as needed or wanted by the State. Different counties may have different thought processes but legislation could allow lands to be transferred as lands are needed for a specific purpose. **Mr. Drozdoff** responded that the State has supported various County land bills which accomplish Commissioner Hartung's statement of acquiring land when needed; however, those bills require significant time to be passed and happen one at a time. **Commissioner Hartung** responded that they (Washoe County) tried to get a small parcel of BLM land identified on the agency's disposal list but were told the "fast track" effort would require 10 to 15 years.

Commissioner Jerri Tipton (Mineral County) indicated there have been discussions relating to the timing of the transfer of public lands to the State, which cannot happen overnight and must involve a process. Commissioner Tipton indicated there has been 100 years of multiple uses occurring in Nevada where people recreating on the ground have as much right to use that land as other users. She does not know if there are appropriate protections in place to ensure the multiple uses will occur after a transfer of federal lands has occurred. She highlighted that in Arizona if someone leases a piece of State land, that person essentially controls access and use of that land. She suggested the Task Force will need additional discussion with State land agencies to ensure appropriate protections are in place, which is another reason the transfer of public lands to the State will not be a one-year process. Commissioner Tipton also indicated that she does not

want to be responsible for fires on the land where she has not had control of how that land has been managed and how the resources have been developed.

Chair Dahl indicated he should have made reference to AB227 that led to Mr. Drozdoff's presentation. He read the following narrative from Section 6 and 6(b) of AB227 into the record:

“6. The Committee shall conduct a study to address the transfer of public lands in Nevada from the Federal Government to the State of Nevada in contemplation of Congress turning over the management and control of those public lands to the State of Nevada on or before June 30, 2015. The study must include, without limitation:

(b) The development of a proposed plan for the administration, management and use of the public lands ...”

Chair Dahl interpreted Section 6 and 6(b) to mean “that when this happens, can the State of Nevada provide the management and uses of the transferred lands.”

Mr. Drozdoff indicated that with only one percent of the land base currently being managed by the State, it has been possible to precisely locate and administer that land. Should the land ownership percentage change dramatically, the level of staffing as well as the approach to management would also need to be changed. Similarly, some limited statutory changes may be needed as well. **Commissioner Tipton** reiterated that in Arizona if a person has a State grazing lease, that person can dictate who has access to that land for hunting, recreation, and other purposes. Such an approach, in her opinion, will not be acceptable in Nevada. **Chair Dahl** indicated a more detailed discussion of allowable uses on the transferred land will occur later in the agenda and suggested focusing on determining if Nevada has the regulatory processes in place to allow the State to manage the transferred lands. **Mr. Drozdoff** reiterated there would be little need for change from a statutory or regulatory standpoint but that is only part of the story needing to be addressed.

Commissioner Bill Sjovangen (Storey County) asked if all federal lands were transferred to the State would the Federal Emergency Management Agency continue to distribute Fire Management Assistance Grant (FMAG) monies for wildland fires. **Mr. Drozdoff** indicated that much of what happens today is based on the land ownership pattern. With the large percentage of federally managed land in Nevada, FMAG is triggered when an estimated dollar threshold is exceeded, which happens relatively quickly, and the federal government becomes responsible for fire suppression costs. With a significant change in the land ownership percentage where there is significantly less federal managed land, the likelihood of the Federal government becoming responsible for suppression costs is lower and it is unknown if the FMAG program would come into play. **Commissioner Sjovangen** indicated there is a lower percentage of federally controlled land within Storey County and they've had fires occur solely on privately owned land which was paid for with FMAG funding. **Mr. Drozdoff** indicated that further research into that situation would be required to ensure a correct response.

Commissioner Laurie Carson (White Pine County) asked if the land were transferred, would there be need to adopt some federal policies and regulations. **Mr. Drozdoff** indicated that, in most cases, existing statutory measures would be sufficient; however, the relationship between the State and the County governments may change. A review would need to be completed to identify areas where policies and/or statutes might need to be changed or created.

Commissioner Jim French (Humboldt County) indicated that many federal laws such as the Antiquities Act, Clean Air Act, and Clean Water Act don't distinguish between different land ownerships. How prepared is the State to administer its activities as a land owner with regard to those laws and, secondly, with regards to the multiple use concept? What would be the process to determine how to move forward with a use? **Mr. Drozdoff** responded that the Nevada Division of Environmental Protection (NDEP) administers the majority of environmental laws delegated to the State. From a regulatory standpoint, there would be little change. There have been instances where, as a regulatory agency, the NDEP has told land owners to address a particular issue; however, as a landowner, that approach would have to change. **Mr. Drozdoff** suggested the discussion may need to focus on what the Task Force would like the state process to look like.

Historically, the State's role has been as a "real estate agent" and has not undertaken a role similar to the federal agencies of a land manager or multiple use arbitrators. **Commissioner Jerri Tipton (Mineral County)** added that it would be necessary to create a map of the landscape to which **Mr. Drozdoff** responded the amount of effort that goes into completing that type of work is exhaustive and that there is a practical limitation to accomplishing that work.

Commissioner Nancy Boland (Esmeralda County) suggested the task force may need to ask the Department questions as discussion continue, to which Mr. Drozdoff indicated such questions would be welcomed, and that the thrust of the task force is to approach this effort as if the transfer of public lands will occur. Commissioner Boland was struck by the comments made in relation to the structure and location of staff required to manage the transferred lands. She understood NDEP may not require significant staffing changes; however, NDF and the DSL staffs may need to be significantly increased. It might be necessary to give thought to how current approaches used by each of these agencies may need to be changed to address a new land ownership pattern. In response, **Mr. Drozdoff** indicated that some thought has already been given to this issue, which is why he suggested the sequential or a staggered approach. He indicated SCNR would be happy to respond to hypothetical scenarios and would benefit from having some sense of how the task force is approaching this effort.

Commissioner Virgil Arellano (Lyon County) questioned if NDF is paid on a "per day" basis for equipment when dispatched to a federally managed fire. **Mr. Drozdoff** responded that for the first 24 hours, everyone is responsible for their own costs. **Commissioner Arellano** provided an example where an NDF engine with staffing was paid \$2,500 per day for 10 days would receive payment of \$25,000. He asked if NDF supplements their budget in anticipation of receiving federal revenues. **Mr. Drozdoff** explained that in developing their budget, NDF examines its responsibilities but is very rarely solely responsible for fire suppression. The point being addressed by Commissioner Arellano was that if the lands were transferred to the State, NDF would not receive the federal revenues for equipment and the State might need to provide additional funding. **Mr. Drozdoff** indicated that Commissioner Arellano was correct and the two divisions within his organization which would be most affected by a major transfer of public land to the State would be NDF and the DSL. **Commissioner Arellano** suggested an effective fire prevention program is critical for proper fuel and fire management. Currently, the State has the regulatory processes and mechanisms in place for an effective prevention program to which **Mr. Drozdoff** highlighted there are many areas within the state that need pretreatment or restoration; however, bureaucratic hurdles at the federal level have occurred.

Mike Stremler (Pershing County) reiterated that the thrust of the task force is to approach this effort as if the transfer of public lands will occur and identifying issues and finding appropriate solutions. He believes most issues are addressed by existing Nevada statutes; however, if an issue is not addressed within the State's statutes, a solution needs to be identified by the Task Force. Mr. Stremler emphasized that the task force needs to stop referring to "if" the transfer of lands will occur and take the approach that the transfer of land will occur and identify how it will be accomplished. Mr. Stremler also indicated that the transfer of public lands would not include lands managed by the U. S. Forest Service to which **Chair Dahl** responded that that decision had not yet been made and that the Task Force is working to determine the implications of the transfer of the public lands.

Commissioner Tom Collins (Clark County) suggested that a "dollar per acre" fee imposed on each acre transferred to the State could provide a fund to be used in assisting wildfire prevention efforts. He also suggested the need for "triggers" that when the State of Nevada requests land to be transferred, the transfer must be completed within 18 to 24 months or the land would automatically transfers to the State.

(The remainder of this page was left blank intentionally)

DISCUSSION AND OVERVIEW OF RESEARCH REGARDING THE COST TO TRANSFER FEDERAL LAND TO THE STATE OF NEVADA AND AS WELL AS COSTS OF MANAGEMENT



Mike Baughman

Mike Baughman, President of Intertech Services, Inc. explained that his organization had been retained by NACO on behalf of the Task Force to update a set of tables contained within a 1994 Eureka County report. Working in conjunction with Resource Concepts, Inc., the information being updated will be incorporated into the Task Force's report to the Legislature's Public Lands Committee.

Mr. Baughman provided an overview of several tables that are instructive as to what occurred in other States' having significant acreages of lands (inset) managed in trust by the State during the period from 2008 through 2012.² The early years of that period included an economic recession which impacted revenues generated within each State. In addition, the later years (2011 and 2012) represented a period when the economic recession was ending. With the economic recession impacting each State, it is felt the data provided is somewhat conservative. The information provided addresses BLM management lands only and does not include lands managed by the U. S. Forest Service. In contrast to the other States', Nevada has approximately 3, 000 acres being managed in trust.

In reviewing the various tables, it is important to understand that the table numbers are consistent with the table numbers as presented in the 1994 Eureka County report. When the final Task Force report is developed, the table numbers will be sequential. The first sequence of tables (2, 2a, 3, 3a, 4, 4a, 5, and 5a) contain data from Arizona, New Mexico, Utah, and Idaho, which all have significant state land holdings and resources that are similar to those found within Nevada. Much of the information provided is derived from published documents such as the State's annual report. There are a few areas where data is currently missing as it was not reported by the State. Requests have been submitted to the appropriate state to obtain the missing data.

In general, information obtained from the four states included their revenues and expenses from which net revenues, revenues per acre and expenses per acre were calculated. Staffing is measured as Full-Time Equivalency (FTE) from which several measures of efficiency (acres per FTE, revenues per FTE, net revenues per FTE, etc.) were calculated. Using these figures, a comparison between States' is possible. Using this data to identify the highest and lowest observed figures as well as the average numbers, boundaries can be identified to estimate of what might be possible in Nevada based upon the experience in the other States'. Underlying this analysis is an assumption that if Nevada obtains a larger land base, it would adopt a state land management model and not federal land management.

The *Five Year Summary of Revenues, Expenditures, Employment, and Output* tables (Tables 2 (Arizona), Table 3 (Idaho), Table 4 (New Mexico) and Table 5 (Utah)) include only major (not all) revenue sources within the appropriate State. It is important to understand the total revenue figure depicted at the top of each table includes all revenue sources; therefore, adding up the figures in the table will not equal the total figure depicted. Table 4 (New Mexico) includes several "n/a" entries which represent areas where the data is missing but has been requested from the State. The information from New

State Land Base Acreages

Utah

3.4 million surface acres

Idaho

*9 million surface acres
12.7 million subsurface acres*

New Mexico

*8.9 million surface acres
13.4 million subsurface acres*

Arizona

9.2 million surface acres

Nevada

3,000 surface acres

² 2012 was selected as the last year as much of the 2013 data is not currently available from the States.

Mexico was recently received but not yet incorporated into the table. Table 5 (Utah) also contains “n/a” entries but this information has not yet been received from the State of Utah. The information received will not change the numbers or the conclusions which might be drawn in terms total revenues, net revenues, etc.

Similar to Nevada’s 3,000 acres that are held in trust and managed for the benefit of the trust’s beneficiaries, lands are held in trust within the other States’. The *Distribution of Revenues by Beneficiary* tables (Table 2a (Arizona), Table 3a (Idaho), Table 4a (New Mexico) and Table 5a (Utah)) depicts the trust beneficiaries and the revenues provided to each beneficiary. The types of beneficiaries across the States’ are very similar and typically include education, hospitals, specialty schools,³ and penitentiaries, which can be generally categorized into education and health/human services. From the education standpoint, most revenues are distributed to the common schools (Kindergarten through grade 12). As an example of the revenues generated from the management of State trust lands in Arizona, in 2012, 8 million acres of State trust lands generated \$272 million for funding the common school system.

The *Observed High, Low, and Five-Year Average* tables (Table 7 (Arizona), Table 8 (Idaho), Table 9 (New Mexico) and Table 10 (Utah) are comparative tables which depict the observed high, low, and 5-year average for each state. This information is used to summarize the 5-year average revenues, expenditures, and employment in depicted Table 11 – *Five-Year Average Revenues, Expenditures and Employment in Selected States*. Table 12 – *Multi-State Observed High, Observed Low and Average* - offers an overview of the combined observed high, low, and the five-state average. Using the information obtained from other States’, a projection can be made of what might occur in Nevada if there was a significant change to the State’s land base.

Table 13, *Estimated Revenue, Expense, FTEs for Expanded State Land Area in Nevada Using Other State Models*, addresses a requirement of AB227 under Section 1 subsection 6(c)(4) (inset). Based upon the information obtained from other States’, the transfer of 47.7 million acres of BLM administered land to the State of Nevada could potentially generate a net revenue (using the four state average) of \$1.5 billion and is estimated to require approximately 1,000 people to manage those lands.

AB227 Section 1 – Subsection 6(c)(4)

“The identification of any potential revenue to be received from those lands by the State of Nevada after the transfer of the lands and recommendations for the distribution of those revenues.”

Section 1 subsection 6(c)(3) of AB227 (stated below) is addressed by information outlined in Table 19b, *BLM NV, DOI ONRR and PILT Revenue Distribution to Nevada State and Local Governments*, which summarize BLM derived revenues not paid directly to BLM but to the Department of the Interior’s (DOI) Office of Natural Resources Revenue (ONRR).

“A determine of the amount of any revenue that is currently received by the State of Nevada or a political subdivision of this State in connection with those lands, including, without limitation, any payments made in lieu of taxes and mineral ...”

During his presentation, Mr. Baughman addressed questions from the Task Force.

Commissioner JJ Goicoechea (Eureka County) asked if the 9 million acres of surface estate in New Mexico was included as part of the 12.7 million acres of subsurface estate as depicted on Table 4. **Mr. Baughman** indicated the 12.7 million acres of subsurface estate does include the 9 million acres of surface estate.

Commissioner Vaughn Hartung (Washoe County) asked that “land development revenue” be defined. **Mr. Baughman** indicated that the states are looking to maximize revenues for a sustained period of time for the benefit of the designated beneficiary. As an example, Arizona may identify a piece of land that has development potential for an

³ Examples are schools for the blind and deaf.

industrial park or a shopping center. The appropriate state land entity will establish the highest and best use of that land as an industrial park or shopping center and then lease that land for that purpose. In Idaho, the best opportunity to maximize revenues is leasing recreational cabins in the northern part of the State.

Commissioner Jerri Tipton (Mineral County) provided an example where the State may sell a piece of land to generate revenue to purchase another piece of land which would consolidate land ownership patterns near a town or state park. **Mr. Baughman** indicated that typically when a State sells land to purchase other land, the land purchased will be able to generate more revenue than the land which was sold. Typically, the lands being sold are in metropolitan areas such as Phoenix or Tucson where smaller parcels can be sold for large sums of money. The money received from the sale can be reinvested in other land resources or distributed to the beneficiaries of that land trust. **Commissioner Vaughn Hartung (Washoe County)** indicated that funds received from the sale of the land were a one-time revenue source. **Mr. Baughman** highlighted data shows in Table 2 that the State land base in Arizona increased from 9.2 million acres in 2011 to 9.3 million in 2012 despite the sale of 9,600 acres in 2012. Most of the increase was a result of land exchanges. In addition, Mr. Baughman highlighted that the sale of state land is occurring in every state but not on a wholesale basis. The states are working to maximize revenues for the beneficiaries and seize opportunities that arise to divest of a piece of property that will generate significant for reinvestment or distribution to the beneficiaries.

Commissioner Virgil Arellano (Lyon County) referenced a sale of public land to the City of Phoenix for development approximately twenty miles north of the city. The development was started; however, never finished. **Commissioner Hartung (Washoe County)** questioned if that was then the highest and best use of that land considering it was the City's choice to purchase that land, which is a concern to many Nevadans. **Mr. Baughman** highlighted that the data is not showing a wholesale divestiture of the State's lands.

Commissioner Bill Sjovangen (Storey County) indicated that approximately one-third of Utah's revenue is derived from investment. **Mr. Baughman** indicated that many states have a "permanent" fund that is used for investment purchases. One hundred percent of the revenues generated in the "permanent" fund are not typically distributed to the trust beneficiaries each year. Some States' have sizable endowments or "permanent" funds which are invested and returns distributed to beneficiaries.

When reviewing Table 12 – *Multi-State Observed High, Observed Low and Average*, **Commissioner Vaughn Hartung (Washoe County)** asked if, based on the information provided in the table, Utah was able to manage their state lands with 70 FTE to which **Mr. Baughman** responded "yes." Mr. Baughman went on to explain that Utah has a Trust Land Commission who must apply for appropriate permits, authorizations, etc., just like everyone else. While the Commission is a state entity, the staff responsible for processing requests for permits, authorizations, etc., are within a different State agency. **Jim Lawrence**, Administrator of the Nevada Division of State Lands, offered that a comparison between Utah and Nevada is somewhat like comparing "apples and oranges." In Utah, the Utah State Land office only has jurisdiction over lands that are managed in trust for education. The identified 70 FTE would not include personnel working in State parks or fire suppression personnel as is the case in Nevada. **Mr. Baughman** reiterated that the figures address only the trust land component with the state.

In discussing Table 13, *Estimated Revenue, Expense, FTEs for Expanded State Land Area in Nevada Using Other State Models*, **Bevin Lister**, a member of the audience, asked how many full-time employees BLM has within the State of Nevada; not counting fire suppression staff. **Mr. Baughman** indicated he doesn't have BLM Nevada staffing figures; however, Table 19A, *Five-Year Summary of Revenues, Expenditures, Employment – BLM*, addresses the number of BLM surface and subsurface acreages, revenues, expenses and staffing nationwide. Nationally, BLM's total staffing level, in 2012, was 10,489 (including fire staff). The agency's cost figures ranged from a low of \$2.50 per acre in 2009 to a high of \$3.39 per acre in 2012. The revenue figures range from a low of \$5.94 per acre to a high of \$8.46 per acre. In contrast, the five states' 5-year average cost of \$3.73 per acre is very close to the BLM's national cost figure. However, the revenue generated per acre is dramatically different because the BLM manages the public land base for other reasons in

addition to revenue generation. In contrast, based on their Constitution, states' are required to manage their trust lands to generate sustainable revenue for their beneficiaries. **Commissioner Jerri Tipton (Mineral County)** highlighted that the operative word was "sustainable." If a state's actions are not sustainable, they are falling short of their constitutional obligations. **Mr. Baughman** indicated that Intertech Services Inc., is trying to acquire information concerning the trend of resource conditions for the State and BLM land bases. **Chair Dahl** interjected that Mr. Baughman's statement concerning the rationale for the differences between the revenues generated by BLM as compared to the State raised concern from a member of the audience, Tina Nappe. Chair Dahl asked if the State would be able to manage for the income needed while maintaining the multiple uses and environmental quality. **Mr. Baughman** responded that States' are using trust lands to establish conservation areas for endangered species as mitigation for activities being completed on other trust lands. **Jim Lawrence** offered that the lands are administered for the purposes for which they were transferred. The enabling Act for those States' allowed for selection of certain lands for educational purposes, institutional purposes, etc. The State land offices have a fiduciary responsibility to manage those lands to generate sustainable income for those purposes. In the Task Force's deliberations, the primary focus should be on the purposes for which the lands would be transferred, which should be clearly outlined. If the land was transferred for multiple use management then they would be managed accordingly. A phased approach to the transferred of the public lands would allow for the purposes of a transfer to be clearly defined.

Commissioner Jerri Tipton (Mineral County) asked if the information yet to be received from the other States' would provide a more clear perspective if the State land is a healthier, more functioning, productive, and sustainable as compared to the adjacent public lands. **Mr. Baughman** responded that BLM regularly assesses the condition of their lands; however, it is not known if state land agencies are doing the same. **Commissioner Tipton** added that the condition and trend information should be included in the report as the trust lands are to be managed sustainably.

Commissioner Carl Erquiaga (Churchill County) outlined a scenario where (1) the state manages a piece of land to generate revenue while BLM may manage it for a different purpose (than generating revenue) and (2) it will require more revenue for the State to manage that piece of land. **Mr. Baughman** highlighted the information displayed in Table 19a where BLM's 2012 revenue for surface and subsurface activities was \$4.9 billion. The question to be addressed is if the BLM is generating as much revenue as they possibility could be making. **Commissioner Erquiaga** indicated that the State would be use the same piece of land as the BLM and if the State is going to be generating more revenue, then something different will need to happen. Will it cost the end user more money to operate on that same piece of ground? **Mr. Baughman** indicated that is the reason revenue, expense, and labor information was obtained from the other states was the assumption that the State of Nevada would not manage a piece of land in the same manner as the federal government. Instead, the State of Nevada may adopt a state management model under which it appears the management cost structure (cost per acre) may be the same; however, the revenues generated would be higher.

Commissioner Vaughn Hartung (Washoe County) asked if the revenue generated figures for BLM Nevada will be obtained. **Mr. Baughman** responded the Intertech Services, Inc., is working with BLM's Washington and Nevada State offices to obtain that information. **Commissioner Hartung** indicated the revenue generated information is important to evaluate staffing levels in determining what it would require on a county-by-county basis to manage those lands.

Commissioner Lorinda Wichman (Nye County) asked Commissioner Erquiaga to ask his question again. **Commissioner Carl Erquiaga (Churchill County)** asked if the cost of taking an action (developing a mine or a geothermal plant) under State management be more as compared to federal management. **Mr. Baughman** suggested that it will not cost more when operating on State lands. The rationale provided addressed the lack of solar development in southern Nevada. In other states, solar development has occurred principally on private and State lands because developing on federal lands involves too much uncertainty and requires too much time. Mr. Baughman's perception is the management approach taken by other states is working because they are receiving significant revenues tied to solar energy. **Chair Dahl** provide an Elko County example in which an oil and gas company wanted to drill in Elko County

but was essentially limited to private land because approximately 70 percent of the BLM-administered land in the County is off limits for drilling. If that public land were transferred to the State and the decision was made to allow oil/gas development, the economic impact the local communities, the County, and the State would be tremendous. **Mr. Baughman** expressed one significant difference between working with BLM versus the State is where the decision is ultimately made. For BLM, many decisions must be reviewed by many different levels including the State and Washington offices where, under State management, the decision is made at a more local level. **Commissioner Nancy Boland (Esmeralda County)** added that often companies have their own permitting costs and because a project is on federal land, the company may be required to mitigate off of their project area. **Mr. Baughman** indicated the cost figures depicted in the tables are strictly agency incurred costs and do not include industry costs. **Commissioner Jerri Tipton (Mineral County)** provided an example where the U. S. Geological Survey wanted to place seismometers in their valley but couldn't get permission from BLM; therefore, she allowed the seismometers to be placed in her backyard.

After addressing Table 19B, *BLM NV, DOI ONRR and PILT Distribution to Nevada State and Local Governments*, **Chair Dahl** asked if the net revenue for the state as identified in the 1994 report was \$301 million and what was the new figure was based on the information collected between 2008 and 2012. **Mr. Baughman** did not have the figure from the 1994 report; however, the estimated net revenue for the state based on the 2008 through 2012 data was approximately \$1.6 billion, which was primarily driven by energy (oil/gas). **Commissioner Vaughn Hartung (Washoe County)** provided an example of a company in Wyoming, where he has land, who actively seeks private land for development as it is difficult to get a well drilled on BLM-administered land. **Commissioner Virgil Arellano (Lyon County)** asked what the margin of error was in relation to the \$1.6 billion estimate. **Mr. Baughman** reiterated the estimate is based on the information received from the other States' over a period of time which involved a recession. **Commissioner Arellano** asked if all of the public lands were transferred to the state, based on the information provided, would approximately 1,100 employees be needed to manage those lands and was interested in determining the salary required for those employees.

Commissioner Vaughn Hartung (Washoe County) asked when Mr. Baughman expected to receive the Nevada BLM numbers to which **Mr. Baughman** responded that he had expected them prior to this time but was confident the numbers would be received. **Commissioner Hartung** stated the Nevada numbers will be very important to the Washoe County Commission in making a decision to move forward.

Chair Dahl indicated that with the transfer of all public lands to the State, it would be giving up the annual Payment-In-Lieu-of-Taxes (PILT) payment which is approximately \$23 million.

UPDATE AND PRESENTATION ON THE RESULTS OF THE QUESTIONNAIRE PRIORITIZING AND IDENTIFYING ISSUES RELATED TO A TRANSFER OF PUBLIC LAND IN NEVADA

Dagny Stapleton provided an overview of efforts to obtain additional feedback from thirty key stakeholders using a questionnaire patterned after a questionnaire used in the 1994 Eureka report. Four responses were received which will be summarized for inclusion into the final report. Generally, the responses were consistent with what has been heard from different organizations during the Task Force meeting public comment periods and presentations.

DISCUSSION ON ISSUES RELATED TO A TRANSFER OF PUBLIC LANDS FROM THE FEDERAL GOVERNMENT TO NEVADA INCLUDING THE TRANSFER OF MULTIPLE USES AND VALID EXISTING RIGHTS

Chair Dahl initiated the discussion by summarizing the transfer of multiple uses and valid existing rights with the land has been discussed in previous meetings during which a general agreement was reached that such uses and rights would

be transferred with the land. **Commissioner Lorinda Wichman (Nye County)** indicated that a transfer cannot legally be completed without recognizing valid existing rights and no one on the Task Force was interested in not transferring the multiple uses. **Commissioner Vaughn Hartung (Washoe County)** indicated that valid existing rights are considered an encumbrance on the property, which transfers with the land. **Chair Dahl** believes it will be important that any legislation addressing the transfer include language indicating valid existing rights will be transferred with the land. He does not believe valid existing rights automatically transfer with the land. **Commissioner Wichman** indicated she has looked at this issue not as State or federal ownership but from the viewpoint of federal management transferring to State management. **Chair Dahl** indicated we are discussing the transfer of the ownership and the management of the land. **Commissioner Wichman** suggested that if there was a piece of paper created that transferred ownership and management, it must include the appurtenances already on that piece of land. **Commissioner Hartung** agreed with Commissioner Wichman stating that the transfer does not dissolve the leases and obligations on the land. **Chair Dahl** referenced the State's enabling Act which states "we disclaim forever all interest in the public land ... until the disposition of the land." As an example, he explained that when a piece of property is purchased, it undergoes a title search to ensure the title is clear. For that reason, he believes legislation would not transfer the multiple uses and, when the transfer is completed and the State owns the land, it would be important to ensure the multiple uses and valid existing rights are preserved. **Commissioner Nancy Boland (Esmeralda County)** believes both Commissioner Wichman and Chair Dahl are correct. BLM typically does not grant easements but issues Rights-of-Way which would require language in the legislation that substitutes the words "State of Nevada" as the named party; instead of the "Department of the Interior". She believes it would be beneficial to have the legislation specific identify that the multiple uses and valid existing rights will transfer with the land.

Commissioner Jim French (Humboldt County) indicated that depending on the party asked, a BLM grazing permit is believed to be a "privilege" or a "right." **Chair Dahl** indicated the old definition of a privilege was a right, which he believes has been litigated. **Commissioner Jerri Tipton (Mineral County)** stated that when someone dies, their grazing permit or right is taxed by the Internal Revenue Service. **Commissioner French** responded that if a reduction is made by BLM to a grazing permit that the permit holder cannot claim a "takings." **Commissioner JJ Goicoechea (Eureka County)** explained that, in many cases, the reduced Animal Unit Months (AUMs) are placed in suspension, which are still part of the grazing permit but cannot be used. In other circumstances, where the grazing permit holder does something wrong, a grazing decision could be issued removing the AUMs from the permit permanently. There is an agency administrative process associated with taking such an action.

CONSENSUS RECOMMENDATION: To bring this discussion to a close, the Task Force reached consensus that the multiple uses and valid existing rights should transfer with the land. This consensus will be reported to the interim Public Lands Committee when an update is provided on February 5, 2014 in Las Vegas.

Commissioner Tom Collins (Clark County) suggested the February 5, 2014, presentation to the interim Public Lands Committee include a general statement addressing the need for a "hold harmless" clause under which all parties are held harmless and that no one be left out.

DISCUSSION ON ISSUES RELATED TO A TRANSFER OF PUBLIC LANDS FROM THE FEDERAL GOVERNMENT TO NEVADA INCLUDING OPTIONS FOR DISPOSAL AND SALE OF LANDS

In opening the discussion for this agenda item, **Chair Dahl** summarized that previous discussions identified certain lands that should be some of the first sold once they've been acquired. Such lands included (1) public lands identified by the federal agencies for disposal and (2) land within the railroad corridor (checkerboard). Revenues from the sale of transferred lands could be used for management of the remaining transferred lands. **Commissioner Virgil Arellano (Lyon County)** asked who might purchase the identified lands to which **Commissioner Jim French (Humboldt**

County) responded that there is land currently listed for sale on the Internet. Such lands are often purchased by people who live in the eastern part of the United States who want a “piece of the West.” **Chair Dahl** responded that he has been in contact with the company who currently owns the “checkerboard” properties previously owned by the railroad to obtain an estimated value of those lands.

Commissioner JJ Goicoechea (Eureka County) indicated that there may be a problem with Federal exchange of use agreements on grazing allotments in the checkerboard land pattern. In response to Commissioner Arellano’s question relating to who would want to purchase the land, Commissioner Goicoechea stated there are ranchers who run livestock in the checkerboard who might want to block up their allotments. Some ranchers are large enough to purchase the land while others might not be financially able to purchase the land. In addition, Commissioner Goicoechea feels there may be a substantial difference between the costs of an AUM charged by the State as compared to the cost charged by the federal government. **Chair Dahl** responded that the value of the State grazing lease is worth the additional monies paid for the forage. **Commissioner Goicoechea** suggested that areas such as Winnemucca, Elko, Beowawe, and Dunphy might be areas which should be considered for sale first for the expansion of the tax base and be more marketable with less impact to valid existing rights.

Commissioner Jerri Tipton (Mineral County) referenced an e-mail she forwarded to Dagny Stapleton concerning the General Railroad Right-of-Way Act of 1875 and Mountain States Legal Foundation’s legal argument presented to the United States Supreme Court. Dagny Stapleton agreed to post the information on the Task Force’s website as well as include the information in the minutes for the meeting (Appendix 2.)

Commissioner Virgil Arellano (Lyon County) asked if a performance bond should be required if a developer purchases land from the State for development and subsequently fails in completing the development. **Commissioner JJ Goicoechea (Eureka County)** suggested the question was beyond the scope of the Task Force’s effort. **Commissioner Tom Collins (Clark County)** indicated that approximately twenty five years ago, the Planning Director for North Las Vegas found that if that private land was not part of a federal grazing allotment, livestock grazing under a federally issued permit would be in trespass if they entered the private land. Commissioner Collins indicated that Nevada is a “fence out” state under which a private land owner must fence their property to keep livestock from entering. If there isn’t a fence, livestock entering the private land are not considered to be in trespass, which is why he (Commissioner Collins) believes a “hold harmless” clause should be included in the legislation. **Commissioner Goicoechea** agreed the livestock would not be in trespass and mentioned that a person cannot get credit for the AUMs if they don’t have an exchange-of-use agreement.

Chair Dahl indicated that there is a general agreement amongst the Task Force members that there will not be a wholesale sale of lands after it is transferred from the federal government to the State. In addition, he proposed with limited exceptions, any land sold by the State should be approved by the County Commission of the county in which the land is located. **Commissioner Vaughn Hartung (Washoe County)** stated the sale of land should follow the rules, policies, and procedures of that county. **Commissioner Virgil Arellano (Lyon County)** asked if Public Lands Management Boards should be given opportunity to review the sale. **Commissioner Nancy Boland (Esmeralda County)** suggested the sale must be completed in conformance with the County’s Master Plan and gain concurrence of the appropriate County body (Commission, Planning Board, etc.). Such an approach may require a change to the Nevada Revised Statutes. **Commissioner Tom Collins (Clark County)** stated that BLM requires an appraisal before a piece of land can be sold. A second point raised by Commissioner Collins was the State can sell the land if they own the land; however, the county only has land use requirements. **Chair Dahl** emphasized that the Task Force is only considering suggestions at this time and does not have any decision-making authority.

CONSENSUS RECOMMENDATION: In closing this discussion, **Chair Dahl** indicated that there is consensus that (1) the sale of land by the State be approved by the appropriate County Commission, (2) there will not be a wholesale sale of

lands transferred to the State from the federal government, and (3) initial sales of transferred lands should include those lying within the railroad corridor (checkerboard.)

Chair Dahl indicated the initial sales should include lands where there is a strong consensus for the sale. **Commissioner Nancy Boland (Esmeralda County)** stated that County Lands plans identify properties the County would like to see disposed of by the federal government for development around communities – lands which may not be identified in the federal government’s planning documents. Developing lands near communities where the expense of providing required services (power, water, etc.) would be lower as compared to areas which are not located near existing services.

Commissioner Vaughn Hartung (Washoe County) indicated that within Washoe County required services are a part of the developer’s developmental plan. A developer cannot develop in a remote location expecting the County to provide the necessary infrastructure. **Commissioner Boland** relayed an experience when smaller developments in rural areas were completed, the developer wanted to give the water systems to Nye County or to a municipal forum that later created problems.

Commissioner Tom Collins (Clark County) offered a word of caution in approaching this issue - the State will own the land and the Task Force should not approach the sale of State land as if the County had a veto power. **Chair Dahl** responded that the Task Force is making recommendations and does not have a decision-making role.

DISCUSSION ON WHICH LANDS TO INCLUDE IN A TRANSFER OF PUBLIC LANDS FROM THE FEDERAL GOVERNMENT TO THE STATE OF NEVADA

To initiate the discussion, **Chair Dahl** read a statement he received into the record (below).

“Which Lands Transfer?

Recognizing one plan for the transfer of the public lands will not fit all states, it will however, be beneficial for the Western States that determine a transfer is in their best interest, to present a untied front, in their demand to Congress for the transfer of the public lands.

The State of Utah, being the first Western State to demand a transfer, established a precedent in HB148 by including all lands within its borders, with the exception of National Monuments, National Parks and congressionally designated wilderness areas.

Recognizing there are some lands in Nevada not to be considered for transfer such as Indian Lands and military lands, (excluded lands), it is the position of the NLMTF that in the event of a transfer demand, Nevada’s initial position should be for the inclusion of all Public Lands within its borders, except National Monuments, National Parks, Congressionally designated Wilderness Areas and (excluded lands).

The NLMTF recognizes that any transfer will require a transition period during which time the State of Nevada will work with the seventeen Nevada Counties and stake holders on the public lands to ensure all valid existing rights, multiple uses and interests are protected.

The State of Nevada and the Federal Government will negotiate an orderly transition and establish a timetable and process for the transfer to the Public Lands.”

Commissioner Jerri Tipton (Mineral County) indicated that the Hawthorne Army Depot lies within her county and if the Task Force indicated that the State was not interested in military lands, what would happen if the Depot were to be closed. Would the land go back to the BLM or could language be included in legislation addressing transfer of the land? **Chair Dahl** indicated the current approach may exclude wilderness areas, which some Task Force members do not agree

should be withheld from transfer particularly in light of the Task Force's direction addressing the need to provide for wilderness areas following transfer of the public lands, and that those lands excluded in any transfer legislation could not be transferred to the State at some future point in time. If all public lands are included in the original request, the properties not included in the transfer legislation based on negotiation with the federal government could be made available for transfer at some later point in time. **Commissioner Vaughn Hartung (Washoe County)** indicated that another question which needs to be asked is if the State would inherit any issues (contamination, hazardous materials, etc.) on that land when it is transferred. Using the Hawthorne Army Depot example, **Commissioner Tipton** indicated the majority of the Depot south of the highway is already clean; however, she believes 60 years will be required to address the area north of the highway. She also believes the Depot may not be closed but archived. Commissioner Tipton stated that the BLM and the Department of Defense (DoD) disagree as to the final disposition of the land once the Depot is returned. BLM indicates that it will be given back to BLM while the DoD believes it should be returned to the County.

Commissioner Nancy Boland (Esmeralda County) indicated that BLM identifies similar military lands as "withdrawn" from public use but still remain under the preview of the Department of the Interior and BLM. **Commissioner Tipton** provided another example where BLM argued the permitting of a geothermal plant on the Depot must be approved by the BLM whereas DoD argued the geothermal facilities would be located on DoD-administered lands; therefore, the DoD must approve the project. In closing, **Commissioner Jim French (Humboldt County)** offered a solution where language should be included in the legislation describing a method for evaluating and accepting withdrawn lands brought back into public use. **Chair Dahl** indicated that the last sentence of the statement read into the record earlier addressing "an orderly transition and time table and process for the transfer of the Public Lands" could address such instances. **Commissioner French** felt that it important for the Task Force to address, in its recommendation, areas such as natural conservation areas, areas with special needs (Areas of Critical Environmental Concern, etc.) as these areas are important to many Nevadans. **Chair Dahl** agreed with Commissioner French and stated it may still be important to transfer the ownership and continue management of those areas under the State.

Commissioner JJ Goicoechea (Eureka County) indicated he agreed with what was said in relation to the transfer and management of special areas; however, it is important to listen to what was presented by Director Drozdoff. With the understanding that the State will eventually want all public lands, it will be important to identify priorities for the transfer of public lands. Lands to be transferred now should be identified in the legislation and come back at a later point in time for the transfer of additional properties. **Chair Dahl** believes that the only successful avenue for transfer of the public lands to the State will occur is if all western States' approach Congress together with one piece of legislation. Therefore, Chair Dahl recommends that Nevada make the same request as being made by the other States. Afterwards, through negotiation with the federal government, transfer priorities and a time line could be addressed. **Commissioner Goicoechea** believes the Task Force should provide the State with an outline to work from when it comes time for negotiation with the federal government.

Commissioner Patsy Waits (Lander County) indicated that each State will have public lands with unique issues (such as the nuclear deposits in Idaho or Yucca Mountain in Nevada) where the transfer to State ownership will not be desirable. **Commissioner Lorinda Wichman (Nye County)** believes most counties have already identified a priority, as suggested by Commissioner Goicoechea, when they asked the federal agencies for the federally identified disposal properties around their communities. **Commissioner Virgil Arellano (Lyon County)** indicated the end goal should be to acquire all of the public lands; however, the State is not prepared to accept all of the lands in the short term. In exploring different alternatives to the transfer of public land, he examined a "vertical" approach – all of the lands, certain lands identified by the county, or opportunities to change policy in how the federal government manages and administers the public lands. A more "horizontal" approach using a 'see saw' image as an example, if all the public land were placed on one end of the see saw, the only way to bring the see saw to a horizontal position is to slowly add smaller pieces – certain lands identified by the county or policy changes – to the other end over time. Commissioner Arellano stated that he does not believe the Lyon County Commission is interested in assuming responsibility for all public lands. He believes the counties will need to demonstrate the ability to manage and administer the lands, which he would prefer to accomplish

over time; rather than all at once. **Commissioner Kevin Phillips (Lincoln County)** believes that the States' will be given one opportunity for legislation addressing the transfer of public lands; not a piece at a time over an extended period. Historically, states such as Ohio and Illinois who had opportunity to obtain the public land, Congress finally had to make the decision to give the remaining lands that could not be disposed of to the State. He believes the current western States need to request the same type of public lands to accomplish the task of shifting the title of the land to the State.

Commissioner JJ Goicoechea (Eureka County) agreed that there will be one opportunity for federal legislation but the State needs to prioritize the order by which the land will be transferred. **Commissioner Virgil Arellano (Lyon County)** stated that realistically the one opportunity for federal legislation may not come for several years but the State needs to be prepared and ready when the opportunity presents itself. **Commissioner Bill Sjovangen (Storey County)** doesn't believe the transfer will occur at one time as it is unclear how all of the federal employees would be addressed. **Commissioner Vaughn Hartung (Washoe County)** agreed with Commissioner Sjovangen as the federal government would not want to give up the "cash cow." **Chair Dahl** agreed by referencing a report issued by the General Accounting Office in which the public lands underlying Colorado, Wyoming, and Utah contains more retrievable oil than the rest of the entire world. He asked why the federal government would want to transfer the lands to those lands to the State. Also, when the schools in Nevada discover the revenues outlined in Mr. Baughman's presentation, the people of Nevada demand their Congressional delegation transfer the lands to the State. **Commissioner Patsy Waits (Lander County)** indicated that it is important the Task Force assist the State in being responsible as there are many Nevadans who expect the State to fail if the lands are transferred from the federal government. **Commissioner Tom Collins (Clark County)** stated that the February 5th presentation to the interim Public Lands Committee should identify a proposal which will demonstrate a positive step forward and then take additional steps later. **Chair Dahl** responded that if the State asks for everything, through negotiation, it may acquire what it wants. **Commissioner Collins** indicated that proposal needs to be identified which can be drafted into a reasonable bill and negotiated during the bill's hearing. If an unreasonable request is made, a hearing may not be scheduled by the Committee's Chairman. In closing, **Commissioner Vaughn Hartung (Washoe County)** indicated that if the Task Force is able to demonstrate the revenue that could be generated for the State through the transfer of the public land, requesting all public lands may be attractive to the legislature. **Commissioner Jim French (Humboldt County)** agreed with Commissioner Hartung that the argument for acquiring all of the public lands as reported by Mr. Baughman earlier in the day is diminished if the State does not request all of the public lands.

DISCUSSION ON TIMELINE OF TASKS TO ACCOMPLISH BY THE TASK FORCE PRIOR TO SUMMER 2014, INCLUDING DISCUSSION OF ACCOMPLISHMENTS TO DATE, CONSENSUS NEEDED, AND TASKS OUTSTANDING

Dagny Stapleton indicated that there are several tasks that must be accomplished in order to have a preliminary report to the interim Public Lands Committee by early summer. The last pages of the pre-meeting material provide a (1) summary (language from Section 1 subsection 6 of AB227) of items which will need to be included in the final report and (2) index of what will be included in the final report.

Chair Dahl asked Jeff Fontaine (Executive Director of NACO) and Rob Stokes (Elko County Manager) if there was an avenue for the Task Force to communicate in writing without violation of Nevada Open Meeting law. **Jeff Fontaine** responded that NACO could distribute material to the Task Force and receive responses as long as the responses were not sent to everyone on the Task Force (i.e., using the "reply all" button.) NACO could assemble and compile the information for discussion at a subsequent Task Force meeting. **Rob Stokes** agreed with the approach outlined by Jeff Fontaine and asked that the Task Force avoid editing each other's comments or having discussions via e-mail. **Dagny Stapleton** asked Task Force members to respond directly to her and not use the "reply all" button.

ACTION: **Chair Dahl** asked the Task Force to forward the following items to Dagny Stapleton.

- Any discussion, ideas, or questions that should be shared with the Task Force addressing AB227 Section 6(a), (b), or (c); and,
- Items (including any pertinent information) to be included on the agenda for the February 21, 2014, meeting.

Commissioner JJ Goicoechea (Eureka County) asked that feedback from the February 5, 2014, presentation to the interim Public Lands Committee be placed on the agenda for the Task Force's February 21st meeting.

Commissioner Vaughn Hartung (Washoe County) asked how the costs relating to the transfer of the public lands will be identified. **Mr. Baughman** responded that obtaining those costs is not directly related to their contract; however, has some thoughts. One approach would be to determine how much it costs BLM to dispose of a piece of property. In addition, counties have also disposed of lands where the County auditor should have information relating to the costs for selling and patenting of those properties.

Commissioner Nancy Boland (Esmeralda County) asked if the Task Force should focus its attention on item four (Administration, Management, and Use of Transferred Lands) as identified on the Intertech Services Inc. outline of the final report to the interim Public Lands Committee.

Chair Dahl asked if there was interest in obtaining additional presentations from different sectors of the State such as utilities, off-highway organizations, etc. **Commissioner Lorinda Wichman (Nye County)** indicated that she would like to receive updates from Intertech Services, Inc. **Commissioner Nancy Boland (Esmeralda County)** expressed interest in hearing from different State officials as the Task Force delves into the administration and management of transferred lands. **Commissioner Virgil Arellano (Lyon County)** thought it critical that the Task Force invite NV Energy to give a presentation. It was pointed out that NV Energy was one of the stakeholders who received the questionnaire and a presentation might not be necessary.

Commissioner Arellano asked if there was an information sheet that could be distributed to the public relaying the progress of the Task Force's efforts. **Commissioner Lorinda Wichman (Nye County)** indicated need for a press release. With the volume of information presented at each meeting, Commissioner Wichman has not been able to keep her peers and constituents informed of the Task Force's efforts. She has attached the Task Force's pre-meeting materials provided by NACO as backup materials for the Nye County Board of Commissioner's meetings, which are distributed to the public. **Chair Dahl** relayed the intent was to have each Task Force member report to their Commissions and press releases prepared by NACO would be sent to everyone. **Dagny Stapleton** indicated that press releases were not sent out in November or December 2013; however, a one-page meeting summary was prepared and distributed shortly after each meeting. **ACTION:** Dagny Stapleton will prepare and distribute a press release and a one-page summary of this meeting.

DISCUSSION ON CONTENT AND PRESENTERS FOR THE TASK FORCE UPDATE TO THE NEVADA LEGISLATURE'S INTERIM COMMITTEE ON PUBLIC LANDS

The update to the interim Public Lands Committee on February 5, 2014,⁴ will address the current status of the Task Force's effort including the consensus on several items discussed at this meeting. **Commissioner JJ Goicoechea (Eureka County)** asked that Commissioner Tom Collins and State Senator Goicoechea be contacted ahead of the February 5th meeting to determine if there are specific items they would like addressed in the presentation.

⁴ The interim Public Lands Committee will meet in Las Vegas beginning at 9 AM on February 5th. The meeting will be video conferenced to Carson City.

DISCUSSION ON AND APPROVAL OF DATES AND LOCATIONS FOR FUTURE TASK FORCE MEETINGS

At the December 6, 2013, meeting, the decision was made to conduct the Task Force meetings on the same date as the NACO Board of Director meetings. Based on that direction, the Task Force is scheduled to meet on the dates depicted in the inset in Carson City at the NACO office.

Commissioner Tom Collins (Clark County) expressed his appreciation for scheduling the Task Force meetings to occur on the same date as the NACO Board of Directors meetings. He also asked that the Task Force continue its timely coordination with the interim Public Lands Committee.

DISCUSSION AND POSSIBLE APPROVAL OF TOPICS FOR FUTURE TASK FORCE MEETINGS

Task members were asked to share possible topics for the next Task Force meeting with Dagny Stapleton.

PUBLIC COMMENT

One speaker provided comment during the meeting's second public comment period.

Mr. Bevan Lister representing the Nevada Farm Bureau indicated he enjoyed listening to the Task Force's discussion and wholeheartedly supported the effort and the issues ahead of the Task Force. It is a continual struggle to work with the federal government agencies to get things done, which is not getting any easier. In discussions at the Sagebrush Ecosystem Council, it is clear that efforts of the various federal and state entities are not coordinated. As an example, he cited a Council meeting where the U. S. Fish & Wildlife Service and the Natural Resource Conservation Service argued for a period of time. The principal he is trying to lean towards is management in our system of government is best done at home, which is the only way that principal will become a reality. He understands there are fears and logistical problems with implementation of AB227 – fears and logical problems which need to be overcome. He implored the Task Force not to be fearful. Counties can write plans. The State can pass laws. He asked the Task Force members if they want to be legislators over 100 percent of their county or only 3 or 4 percent. The "door" has been opened for a tremendous opportunity and encouraged the Task Force to move forward. He agrees with many of the Task Force members that there may only be one opportunity to transfer the public lands. Writing legislation containing a tapered time line is one of many options to explore.

ADJOURNMENT

Chair Dahl accepted a motion from **Commissioner Jerri Tipton (Mineral County)** and seconded by **Commissioner Patsy Waits (Lander County)** to adjourn the meeting. The motion passed unanimously and the meeting was adjourned at 4:23 PM.

Scheduled Task Force Meetings

February 21, 2014

March 28, 2014

April 25, 2014

May 30, 2014

June 27, 2014

*July 18, 2014
(if needed)*

*August 22, 2014
(if needed)*

ACRONYMS

The following acronyms were used during the meeting and listed in alphabetical order.

<u>Acronym</u>	<u>Meaning</u>
AB.....	Assembly Bill
AUMs.....	Animal Unit Months
BLM.....	U. S. Bureau of Land Management
DCNR.....	Nevada Department of Conservation and Natural Resources
DoD.....	U. S. Department of Defense
DOI.....	U. S. Department of the Interior
DSL.....	Nevada Division of State Lands
FMAG.....	Fire Management Assistance Grant
FTE.....	Full-Time Equivalency
NACO.....	Nevada Association of Counties
NDEP.....	Nevada Department of Environmental Protection
NDF.....	Nevada Division of Forestry
ONRR.....	U. S. Office of Natural Resource Revenue
PILT.....	Payment-In-Lieu-of-Taxes

ATTACHMENTS**ATTACHMENT 1 – MEETING ATTENDANCE****TASK FORCE**

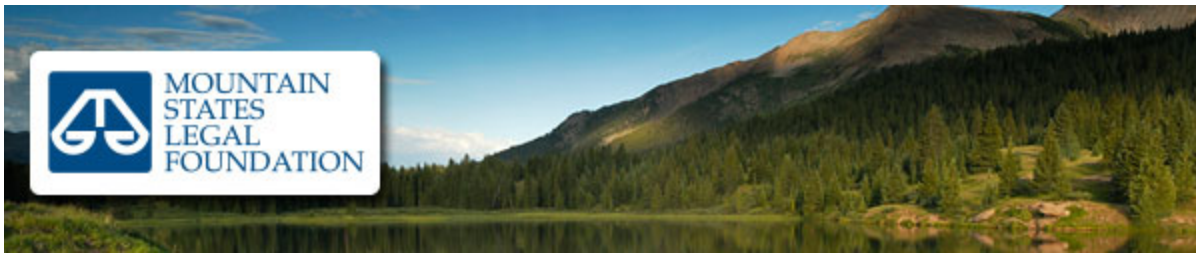
Participant Name	Position	Government Entity	Present	Not Present
Bob Crowell	Mayor	Carson City		X
Carl Erquiaga	Commissioner	Churchill County	X	
Tom Collins	Commissioner	Clark County	Video	
Doug Johnson	Commissioner	Douglas County		
Demar Dahl	Commissioner & Task Force Chairman	Elko County	X	
Nancy Boland	Commissioner & Vice Chairman	Esmeralda County	X	
JJ Goicoechea	Commissioner	Eureka County	X	
Dan Cassinelli	Commissioner	Humboldt County	Video	
Jim French	Commissioner	Humboldt County	X	
Patsy Waits	Commissioner	Lander County	X	
Kevin Phillips	Commissioner	Lincoln County	X	
Virgil Arellano	Commissioner	Lyon County	X	
Jerrie Tipton	Commissioner	Mineral County	X	
Lorinda Wichman	Commissioner	Nye County	X	
Mike Stremler		Pershing County	X	
Bill Sjovangen	Commissioner	Storey County	X	
Vaughn Hartung	Commissioner	Washoe County	X	
Laurie Carson	Commissioner	White Pine County	X	

SPEAKERS

Name	Position	Organization or Entity
Leo Drozdoff	Director	Nevada Department of Conservation and Natural Resources
Mike Baughman	President	Intertech Services, Inc.

OTHER PARTICIPANTS

Name	Position	Organization or Entity
Jeff Fontaine	Executive Director	Nevada Association of Counties
Dagny Stapleton	Deputy Director	Nevada Association of Counties
Mike Holbert	Owner	Silver State Meeting Minutes
Chris Rose	Public Affairs Officer	Bureau of Land Management – Carson City District
Don Alt		Nevada Livestock
Chandeni Gill	Attorney	Lionel, Sawyer, and Collins
Tina Nappe		
Collin Sievers		Bureau of Land Management – Carson City District
Lisa Ross		Bureau of Land Management – Carson City District
Steve Walker		Walker & Associates
Bob Clifford	Chair	Fallon Tea Party
Jim Lawrence	Administrator	Nevada Division of State Lands
Bevan Lister	Vice-President	Nevada Farm Bureau



January 22, 2014

Dear Ms. Thomas:

I have just returned from the appearance by Mountain States Legal Foundation (MSLF) before the Supreme Court of the United States on behalf of our Wyoming client, Marvin Brandt. Now that I have finished the work that piled up during my time in Washington, D.C., including fundraising efforts for 2013, I want to report to you on the arguments.

By way of background, in 1875, Congress passed the General Railroad Right of Way Act of 1875, which provided for conveying easements to railroads to lay railroad track to permit the settlement of the West by private citizens. It was clear at that time that the right granted to the railroads was an easement and NOT a partial fee with a right of reversion to the federal government of the right of way after the railroad ended its use of the easement. In fact, from the time the U.S. Department of the Interior (DOI) first adopted regulations regarding the act in the 1800s until today, that is, as recently as November 2011 (the date of the most recent Solicitor's Opinion on the issue), the DOI has treated the right of way as an easement when conveying land to settlers. In 1942, the Supreme Court was presented with the question of whether the right of way was an easement or a partial fee in which the federal government retained an interest. The Solicitor General (SG) spent almost the entire brief arguing that it was an easement. The Supreme Court adopted that argument almost verbatim and rejected other arguments by the SG that were inconsistent with the holding that the right of way was an easement. Meanwhile, Congress made no changes in the 1875 act in response to either the actions of the DOI or the ruling of the Supreme Court.

As a result, everyone in the country--lawyers, landmen, and title insurance providers--recognized that if the federal government conveys to a private party lands encumbered with an 1875 railroad right of way, when the railroad abandons its use of the right of way, the former easement is absorbed into the title owned by the private landowner. That is, the land is no longer encumbered by the easement and is owned outright and totally by the landowner and NOT the federal government. The patent received by our client, Marvin Brandt of Fox Park, Wyoming, provides that his land is encumbered by the railroad right of way and that the federal government retains no interest in the property. Now the federal government, after 140 years of arguing otherwise, asserts that when it conveyed the right of way to the railroad it was NOT an easement, but a partial fee in which the

federal government retained the right of reversion, that is, it could get it back. This partial fee with right of reversion that the federal government argues exists and has existed since 1875 is unknown to the common law and property law in this country. In fact, the concept is not just alien to the common law, it is a sleeping Frankenstein monster created by the federal government and its allies in States, municipalities, and land-grab groups that, if allowed to awaken as a result of a Supreme Court ruling against Marvin Brandt, will eject people from their land and even their homes. As several justices pointed out during the argument, the federal government argues that, contrary to all knowledgeable expectation and 140 years of actions by Congress, the Court, and the Executive, millions of landowners will be displaced or have their titles to their land rendered in doubt.

There was some media coverage of the case:

<http://www.scotusblog.com/2014/01/argument-preview-rights-to-old-rights-of-way/>

<http://www.usatoday.com/story/news/nation/2014/01/14/supreme-court-property-rights-west/4479339/>

<http://washingtonexaminer.com/supreme-court-to-decide-if-bicycle-trails-trump-property-rights/article/2542361>

My article on the case appeared in the *Washington Times* the day before the argument:

<http://www.washingtontimes.com/news/2014/jan/12/pendley-the-us-forest-service-land-grab/>

Because cameras are not allowed in the Courtroom, artists capture their view of the proceedings. Here is that of Art Lien (you may click on it to enlarge it):

<http://courtartist.arthurlien.com/famain.asp?customerid=697&sKey=G4K947EV&action=viewimage&cid=28&lid=0&imageid=1667>

To sum it up, the argument went very well for MSLF and its client. I expect a 7-2 ruling (with Justices Breyer and Kagan joining the 5 normally right-of-center justices) and would not be surprised with a unanimous ruling given Chief Justice Roberts' penchant for unanimous rulings and the lack of any ideological passion in the questions posed by Justices Ginsburg and Sotomayor. The transcript is online here:

http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-1173_7lh8.pdf

As MSLF's Vice President and Chief Legal Officer, Steve Lechner, made clear in his opening, the ruling sought by the federal government would: 1) overturn the Court's 1942 ruling in *Great Northern*, which interpreted the 1875 General Railroad Right of Way Act, which is at issue in *Brandt*; 2) overturn the Court's 1979 ruling in *Leo Sheep*, which held the federal government does not acquire property by implication, or as I would put it, by stealth; and 3) reverse 140 years of policy by the federal government including acts of Congress, consistent actions by the Executive, specifically the Department of the Interior, and a ruling by the Supreme Court in 1942.

As a result, the federal government was under constant attack during its argument for: 1) reversing its position, which the Court wholeheartedly embraced, in *Great Northern*; 2) not providing case law

support for its new position, adopted after 140 years of viewing the grant in question as an easement; and 3) subjecting thousands and perhaps millions of landowners, who had relied on the federal government's actions for 140 years, to the seizure of their property and on this point the federal government was hammered for not knowing how much land would be affected by the Court's decision. Declared Justice Scalia, "[Y]ou should know how much land the United States owns. **It's incredible that--that there's no record in the Interior Department or anywhere else of what land the United States own.** You claim you own these thousands of acres, and you say we've not kept track of it. We just know where it's going to go, but we don't know what we own." (pp. 51-52)

The attack on the federal government started early—the federal government's attorney got out two sentences--with Justice Alito: "Mr. Yang, I have to say I think the government gets the prize for understatement with its brief in this case. You have a sentence in your brief that says, 'We acknowledge that there is language in this Court's opinion in *Great Northern* and in the government's brief in that case that lends some support to petitioner's contrary argument.'" Then Justice Alito quoted four subject headings from the government's brief in *Great Northern*, which argue forcefully that the grant is an easement. (p. 24)

Justice Breyer was very troubled by the possibility that someone would wake up with a bicycle path through his house (p. 36), especially given the proper reliance on *Great Northern* for over 70 years. "Can you imagine or explain to me why a property lawyer worth his salt since 70 years ago or more, 1942, wouldn't have read [*Great Northern*] and advised his client, who was buying the land, if the railroad abandons it, it's yours," asked Justice Breyer. (p. 32) "[B]ecause the lawyer would think--when he reads the case of *Great Northern* ... it's an easement." (pp. 36-37) Justice Kagan later jumped in, "Well, I'm just suggesting that after *Great Northern* and then you're given this patent, which is unequivocal and does not reserve anything, why anybody would think that they haven't gotten the whole ball of wax is a mystery." (pp.40-41) As I noted already, the desultory and perfunctory questions by Justice Ginsburg and Sotomayor cause me to believe that they will join the other justices in the majority opinion.

I will let you know when the Court rules, which should be long before June. In the meantime, Happy New Year and thank you for your support. Best, Perry

William Perry Pendley, Esq.
President
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, Colorado 80227
303-292-2021; FAX 303-292-1980

<http://mountainstateslegal.org>