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APPENDIX A – “FRAMEWORK FOR THE TRANSFER OF TITLE BUREAU OF RECLAMATION PROJECTS”

**FRAMEWORK FOR THE TRANSFER OF TITLE
BUREAU OF RECLAMATION PROJECTS
AUGUST 7, 1995**

BACKGROUND

The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. While it has been Reclamation's policy for decades to transfer operation and maintenance of projects to local entities where and when appropriate, interest in the actual transfer of title (with its attendant responsibilities) is now growing.

PURPOSE

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to a project will, in effect, sever Reclamation's ties with that project¹.

SCOPE OF APPLICATION OF FRAMEWORK

It is the intent of Reclamation to transfer title and responsibility for certain projects or facilities, when and where appropriate, to qualifying non-Federal interests. Uncomplicated projects are projects or facilities where there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns² associated with a transfer can be readily addressed. In other words, after meeting the requirements set forth in the Criteria section below, projects will be selected

¹ Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

² Such concerns include, but are not limited to, unresolved Native American claims, endangered species considerations, international or interstate issues, absence of consensus among beneficiaries, significant disagreements raised by the stakeholders, a need to prepare an Environmental Impact Statement, and substantive objections from other governmental agencies.

for title transfer on the basis of the transfer being achievable and able to move forward quickly.

For purposes of this document and the transfer of title to the projects, the terms "beneficiary" and "stakeholder" are defined as follows: (a) beneficiary refers to (i) contractors and others who receive direct benefits under the authorized purposes for that project and (ii) non-Federal governmental entities in the project area; (b) stakeholder is a broader term and includes the beneficiaries, as well as those individuals, organizations, or other entities which receive indirect benefits from the project or may be particularly affected by any change from the status quo.

CRITERIA FOR TITLE TRANSFER

Following are the six major criteria that must be met before any project is transferred:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected
- 2) There must be compliance with all applicable State and Federal laws
- 3) Interstate compacts and agreements must be protected
- 4) The Secretary's Native American trust responsibilities must be met
- 5) Treaty obligations and international agreements must be fulfilled
- 6) The public aspects of the project must be protected

GENERAL GUIDANCE FOR DETERMINING PROJECTS ELIGIBLE FOR TRANSFER

Reclamation Area offices will review projects nominated by an interested transferee and will pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve. This could include projects with multiple purposes and numerous stakeholders, but only if it is clear that outstanding issues are resolved and that there is consensus among the stakeholders.

Reclamation will not initiate negotiations on those projects where title transfer will involve a protracted process to ensure that the six criteria listed above are met.

Generally, Reclamation will not pursue transfer of powerhouses and generating facilities where power is marketed by the Power Marketing Administrations or where such power is used for purposes not directly associated with project purposes.

GENERAL GUIDELINES APPLYING TO TRANSFERS

All transfers will be voluntary.

Reclamation's intent is to transfer projects to current project beneficiaries, including non-Federal governmental entities, or to entities approved by the current beneficiaries.

All transfers must have the consent of other project beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

Reclamation will comply with National Environmental Policy Act and other applicable laws in all transfers³.

All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities. Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project.

In general, it is Reclamation's expectation that, upon the transfer of title to a project, its jurisdiction over that project will be divested. Reclamation further recognizes that in some cases the complete divestiture of jurisdiction may not be attainable because the transferee still receives water supplied from a Reclamation facility, or only a portion of the project was transferred and the rest of the project remains in Federal ownership, or there are other extenuating circumstances. The degree to which the Reclamation Reform Act of 1982 will apply following transfer will be negotiated on a case-by-case basis.

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. (See attachment which describes the valuation of projects.) Transferees will be expected to pay up front the estimated transaction costs, such as costs associated with compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. Reclamation will not provide new loans to finance transfers.

No transferred Federal asset will be considered for federal assistance for project operation, maintenance, and replacement or capital construction purposes following completion of the transfer.

³ Reclamation is proceeding to develop a new Categorical Exclusion (CE) for those title transfers which would not significantly impact the environment and thus could be categorically excluded from a detailed NEPA review. Generally, Reclamation would anticipate such a CE would apply on projects involving transfer of title of Reclamation projects or facilities, in whole or in part, to entities who would operate and maintain the facilities or manage the lands so that there would be no significant changes in operations and maintenance or in land and water use in the reasonably foreseeable future. It is Reclamation's expectation that a CE would apply to relatively small number of projects, i.e. some of the small single-purpose projects where no change in use is anticipated after the transfer.

Prior to the initiation of detailed discussions on title transfer, Reclamation and the potential transferees will execute an agreement covering the responsibilities of all parties during the negotiations.

A base value will be determined for each project as it becomes the subject of serious negotiations for transfer. (See attached guidance on valuation.) The negotiated price for the project may deviate up or down from the base value. It will be necessary for Reclamation and the interested non-Federal entity to document how the factual circumstances and equitable treatment considerations justify such adjustments. In addition, Reclamation may consider future uses on the transferred lands and waters in establishing a price.

Potentially affected State, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner.

Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each project or feature.

**APPENDIX B – PUBLIC LAW 107-282 (107TH CONGRESS),
HUMBOLDT PROJECT CONVEYANCE ACT**

107th Congress, 2^d Session, Report 107-750
TITLE VIII – HUMBOLDT PROJECT CONVEYANCE

SEC. 801. SHORT TITLE.

This title may be cited as the “Humboldt Project Conveyance Act”.

SEC. 802. DEFINITIONS.

For purposes of this title:

- (1) SECRETARY. - The term “Secretary” means the Secretary of the Interior.
- (2) STATE. - The term “State” means the State of Nevada.
- (3) PCWCD. - The term “PCWCD” means the Pershing County Water Conservation District, a public entity organized under the laws of the State of Nevada.
- (4) PERSHING COUNTY. - The term “Pershing County” means the Pershing County government, a political subunit of the State of Nevada.
- (5) LANDER COUNTY. - The term “Lander County” means the Lander County government, a political subunit of the State of Nevada.

SEC. 803. AUTHORITY TO CONVEY TITLE.

(a) IN GENERAL. - As soon as practicable after the date of enactment of this Act and in accordance with all applicable law, the Secretary shall convey all right, title, and interest in and to the lands and features of the Humboldt Project, as generally depicted on the map entitle the “Humboldt Project Conveyance Act”, and dated July 3, 2002, including all water rights for storage and diversion, to PCWCD, the State, Pershing County, and Lander County, consistent with the terms and conditions set forth in the Memorandum of Agreement between PCWCD and Lander County dated January 24, 2000, and the Conceptual Agreement between PCWCD and the State dated October 18, 2001, the Letter of Agreement between Pershing County and the State dated April 16, 2002, and any agreements between the Bureau of Reclamation and PCWCD.

(b) MAP. - As soon as practicable after the date of the enactment of this Act, the Secretary shall submit to Congress a map of the Humboldt Project Conveyance. In case of a conflict between the map referred to in subsection (a) and the map submitted by the Secretary, the map referred to in subsection (b) shall control. The map shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such map and legal description. Copies of the map shall be on file and available for public inspection in the Office of the Commissioner of the Bureau of Reclamation and in the office of the Area Manager of the Bureau of Reclamation in Carson City, Nevada.

(c) COMPLIANCE WITH AGREEMENTS. - All parties to the conveyance under subsection (a) shall comply with the terms and conditions of the agreements cited in subsection (a).

(d) REPORT. - If the conveyance required by this section has not been completed within 18 months after the date of enactment of this Act, the Secretary shall submit a report to the Committee of Energy and Natural Resources of the Senate that describes –

- (1) the status of the conveyance;
- (2) any obstacles to completion of the conveyance; and

(3) the anticipated date for completion of the conveyance.

SEC. 804. PAYMENT.

(a) **IN GENERAL.** – As consideration for any conveyance required by section 803, PCWCD shall pay to the United States the net present value of miscellaneous revenues associated with the lands and facilities to be conveyed.

(b) **WITHDRAWN LANDS.** – As consideration for any conveyance of withdrawn lands required by section 803, the entity receiving title shall pay the United States (in addition to amounts paid under subsection (a)) the fair market value for any such lands conveyed that were withdrawn from the public domain pursuant to the Secretarial Orders dated March 16, 1934, and April 6, 1956.

(c) **ADMINISTRATIVE COSTS.** – Administrative costs for conveyance of any land or facility under this title shall be paid in equal shares by the Secretary and the entity receiving title to the land or facility, except costs identified in subsections (d) and (e).

(d) **REAL ESTATE TRANSFER COSTS.** – As a condition of any conveyance of any land or facility required by section 803, costs of all boundary surveys, title searches, cadastral surveys, appraisals, and other real estate transactions required for the conveyance shall be paid by the entity receiving title to the land or facility.

(e) **NEPA COSTS.** – Costs associated with any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for conveyance of any land or facility under section 803 shall be paid in equal shares by the Secretary and the entity receiving title to the land or facility.

(f) **STATE OF NEVADA.** – The State shall not be responsible for any payments for land or facilities under this section. Any proposal by the State to reconvey to another entity land conveyed by the Secretary under this title shall be pursuant to an agreement with the Secretary providing for fair market value to the United States for the lands, and for the continued management of the lands for recreation, wildlife habitat, wetlands, or resource conservation.

SEC. 805. COMPLIANCE WITH OTHER LAWS.

Following the conveyance required by section 803, the district, the State, Pershing County, and Lander County shall, with respect to the interests conveyed, comply with all requirements of Federal, State, and local law applicable to non-Federal water distribution systems.

SEC. 806. REVOCATION OF WITHDRAWALS.

Effective on the date of the conveyance required by section 803, the Secretarial Orders dated March 16, 1934, and April 6, 1956, that withdrew lands for the Rye Patch Reservoir and the Humboldt Sink, are hereby revoked.

SEC. 807. LIABILITY.

Effective on the date of the conveyance required by section 803, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the Humboldt Project, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section shall be considered to increase the liability of the

United States beyond that currently provided in chapter 171 of title 28, United States Code, popularly known as the Federal Tort Claims Act.

SEC. 808. NATIONAL ENVIRONMENTAL POLICY ACT.

Prior to any conveyance under this title, the Secretary shall complete all actions as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable laws.

SEC. 809. FUTURE BENEFITS

Upon conveyance of the lands and facilities by the Secretary under this title, the Humboldt Project shall no longer be a Federal reclamation project and the district shall not be entitled to receive any future reclamation benefits with respect to that project, except those benefits that would be available to other nonreclamation districts.

APPENDIX C – MEMORANDUM OF AGREEMENT BETWEEN RECLAMATION AND PCWCD

**MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION AND
PERSHING COUNTY WATER CONSERVATION DISTRICT**

This Memorandum of Agreement (MOA) is made pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, between the **UNITED STATES OF AMERICA**, acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, the **PERSHING COUNTY WATER CONSERVATION DISTRICT**, a public entity organized under the laws of the State of Nevada, with its principal place of business in Lovelock, Nevada, hereinafter referred to as the District.

WHEREAS, District seeks transfer of title to the Humboldt Project from the United States to the District, State, Lander County, Nevada ("Lander County") and Pershing County, Nevada ("Pershing County");

WHEREAS, On November 6, 2002, the President signed into law Title VIII of Public Law 107-282, hereinafter referred to as the "Humboldt Project Conveyance Act" or "the Act," attached hereto and by this reference made a part hereof;

WHEREAS, the Humboldt Project Conveyance Act directs the Secretary of the Interior, hereinafter the "Secretary" to convey all right, title, and interest in and to the lands and features of Humboldt Project, including all water rights for storage and diversion, to District, State, Lander County and Pershing County consistent with the terms and conditions set forth in the Memorandum of Agreement between District and Lander County, dated January 24, 2000, the Conceptual Agreement between District and State, dated October 18, 2001, the Letter of Agreement between Pershing County and State, dated April 16, 2002, and any agreements between District and Reclamation;

WHEREAS, the District, in executing this Memorandum of Agreement, agrees to represent the counties of Lander and Pershing in accordance with agreements between the District and each of the parties attached hereto and by this reference made a part hereof;

WHEREAS, the Act requires District to pay the United States the net present value of miscellaneous revenues associated with the lands and facilities to be conveyed;

WHEREAS, the Act required each entity, except the State, receiving title to withdrawn lands to pay the United States fair market value for such lands conveyed that were withdrawn from the public domain pursuant to the Secretarial Orders dated March 16, 1934, and April 6, 1956;

WHEREAS, the Act required administrative costs and National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., compliance ("NEPA") costs for conveyance of any land or facility to be paid in equal shares by the Secretary and the entity receiving title to the land or facility except that the State shall not be responsible for any payment for land or facilities;

WHEREAS, the Act required that costs of all boundary surveys, title searches, cadastral surveys, appraisals, maps, and other real estate transactions required for the conveyance shall be paid by the entity receiving title to the land or facility except that the State shall not be responsible for any payments for land or facilities;

WHEREAS, the Act directs the Secretary to complete, prior to the conveyance of the designated lands and facilities, all actions necessary under the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act of 1973 (ESA), and all other applicable laws;

WHEREAS, under NEPA Reclamation is the lead agency with primary responsibility for NEPA compliance and compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA);

WHEREAS, under NEPA the District requested and Reclamation granted cooperating agency status to the District which requires District compliance with 40 CFR 1501.6;

WHEREAS, District intends to contract with a consultant approved by Reclamation to conduct NEPA activities;

WHEREAS, Reclamation has the ultimate responsibility to approve environmental analyses, prepared by the District or its contractors, associated with such a transfer;

WHEREAS, on December 1, 2003, the President signed into law the Energy and Water Development Appropriations Act of 2004 (P.L. 108-137) which superceded certain provisions of the Act and provides that:

In consultation with PCWCD the Commissioner shall expend \$270,000 for the State of Nevada's costs associated with the NEPA review of the Humboldt Title Transfer:
Provided, That notwithstanding Public Law 107-282, section 804(d)-(f), the State of Nevada shall pay any other costs assigned to the State as an entity receiving title in Public Law 107-282, section 804(b)-(c) or due to any reconveyance under Public Law 107-282, section 804(f), including any such National Environmental Policy Act costs that exceed the \$270,000 expended by the Commissioner under this subparagraph.

NOW THEREFORE, pursuant to the statutes identified above, the parties agree as follows:

1. Reclamation will be responsible for the following actions:

- a. Submit to Congress a map of the Humboldt Project Conveyance as required by the Act.

b. Submit a report to Congress if transfer is not completed by April 30, 2004, pursuant to the requirements of the Act.

c. Assure completion of all actions as may be required under NEPA, ESA, NHPA and all applicable laws.

d. Reclamation is the lead agency with primary responsibility for NEPA compliance for the title transfer. Lead agency responsibility includes, but is not limited to, approval of the NEPA contractor selection; approval of scoping meeting format, content and locations; approval of alternatives to be analyzed; approval of response to comments; and approval of all draft and final documents.

e. Recognize and consult with the District as a cooperating agency as outlined in the Council of Environmental Quality Regulations including 40 CFR 1501.6.

f. Review the work of the District and/or any consultants engaged by the District, at appropriate intervals, to assure that the applicable procedural requirements of NEPA, ESA and other applicable State and Federal laws are met as required.

g. Complete consultation and assure compliance as required by Section 7 of the ESA.

h. Reclamation is responsible for coordinating Section 106 compliance including consultation with the State Historic Preservation Office, administering any cultural resource contracts and consulting with affected Tribes.

i. Consult with the District as a cooperating party in the Section 106 process, as outlined in 36 CFR 800. Documents for Section 106 compliance will be provided to the District for a two-week review before they are submitted to SHPO. Reclamation retains responsibility for the content of all Section 106 documents.

j. Identify and/or inventory and consult with Tribes on Indian Trust Assets and ensure the Secretary's Native American Trust Responsibilities are met consistent with applicable legislation.

k. Provide copies, if so requested, of drawings and non-privileged legal documents currently in Reclamation's possession, that are associated with the lands, third-party agreements, rights-of-way, and facilities to be included in this title transfer.

l. Perform other technical or administrative tasks associated with this title transfer as mutually agreed to in advance in writing by the parties. Provisions in these other contemplated agreements will cover funding of tasks specified in those agreements.

m. Determine net present value of miscellaneous revenues associated with lands and facilities to be conveyed.

n. Prepare transfer documents.

o. Complete a Level I contaminant survey checklist. Any necessary further analyses resulting from the checklist (including a Phase I environmental site assessment, or a Phase II environmental site assessment), and any necessary remediation or removal shall be completed at the direction of Reclamation.

2. The District will be responsible, subject to Reclamation's review and approval as appropriate, for the following:

a. Complete those activities required of a NEPA cooperating agency as set forth in 40 CFR 1501.6.

b. Complete NEPA documentation including cultural resource effects, endangered species effects or other documentation required by federal, state or local laws protecting the environment and submit to Reclamation for review and approval.

c. Based upon the map submitted to Congress, the District shall obtain any necessary boundary surveys, title searches, cadastral surveys, appraisals, maps and any other real estate work, including obtaining a dam permit from the Nevada Department of Water Resources required, for the conveyance of land or facilities to the District. Title searches and appraisals must be completed in accordance with Reclamation standards and policy. Any contracts for title searches and/or appraisals must be reviewed and approved by Reclamation prior to requests for proposals to insure those standards and policies are reflected in the scope of work. The final product must be approved by Reclamation.

d. Enter into any necessary agreements with the counties and the State.

e. Perform other technical or administrative tasks associated with the title transfer process as mutually agreed to in writing by both parties. Provisions in other agreements will cover funding of tasks specified in those agreements.

3. Areas of mutual responsibility – Reclamation and District will:

a. Appoint representatives to coordinate activities necessary to complete the authorized transfer. All requests to Reclamation relating to the transfer will go through Terri Edwards, Repayment Specialist, Lahontan Basin Area Office, Carson City, Nevada. All requests to District relating to this MOA will go through Bennie Hodges, District Manager, Pershing County Water Conservation District. Changes of appointed representatives may be made by notifying all parties in writing.

b. Cooperate to conduct the process in a manner that includes appropriate public and stakeholder participation as required by 40 CFR 1506.6(a).

c. Work cooperatively to determine the net present value of the of any revenue streams from the lands and facilities to be conveyed.

d. Responsibilities for any party may become the responsibility of another party if agreed to by all parties in writing, unless prohibited by law or regulation.

e. Any party may contract with another person or entity subject to the approval of the others for any of its obligations described herein.

f. Ensure that all contracts or obligations entered into relating to this MOA be revocable or contain provisions for cancellation, whereby the contracts or obligations may be terminated at any time upon request, so that the party will only be responsible for costs and expenditures incurred to the date of termination.

g. Provide copies, if so requested, to the other parties of all contracts, documents, invoices and other writings that evidence the party's obligations pursuant to this MOA.

4. Costs - The provisions below relating to costs shall be subject to terms consistent with and subordinate to the Act:

a. **Miscellaneous Revenues:** The Act at Section 804(a) requires the District to pay to the United States the net present value of miscellaneous revenues associated with the lands and facilities to be conveyed. Reclamation shall provide District its accounting of such miscellaneous revenues within 6 months of this agreement.

b. **NEPA, ESA, NHPA, and Administrative Costs:** The District and Reclamation agree to split all necessary and reasonable costs associated with the Humboldt Project Conveyance Act, Section 804(c) and (e) as follows.

i. Reclamation will pay half the costs;

ii. The entities receiving title shall pay the remaining half of the costs as follows:

(a) All NEPA costs, all ESA costs, all administrative costs and all general cultural resources costs (those that cannot be directly assigned to a specific property) will be split by the entities to receive title based on the percentage of land to be received. The District is receiving title to approximately 42% of the property to be transferred; Lander County approximately 1.3% of the property to be transferred; and Pershing County approximately 1.2% of the property to be transferred. The Counties' shares will be paid to the District by those Counties in advance pursuant to a separate agreement with the District. Approximately 55.5% of the property is to be transferred to the State. Congress authorized an appropriation of \$270,000 under the Energy and Water Development Appropriations Act of 2004 (P.L. 108-137) for the State's 55.5% share of NEPA related expenses payable through Reclamation. The State shall pay any other costs assigned to the State as an entity receiving title in section 804(b)-(e) of the Act including any such NEPA costs that exceed the \$270,000 expended by the Commissioner.

(b) Any land-specific cultural resource evaluation and mitigation measures that are undertaken for those lands to which the entity receives title shall be paid by that entity.

c. **REAL ESTATE TRANSFER COSTS:** Pursuant to Section 804 (d) of the Act, as a condition of any conveyance of any land or facility, costs of all boundary surveys, title searches, cadastral surveys, appraisals, and other real estate transactions required for the conveyance shall be paid by the entity receiving title to the land or facility. It is expected that each entity will pay for these services.

d. **WITHDRAWN LANDS:** Section 804 (b) of the Act and the Energy and Water Development Appropriations Act of 2004 provide that as a consideration for any conveyance of withdrawn lands, the entity receiving title shall pay the United States the fair market value for any such lands conveyed that were withdrawn from the public domain pursuant to the Secretarial Orders dated March 16, 1934 and April 6, 1956.

e. All costs of completing a Level 1 contaminant survey checklist shall be paid by Reclamation. Any necessary further analyses resulting from the checklist (including a Phase I environmental site assessment, or a Phase II environmental site assessment), and any necessary remediation or removal shall be completed at Reclamation's expense.

f. Ensure that the costs billed to title transfer and invoiced by the District and Reclamation pursuant to this MOA, shall be actual and reasonably necessary costs incurred to complete the proposed transfer activities.

g. Provide a cost report to the other party on a quarterly basis until this title transfer is complete. Each cost report shall itemize costs for all work performed and materials used in performing the obligations under this MOA.

h. Upon request, each party will provide to the other projections of expenses to be incurred by that party in connection with this title transfer.

i. District and Reclamation agree to take the necessary steps to equalize and minimize costs for activities associated with this title transfer;

j. Administrative Costs for the authorized title transfer will include but are not limited to the following:

- i. District and Reclamation salary, overhead, and contractor costs accrued for activities associated with this MOA;
- ii. Travel by District and Reclamation staff, including per diem and transportation costs, as required including development and negotiation of the terms for the authorized title transfer;
- iii. Photocopying and mailing by District and Reclamation of documents related to the authorized title transfer (e.g., documents needing public review and/or comment); and

k. Reclamation agrees to allocate authorized and appropriated funds as may become available for the performance of tasks described herein.

l. The parties may by subsequent written agreement documented as an amendment to this agreement pay other expenses including those that are the responsibility of the other.

5. Payment:

a. Reclamation and District will establish unique cost accounts to track and account for the cost and expenses incurred pursuant to this MOA.

b. If Reclamation and the District determine that a binding contract with the District including the payment terms outlined in this MOA is necessary in order to provide a mechanism for Reclamation to obligate funding and pay the District for costs incurred by the District on Reclamation's behalf, Reclamation shall execute such a contract.

c. Monies shall be allocated under this agreement beginning November 17, 2002. Additional payments made pursuant to this MOA to Reclamation shall be submitted to Lahontan Basin Area Office, Attn: Terri Edwards, or her successor, 705 N. Plaza St., Rm 320, Carson City, NV 89701. Additional payments made pursuant to this MOA to District shall be submitted to Pershing County Water Conservation District in care of Bennie Hodges, or his successor, in Lovelock, NV.

d. Pursuant to the Act, each party shall pay the shares of administrative and NEPA costs as provided in Paragraph 4.b. above. District and Reclamation shall present invoices covering a 6 month period to the other within 60 days of the closing of the 6 month period. Equalizing payments shall be paid within 30 days thereafter. District will be responsible for invoicing Lander County and Pershing County for their respective payment in accordance with their agreements.

e. Pursuant to the Act, costs of all boundary surveys, title searches, cadastral surveys, appraisals, and other real estate transactions required for the conveyance shall be paid by the entity receiving title to the land or facility. Reclamation shall present invoices covering a 6 month period to the District within 60 days of the closing of the 6 month period. Equalizing payments shall be paid within 30 days thereafter. District will be responsible for paying the costs incurred for Lander County and Pershing County and invoicing them for their respective payment in accordance with their agreements.

f. At the time of execution of this MOA, the District and Reclamation will each present their accounting to that point and make any necessary equalizing payments. From the date of execution, accounting and equalizing payments will be made in accordance with paragraph 5.c. above.

g. The Energy and Water Development Appropriations Act of 2004 (P.L. 108-137) provided \$270,000 to Reclamation for the State's costs associated with the NEPA review. Accordingly, the District will invoice Reclamation for District costs attributable to the State for NEPA related activities. These invoices will be presented in accordance with section 5.d. above.

h. Within sixty (60) days after completion of title transfer or termination (for whatever reason) of the title transfer activities, the payments for NEPA, Administrative Costs and lands/realty costs between District and Reclamation will be equalized and paid pursuant to the Act.

6. General Provisions:

a. The parties pledge their individual good faith to seek a prompt and fair agreement on all issues relating to this title transfer.

b. This MOA shall become effective on the date of the last signature hereto. This MOA may be modified, amended or terminated upon mutual written agreement of the parties hereto, but in any event will terminate two (2) years from the date of the MOA is signed or upon full execution of a quit claim deed transferring title, whichever occurs first, unless renegotiated and or renewed by mutual consent of both parties. Either party may terminate its obligations and duties under this MOA at any time upon thirty (30) days written notice to the other party. All duties and obligations of both parties under this MOA will cease at that time except as the MOA provisions relate to outstanding accounting and reimbursement of the parties' expenses.

c. Nothing herein shall be construed to obligate Reclamation to expend funds or obligate the United States of America in any contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively allocated for the purposes and projects contemplated hereunder. In case funds are not appropriated or allocated Reclamation shall incur no liability.

d. No Member or delegate to Congress, or resident Commissioner, shall be admitted to any share or to be part of this MOA or to receive any benefit that may arise out of it other than as a water user or landowner in the same manner as any other water user or landowner.

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last date and signature below.

UNITED STATES OF AMERICA

Elizabeth Ann Rieke

Bureau of Reclamation
Elizabeth Ann Rieke, Area Manager
Lahontan Basin Area Office

5/6/04

Date

PERSHING COUNTY WATER CONSERVATION DISTRICT

Bennie B. Hodges

Pershing County Water Conservation District
Bennie B. Hodges, Manager

5/4/04

Date

APPENDIX D – CONCEPTUAL AGREEMENT BETWEEN PCWCD AND THE STATE OF NEVADA

PERSHING COUNTY WATER CONSERVATION DISTRICT OF NEVADA

PHONE 775-273-2293
FAX# 775-273-2424
E-MAIL: pcwcd@irrigation.lovelock.nv.us

POST OFFICE BOX 218
LOVELOCK, NEVADA 89419

October 18, 2001

Mr. Michael Turnipseed
Director
Department of Conservation and Natural Resources
123 West Nye Lane, Room 230
Carson City, Nevada 89706-0818

LETTER OF CONCEPTUAL AGREEMENT

Dear Mr. Turnipseed:

Over the past several years, discussions and negotiations have taken place between representatives of the State of Nevada (State), the Pershing County Water Conservation District (District), the United States Bureau of Reclamation (Reclamation), Lander County and other parties for the purpose of reaching an agreement providing for transfer of title to lands near Battle Mountain and Lovelock, Nevada from the Federal Government to the District, Lander County and the State.

It is the intent of this letter to set forth concepts of agreement reached between the State and the District whereby both entities will pursue and support the transfer of title. It is recognized that the details of any agreement will be set forth in an agreement negotiated between the State and the District and signed by both parties.

To that end, the parties have agreed in principle to the following:

RYE PATCH RESERVOIR AND HUMBOLDT SINK

1. The State will continue to construct, operate and maintain the recreation facilities at Rye Patch Reservoir in a manner that does not affect the operation of the Reservoir or the Humboldt Project. Such construction, operation and maintenance shall be in accordance with the Rye Patch State Recreation Area Master Plan. It is recognized that the master plan may be revised as necessary in the future to meet future recreational demands and that such revisions will be made through a public process in which the District can participate.
2. The PCWCD and the State recognize that as a result of transferring the Humboldt Project title to PCWCD the State will lose the Reclamation Act funding that the Bureau of Reclamation has granted over the past decade. PCWCD will support the State in its efforts to replace these funds.

3. The District will guarantee a minimum pool of 3,000 acre-feet in Rye Patch Reservoir for maintenance of the fish. To assure this minimum pool, the District will reduce or cease all releases when the reservoir reaches a minimum of 3,000 acre feet of storage to make sure the reservoir does not drop below 3,000 acre feet due to releases.
4. The District and State will support legislation that transfers ownership of all Reclamation acquired land under and adjacent to the Reservoir and all "withdrawn" land below the high water mark of the reservoir to the District.
5. The District and State will support legislation that transfers ownership of all Reclamation "withdrawn" land above the high water mark of the reservoir in the vicinity of the reservoir to the State.
6. The District and the State will support legislation that transfers ownership of "withdrawn" lands in the Humboldt Sink, Toulon and Jessup to the State.
7. The State agrees that drainage water from Humboldt Project lands will continue to flow to the Humboldt sink.
8. The District and the State will enter into a long term agreement concerning the continued use of District land by the State for park office, shop and residence.
9. The District desires that the State continue to manage the recreation at Rye Patch Reservoir without interference from the District. Therefore, the State and the District will enter into a long term cooperative agreement for the State to administer the recreation and to construct, operate and maintain recreation related facilities at Rye Patch Dam and Reservoir similar to the existing Tri-Party agreement. The agreement will provide the State with the necessary authority to administer recreation on the District owned lands above and below the high water mark of the reservoir and the water surface of the reservoir. The District recognizes that the State must have the necessary authority to administer the recreation and control camping facilities, boat docks, launch ramps, buoys, etc. for recreational purposes. To insure long-term recreational use of the reservoir, the District will enter into a binding agreement that provides a long-term recreation easement to the State for those lands above and below the high water mark of the reservoir that will be transferred to the District.

COMMUNITY PASTURE:

1. The District and the State will support legislation to transfer title to approximately 23,000 acres of land in the Community Pasture to the District.
2. The District and the State will support legislation to transfer title to approximately 5,850 acres of land in the Community Pasture to the State for purposes of creating a wetland

The land to be transferred is identified as the northern portion of the Pasture from the eastern boundary through the Rock Creek drainage to the River Road adjacent to the Old Blossom Road Field #15.

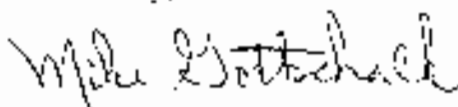
3. The District shall have the privilege to graze the land transferred to the State until such time as development into a wetland begins. Such grazing shall be pursuant to a Grazing Plan developed by a mutually acceptable range consultant.
4. If grazing of the wetland is deemed a viable vegetation control practice by the State, the District shall have the first right of refusal to graze selected lands within the developed wetland.
5. If grazing is deemed a viable vegetation control practice by the State, the District shall have the first right of refusal to graze selected lands which the State may acquire in the future immediately adjacent to the Community Pasture.
6. The land to be transferred to the State will separate the land transferred to the District. In order to assure efficient grazing of the land transferred to the District, the State will provide reasonable access across their land for movement of cattle from one area to another within the Community Pasture.
7. The District will cooperate with the State in obtaining water rights for the proposed wetlands within the Community Pasture area.
8. The State shall assume responsibility for operation and maintenance of Slavin Diversion Dam near the East end of the Community Pasture in conjunction with other beneficial users of the facility when the facility is needed to divert water (purchased at some future date from willing sellers) to the developed land. After title to the facility is transferred to the State and before it is needed for diversion of water to the wetland, the District will continue to operate and maintain the facility. The district will allow access to the dam as needed by the State of Nevada and other beneficial users for the purpose of operating and maintaining the structure after that responsibility is assumed by the State.
9. The State and the District will support legislation to transfer title to approximately 1,100 acres of Community Pasture lands in the vicinity of the town of Battle Mountain to Lander County.
10. The District and the State will seek Federal funding for title transfer costs including but not limited to: NEPA documentation, Cultural Resources, property line surveying, etc.
11. The District and the State will support legislation to provide Federal funding for water rights acquisition and development of the proposed wetlands.

The District and the State shall freely exchange ideas and information in a cooperative manner on a continuing basis and shall use their best efforts to achieve the objectives of this letter in a timely

manner.


If you agree with the principles set forth in this letter, please indicate your concurrence below.

Sincerely,



Mike Gottschalk, President
Board of Directors
Pershing County Water Conservation District

Concurrence:



Michael Turnipseed, Director
Department of Conservation and Natural Resources
State of Nevada

Date

10/25/01

**APPENDIX E – LETTER OF AGREEMENT BETWEEN LANDER
COUNTY AND PCWCD**

MEMORANDUM OF AGREEMENT

This Agreement is made and entered into by and between Pershing County Water Conservation District (hereinafter referred to as "the District") and Lander County, Nevada (hereinafter referred to by name or as "the County").

RECITALS:

1. The District was organized in 1926 under the name of the Lovelock Irrigation District. Its main purpose was to seek additional water storage sites on the Humboldt River. In the early 1900s, the Pitt-Taylor Reservoirs were constructed by the District's predecessor, but the storage capacity of those reservoirs was insufficient to supply all the irrigation needs of the District.

2. In the early 1930s, negotiations began between the District and the Bureau of Reclamation (hereinafter "BOR") in an attempt to create the Humboldt Project to store water. After studying the proposed project, the parties determined that the existing water rights appurtenant to District lands were inadequate to provide the District with a reliable source of dry year irrigation supply.

3. In 1933, in an attempt to acquire additional water rights for storage and use within the Humboldt Project, the District began to solicit willing sellers of both property and water rights upstream of the proposed reservoir. Two such willing sellers were the Filippini family who owned the Argenta Ranch and the Muleshoe Ranch, and the Aldous family who owned the Aldous Ranch. These three ranches comprised 29,450 acres northeast of the City of Battle Mountain, in Lander County, Nevada.

4. On January 27, 1934, the District and the Philippini Ranching Company entered

into a written agreement for the sale and purchase of the Argenta Ranch and the Muleshoe Ranch for the sum of \$181,000.00. Subsequently, on July 15, 1934, the District and Charles and Hortense Aldous entered into a similar written sales agreement for the Aldous Ranch for the sum of \$35,000.00. The future plans for these Lander County ranches and the appurtenant water rights were included in the purchase and sale agreements and the sales were conducted with full disclosure that a majority of the water rights would be transferred to the District lands in Pershing County.

5. Once these agreements were "in hand" between the District and the respective ranch owners in Lander County, the BOR expressed its willingness to assist. Upon these assurances, the District assigned the purchase and sale agreements to the BOR. In exchange, the BOR agreed to advance the money for the sale price of the ranches in Lander County. The District agreed to repay this sum pursuant to a written contract between the BOR and the District. Because the purchase of these Lander County ranches was completed with money authorized by Congress under the Humboldt Project, the lands are considered part of the Humboldt Project facilities.

6. The District has repaid the entire amount advanced by the BOR to acquire the ranch lands on behalf of the District, as well as the entire current cost obligation of Rye Patch dam and other Humboldt Project facilities. Now that this amount is repaid, the District is seeking to have the title to the project transferred to it.

7. After the Lander County ranches were purchased in 1934, the Nevada State Engineer approved a permanent transfer of the water rights that were appurtenant to the ranch lands downstream to the District facilities in Pershing County.

8. At the time of purchase of the Lander County ranches, and within the area of the Argenta Ranch and the Muleshoe Ranch, there existed an area known as the Argenta Marsh. After the transfer of the water rights from the Lander County ranches, and as part of the water rights change approvals, the Nevada State Engineer ordered that the lands be dewatered. In 1955, the marsh area was channelized to improve water conveyance in the Humboldt River adjacent to those lands.

9. Since 1941, the District has managed, operated and maintained the entire Humboldt Project at its own expense. Prior to 1951, grazing privileges for the Lander County ranches, commonly known as the Community Pasture, were held by individuals other than the District. Since 1951, the District has leased the Community Pasture pursuant to BOR guidelines which give the District preference due to the Community Pasture's status as part of the Humboldt Project. Seasonal grazing on the Community Pasture by District constituents continues to the present day.

10. As a result of all of the above, Lander County contends that it has been injured in several particulars.

WHEREAS, the District is now seeking title to the Humboldt Project from the BOR;

WHEREAS, the District desires Lander County to participate with it as an affected stakeholder in the title transfer process;

WHEREAS, Lander County recognizes the short and long-term benefits of its citizens to be derived from participation in the title transfer process;

NOW, THEREFORE, and in consideration of the mutual benefits to be received from this Agreement and the title transfer, and completely contingent on Congressional approval of such

title transfer, it is agreed between the District and Lander County as follows:

AGREEMENT

1. Cooperation. The parties acknowledge that the title transfer of the Humboldt Project between the District and the BOR is a long and involved process. The parties agree to cooperate with each other in all respects in effecting the title transfer. The parties further acknowledge that in the past there have been disagreements and some discord between them, and among and between the residents and patrons of their respective constituencies. The parties agree to expend their best efforts to put this history behind them and to work for the mutual benefit of accomplishing the title transfer. The parties additionally acknowledge that this Agreement is a compromise of past claims each may have against the other and for receipt of the mutual advantages received hereunder, the parties agree to forgo and forgive those claims.

2. Transfer of Property to Lander County. As part of the title transfer process, and concurrent with title transfer to the District, the District and County agree that the federal government should also transfer to Lander County, the following real property:

Parcel A. The parcel located in Section 17, T.32N., R.45E., Mt. Diablo Meridian, underlying the livestock events center and surrounding area, including the Reese River Levy comprising approximately 135 acres. The legal description of Parcel A is contained in Exhibit A hereto and is incorporated herein by this reference. A detailed map depicting the approximate boundaries of Parcel A (labeled as the "Livestock Events Center Area") is attached hereto as Exhibit B and is incorporated herein by this reference.

Parcel B. The parcel located in Section 8, T.32N., R.45E. lying adjacent to the west (left) bank of the Humboldt River, and near White Bridge on Nevada State Route 806, on

which Lander County proposes to develop a low maintenance public recreation area, comprising approximately 30 acres. The legal description of Parcel B is contained in Exhibit A hereto and is incorporated herein by this reference. A detailed map depicting the approximate boundaries of Parcel B (labeled as the "Recreation Area") is attached hereto as Exhibit B and is incorporated herein by this reference.

Parcel C. The parcel located in Section 8, T.32N., R.45E. lying adjacent to the west bank of the Humboldt River, and near White Bridge on Nevada State Route 806, on which Lander County proposes to develop a parking lot for the adjacent low maintenance public recreation area, comprising approximately 1 acre. The legal description of Parcel C is contained in Exhibit A hereto and is incorporated herein by this reference. A detailed map depicting the approximate boundaries of Parcel C (labeled as the "Parking Area") is attached hereto as Exhibit B and is incorporated herein by this reference.

Parcel D. The parcel located northwest of the town of Battle Mountain and adjacent to the Battle Mountain Indian Colony, containing approximately 932 acres. The legal description of Parcel D is contained in Exhibit A hereto and is incorporated herein by this reference. A detailed map depicting the approximate boundaries of Parcel D (labeled as the "West Battle Mountain Area") is attached hereto as Exhibit B and is incorporated herein by this reference.

3. Retained Possession of Shop. For two years following the date upon which Lander County receives legal title to Parcel A, the District shall retain the exclusive right of possession and use of the metal shop building in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.32N., R.45E. During this period of use, the District shall retain the right of continued access to the

structure across Parcel A. In addition, the District shall have the right to park vehicles in and around the immediate area surrounding the structure. At the expiration of this two year time period, the District shall vacate the premises, removing all District-owned equipment or fixtures, and the County shall accept the premises in an "AS IS" condition. If the District fails to remove any District-owned equipment, fixture, or other miscellaneous items, the County may request in writing that the District remove the property. If the District has not removed the items within thirty (30) days of receiving the County's request, the County may remove and dispose of the items at the District's expense.

4. Humboldt River Access Easement. As part of the title transfer process, and contingent upon successful title transfer to the District, the District agrees to grant to Lander County a permanent easement to a strip of land along either side of the centerline of the Humboldt River ("Access Easement"). The legal description of the easement is contained in Exhibit A hereto and is incorporated herein by this reference. A detailed map depicting the approximate area encumbered by the easement (labeled as the "Humboldt River Access Easement") is attached hereto as Exhibit B and is incorporated herein by this reference.

4.1. Purpose of Easement. The Access Easement is granted with the intent that it shall be used solely for the purpose of providing members of the public with pedestrian access to the Humboldt River and the riparian lands adjacent to the River.

4.2. Scope of Easement. The Access Easement shall begin at the centerline of the Humboldt River where it intersects the northwest edge of Nevada State Route 806 (North Battle Mountain Highway) and shall extend in an northwesterly direction along the length of the Humboldt River a distance of approximately 4 miles to the west boundary of the Community

Pasture. It shall be limited only to that width necessary to create a 5 foot wide strip of dry land immediately adjacent to the river on each bank under non-flood conditions. The Access Easement is described in more detail on Exhibit A hereto.

4.3. Restrictions on Easement. The Access Easement shall be subject to the following restrictions:

4.3.1. Natural State. The Access Easement shall be maintained and used in its natural state, without any improvements of any kind. Lander County shall not add to or alter in any way nor permit others to add to or alter in any way, the fencing, vegetation, or drainage now present within the Access Easement, except as otherwise indicated by this Agreement. In addition, the County shall be responsible for regularly patrolling the Access Easement to insure that no trash or other refuse is present on the Access Easement.

4.3.2. Hours of Use. The Access Easement shall only be used by members of the public from one-half hour before sunrise to one-half hour after sunset. There shall be no overnight camping or after-hours access to the Access Easement or the adjacent portions of the Community Pasture.

4.3.3. No Improvements. Lander County shall not make nor permit others to make improvements to any portion of the Access Easement, except as follows: 1) Prior to opening the Access Easement to public use, Lander County must construct a fence around the recreation area parking lot with an immovable gate on the west (left) bank of the Humboldt River at the east end of the Access Easement in Section 8, T.32N., R.45E. This gate shall be constructed out of permanent materials, and shall be designed in a manner necessary to restrict the use of the Access Easement to human foot traffic; 2) Lander County may erect a second, identical

immovable gate on the east (right) bank of the Humboldt River at the east end of the Access Easement in Section 8, T.32N., R.45E, provided that all necessary permission is first obtained from the Nevada Department of Transportation; and 3) Lander County may erect one or more signs at the east end of the Access Easement in Section 8, T.32N., R.45E., which identify the easement and which set forth all relevant restrictions on the public's use of the Access Easement.

4.3.4. Foot Traffic Only. The Access Easement shall be used for human foot traffic only. No motorized vehicles, horses or other conveyances are permitted on the Access Easement. Any pets must be kept on a leash at all times.

4.4. Reverter. Failure to enforce and abide by the Access Easement restrictions set forth herein, or express abandonment of the Access Easement shall cause the Access Easement to revert to the District. Upon such reverter, all rights and benefits in and to the Access Easement conferred by this Agreement to Lander County shall terminate.

5. Fencing.

5.1. Existing Fencing. The parties recognize that the District will continue to use the Community Pasture for grazing after the transfer of title. The Community Pasture is currently enclosed by perimeter fencing which is vital to this activity. Therefore, the County agrees that it will not disturb, alter, or remove any portion of the existing perimeter fence without first constructing a new fence along the common boundary between the retained portion of the Community Pasture and the portion of the County property on which the County wishes to alter the existing fence.

5.2. Exclusion of Livestock. Consistent with Nevada law, if the County wishes

to exclude the District's livestock from any portion of the property to be granted to the County as described in this Agreement, it shall be the County's obligation to construct any fencing necessary to accomplish that task.

5.3. New Fence Cost. Any new fence constructed by the County pursuant to the obligations set forth in this Agreement shall be constructed at the sole and exclusive cost of the County; the District shall have no financial responsibility for such fence.

5.4. New Fence Quality. Any new fence constructed by the County pursuant to the obligations set forth in this Agreement shall be constructed to the standards set forth in NRS 569.431 (1997).

6. Liability. Lander County agrees to assume full liability for any and all damages incurred by the District as a result of the use of the Access Easement by the County or the general public. The assumption of liability under this paragraph expressly excludes any damage proximately caused by the District, the District's employees, agents, representatives, invitees, licensees, or guests.

7. Indemnification. Lander County agrees to indemnify the District to the extent allowed by Nevada law and hold the District harmless against any and all damages and expenses (including legal fees), claims, liabilities, causes of action, and demands of any nature whatsoever, arising out of or in any manner connected with the use of the Access Easement by the County or members of the public. This indemnification expressly excludes any action or demand of whatever nature brought by a District employee, agent, representative, invitee, licensee, or guest against the District and shall not include any damages or injury proximately caused by the District, the District's employees, agents, representatives, agents, invitees, licensees or guests. The parties

understand that the Access Easement is located in the annual floodplain of the Humboldt River. It is a dynamic natural area subject to erosion, flooding, and debris accumulation. The servient property is not maintained nor monitored by the District. Therefore, the District expressly disclaims all responsibility for the condition of the Access Easement or the servient property and any hazards--natural or man-made--that may exist now or in the future.

8. Hazardous Materials. The parties recognize that Parcels A, B, C, and D, together with the retained portion of the Community Pasture, are agricultural property. The past owners and occupants of the property have used the property for agricultural purposes in compliance with the applicable laws then in effect. The parties acknowledge that as a result of such activities, there may now be agricultural residues, wastes, or by-products present on the property. Notwithstanding the existence of such agricultural residues, wastes, or by-products, to the best of the District's knowledge, there are no areas of the property where hazardous or toxic materials or substances have either been disposed of, discharged, or found.

9. Payment of Transactional Costs. Except as specifically provided herein, each party shall be solely responsible for the payment of all transactional costs attributable to the portion of the Humboldt Project to which the party is seeking title. Such costs may include, but are not limited to the following: title research, surveys, NEPA compliance, cultural resources surveys, hazardous materials inspection, and document preparation costs.

9.1. Lander County Costs. Except as specifically provided herein, Lander County shall be solely responsible for any and all transactional costs related to the acquisition of Parcels A, B, C, and D; the District shall have no financial responsibility for such costs.

9.2. District Costs. Except as specifically provided herein, the District shall be

solely responsible for any and all transactional costs related to the acquisition of the retained portion of the Community Pasture. The County shall have no financial responsibility for such costs.

9.3. Shared Survey Costs. If required by BOR or Congress, the parties shall equally share the costs of surveying and monumenting any common boundary lines between Parcels B, C, or D and the retained portion of the Community Pasture.

9.4. Federal Funding. To the extent that federal funds are available to defer the transactional costs associated with title transfer, those funds shall be apportioned between the District and Lander County in proportion to the acreage that each party is seeking to acquire. This provision shall not include any funds available to the District because of prior credits owed to the District by the Federal government.

9.5. Transfer Not Contingent on Other Party's Payment. The District and Lander County agree that the title transfer legislation submitted to Congress shall contain a provision that either the District or the County may receive title to their respective portion of the Humboldt Project regardless of whether the other party has completed payment of all transactional costs associated with title transfer. This provision does not otherwise modify the requirement that the District must first receive Congressional approval for title transfer of the retained portions of the Humboldt Project before any of the property described herein may be transferred to Lander County.

10. Agreement to Perform Necessary Acts. Each party to this Agreement agrees to perform any further acts and to execute and deliver any and all instruments and documents that may be necessary or reasonable for the accomplishment of any purpose or performance of any

provision of this Agreement.

11. Lander County Support of Title Transfer. In exchange for the benefits to be conferred upon Lander County under this Agreement, Lander County agrees to support the District's title transfer efforts, contingent upon resolution of concerns relating to the proposed Argenta Marsh to the satisfaction of the Bureau of Reclamation's Lahontan Basin Area Manager. Upon such Bureau approval, the County shall in no event oppose or take any position contrary to the District which could reasonably impede the District's efforts to obtain title to the Humboldt Project.

12. Term. This Agreement shall expire on the last day of the Second Session of the 107th United States Congress, unless Congress has approved title transfer of the Humboldt Project prior to that time, in which case the Agreement shall remain in full force and effect.

13. Notice.

13.1. To Pershing County Water Conservation District. Any notice, demand, or request required or authorized by this Agreement to be provided to the District shall be effective if delivered by mail, postage prepaid to: Manager, Pershing County Water Conservation District, P.O. Box 218, Lovelock, NV 89409.

13.2. To Lander County. Any notice, demand, or request required or authorized by this Agreement to be provided to Lander County shall be effective if delivered by mail, postage prepaid to: Lander County Manager, 315 S. Humboldt, Battle Mountain, NV 89820.

14. Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any right or remedy under or by reason of any provision of this Agreement upon any person other than a party to this Agreement. Nothing in this Agreement is intended to relieve or

discharge the obligation or liability of any third person to any party to this Agreement. No provision of this Agreement shall give any third party any right of subrogation or right of action over or against any party to this Agreement.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

16. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered herein, and no other agreement, statement, or promise made by any party, or to any employee or agent of any party, which is not contained in this Agreement shall be binding or valid. Further, there are no representations, agreements, arrangements or understandings, either oral or written, between the parties hereto relating to the subject matters contained in this Agreement which are not fully expressed herein.

17. Time of Essence. Time is expressly declared to be the essence of this Agreement, and of each provision contained herein.

18. Modification. This Agreement is not subject to modification except through an amendment in writing signed by both parties hereto.

19. Severability. If any term, covenant, condition or provision of this Agreement is held by either the BOR or a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and shall in no way be affected, impaired or invalidated.

20. Interpretation of Language. The language of all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any party

hereto.

21. Captions. Captions of the articles, sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. Nonassignability. This Agreement shall not be assigned to any other party.

23. Governing Law. All questions with respect to the construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Nevada.

IN WITNESS WHEREOF, we have signed this Agreement on the dates affixed below.

Dated: Jan 5, 2000

PERSHING COUNTY WATER
CONSERVATION DISTRICT

By: Mike Gottshalk
Mike Gottshalk, President
Board of Directors

Dated: January 25th, 2000
LANDER COUNTY

By: Bill Elquist
~~Cheryl Lyman~~ Chairperson
Lander County Board of Commissioners
Bill Elquist
Attest:

Andy E. Negro
Clerk

Approved as to Form:

Laura A. Schroeder
Laura A. Schroeder
District Counsel

Approved as to Form:

Leon Aberasturi
Leon Aberasturi
Assistant District Attorney

**EXHIBIT A
TO
MEMORANDUM OF AGREEMENT
BETWEEN PERSHING COUNTY WATER CONSERVATION DISTRICT
AND LANDER COUNTY, NEVADA**

LEGAL DESCRIPTION OF PARCELS TO BE TRANSFERRED TO LANDER COUNTY

Parcel A (Livestock events center and surrounding property):

All that portion of the SE¼ of Sec. 17, T.32N., R.45E., Mt. Diablo Meridian, Lander County, Nevada, that is owned by the United States Bureau of Reclamation (containing 135 acres more or less).

Parcel B (Recreation area):

All those portions of the E¼NW¼ of Sec. 8, T.32N., R.45E., Mt. Diablo Meridian, Lander County, Nevada, lying east of Nevada State Route 806 (North Battle Mountain Highway) and southwest of the centerline of the Humboldt River (containing 30 acres more or less).

Parcel C (Recreation area parking lot):

All those portions of the S¼SW¼NE¼NE¼NW¼ and the N¼NW¼SE¼NE¼NW¼ of Sec. 8, T.32N., R.45E., Mt. Diablo Meridian, Lander County, Nevada lying west of the centerline of the Humboldt River and Nevada State Route 806 (North Battle Mountain Highway) (containing 1 acre more or less).

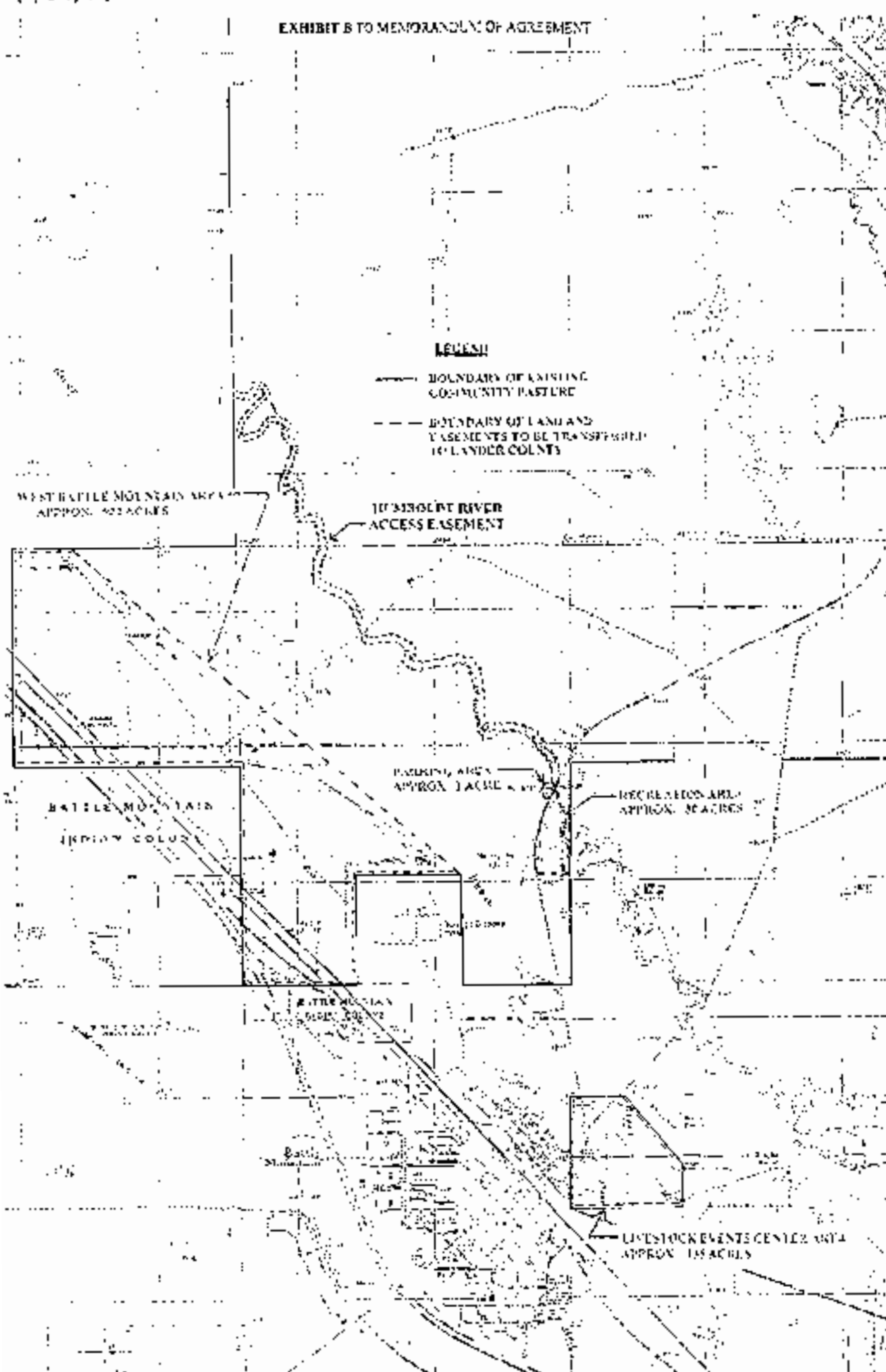
Parcel D (West Battle Mountain property):

All that property located within the area described by a line running from the point of beginning at the East ¼ Cor. of Sec. 7, T.32N., R.45E., Mt. Diablo Meridian, Lander County, Nevada, west approximately 2,640 feet to the center of said Sec. 7; thence south approximately 2,640 feet to the South ¼ Cor. of Sec. 7; thence west approximately 2,640 feet to the SW Cor. of Sec. 7; thence north approximately 5,280 feet to the NW Cor. of Sec. 7; thence west approximately 5,280 feet to the SW Cor. of Sec. 1, T.32N., R.44E.; thence north approximately 5,280 to the NW Cor. of said Sec. 1; thence east along the northerly line of said Sec. 1 approximately 1,320 feet; thence southeasterly approximately 12,170 feet to the point of beginning (containing 932 acres more or less).

Humboldt River Access Easement:

A strip of land extending from either side of the centerline of the Humboldt River only so far as necessary to create a 5 foot wide strip of dry land immediately adjacent to the river on either bank during non-flood conditions. The Access Easement shall begin at a point in Section 8, T.32N., R.45E., Mt. Diablo Meridian, Lander County, Nevada on the northwest side of the "White Bridge" on Nevada State Route 806 (North Battle Mountain Highway) where it is intersected by the Humboldt River, extending along said centerline approximately 4 miles to the point of termination located at the point where the centerline of the Humboldt river first intersects the west boundary line of Section 31, T.32N., R.44E., Mt. Diablo Meridian, Lander County, Nevada.

EXHIBIT B TO MEMORANDUM OF AGREEMENT



**APPENDIX F – LETTER OF AGREEMENT BETWEEN
PERSHING COUNTY AND THE STATE OF NEVADA**

BOARD OF COUNTY COMMISSIONERS

PERSHING COUNTY

P.O. DRAWER 2

LOVELOCK, NEVADA 89419

April 16, 2002

Honorable U.S. Senator Harry Reid
528 Hart Senate Office Building
Washington, D.C. 20510

Honorable U.S. Senator John Ensign
364 Russell Senate Office Building
Washington, D.C. 20510-0001

Honorable U.S. Representative Jim Gibbons
100 Cannon House Office Building
Washington, D.C. 20515-001

Re: Humboldt Project Title Transfer

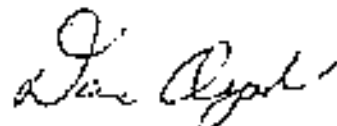
Dear Gentlemen:

Pershing County, Pershing County Water Conservation District and the Nevada Department of Wildlife all agree that as part of the Humboldt Project title transfer, Pershing County will receive 1 ½ sections of Bureau of Reclamation land around Derby Airport. Pershing County presently has these sections leased and Pershing County's airport extends onto these two sections.

We would request that the legislation which will be presented to Congress include the language that all of Section 36, T. 26 N. R. 30 E. and the East ¼ of Section 2, T. 25 N., R. 30 E. go to Pershing County.

Thank you very much for your assistance with this important matter. Please contact Pershing County District Attorney, Belinda Quilici at (775) 273-2613 if you have any questions or require additional information.

Sincerely,



Dave Aycoob, Chairman
Pershing County Commissioners

**APPENDIX G – H. R. 2754 – ENERGY AND WATER
DEVELOPMENT APPROPRIATIONS BILL**

HR 2754 -- ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL

The Humboldt Project Conveyance Act provides that title transfer activities will be funded by the Bureau of Reclamation and the public entity receiving title to the land or facility being transferred. One exception this general requirement was that the State of Nevada would not be responsible for payment of administrative costs, real estate costs and real estate transfer costs, and NEPA costs.

On December 1, 2003, the president signed into law HR 2754 -- Conference Report: H Rept 108-357, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS BILL, FY 2004

This legislation provides Funding for Energy Department operations, including defense-related programs, as well as the Army Corps of Engineers, water-related projects of the Interior Department and independent agencies such as the Nuclear Regulatory Commission.

Specifically, Section 217 (a) (3) provides:

In carrying out section 2507 of Public Law 107-171, title II, subtitle F, the Secretary of Interior, acting through the Commissioner of Reclamation, shall—

In consultation with the Pershing County Water Conservation District, the Commissioner shall expend \$270,000 for the State of Nevada's costs associated with the National Environmental Policy Act review of the Humboldt Title Transfer: Provided, That notwithstanding Public Law 107-282, section 804(d)-(f), the State of Nevada shall pay any other costs assigned to the State as an entity receiving title in Public Law 107-282, section 804(b)-(e) or due to any reconveyance under Public Law 107-282, section 804(f), including any such National Environmental Policy Act costs that exceed the \$270,000 expended by the Commissioner under this subparagraph.

APPENDIX H – CORRESPONDENCE WITH U.S. FISH AND WILDLIFE SERVICE



United States Department of the Interior

Fish and Wildlife Service
Nevada Fish and Wildlife Office
1340 Financial Boulevard, Suite 234
Reno, Nevada 89502-7147
Phone: (775) 861-6300, Fax: (775) 861-6301

March 3, 2003
File No. 1-5-03-SP-096

Memorandum

To: Caryn Hunt DeCarlo, Environmental Specialist, Bureau of Reclamation,
Carson City, Nevada

From: Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada

Subject: Species List Request for the Proposed Bureau of Reclamation Humboldt Project
Transfer

In response to your memorandum received on February 14, 2003, we have attached a list of threatened species which may occur in the proposed Bureau of Reclamation Humboldt Project Transfer (Attachment A). The project includes three different sites: 1) Humboldt Sink; 2) Rye Patch Dam and Reservoir, and 3) Battle Mountain Community Pasture. We have combined our response into one list which is keyed to each site. This list fulfills the requirement of the Fish and Wildlife Service (Service) to provide information on listed species pursuant to section 7(c) of the Endangered Species Act of 1973, as amended, for projects that are authorized, funded, or carried out by a Federal agency.

For your consideration, Attachment A contains a list of other species of concern to the Service which may occur in the project area. The Service has used information from State and Federal agencies and private sources to assess the conservation needs and status of these species. Further biological research and field study are needed to resolve their conservation status. By considering these species and exploring management alternatives early in the planning process, it may be possible to provide long-term conservation benefits for these species and avoid future conflicts that could otherwise develop. We recommend that you contact the Nevada Natural Heritage Program [1550 East College Parkway, Suite 157, Carson City, Nevada 89710, (775) 687-4245] and the appropriate regional office of the Nevada Division of Wildlife, as well as other local, State, and Federal agencies for distribution data and information on the conservation needs of these and other species of concern.

Caryn Hunt DeCarlo

File No. 1-5-03-SP-096

Please reference File No. 1-5-03-SP-096 in future correspondence concerning this species list. If you have any questions or require additional information, please contact me or Chad Mellison at (775) 861-6300.

Robert D. Williams

For Robert D. Williams

Attachment

RECEIVED

MAR 06 2003

BUREAU OF LAND MANAGEMENT
CHAD MELLISON

CODE	PERSON RESP	INITIAL & DATE
100		
101	<input checked="" type="checkbox"/>	
105	<input checked="" type="checkbox"/>	3/12/03
110		
400		
700		
900		
450	<input checked="" type="checkbox"/>	3/12/03

ATTACHMENT A**THREATENED SPECIES
AND SPECIES OF CONCERN**

that may occur in the area of the
**PROPOSED BUREAU OF RECLAMATION
 HUMBOLDT PROJECT TRANSFER**
 Churchill, Lander, and Pershing Counties, Nevada
 File No. 1-5-03-SP-096; March 3, 2003

Threatened Species**Bird**

Bald eagle

Haliaeetus leucocephalus (4)**Species of Concern****Mammals**

Pygmy rabbit

Brachylagus idahoensis (4)

Townsend's big-eared bat

Corynorhinus townsendii (4)

Spotted bat

Eudermis maculatum (4)

Small-footed myotis

Myotis californicus (4)

Long-eared myotis

Myotis evotis (4)

Fringed myotis

Myotis thysanodes (4)

Long-legged myotis

Myotis volans (4)

Yuma myotis

Myotis yumanensis (1)**Birds**

Northern goshawk

Accipiter gentilis (4)

Western burrowing owl

Athene cunicularia hypugaea (4)

Ferruginous hawk

Buteo regalis (3)

Sage grouse

Centrocercus urophasianus

Black tern

Sterna bergii (4)

Least bittern

Ixobrychus exilis hesperis (4)

White-faced ibis

Plegadis chihi (4)**Invertebrate**

Nevada viceroy

Limnitis archippus lahontan (2, 3)**Plants**

Windflower buckwheat

Eriogonum anemophilum (1, 3)

Nevada oryctes

Oryctes nevadensis (1, 2)

Nevada dune beardtongue

Pentstemon annuus (1)**KEY**

- 1 Humboldt Sink
- 2 Rye Patch
- 3 Battle Mountain Community Pasture
- 4 All Three Areas

APPENDIX I- WILDLIFE SPECIES ASSOCIATED WITH THE HUMBOLDT RIVER AND ITS TRIBUTARIES

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Birds (A & B)				
Cooper's Hawk	<i>Accipiter cooperii</i>	●	●	
Northern Goshawk	<i>Accipiter gentilis</i>	●	●	●
Sharp-shinned Hawk	<i>Accipiter striatus</i>	●		
Spotted Sandpiper	<i>Actitis macularia</i>	●		●
Clark's Grebe	<i>Aechmophorus clarkii</i>	●		
Western Grebe	<i>Aechmophorus occidentalis</i>	●	●	●
Northern Saw-whet Owl	<i>Aegolius acadicus</i>	●		
White-throated Swift	<i>Aeronautes saxatalis</i>	●		●
Red-winged Blackbird	<i>Agelaius phoeniceus</i>	●	●	●
Tricolored Blackbird	<i>Agelaius tricolor</i>	●	●	●
Cassin's Sparrow	<i>Aimophila cassinii</i>		●	
Wood Duck	<i>Aix sponsa</i>	●	●	
Chukar	<i>Alectoris chukar</i>	●	●	
Grasshopper Sparrow	<i>Ammodramus savannarum</i>			
Sage Sparrow	<i>Amphispiza belli</i>	●		
Blackthroated Sparrow	<i>Amphispiza bilineata</i>	●		
Northern Pintail	<i>Anas acuta</i>	●	●	●
American Widgeon	<i>Anas americana</i>	●	●	●
Northern Shoveler	<i>Anas clypeata</i>	●		●
Green-winged Teal	<i>Anas crecca</i>	●	●	●
Cinnamon Teal	<i>Anas cyanoptera</i>	●	●	●
Blue-winged Teal	<i>Anas discors</i>	●		●
Mallard	<i>Anas platyrhynchos</i>	●	●	●
Gadwall	<i>Anas strepera</i>	●	●	●
White-fronted Goose	<i>Anser albifrons</i>	●	●	●
American Pipit	<i>Anthus rubescens</i>	●		
Western Scrub Jay	<i>Aphelocoma californica</i>	●	●	●
Golden Eagle	<i>Aquila chrysaetos</i>	●	●	●
Black-chinned Hummingbird	<i>Archilochus alexandri</i>	●		
Great Egret	<i>Ardea alba</i>	●	●	●
Great Blue Heron	<i>Ardea herodias</i>	●	●	●
Short-eared Owl	<i>Asio flammeus</i>	●		●
Long-eared Owl	<i>Asio otus</i>	●		
Burrowing Owl	<i>Athene cunicularia</i>	●	●	●
Lesser Scaup	<i>Aythya affinis</i>	●		
Redhead	<i>Aythya americana</i>	●	●	
Ring-necked Duck	<i>Aythya collaris</i>	●		
Greater Scaup	<i>Aythya marila</i>	●		
Canvasback	<i>Aythya valisineria</i>	●	●	●
Juniper Titmouse	<i>Baeolophus griseus</i>	●		
Cedar Waxwing	<i>Bombycilla cedrorum</i>	●	●	●
Bohemian Waxwing	<i>Bombycilla garrulus</i>	●		
American Bittern	<i>Botaurus lentiginosus</i>			●
American Brant	<i>Branta bernicla</i>		●	
Canada Goose	<i>Branta canadensis</i>	●	●	
Great Horned Owl	<i>Bubo virginianus</i>	●	●	●
Cattle Egret	<i>Bubulcus ibis</i>	●	●	●
Bufflehead	<i>Bucephala albeola</i>	●		
Common Goldeneye	<i>Bucephala clangula</i>	●	●	
Barrow's Goldeneye	<i>Bucephala islandica</i>	●		
Red-tailed Hawk	<i>Buteo jamaicensis</i>	●	●	●
Rough-legged Hawk	<i>Buteo lagopus</i>	●	●	
Ferruginous Hawk	<i>Buteo regalis</i>	●	●	●
Swainson's Hawk	<i>Buteo swainsoni</i>	●	●	●
Green Heron	<i>Butorides virescens</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Lark Bunting	<i>Calamospiza melanocorys</i>	●		
Sanderling	<i>Calidris alba</i>	●		
Dunlin	<i>Calidris alpina</i>	●		
Western Sandpiper	<i>Calidris mauri</i>	●	●	●
Least Sandpiper	<i>Calidris minutilla</i>	●		
California Quail	<i>Callipepla californica</i>	●	●	●
Pine Siskin	<i>Carduelis pinus</i>	●		
Lesser Goldfinch	<i>Carduelis psaltria</i>	●	●	●
American Goldfinch	<i>Carduelis tristis</i>	●	●	●
Cassin's Finch	<i>Carpodacus cassinii</i>	●		
House Finch	<i>Carpodacus mexicanus</i>	●	●	●
Turkey Vulture	<i>Cathartes aura</i>	●	●	●
Hermit Thrush	<i>Catharus guttatus</i>	●		
Swainson's Thrush	<i>Catharus ustulatus</i>	●		
Rock Wren	<i>Catherpes mexicanus</i>	●	●	
Willet	<i>Catoptrophorus semipalmatus</i>	●		●
Sage Grouse	<i>Centrocercus urophasianus</i>	●	●	●
Brown Creeper	<i>Certhia americana</i>	●		
Belted Kingfisher	<i>Ceryle alcyon</i>	●	●	●
Vaux's Swift	<i>Chaetura vauxi</i>	●		
Snowy Plover	<i>Charadrius alexandrinus</i>	●		
Mountain Plover	<i>Charadrius montanus</i>	●	●	●
Semipalmated Plover	<i>Charadrius semipalmatus</i>	●		
Killdeer	<i>Charadrius vociferus</i>	●	●	●
Snow Goose	<i>Chen caerulescens</i>	●		
Ross's Goose	<i>Chen rossii</i>	●	●	
Black Tern	<i>Chionias niger</i>	●	●	●
Lark Sparrow	<i>Chondestes grammacus</i>	●		
Lesser Nighthawk	<i>Chordeiles acutipennis</i>			
Common Nighthawk	<i>Chordeiles minor</i>	●	●	●
American Dipper	<i>Cinclus mexicanus</i>	●	●	●
Northern Harrier	<i>Circus cyaneus</i>	●	●	●
Marsh Wren	<i>Cistothorus palustris</i>	●	●	●
Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	●		
Northern Flicker	<i>Colaptes auratus</i>	●	●	
Rock Dove	<i>Columba livia</i>	●	●	●
Olive-sided Flycatcher	<i>Contopus cooperi</i>	●	●	●
Western Wood-Pewee	<i>Contopus sordidulus</i>	●		
American Crow	<i>Corvus brachyrhynchos</i>	●	●	●
Common Raven	<i>Corvus corax</i>	●	●	●
Trumpeter Swan	<i>Cygnus buccinator</i>	●	●	
Whistling (tundra) Swan	<i>Cygnus columbianus</i>	●	●	
Yellow-rumped Warbler	<i>Dendroica coronata</i>	●	●	●
Townsend's Warbler	<i>Dendroica townsendi</i>			
Black-throated Gray Warbler	<i>Dendroica nigrescens</i>	●		
Yellow Warbler	<i>Dendroica petechia</i>	●	●	●
Bobolink	<i>Dolichonyx oryzivorus</i>	●	●	●
Snowy Egret	<i>Egretta thula</i>	●	●	●
Western Flycatcher	<i>Empidonax difficilis</i>	●	●	●
Hammond's Flycatcher	<i>Empidonax hammondi</i>	●	●	
Cordilleran Flycatcher	<i>Empidonax occidentalis</i>	●	●	
Willow Flycatcher	<i>Empidonax traillii</i>	●	●	●
Gray Flycatcher	<i>Empidonax wrightii</i>	●	●	
Horned Lark	<i>Eremophila alpestris</i>	●	●	●
Brewer's Blackbird	<i>Euphagus cyanocephalus</i>	●	●	●
Merlin	<i>Falco columbarius</i>	●	●	●
Prairie Falcon	<i>Falco mexicanus</i>	●	●	●
Peregrine Falcon	<i>Falco peregrinus</i>	●	●	●
American Kestrel	<i>Falco sparverius</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
American Coot	<i>Fulica americana</i>	●	●	●
Common Snipe	<i>Gallinago gallinago</i>	●	●	●
Common Moorhen	<i>Gallinula chloropus</i>	●	●	
Pacific Loon	<i>Gavia pacifica</i>	●	●	
Common Yellowthroat	<i>Geothlypis trichas</i>	●	●	
Northern Pygmy Owl	<i>Glaucidium gnoma</i>	●	●	●
Sandhill Crane	<i>Grus canadensis</i>	●	●	●
Blue Grosbeak	<i>Guiraca caerulea</i>			
Bald Eagle	<i>Haliaeetus leucocephalus</i>	●	●	●
Black-necked Stilt	<i>Himantopus mexicanus</i>	●	●	●
Barn Swallow	<i>Hirundo rustica</i>	●	●	●
Yellow-breasted Chat	<i>Icteria virens</i>	●	●	●
Bullock's Oriole	<i>Icterus bullockii</i>	●	●	●
Least Bittern	<i>Ixobrychus exilis</i>	●	●	●
Dark-eyed Junco	<i>Junco hyemalis</i>	●	●	●
Northern Shrike	<i>Lanius excubitor</i>	●	●	●
Loggerhead Shrike	<i>Lanius ludovicianus</i>	●	●	●
Herring Gull	<i>Larus argentatus</i>	●	●	
Ring-billed Gull	<i>Larus delawarensis</i>	●	●	●
Bonaparte's Gull	<i>Larus philadelphia</i>	●	●	
Franklin's Gull	<i>Larus pipixan</i>	●	●	
Short-billed Dowitcher	<i>Limnodromus griseus</i>	●	●	
Long-billed Dowitcher	<i>Limnodromus scolopaceus</i>	●	●	
Marbled Godwit	<i>Limosa fedoa</i>	●	●	
Hooded Merganser	<i>Lophodytes cucullatus</i>	●	●	●
Lewis Woodpecker	<i>Melanerpes lewis</i>		●	
Wild Turkey	<i>Meleagris gallopavo</i>	●	●	●
Lincoln's Sparrow	<i>Melospiza lincolnii</i>			
Song Sparrow	<i>Melospiza melodia</i>	●	●	●
Common Merganser	<i>Mergus merganser</i>	●	●	●
Red-breasted Merganser	<i>Mergus serrator</i>	●		
Northern Mockingbird	<i>Mimus polyglottos</i>	●	●	●
Brown-headed Cowbird	<i>Molothrus ater</i>	●	●	●
Townsend's Solitaire	<i>Myadestes townsendi</i>	●		
Ash-throated Flycatcher	<i>Myiarchus cinerascens</i>	●		
Long-billed Curlew	<i>Numenius americanus</i>	●		●
Black-crowned Night Heron	<i>Nycticorax nycticorax</i>	●	●	●
MacGillivray Warbler	<i>Oporonis tolmiei</i>	●	●	
Sage Thrasher	<i>Oreoscoptes montanus</i>	●	●	●
Western Screech Owl	<i>Otus asio</i>	●	●	●
Ruddy Duck	<i>Oxyura jamaicensis</i>	●	●	●
Osprey	<i>Pandion haliaetus</i>	●	●	
House Sparrow	<i>Passer domesticus</i>	●	●	●
Savannah Sparrow	<i>Passerculus sandwichensis</i>	●	●	●
Fox Sparrow	<i>Passerella iliaca</i>	●	●	●
Lazuli Bunting	<i>Passerina amoena</i>	●	●	●
American White Pelican	<i>Pelecanus erythrorhynchos</i>	●	●	●
Gray partridge	<i>Perdix perdix</i>	●	●	●
Cliff Swallow	<i>Petrochelidon pyrrhonota</i>	●	●	●
Phainopepla	<i>Phainopepla nitens</i>	●	●	●
Double-crested Cormorant	<i>Phalacrocorax auritus</i>	●	●	●
Common Poorwill	<i>Phalaenoptilus nuttallii</i>	●	●	●
Ring-neck Phalarope	<i>Phalaropus lobatus</i>			
Wilson's Phalarope	<i>Phalaropus tricolor</i>	●		●
Ring-necked Pheasant	<i>Phasianus colchicus</i>	●	●	●
Black-headed Grosbeak	<i>Pheucticus melanocephalus</i>	●		●
Black-billed Magpie	<i>Pica pica</i>	●	●	●
White-headed Woodpecker	<i>Picoides albolarvatus</i>	●	●	●
Downy Woodpecker	<i>Picoides pubescens</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Hairy Woodpecker	<i>Picoides villosus</i>	●		
Pine Grosbeak	<i>Pinicola enucleator</i>	●		
Rufous-sided Towhee	<i>Pipilo erythrophthalmus</i>	●	●	●
Western Tanager	<i>Piranga ludoviciana</i>	●	●	●
Summer Tanager	<i>Piranga rubra</i>	●	●	●
White-faced Ibis	<i>Plegadis chihi</i>	●	●	●
Black-bellied Plover	<i>Pluvialis squatarola</i>	●	●	
Horned Grebe	<i>Podiceps auritus</i>	●	●	●
Eared Grebe	<i>Podiceps nigricollis</i>	●		
Pied-billed Grebe	<i>Podilymbus podiceps</i>	●	●	●
Mountain chickadee	<i>Poecile gambeli</i>	●	●	●
Blue-gray Gnatcatcher	<i>Poliophtila caerulea</i>	●	●	
Vesper Sparrow	<i>Pooecetes gramineus</i>	●	●	●
Sora	<i>Porzana carolina</i>	●	●	●
Purple Martin	<i>Progne subis</i>	●	●	●
Bushtit	<i>Psaltirparus minimus</i>	●	●	●
Common Grackle	<i>Quiscalus quiscula</i>	●	●	●
Virginia Rail	<i>Rallus limicola</i>	●	●	
American Avocet	<i>Recurvirostra americana</i>	●	●	●
Ruby-crowned Kinglet	<i>Regulus calendula</i>	●	●	●
Golden-crowned Kinglet	<i>Regulus satrapa</i>	●	●	●
Bank Swallow	<i>Riparia riparia</i>	●	●	●
Black Phoebe	<i>Sayornis nigricans</i>	●	●	●
Say's Phoebe	<i>Sayornis saya</i>	●	●	●
Broad-tailed Hummingbird	<i>Selasphorus platycercus</i>	●	●	
Rufous Hummingbird	<i>Selasphorus rufus</i>	●	●	●
Mountain Bluebird	<i>Sialia currucoides</i>	●	●	●
Western Bluebird	<i>Sialia mexicana</i>	●	●	●
Red-breasted Nuthatch	<i>Sitta canadensis</i>	●	●	●
White-breasted Nuthatch	<i>Sitta carolinensis</i>	●	●	●
Pygmy Nuthatch	<i>Sitta pygmaea</i>	●	●	●
California Gull	<i>Somateria mollissima</i>	●	●	●
Red-naped Sapsucker	<i>Sphyrapicus nuchalis</i>	●	●	●
Williamson's Sapsucker	<i>Sphyrapicus thyroideus</i>	●	●	●
Yellow-bellied Sapsucker	<i>Sphyrapicus varius</i>	●	●	●
Dickcissel	<i>Spiza americana</i>	●	●	●
Brewer's Sparrow	<i>Spizella breweri</i>	●	●	●
Chipping Sparrow	<i>Spizella passerina</i>	●	●	●
Northern Rough-winged Swallow	<i>Stelgidopteryx serripennis</i>	●	●	●
Calliope Hummingbird	<i>Stellula calliope</i>	●	●	
Caspian Tern	<i>Sterna caspia</i>	●	●	●
Forster's Tern	<i>Sterna forsteri</i>	●		
Western meadowlark	<i>Sturnella neglecta</i>	●	●	●
European Starling	<i>Sturnus vulgaris</i>	●	●	●
Violet-green Swallow	<i>Tachycineta bicolor</i>	●	●	●
Tree Swallow	<i>Tachycineta thalassina</i>	●	●	●
Bewick's Wren	<i>Thryomanes bewickii</i>	●	●	
Lesser Yellowlegs	<i>Tringa flavipes</i>	●	●	
Greater Yellowlegs	<i>Tringa melanoleuca</i>	●	●	
Solitary Sandpiper	<i>Tringa solitaria</i>	●	●	
House Wren	<i>Troglodytes aedon</i>	●	●	●
American Robin	<i>Turdus migratorius</i>	●	●	●
Eastern Kingbird	<i>Tyrannus tyrannus</i>	●	●	●
Western Kingbird	<i>Tyrannus verticalis</i>	●	●	●
Cassin's Kingbird	<i>Tyrannus vociferans</i>	●	●	●
Barn Owl	<i>Tyto alba</i>	●	●	●
Orange-crowned Warbler	<i>Vermivora celata</i>	●	●	●
Nashville Warbler	<i>Vermivora ruficapilla</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Virginia's Warbler	<i>Vermivora virginiae</i>	●	●	●
Warbling Vireo	<i>Vireo gilvus</i>	●	●	●
Solitary Vireo	<i>Vireo solitarius</i>	●	●	●
Wilson's Warbler	<i>Wilsonia pusilla</i>	●	●	●
Yellow-headed Blackbird	<i>Xanthocephalus xanthocephalus</i>	●	●	●
Mourning Dove	<i>Zenaida macroura</i>	●	●	●
White-throated Sparrow	<i>Zonotrichia albicollis</i>	●	●	●
Golden-crowned Sparrow	<i>Zonotrichia atricapilla</i>	●	●	●
White-crowned Sparrow	<i>Zonotrichia leucophrys</i>	●	●	●
Harris's Sparrow	<i>Zonotrichia querula</i>	●	●	●
Mammals (A&B)				
White-tailed Antelope Squirrel	<i>Ammospermophilus leucurus</i>	●	●	●
Pronghorn	<i>Antilocapra americana</i>	●	●	●
Pallid Bat	<i>Antrozous pallidus</i>	●	●	●
Pygmy rabbit	<i>Brachylagus idahoensis</i>	●	●	●
Coyote	<i>Canis latrans</i>	●	●	●
Beaver	<i>Castor canadensis</i>	●	●	●
Belding Ground Squirrel	<i>Citellus beldingi</i>	●	●	●
Townsend's Ground Squirrel	<i>Citellus townsendi</i>	●	●	●
Chisel-toothed Kangaroo Rat	<i>Dipodomys microps</i>	●	●	●
Ord Kangaroo Rat	<i>Dipodomys ordi</i>	●	●	●
Big Brown Bat	<i>Epstesicus fuscus</i>	●	●	●
Porcupine	<i>Erethizon dorsatum</i>	●	●	●
Spotted Bat	<i>Euderma maculata</i>	●	●	●
Least Chipmunk	<i>Eutamias minimus</i>	●	●	●
Uinta Chipmunk	<i>Eutamias umbrinus</i>	●	●	●
Mountain Lion	<i>Felix concolor</i>	●	●	●
Sagebrush Vole	<i>Lagurus curtatus</i>	●	●	●
Silvery-haired Bat	<i>Lasionycteris noctivagans</i>	●	●	●
Red Bat	<i>Lasiurus borealis</i>	●	●	●
Hoary Bat	<i>Lasiurus cinereus</i>	●	●	●
Black-tailed Jackrabbit	<i>Lepus californicus</i>	●	●	●
White-tailed Jackrabbit	<i>Lepus townsendi</i>	●	●	●
River Otter	<i>Lutra canadensis</i>	●	●	●
Bobcat	<i>Lynx rufus</i>	●	●	●
Yellow-bellied Marmot	<i>Marmota flaviventris</i>	●	●	●
Striped Skunk	<i>Mephitis mephitis</i>	●	●	●
Montane Vole	<i>Microtus longicaudus</i>	●	●	●
House Mouse	<i>Mus musculus</i>	●	●	●
Short-tailed Weasel	<i>Mustela erminea</i>	●	●	●
Long-tailed Weasel	<i>Mustela frenata</i>	●	●	●
Mink	<i>Mustela vison</i>	●	●	●
California Bat	<i>Myotis californicus</i>	●	●	●
California Myotis	<i>Myotis californicus</i>	●	●	●
Long-eared Myotis	<i>Myotis evotis</i>	●	●	●
Little Brown Bat	<i>Myotis lucifugus</i>	●	●	●
Small-footed Myotis	<i>Myotis subulatus</i>	●	●	●
Fringed Myotis	<i>Myotis thysanodes</i>	●	●	●
Long-legged Myotis	<i>Myotis volans</i>	●	●	●
Yuma Myotis	<i>Myotis yumanensis</i>	●	●	●
Bushy-tailed Woodrat	<i>Neotoma cinerea</i>	●	●	●
Desert Woodrat	<i>Neotoma lepida</i>	●	●	●
Mule Deer	<i>Odocoileus hemionus</i>	●	●	●
Muskrat	<i>Ondatra zibethica</i>	●	●	●
Northern Grasshopper Mouse	<i>Onychomys leucogaster</i>	●	●	●
Little Pocket Mouse	<i>Perognathus longimembris</i>	●	●	●
Great Basin Pocket Mouse	<i>Perognathus parvus</i>	●	●	●
Desert Pocket Mouse	<i>Perognathus penicillatus</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Deer Mouse	<i>Peromyscus maniculatus</i>	●	●	●
Western Pipistrelle	<i>Pipistrellus hesperus</i>	●	●	
Townsend's Big-eared Bat	<i>Plecotus townsendii</i>	●	●	●
Raccoon	<i>Procyon lotor</i>	●	●	●
Norway Rat	<i>Rattus norvegicus</i>	●	●	●
Western Harvest Mouse	<i>Reithrodontomys megalotis</i>	●	●	●
Northern Water Shrew	<i>Sorex palustris</i>			
Preble's Shrew	<i>Sorex preblei</i>			
Vagrant Shrew	<i>Sorex vagrans</i>	●	●	
Spotted Skunk	<i>Spilogale putorius</i>	●	●	●
Cottontail Rabbit	<i>Sylvilagus audubonii</i>	●	●	●
Pygmy Rabbit	<i>Sylvilagus idahoensis</i>		●	
Mountain Cottontail	<i>Sylvilagus nuttallii</i>	●	●	●
Brazilian Free-tailed Bat	<i>Tadarida brasiliensis</i>	●	●	●
Big Free-tailed Bat	<i>Tadarida molossa</i>	●		
Badger	<i>Taxidea taxus</i>	●	●	
Botta Pocket Gopher	<i>Thomomys bottae</i>	●	●	●
Northern Pocket Gopher	<i>Thomomys talpoides</i>	●	●	●
Townsend Pocket Gopher	<i>Thomomys townsendi</i>	●	●	●
Red Fox	<i>Vulpes fulva</i>	●	●	●
Kit Fox	<i>Vulpes macrotis</i>	●	●	●
Western Jumping Mouse	<i>Zapus princeps</i>	●	●	●
Reptiles (A, B, & C)				
Rubber Boa	<i>Charina bottae</i>	●	●	●
Western Whiptail	<i>Cnemidophorus tigris</i>	●	●	●
Racer	<i>Coluber constrictor</i>	●	●	●
Western Rattlesnake	<i>Crotalus viridis</i>	●	●	●
Desert Collared Lizard	<i>Crotaphytus insularis</i>	●	●	●
Ring neck Snake	<i>Diadophis punctatus</i>	●	●	●
Western Skink	<i>Eumeces skiltonianus</i>	●	●	●
Leopard lizard	<i>Gambelia wislizeni</i>	●	●	●
Long-nosed Leopard Lizard	<i>Gambelia wislizenii wislizenii</i>	●	●	●
Night Snake	<i>Hypsiglena torquata</i>	●	●	●
Striped Whipsnake	<i>Masticophis taeniatus</i>	●	●	●
Short-horned Lizard	<i>Phrynosoma douglassii</i>	●	●	●
Desert Horned Lizard	<i>Phrynosoma platyrhinos</i>	●	●	●
Gopher Snake	<i>Pituophis melanoleucus</i>	●	●	●
Long-nosed Snake	<i>Rhinocheilus lecontei</i>	●	●	●
Western Patch-nosed Snake	<i>Salvadora hexalepis</i>	●	●	●
Sagebrush Lizard	<i>Sceloporus graciosus</i>	●	●	●
Desert Spiny Lizard	<i>Sceloporus magister</i>	●	●	●
Western Fence Lizard	<i>Sceloporus occidentalis</i>	●	●	●
Ground Snake	<i>Sonora semiannulata</i>	●	●	●
Western Terrestrial Garter Snake	<i>Thamnophis elegans</i>	●	●	●
Common Garter Snake	<i>Thamnophis sirtalis</i>	●	●	●
Side-Blotched Lizard	<i>Uta stansburiana</i>	●	●	●
Amphibians (A,C)				
Western Toad	<i>Bufo boreas</i>	●	●	●
Woodhouse's Toad	<i>Bufo woodhousii</i>	●	●	●
Pacific Treefrog	<i>Hyla regilla</i>	●	●	●
Bullfrog	<i>Rana catesbeiana</i>	●	●	●
Northern Leopard Frog	<i>Rana pipiens</i>	●	●	●
Spotted Frog	<i>Rana pretiosa</i>	●	●	●
Great Basin Spadefoot	<i>Scaphiopus intermontanus</i>	●	●	●
Fish (C)				
Sacramento perch	<i>Archoplites interruptes</i>	●	●	●
Goldfish	<i>Carassius auratus</i>	●	●	●

Appendix I

Wildlife Species Potentially Occurring on Humboldt Project Transfer Lands

Common Name	Scientific Name	Potential Occurrence		
		Humboldt Sink	Rye Patch Reservoir	Battle Mountain Community Pasture
Tahoe sucker	<i>Catostomus tahoensis</i>	●	●	●
Common carp	<i>Cyprinus carpio</i>	●	●	●
Northern pike	<i>Esox lucius</i>	●	●	●
Gambusia	<i>Gambusia affinis</i>	●	●	●
Lahontan chub	<i>Gila bicolor</i>	●	●	●
Brown bullhead	<i>Ictalurus melas</i>	●	●	●
White catfish	<i>Ictalurus nebulosus</i>	●	●	●
Channel catfish	<i>Ictalurus punctatus</i>	●	●	●
Green sunfish	<i>Lepomis cyanellus</i>	●	●	●
Bluegill	<i>Lepomis macrochirus</i>	●	●	●
Smallmouth black bass	<i>Micropterus dolmieu</i>	●	●	●
Largemouth black bass	<i>Micropterus salmoides</i>	●	●	●
White bass	<i>Morone chrysops</i>	●	●	●
Yellow perch	<i>Perca flavescens</i>	●	●	●
White crappie	<i>Pomoxis annularis</i>	●	●	●
Redside shiner	<i>Richardsonius balteatus</i>	●	●	●
Brown trout	<i>Salmo trutta</i>		●	
Walleye	<i>Stizostedion vitreum</i>	●	●	

(A): Bradley, NDOW 1991

(B): Bull and Richards, NDOW 2003

(C): Eissmann et al. Nevada State Parks 1991

Other Sources: USFWS Nevada Offices, October 30, 2003

Note: No ● indicates a species that is listed for the Humboldt River and its Major Tributaries (Bradley, NDOW 1991) but not recorded in or near one of the three project areas.

APPENDIX J – SUMMARY OF COMMENTS RECEIVED DURING SCOPING

It is Reclamation's intent to address all of the issues brought up during scoping to the extent practicable. The comments listed below are grouped by issue categories. A complete set of the written comments will be made available as part of the public record for the project.

NEPA Process

- ❖ The drafters of the Environmental Impact Statement should accept the plan which has been developed, with its heavy emphasis on environmental preservation and to totally discount any "new information" as nothing more than obstructionism.
- ❖ Address the No-Action alternative.
- ❖ The effect the channelization of the Argenta Marsh has had and will continue to have on wildlife, fisheries, water quality/quantity, and the functioning condition of the river and wetland systems, and surrounding land. Explain how the existing situation and all proposed actions comply with the Clean Water Act, Endangered Species Act, and other pertinent laws, which protect the loss of wetlands and/or resources.
- ❖ The effects of the proposed action and alternatives on Threatened and Endangered Species, USFWS Species of Concern and State listed species must be analyzed.
- ❖ Increase scoping meetings to include other interested communities in Nevada, including Winnemucca (near Rye Patch) and Lovelock (near Humboldt Sink).
- ❖ Southern Nevada - Las Vegas was missed for open house meeting.
- ❖ Transaction costs should be the responsibility of PCWCD.
- ❖ Why was PCWCD allowed to hire NEPA consultant rather than Bureau of Reclamation?
- ❖ BLM should be a major player in this process.

Water Resources

- ❖ Rye Patch Reservoir should be kept with a minimum pool greater than or equal to 5,000 acre-feet. 3,000 acre-feet is not adequate to keep temperatures and dissolved oxygen at proper levels for fish survival.
- ❖ The minimum pool of water at Rye Patch is far too little to sustain the Rye Patch Reservoir as a quality fishery, wildlife habitat and recreational body of water.
- ❖ Direct and indirect impacts to existing decreed and certificated surface and groundwater rights from all proposed uses of land transferred pursuant to the Humboldt Project Conveyance should be addressed in the EIS.
- ❖ Identify all quantities and sources of ground and surface water to be acquired by any party as needed to develop and use land transferred pursuant to the Humboldt Project Conveyance.
- ❖ Much more water for wildlife is needed.
- ❖ Provide project water for wetlands.

- ❖ Put water back into Argenta Marsh.
- ❖ Public water resources should not be privatized.
- ❖ The restoration alternative and possible mitigation measures for the loss of publicly owned lands and water rights should include sufficient water for wetlands restoration purposes.

Water Quality

- ❖ Reclamation proposes transferring title of the PCWCD owned portion of the Humboldt Sink to the Nevada Department of Wildlife (NDOW). The area would thus remain as a Wetland/Waterfowl Management Area. Water quality downstream of major irrigation projects has been a major problem in other areas of the country and should be analyzed in the EIS and procedures established and implemented.

Wetlands

- ❖ The EIS should address the best locations for wetlands restoration and management techniques for mitigation for mosquitoes and black flies in the Community Pasture area. It should include the best restoration techniques, from minimal to extensive. It should list the best size for a demonstration restored wetland.
- ❖ Identify other wetlands along the Humboldt River for future restoration.
- ❖ The Sierra Club supports a wetlands restoration alternative, with optimal locations for restored wetlands, along the Humboldt River, in seasonally flooded lowlands, and along other natural watercourses. The size should approximate the historic Argenta Marsh, recognizing that the marsh expanded and contracted, depending on annual river flows.

Argenta Marsh

- ❖ Land should be set aside for the possible restoration of Argenta Marsh.
- ❖ Add alternative for Argenta Marsh restoration.
- ❖ Provide an alternative for Argenta Marsh restoration along historic Humboldt River corridor with old oxbows and sloughs.
- ❖ The acreage for the restoration of the Argenta Marsh must be significantly enlarged in order to restore a fraction of the values that were lost decades ago.
- ❖ Reestablish marsh lands in the Battle Mountain Community Pasture.
- ❖ Provide funding for a demonstration Argenta wetlands restoration project on the acquired wetlands which can be most technically and cost-effectively restored.
- ❖ Analyze the continued need for the channelization of the Argenta Marsh/Community Pasture. Is it necessary for the continued function of the Humboldt project? Present science indicates that the potential water storage in the Community Pasture would better benefit the project than “hydraulic efficiency”.

Riparian Habitat

- ❖ Create riparian habitat along Humboldt River to delay flow of water to Rye Patch Reservoir.
- ❖ Riparian areas including overflow channels, springs, and oxbows should be managed for wildlife habitat.

Floodplains

- ❖ Areas associated with floodplains of Humboldt River and Rock Creek should be identified and protected from development as mandated by the Floodplain Management Act.

Vegetation

- ❖ The no action and any other proposed alternatives that stipulates the transfer of the Lander County Community Pasture to PCWCD must specify that PCWCD establish a Resource Management Plan for the Humboldt River and its floodplain within Lander County. At a minimum, the objectives of this plan should include the return of the river and its floodplain to a properly functioning condition and the re-establishment of the natural plant communities for the different components of the systems. See Executive order 11990 Section 4.

Wildlife

- ❖ Waterfowl habitat north and south of Callahan Bridge should be transferred to the State of Nevada.
- ❖ The EIS should support ecosystem restoration, not just duck pond creation.

Socioeconomic

- ❖ Address socio-economic impact of past, present and proposed actions.
- ❖ Quantify environmental, fiscal and economic impacts within Elko, Eureka, Lander, Humboldt and Pershing counties resulting from development and use of land transferred and any water required to use said lands.
- ❖ This is the best thing for the ranchers.
- ❖ Concerned about this Project impact to small acreage operators.
- ❖ The proposed trail system that will belong to Lander County is good. To make the most beneficial use of this trail system and other recreational opportunities, the County should develop an Open Space Plan. The proponent working with the County (Community Development or Economic Development) to develop appropriate mitigation, if needed, is encouraged. The County is eligible to acquire Question 1 funds to create an Open Space Plan. It would be appropriate to incorporate this into the bike plan already approved by the County.

Historic Preservation

- ❖ Protect and manage the historic Emigrant Trail along the Humboldt River by BLM, NDOW, State Parks and private landowners. The EIS should include the best option for protection and management of the Emigrant Trail.
- ❖ Potential impacts of this transfer upon the California Trail and the many other known and potential historic properties are a concern.
- ❖ Provide access to and protection for the historic Immigrant Trail along the Humboldt River.
- ❖ The river corridor and associated marshlands and the meadows around Rye Patch Reservoir were also the traveling routes for early explorers, beaver trappers, pioneers taking the Emigrant Trail routes to California and railroad workers. Each group of visitors left traces of their passage which should be surveyed, inventoried, and preserved as part of our Western heritage.
- ❖ Surveys, inventory, and preservation of paleontological resources in the disposal areas should be conducted before any title transfer takes place. See Studies in Archeology, Geology and Paleontology at Rye Patch Reservoir, Pershing County, Nevada M. Rusco & J. Davis, June 1987.

Cultural Resources/Indian Trust Assets

- ❖ These lands have historic and spiritual significance to the Lovelock Paiutes.
- ❖ The Lovelock Paiute Tribe is protesting this conveyance, since the Bureau of Reclamation has not followed the executive order dated April 29, 1994 signed by President Clinton. (Executive Order 13175 titled "Consultation and Coordination with Indian Tribal Governments, signed by President Clinton on November 6, 2000. The April 29th document is an Executive Memorandum).
- ❖ Archeological and cultural resources in the Community Pasture must be inventoried and effects analyzed.
- ❖ The Humboldt River Corridor and associated marshlands have been inhabited for millennia by native people. Before these public lands are privatized, a full survey and inventory of the rich cultural area should be conducted and significant sites and artifacts carefully recorded and preserved.

Recreation

- ❖ Include present and possible future revenue from recreation opportunities to Lander County, given that the Community Pasture were restored to its pre-fifties condition and managed by NDOW or other resource agency or private resource conservation group. Those opportunities include bird watching, camping, swimming, fishing, hunting, and the improvement in the general aesthetics of the river environment. Several communities in the intermountain west have improved their economic condition by taking advantage of existing or by improving recreational opportunities.
- ❖ The recreational and environmental value of Rye Patch Reservoir must be considered. If the minimum pool was raised to 17,000 acre foot, the Federal government should be able to subsidize irrigation district losses.
- ❖ In addition to the recreational benefits of the Rye Patch Reservoir, the economic value to the

county needs to be realized. If we had a larger minimum pool, the fishery would be utilized year round, thus increasing the business within our County.

Land Ownership/Land Use

- ❖ Provide an alternative that analyzes the transfer of title of the Community Pasture to NDOW, Lander County, or other government agencies or private parties (Nature Conservancy, Ducks Unlimited, Trout Unlimited, etc.) interested in restoring the natural resources of the area.
- ❖ Transfer prime historic wetlands in the community pasture along the Humboldt River corridor to the State of Nevada. These include about 5,000 acres in Township 32 North, Range 45 East.
- ❖ Acquire a conservation easement by the State of Nevada to all other lands to be transferred in the Humboldt Project. The conservation easement will encompass wildlife values, water management and recreational access and will include historical and cultural values, tourism opportunities, water management to minimize future problems, and to protect wildlife.
- ❖ Provide a complete description of all proposed uses of land to be transferred pursuant to the Humboldt Project Conveyance.
- ❖ The location and amount of land above the Rye Patch Dam's high water mark needs to be identified and the affect of its disposition on recreational opportunities and requirements for the existing fishery (minimum pool) needs to be analyzed in the NEPA document. This includes BLM land that may have been included in the dam project, but never properly conveyed to Reclamation and therefore should not be a part of the transfer.
- ❖ A riparian easement should be obtained for a 400 yard corridor along the Humboldt River channel. The corridor should be fenced and managed for a riparian pasture according to Bureau of Land Management of U. S. Fish & Wildlife Service riparian guidelines. The State should acquire all of Rock Creek within the Battle Mountain Community Pasture and restore and manage the area as a riparian wildlife area.
- ❖ The land along Humboldt River and Rock Creek should be transferred to both NDOW and Pershing County.
- ❖ The State should acquire all of Rock Creek within the Battle Mountain Community Pasture and restore and manage the area as a riparian wildlife area.
- ❖ Acquire private wetlands at the Licking Ranch to link these two wetland areas along with the currently leased water rights.
- ❖ No condominiums should be built.
- ❖ The financial ability and commitment of the PCWCD to maintain and/or rehabilitate various hydraulic structures in perpetuity within the Project must be addressed.
- ❖ Need public access to river for recreations (fishing and camping). Water is already scarce in Nevada it must not be blocked off from public access.
- ❖ Protect public access to all transferred lands. Public access would be protected by law and include all of the existing community pasture.

- ❖ Need adequate public access to NDOW land.
- ❖ Ensure adequate public access to NDOW lands and all along the Humboldt River.
- ❖ Correct grazing mismanagement on Community Pasture.
- ❖ There must be a science-based plan in place and action taken to restore the community pasture to health and sustainability.
- ❖ Provide for restoration of historic river channel through fencing and livestock management.
- ❖ The restoration alternative should include land acquisition of significant private parcels in areas of biologically optimal wetlands re-establishment.
- ❖ In other parts of the Community Pasture, grazing management improvements can be made to correct decades of livestock overgrazing.

APPENDIX K – DEIS COMMENTS AND RESPONSES

- 1. Humboldt River Basin Water Authority - Paul Miller, Chairman**
- 2. Tina Nappe**
- 3. Lovelock Paiute Tribe - Glenn Wasson, Tribal Chairman**
- 4. U. S. Environmental Protection Agency, Region IX - Lisa B. Hanf, Manager, Federal Activities Office, Cross Media Division**
- 5. Nevada State Historic Preservation Office - Rebecca Palmer**
- 6. Craig Carpenter**
- 7. Nevada Waterfowl Association - Norman Saake, Vice-President**
- 8. U. S. Department of the Interior, Bureau of Land Management - Gene Seidlitz, Acting Deputy State Director, Natural Resources, Lands and Planning**
- 9. Nevada Archaeological Association - Daron G. Duke, NAA Board Member**
- 10. Toiyabe Chapter of the Sierra Club - Rose Strickland**
- 11. Nevada Division of Wildlife - Dave Pulliam, Acting Habitat Bureau Chief**
- 12. Nelo Mori**
- 13. Jon D. Sherve**
- 14. U. S. Fish and Wildlife Service - Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office**
- 15. State of Nevada, Commission on Mineral Resources, Division of Minerals - Christy L. Morris, Program Manager, Oil, Gas and Geothermal Program**
- 16. Brad Kelley, Lander County Commissioner**

**Humboldt River Basin Water Authority
c/o P.O. Box 2008
Carson City, Nevada 89702**

**Elko County
Eureka County
Humboldt County
Lander County
Pershing County**

February 9, 2005

**Ms. Caryn Hunt DeCarlo
Bureau of Reclamation
705 North Plaza Street
Room 320
Carson City, Nevada 89701-4015**

RE: Comments to Humboldt Project Conveyance Draft Environmental Impact Statement

Dear Ms. Hunt DeCarlo:

The Humboldt River Basin Water Authority (HRBWA) has completed a review of the Humboldt Project Conveyance Draft Environmental Impact Statement and offers the following comments thereto:

- 1. Pursuant to the requirements of the National Environmental Policy Act (NEPA), the DEIS provides sufficient disclosure of potential environmental impacts for conveyance of Humboldt Project land and/or improvements to the Pershing County Water Conservation District, Lander County and Pershing County.**
- 2. Pursuant to the requirements of the National Environmental Policy Act (NEPA), the DEIS provides insufficient disclosure of potential environmental impacts for conveyance of Humboldt Project land and/or improvements to the State of Nevada. This insufficiency can be remedied if additional details on the specific management plans including water sources, funding, and vector control and disclosure of related environmental impacts are included within the FEIS.**
- 3. Page 2-1, Section 2.1.1. of the DEIS states, "It is Reclamation's intent to address all of the issues brought up during scoping." The following issues were identified as needing to be addressed in the HRBWA May 16, 2003 letter to Reclamation regarding the scope of the EIS:**
 - Complete description of all proposed uses of land to be transferred pursuant to the Humboldt Project Conveyance.**
 - Direct and indirect impacts to existing decreed and certificated surface and groundwater rights from all proposed uses of land transferred pursuant to the Humboldt Project Conveyance.**
 - Identification of all quantities and sources of ground and surface water to be acquired by any party as needed to develop and use land transferred pursuant to the Humboldt Project Conveyance.**

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Ms. Caryn Hunt DeCarlo

February 9, 2005

- Quantification of environmental, fiscal and economic impacts within Elko, Eureka, Lander, Humboldt and Pershing counties resulting from development and use of land transferred and any water required to use said lands

HRBWA concludes that with respect to conveyance of Humboldt Project land and/or improvements to the State of Nevada, none of the aforementioned issues have been adequately addressed within the DEIS. Each of the issues raised by HRBWA in its May 16, 2003 letter to Reclamation should be addressed within the FEIS.

For example, if the State of Nevada is proposing "to restore up to 2,000 acres of marsh habitat" it should be possible to estimate how many acre feet of water would be required on an annual basis to develop and maintain such a habitat, including requirements for flushing/circulation and evapotranspiration. This total annual water requirement could then be considered against available unappropriated surface and/or ground water in the region and a determination made as to whether previously unappropriated water would be available or whether transfer of existing surface or ground water rights would be required. If transfer of existing water rights is required, the FEIS should discuss the likely sources of the total quantity of water required. An estimate of the potential environmental and economic impacts of changing the manner and place of use of the water required to develop and maintain the State of Nevada marsh should be included in the FEIS. The FEIS should also identify and quantify the beneficial economic and fiscal impacts associated with development and maintenance of the State of Nevada marsh. The FEIS should include identification and evaluation of alternative methods for mitigating the environmental and economic impacts associated with transfer of water from existing uses to support the State of Nevada marsh.

4. Failure of the FEIS to adequately address the aforementioned issues will result in a NEPA compliance document which is legally insufficient and a Reclamation action (transfer of Humboldt Project land/and/or improvements to the State of Nevada) which is likely to produce unanticipated and unmitigated adverse environmental consequences.

The HRBWA appreciates your consideration of these comments and looks forward to reviewing the FEIS. Should you have any questions regarding these comments please do not hesitate to contact Dr. Mike L. Baughman, the Authority's Contract Executive Director.

Sincerely,

Paul Miller
Chairman

From: Paul Miller, Chairman, Humboldt River Basin Water Authority, dated 2/9/05

1. **Comment:** Pursuant to the requirements of the National Environmental Policy Act (NEPA), the DEIS provides sufficient disclosure of potential environmental impacts for conveyance of Humboldt Project land and/or improvements to the Pershing County Water Conservation District, Lander County and Pershing County.

Response: *Comment acknowledged.*

2. **Comment:** Pursuant to the requirements of the National Environmental Policy Act (NEPA), the DEIS provides insufficient disclosure of potential environmental impacts for conveyance of Humboldt Project land and/or improvements to the State of Nevada. This insufficiency can be remedied if additional details on the specific management plans including water resources, funding, and vector control and disclosure of related environmental impacts are included within the FEIS.

Response: *Management of water resources subsequent to title transfer is described in Chapter 3.2. Funding of future improvements is beyond the scope of this EIS. Vector issues will be addressed when the State and County enter into a more formal agreement on wetlands development. The FEIS discloses all identified environmental impacts analyzed under the Proposed Action.*

3. **Comment:** Page 2-1, Section 2.1.1 of the DEIS states, “It is Reclamation’s intent to address all of the issues brought up during scoping.” The following issues were identified as needing to be addressed in the HRBWA May 16, 2003 letter to Reclamation regarding the scope of the EIS:
 - **Comment:** Complete description of all proposed uses of land to be transferred pursuant to the Humboldt Project Conveyance.

Response: *The proposed uses of Humboldt Project lands subsequent to the title transfer are described in Section 3.1.2.1 (Environmental Impacts – Proposed Action/Preferred Alternative).*

- **Comment:** Direct and indirect impacts to existing decreed and certificated surface and groundwater rights from all proposed uses of land transferred pursuant to the Humboldt Project Conveyance.

Response: *Since there are no known or expected changes in the use of Humboldt Project water rights, there will be no direct or indirect impacts to them.*

- **Comment:** Identification of all quantities and sources of ground and surface water to be acquired by any party as needed to develop and use land transferred pursuant to the Humboldt Project Conveyance.

Response: *The Proposed Action in the EIS does not include water right acquisition. The issue of acquisition of water rights by other parties was not addressed under the title transfer legislation and is outside of the scope of this EIS.*

- **Comment:** Quantification of environmental, fiscal and economic impacts within Elko, Eureka, Lander, Humboldt and Pershing counties resulting from development and use of land transferred and any water required to use said lands.

Response: *The lands proposed for transfer are located in Lander, Pershing and Churchill counties only. The transfer does not affect the other counties listed above. There will be no changes in the use of Humboldt Project water rights as a result of this transfer. The DEIS examined the environmental effects of the title transfer for all affected land within the three counties. The fiscal and economic impacts were analyzed for Lander and Pershing Counties only because there are no proposed actions or foreseeable changes to the parcels in Churchill County (see section 3.8.1). The environmental, fiscal and economic impacts to affected areas are documented under the various resource headings in Chapter 3.0 Affected Environment and Environmental Consequences.*

- **Comment:** If transfer of existing surface water rights is required, the FEIS should discuss the likely sources of the total quantity of water required. An estimate of the potential environmental and economic impacts of changing the manner and place of use of the water required to develop and maintain the State of Nevada marsh should be included in the FEIS. The FEIS should also identify and quantify the beneficial economic and fiscal impacts associated with development and maintenance of the State of Nevada marsh. The FEIS should include identification and evaluation of alternative methods for mitigating the environmental and economic impacts associated with transfer of water from existing uses to support the State of Nevada marsh.

Response: *Water flows through the Humboldt River are established by the Nevada State Engineer's Office through assigned water decrees. The State Engineer is the water rights administrator and is responsible for the appropriation, adjudication, distribution and management of water in the State of Nevada. Analyzing potential wetland development is beyond the scope of the proposed actions being analyzed in this EIS. Implementation of such an action would fall under State guidelines and regulations for environmental review.*

Tina Nappe

615 Robinson Court, Reno, Nevada 89503 775 786 1176 201 0246F tnappe@juno.net

March 15, 2006

Caryn Hunt DeCarlo
Lahontan Basin Area Office
Bureau of Reclamation
705 North Plaza, Room 320
Carson City, NV 89701

Re: Humboldt Project Conveyance – Draft EIS

Dear Caryn:

Over the years representatives from organizations like the Lahontan Audubon Society, Sierra Club, and Lahontan Wetlands Coalition have sought to improve federal management of the Humboldt Project, develop a broader public interest in the natural, cultural, and recreation resources existing on this property, and to provide a vision for the future of the community pasture, the federal lands along the Humboldt River and around Rye Patch Dam.

The 1930's Humboldt Project destroyed wetlands for which no mitigation was provided then and apparently none is offered now under this EIS. This EIS assumes that the future will be like the past. The water along the Humboldt River will be for mining and agriculture. Minimal groundwater development will occur. Public recreation will be confined to Lahontan State Park and NDOV's community pasture. Lander County appears to have been a little more pro-active by negotiating for river recreation use. The agreement between Lander County and the District lays the groundwork for a slightly broader recreation vision, but it can be easily amended or cancelled by the two parties and does not reflect the broad public interest, which now through BOR, can be expressed.

The EIS represents a good compendium of information available at this time. In this sense the EIS provides a valuable document.

The EIS makes assumptions about the future use of the land and water, which are unknown and highly uncertain given the rapid human population growth of Nevada and subsequent demand for both land and water. By making this assumption, i.e. the future will be the same as the current land use status, this EIS is basically dismissive of the potential impacts of further losses of public access, wildlife resources, and cultural values when changes in use are pursued as they inevitability will be in the fastest growing state in the union.

Since this document basically is an inventory of existing information, the document itself provides little new information, but it does offer an opportunity to re-iterate concerns previously expressed and raises the question "What now?"

1. Timelines for moving forward appear to be uncertain. When will the cultural clearances be finalized on the District Land? When they are finalized, what are the next steps? Is there a second public review of those cultural resource reports?
2. Have the State of Nevada and the District agreed in writing to accept responsibility of the Dam? If the state does not proceed on the cultural clearances and other costs of the transfer, does this mean that BOR continues its responsibility for the Dam? Does this mean BOR maintains some responsibility for state lands? Or must the District accept all responsibility? Will the state of Nevada accept responsibility for the dam if, in fact, it has no interests to protect i.e. the land is not being transferred to the State of Nevada?

3. The EIS essentially absolves the federal government from any responsibility over natural and cultural resources or recreation opportunities by saying that nothing will change. I would like to see a conservation easement to ensure that minimal change occurs. No additional federal funds or state funds should be provided except with agreements to provide protection and improvement in the community pasture.
4. If BOR transfers Title to the District but maintains ownership of proposed state lands, does mean that the grazing lease on these lands can be negotiated with public input? As I recollect, the grazing lease does call for some environmental protection, which has never been implemented.
5. The EIS provides no mitigation for wetlands loss or for potential loss of new recreation opportunities such as creating a "Pioneer Trail" along the Humboldt River. We had hoped for a more pro-active approach and object to the "do-nothingness" in this document.
6. Can the State of Nevada have a long-term lease, similar to that the District has enjoyed, say for 30 years on lands it is anticipating acquiring? Can cultural surveys be conducted only on those portions of the land subject to some development? A long-term lease will allow Nevada to incorporate planning and improvements now as funds become available.
7. The proceeds from leasing the community pasture should be used to conduct the cultural clearances for the community pasture on both state and District lands.

As noted in earlier documents, we feel that the State of Nevada agreement with the District and subsequent legislation are not in the best interests of Nevadans. While we all would like agriculture to live many years in Nevada, the erosion of ranchlands and particularly water to fuel more intensive development, is a given. The community pasture, a federal land resource, has been managed as a private pasture, without public benefit or public review. If the transfer does not take place in the foreseeable future, we are requesting a public meeting on management of the property.

At a time when growth will require more recreation opportunities and wetland dependent species face a shrinking habitat, the transfer of this property is a traumatic loss.

Sincerely,

Tina Nappe

From: Tina Nappe, dated 3/15/05

Comment: Timeframes for moving forward appear to be uncertain. When will the cultural clearances be finalized on the District Land? When they are finalized, what are the next steps? Is there a second public review of those cultural reports?

Response: *Reclamation has prepared a draft Sample Inventory Design for that portion of the lands to be conveyed to PCWCD and Lander and Pershing Counties. The current Sample Inventory Design does not cover the State of Nevada portion of the conveyance. A separate Inventory Design will be prepared for the State of Nevada portion of the title transfer as needed when that portion moves forward.*

The Inventory Design was reviewed by the Nevada State Historic Preservation Office (SHPO) and is expected to be finalized during the summer of 2005. The Inventory Design describes the methods Reclamation proposes to use to identify, document and evaluate cultural resources within portions of the title transfer area. The proposed cultural resource inventory design calls for a full survey of lands being transferred to Pershing County at Derby Field. Lands being transferred to PCWCD at Rye Patch Reservoir will be fully surveyed, with the exception of small, isolated parcels. A sample inventory of lands being transferred to PCWCD and Lander County is proposed for the Battle Mountain Community pasture area. Reclamation expects to prepare contract specifications to conduct surveys by the end of 2005. The results of those surveys will provide information for the formulation of more detailed surveys/analysis.

Reclamation intends to complete a full review and analysis of the affected cultural resources prior to title transfer. The Record of Decision (ROD) for the EIS will identify any environmental commitments that must be met prior to transferring lands to the receiving entities, including compliance with Section 106 of the NHPA. When Reclamation has completed Section 106 on federally designated portions of the Humboldt Project (e.g., Rye Patch Area), transfer of those areas to the receiving entities may occur separately from the other portions. Activities needed for compliance with Section 106 for the title transfer are expected to take several years.

The 36 CFR 800 regulations allow for public participation throughout the Section 106 compliance process. Several groups were contacted during development of the Inventory Design. These groups and other members of the public will continue to be involved as Reclamation proceeds through the identification, evaluation, and effect phases. Additional members of the public can request, in writing, copies of any report for review and comment.

Comment: Have the State of Nevada and the District agreed in writing to accept responsibility of the Dam? If the State does not proceed on the cultural clearances and other costs of the transfer, does this mean that BOR continues its responsibility for the Dam? Does this mean BOR maintains some responsibility for State lands? Or must the District accept all responsibility? Will the State of Nevada accept responsibility for the

dam if, in fact, it has no interests to protect i.e. the land is not being transferred to the State of Nevada?

Response: *Upon title transfer, the dam safety regulatory responsibility will formally transfer to the State of Nevada, and the dam safety ownership responsibilities would transfer to PCWCD. Liability for the structure and its operation would become the sole responsibility of the District. As stated in Sec. 807(Liability) in P. L. 107-282, “Effective on the date of the conveyance required by Section 803, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the Humboldt Project, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section shall be considered to increase the liability of the United States beyond that currently provided in Chapter 171 of Title 28, United States Code, popularly known as the Federal Tort Claims Act.”*

The Bureau of Reclamation will continue to be the agency responsible for administering federally owned land in the Humboldt Project until title is transferred to another entity.

Comment: The EIS essentially absolves the federal government from any responsibility over natural and cultural resources or recreation opportunities by saying that nothing will change. I would like to see a conservation easement to ensure that minimal change occurs. No additional federal funds or state funds should be provided except with agreements to provide protection and improvement in the community pasture.

Response: *There is no provision in P.L. 107-282 requiring a guarantee that there will be no changes in the use of the transferred lands. The future impacts of implementing this law are determined and evaluated on the known facts at this time and reasonable future projections.*

Comment: If BOR transfers title to the District but maintains ownership of proposed state lands, does that mean that the grazing lease on these lands can be negotiated with public input?

Response: *It is anticipated that the District will continue to lease Community Pasture lands not transferred to the State. If any or all of the lands designated for transfer aren’t transferred, Reclamation intends to develop a Resource Management Plan (RMP) for federal lands in the Humboldt Project. The RMP would include public input.*

Comment: The EIS provides no mitigation for wetlands loss or for potential loss of new recreation opportunities such as creating a “Pioneer Trail” along the Humboldt River.

Response: *The Humboldt Sink has transitional wetlands; there are some marshy areas that may be classified as wetlands in the Community Pasture, and there are small wetland areas below Rye Patch Dam. Increased recreational opportunities are expected along the Humboldt River on lands proposed to be transferred to Lander County and on the permanent easement Lander County will have along the Humboldt River. Recreation*

opportunities will also continue on the State Park land at Rye Patch. It is unknown whether other future recreation opportunities would occur under either the federal government ownership or the title transfer receiving entities, therefore mitigation can not be determined. There is no expected loss of any wetlands under the proposed title transfer, therefore no wetland mitigation is considered.

Comment: Can the State of Nevada have a long term lease, similar to that the District has enjoyed, say for 30 years of lands it is anticipating acquiring?

Response: *If this comment is referring to land in the Community Pasture, the answer is no to a State lease as the legislation specifies that the District can continue grazing the lands until the State develops a wetland. Until the transfer to the State is completed, it is likely the District would continue the grazing lease in the Pasture. If this comment is referring to the Humboldt Sink, NDOW already has a management agreement to manage the area. In the Rye Patch area, State Parks will continue to manage the Park facilities.*

Comment: Can cultural surveys be conducted only on those portions of the land subject to some development? A long term lease will allow Nevada to incorporate planning and improvements now as funds become available.

Response: *All land to be transferred out of federal ownership, not just land currently proposed for development, must be evaluated for effects to historic properties. Additionally, it is not known where all future development might occur on the various land parcels proposed for transfer.*

Given funding levels and timing constraints, surveys are not proposed for 100% of the land to be transferred. Rather, an Inventory Design was developed as a proposal for Reclamation compliance with the Section 106 regulations. The Inventory Design represents a strategy to best evaluate historic properties within the area of potential effects and to carry out appropriate identification efforts.

Comment: The proceeds from leasing the community pasture should be used to conduct the cultural clearances for the community pasture on both state and District lands.

Response: *The proceeds from the annual \$500 in grazing lease fees are governed by Federal laws which direct how revenues are distributed.*

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Lovelock Paiute Tribe
P.O. Box 878
Lovelock, Nevada 89419
Phone (775)273-7861 Fax (775)273-1144

March 21, 2005

Caryn Hunt DeCarlo
Bureau of Reclamation
705 North Plaza Street, Room 320
Carson City, NV 89701-4015

Dear Ms. Hunt DeCarlo:

The Lovelock Paiute Tribe has reviewed the draft *Humboldt Project Conveyance Draft Environmental Impact Statement*. It is clear from a review of this document that the Lovelock Paiute Tribe was only minimally involved in research related to this document.

In order to fully understand the Tribe's position regarding the land conveyance, the Tribe should have been much more deeply involved in conveyance activities. It is clear from the Tribe's attempts to speak with officials regarding our issues, and their repeated failure to respond to our requests for assistance, that the depth of the Tribe's concern has not been realized.

While the Tribe is not opposed to the conveyance as a whole, it is vehemently opposed to the Tribe's exclusion from the conveyance. The lands in question include thousands of acres of culturally relevant property and the Tribe should receive its fair share of this land. To deliberately exclude the Tribe from consideration is appalling.

The Tribe continues to express disapproval at having been omitted from conveyance consideration. The land in question is of great cultural and spiritual significance to the Tribe.

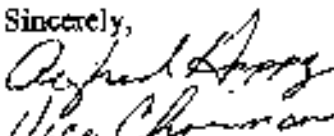
As the draft cultural resources document indicates, much of the land to be transferred to the Pershing County Water Conservation District (PCWCD) and to Pershing County was historically utilized by the Tribe's ancestors. The Tribe wishes to be granted a portion of these lands.

Additionally, the draft report indicates that only a small portion of the lands to be conveyed have been adequately surveyed for cultural relevance. Tribal members have historically lived and hunted upon many of the lands in question and the Tribe feels that it is imperative that acreage be conveyed to the Tribe to ensure its proper use and preservation. The Tribe has also not been included in the cultural studies. We understand that only vague historical documents, many of them incomplete, were used to survey the

land. This approach demonstrates the Bureau of Reclamation's unwillingness to concede that the process of land allocation has not been fairly assessed.

I sincerely hope that you take our concerns seriously and assist us in acquiring a portion of the land in question. The Tribe continues to express its displeasure at the entire process, as well as with the minimal level of contact government officials have had with Tribal leadership. It is clear that the Tribe's needs have been deemed of negligible importance to the entities involved. We do hope that the conveyance will be reconsidered to assign a portion of the ancestral lands to the Tribe.

Your assistance and consideration is greatly appreciated.

Sincerely,

Vice Chairman
Glenn Wasson
Tribal Chairman

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MAR 23 2005
BUREAU OF RECLAMATION
Lands & Business Office

cc: Governor Kenny Guinn
Senator Harry Reid
Senator John Ensign
Lovelock Review-Miner
Reno Gazette-Journal
Humboldt Sun
Las Vegas Sun
Las Vegas Review-Journal

CODE	PERSON RESP	INITIAL & DATE
100	*	
101	*	
105		
110		
400		
700		
800		
900		
446	*	
456	Action	

From: Glenn Wasson, Tribal Chairman, Lovelock Paiute Tribe, dated 3/21/05

Comment: While the tribe is not opposed to the conveyance as a whole it is vehemently opposed to the Tribe's exclusion from the conveyance. The tribe wishes to be granted a portion of these lands.

Response: *Transfer of Humboldt Project lands to PCWCD, State of Nevada, and Lander and Pershing Counties is directed by Public Law 107-282. It would require new legislation to change title transfer recipients.*

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

76 Hawthorne Street
San Francisco, CA 94105-3901

March 28, 2005

Caryn Hunt DeCarlo
Bureau of Reclamation
Lahontan Basin Area Office
705 North Plaza, Room 320
Carson, NV 89701

Subject: Draft Environmental Impact Statement (DEIS) for the Humboldt Project Conveyance,
Pershing and Lander Counties, Nevada (CEQ # 050033)

Dear Ms. Hunt DeCarlo:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

The DEIS evaluates the potential effects of conveying title of the Humboldt Project and associated lands to the Pershing County Water Conservation District, State of Nevada, and Lander and Pershing Counties. Based on our review, we have rated the DEIS as Environmental Concerns - Insufficient Information (EC-2). We have environmental concerns about potential impacts to water quality. We also request additional information to support the cumulative impacts analysis, and ask for further discussion of tribal consultation and Indian sacred sites. Please see the enclosed Detailed Comments for a description of these concerns and our recommendations. A Summary of EPA Rating Definitions is also enclosed.

We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send two copies to the address above (mail code: CMD 2). If you have any questions, please contact me or David P. Schmidt, the lead reviewer for this project. David can be reached at 415-972-3792 or schmidt.davidp@epa.gov.

Sincerely,

A handwritten signature in cursive script, reading "David P. Schmidt".

for Lisa B. Hanf, Manager
Federal Activities Office
Cross Media Division

Enclosures:

EPA's Detailed Comments
Summary of EPA Rating Definitions

cc: Bernice Lafo, Battle Mountain Band Te Monk Shoshone
Harry Summerfield, Lovelock Paiute Tribe

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MAR 31 2005

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Water Quality Impacts

The Clean Water Act (CWA) requires states to develop a list of water segments which do not or are not expected to meet applicable water quality standards, establish a priority ranking of those segments, and develop action plans, called Total Maximum Daily Loads (TMDLs), to improve water quality. The State of Nevada's draft 2004 CWA Section 303(d) Impaired Waters List¹ indicates that a number of reaches on the Humboldt River within the project area are impaired for one or more of the following pollutants: boron, iron, molybdenum, total phosphorous, total dissolved solids, total suspended solids, and turbidity.

The DEIS discusses water quality of the Humboldt River and compliance with federal drinking water standards (Section 3.2.3). The DEIS does not discuss CWA Section 303(d) listings in the project area, whether TMDLs have been established for those water bodies, and what impact the proposed land transfer and possible future development might have on meeting CWA Section 303 goals.

Recommendation:

The FEIS should provide information about all CWA Section 303(d) impaired waters and efforts to develop TMDLs in the project area. It should describe existing restoration and enhancement efforts for those waters, how the land transfer and future development could impact CWA Section 303 goals, and mitigation measures that could be implemented to avoid further degradation of impaired waters. The FEIS should also provide a description of the CWA 303(d) program.

Cumulative Impacts Analysis

The DEIS evaluates the potential cumulative impacts of the proposed land transfer from federal ownership to the Pershing County Water Conservation District, the State of Nevada, and Pershing and Lander Counties. While the document acknowledges that there may be cumulative land use impacts when considered in combination with the effects of other existing or planned development within the project area (p. 4-1), only impacts from development of lands to be transferred are discussed. It does not evaluate the potential cumulative effects from other public and private activities in the surrounding area. The analysis lacks information on planned development, projected growth, other activities, and the cumulative impacts that may result from those actions.

¹ The State of Nevada's draft 2004 CWA Section 303(d) Impaired Waters List can be found at http://ndep.nv.gov/bwqp/file/2004_303d%20list_draft.pdf.

Recommendation:

The FEIS should provide a substantive discussion of, and quantify where possible, the cumulative effects of the project when considered with other past, present, or reasonably foreseeable projects, regardless of what agency or person undertakes those actions (see 40 CFR Part 1508.7). The document should also propose mitigation for all identified cumulative impacts.

Consultation and Coordination with Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. The DEIS does not indicate that the Bureau of Reclamation initiated this form of consultation with the three tribal governments in the project area. The summary of scoping comments (Appendix J) indicates that the Lovelock Paiute Tribe is protesting this conveyance because they were not consulted in accordance with the Order.

Recommendation:

The FEIS should clearly describe the process and outcome of government-to-government consultation between the Bureau and each of the tribal governments in the project area in accordance with Executive Order 13175.

Section 106 Consultation and Indian Sacred Sites

Historic properties under the National Historic Preservation Act (NHPA) are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO). Section 3.10 of the DEIS discusses this process and provides a good review of cultural resources in the project area.

Executive Order 13007 (May 24, 1996), Indian Sacred Sites, requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian Religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. Although the summary of scoping comments (Appendix J) indicates that project area lands have spiritual significance to at least one tribe, the DEIS does not reference the Executive Order and does not address whether Indian sacred sites exist within the area.

Recommendation:

The FBIS should address the existence of Indian sacred sites in the project area. It should address Executive Order 13007, distinguish it from Section 106 of the NHPA, discuss how the Bureau will avoid adversely affecting the physical integrity of sacred sites, if they exist, and address other requirements of the Order.

SUMMARY OF EPA RATING DEFINITIONS¹

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACTS OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impact that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

¹ From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

**From: Lisa B. Hanf, Manager, Federal Activities Office, Cross Media Division,
United States Environmental Protection Agency, Region IX, dated 3/28/05**

Comment: The FEIS should provide information about all CWA Section 303(d) impaired waters and efforts to develop TMDLs in the project area. It should describe existing restoration and enhancement efforts for those waters, how the land transfer and future development could impact CWA Section 303 goals, and mitigation measures that could be implemented to avoid further degradation of impaired waters. The FEIS should also provide a description of the CWA 303(d) program.

Response: *Section 3.2.3 was expanded to include information about the State of Nevada CWA Section 303(d) program. The FEIS identifies existing TMDL efforts in the Humboldt River area. Mitigation measures will not be identified in the FEIS as no change in water use or water rights are expected under the Proposed Action. TMDL rules and regulations within the State of Nevada are managed by the Nevada Department of Environmental Protection.*

Comment: The FEIS should provide a substantive discussion of, and qualify where possible, the cumulative effects of the project when considered with other past, present, or reasonably foreseeable projects, regardless of what agency or person undertakes those actions (see 40 CFR Part 1508.7). The document should also propose mitigation for all identified cumulative impacts.

Response: *Cumulative impacts of the proposed action are discussed in Section 4.1. There are no known cumulative impacts from the proposed action; therefore no mitigation has been identified.*

Comment: The FEIS should clearly describe the process and outcome of government-to-government consultation between the Bureau and each of the tribal governments in the project area in accordance with Executive Order 13175.

Response: *The analysis of the Indian Trust Assets is described under section 3.11 of the FEIS. The FEIS includes an expanded Consultation and Coordination section based on on-going consultations between BOR and the tribes (see 5.2.3). Government to Government consultation included the following:*

- *Reclamation initiated Government-to-Government consultation with the Lovelock Paiute Tribe, Battle Mountain Band and the Fallon Paiute-Shoshone Tribe via a letter dated January 29, 2004; the Fallon-Paiute Shoshone Tribe expressed no interest in obtaining further information about the project.*
- *Reclamation was contacted by the Lovelock Paiute Tribe following the scoping meetings. The Tribe followed up with a letter to Reclamation (received March 1, 2004) outlining their desire to receive a portion of the lands to be transferred and their concerns about inclusion in the transfer process; Reclamation responded in a*

letter dated March 24, 2004 to clarify the process and the steps involved in the transfer.

- *Reclamation met with the Battle Mountain Band on April 29, 2004 to describe the project and the Section 106 compliance process.*
- *Reclamation met with the Lovelock Paiute Tribe on May 13, 2004 to more fully describe the project and discuss their concerns with being left out of the legislation.*
- *The Lovelock Paiute Tribe provided written comments to the Draft EIS on March 21, 2005 to which Reclamation responded in a letter dated April 21, 2005.*

Comment: The FEIS should address the existence of Indian sacred sites in the project area. It should address Executive Order 13007, distinguish it from Section 106 of the NHPA, discuss how the Bureau will avoid adversely affecting the physical integrity of sacred sites, if they exist and address other requirements of the order.

Response: *The Inventory Design calls for preparation of an ethnographic section and this effort includes an opportunity for Indian Tribes to identify cultural resources of religious and cultural significance. Plans calls for interviews and field trips with Tribal elders. Any sites of religious or cultural significance will be considered within the context of the regulations and executive orders.*

Reclamation is required, to the extent practicable and consistent with essential agency functions (Executive Order 13007-Sacred Sites) to avoid adversely affecting the physical integrity of Indian sacred sites and to allow access by Indian religious practitioners to such sacred sites.

KERRY L. COHEN
Governor

STATE OF NEVADA

JOHN P. COMBAUX
Director

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MAR 29 2005

BUREAU OF RECLAMATION
Lahontan Basin Area Office



DEPARTMENT OF ADMINISTRATION

209 E. Musser Street, Room 200

Carson City, Nevada 89701-4295

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COPY

3/28/2005

Caym Hunt DeCarlo
Bureau of Reclamation
Lahontan Basin Area Office
705 N. Plaza
Room 320
Carson City, NV 89701-4015

Re: SAJ NV # E2005-165

Reference:

Project: Humboldt Project Conveyance, Pershing, Churchill, and Lander Counties

Dear Caym Hunt DeCarlo:

Enclosed are the comments from the following agencies regarding the above referenced document:

State Historic Preservation Office

These comments constitute the State Clearinghouse review of this proposal as per Executive Order 12372. Please address these comments or concerns in your final decision. If you have questions, please contact me at (775) 684-0209.

Sincerely,

Reese Tietje
Nevada State Clearinghouse Coordinator/SPOC

Enclosure

CODE	PERSON RESP	INITIAL & DATE
100	✓	
101		
105	✓	DA 3/29/05
110		
400		
700		
800		
900		
450	✓	4/1/05

NEVADA STATE CLEARINGHOUSE

Department of Administration
Budget and Planning Division
209 East Musser Street, Room 200
Carson City, Nevada 89701-4296
(775) 684-0209
Fax (775) 684-0260

2/1

DATE: January 31, 2005

Conservation & Natural Resources
Conservation Districts
Environmental Protection
Health
Historic Preservation
Indian
Land
Legislative Counsel Bureau
Minerals
Natural Heritage
Transportation
Transportation, Aviation
NR Mines
Water Resources
Wildlife, Director's Office
Wildlife, Elko
Wildlife, Fallon

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DEPARTMENT OF ADMINISTRATION
BUDGET AND PLANNING DIVISION

Nevada SAI # E2805-165

Project: Bureau of Reclamation Notice of Availability, and a Notice of Public Hearing - Humboldt Project Conveyance - DEIS

NEVADA STATE CLEARINGHOUSE NOTES also see SAME2003-095

<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-1636.htm>.

Enclosed, for your review and comment, is a copy of the above-mentioned project. Please evaluate it with respect to its effect on your plans and programs; the importance of its contribution to state and/or local area-wide goals and objectives; and its accord with any applicable laws, rules, or regulations with which you are familiar.

Please submit your comments no later than **March 21, 2005**. Use the space below for short comments. If significant comments are provided, please use agency letterhead and include the Nevada SAI number and comment due date for our reference. Questions? Michael Mofford, Clearinghouse Coordinator, (775) 684-0209 or mjmofford@budget.state.nv.us.

☐ No comment on this project

☐ Proposal supported as written

AGENCY COMMENTS:

The SHPO reviewed the subject document. The SHPO looks forward to consulting with the Bureau of Reclamation on the preparation of a Programmatic Agreement for the subject undertaking as is suggested in this document. The SHPO recommends that such a document be executed before the Record of Decision is produced for this undertaking. If you have any questions concerning this correspondence, please contact me by phone at (775) 684-3443 or by E-mail at rlpalmer@clan.lib.nv.us.

Signature *Rebecca A. Palmer*

Agency *Historic Preservation*

Date *2/1*

From: Rebecca Palmer, Nevada State Clearinghouse – State Historic Preservation Office, dated 3/29/05

Comment: The SHPO reviewed the subject document. The SHPO looks forward to consulting with the Bureau of Reclamation on the preparation of a Programmatic Agreement for the subject undertaking as is suggested in this document. The SHPO recommends that such a document be executed before the Record of Decision is produced for this undertaking. If you have any questions concerning this correspondence, please contact me by phone at (775) 684-3443 or by E-mail at rlpalmer@clan.lib.nv.us.

Response: *Comments acknowledged.*

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Comment Sheet for Humboldt Project Conveyance DEIS

The Humboldt Project Conveyance Draft Environmental Impact Statement (DEIS) was released on January 28, 2005.

As part of the public review process written comments are due to the Bureau of Reclamation by close of business Friday, April 1, 2005.

All comments will be come part of the public record.

TO: CARIN HUNT, DeCARLO, U.S. DEPT. OF THE INTERIOR, BUREAU OF RECLAMATION, 705 NORTH PLAZA STREET, ROOM 320 (Please print clearly)
CARSON CITY, NV, 89701-4015 FROM:

Name CRAIG CARPENTER 2:30 P.M. OF TUES. 14th 29th MARCH 2005

Organization and Address 21 MT. VIEW DR., BATTLE MT., NV., 89820

PHONE/FAX: 1(975) 635-5472 (SINCE 9/11/2003)

Phone () E-mail

If you'd like, you may use this form to provide your comments:

WITH YOUR RECEIPT OF THIS FAX PLEASE REMOVE FROM YOUR FILES MY HASTY, EXTEMPORANEOUS, QUESTION OF 1:00 P.M. MONDAY, MARCH 14, 2005 WHICH I DELIVERED DURING THE PUBLIC HEARING REGARDING THE PROPOSED HUMBOLDT (RIVER) PROJECT CONVEYANCE, HELD HERE IN BATTLE MOUNTAIN, NEVADA. IN ITS STEAD PLEASE ACCEPT THE FOLLOWING 3 INTER-RELATED QUESTIONS AND COMMENTS:

FOR THE EDUCATION OF THOUGHTFUL, REASONABLE, RESPONSIBLE, CARING AND SAVING PEOPLE WHO MAY BE INTERESTED IN THIS "CONVEYANCE" PROPOSAL, PLEASE TELL ME AND US (1) WHEN, (2) WHERE, AND (3) FOR WHAT "THE PROCESS OF LAND" AND "JUST COMPENSATION" CONSIDERATION(S) THE ABORIGINAL USERS AND OCCUPIERS OF "BATTLE MOUNTAIN COMMUNITY PASTURE", "RYE PATCH RANCH & SITE" AND "HUMBOLDT SINK" CONVEYED THEIR ABORIGINAL RIGHT, CLAIM, TITLE AND INTERESTS IN THESE PERSONAL PROPERTIES, JOINTLY HELD IN COMMON, TO THE UNITED STATES OF AMERICA (AS IS REQUIRED BY THE PREAMBLE TO THE CONSTITUTION OF THE UNITED STATES AND BY ITS 4th & 5th AMENDMENTS [WHICH EVERY GOVERNMENT OFFICER AND EMPLOYEE IS "...BOUND BY OATH OR AFFIRMATION TO SUPPORT..." AS PER ARTICLE VI, PARAGRAPH 3, OF SAID CONSTITUTION] AND AS PRECEDENTED BY SOME 309 INTERNATIONAL CONTRACTS CALLED "TREATIES" FOR THE CONVEYANCE OF RIGHT, CLAIM, TITLE AND INTEREST TO LANDS FROM THE ATLANTIC TO THE PACIFIC)?

-Attach additional sheets if necessary-

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or email to chunttdecarlo@mp.sbr.gov. Thank you

From: Craig Carpenter, Battle Mountain, Nevada resident, dated 3/29/05

Comment: For the edification of thoughtful, reasonable, responsible, caring and sharing people who may be interested in this “conveyance” proposal, please tell me and us 1) when 2) where, and 3) for what “...due process of law...” and “...just compensation...” consideration(s) the aboriginal users and occupiers of “Battle Mountain Community Pasture”, “Rye Patch Reservoir Site” and “Humboldt Sink” conveyed their aboriginal right, claim, title and interest in these personal properties, jointly held in common, to the United States of America (as is required by the preamble to the Constitution of the United States and by its 4th and 5th amendments [which every government officer and employee is “bound by oath or affirmation to support... “as per Article VI, Paragraph 3 of said constitution] and as preceded by some 269 international contracts called “Treaties, for the conveyance of right, claim, title and interest to lands from the Atlantic to the Pacific)?

Response: *Native American treaty rights are under the jurisdiction of Congress. For this title transfer Congress has directed that the rights title and interest which are held by the federal government in the Humboldt Project be transferred to the specified entities in Public Law 107-282.*



Caryn Hunt DeCarlo
Lahontan Basin Area Office
Bureau of Reclamation
705 North Plaza, Room 320
Carson City, NV 89701

March 29, 2005

RE: Humboldt Project Conveyance - Draft EIS

Dear Mrs. Hunt DeCarlo:

The Board of Directors of the Nevada Waterfowl Association (NWA) on behalf of its membership appreciates the opportunity to comment on the Bureau of Reclamation's (BOR) Draft EIS for the Humboldt Project Conveyance to the State of Nevada (State), Pershing County Water Conservation District (District), and Pershing and Lander counties. We have found that the document, for the most part, is well prepared and concise and contains significant information on the transfer and history of the Humboldt Project (Project)

While the NWA is tentatively supportive of the transfer, we do have the following concerns and comments that we would like to present for your consideration:

1. We are concerned that the last-minute changes that now require the State to pick up its portion of the transfer cost over and above the \$270,000 appropriated has been expended, has caused the State to withdraw from the lands it was to receive under the title transfer. We feel that since the State was not allowed to be a participant in the discussions about payments ahead of time that it should not be required to come up with the additional funds over what was appropriated by Congress.
2. Whether or not the State is able to accept those lands proposed in this EIS, we would request that those lands associated with the Jessup area west of highway 95 be added to the Humboldt Wildlife Management Area (HWMA) lease agreement to be preserved and managed for their wetland values.
3. Since there appears to be significant errors with figure 3.1 concerning the habitat types of the Humboldt Sink, we request that it be redone. If we can be of assistance with doing this, we would be happy to do so. Some changes also need to be made to Figure 3.3.

4. If the State is unable to accept title to the lands proposed for transfer in this EIS, then we would request that those lands be retained in federal ownership and be managed for the benefit of the public and for their wildlife values. We also request, that if possible, that those lands be managed by the State through a cooperative agreement.
5. We are concerned about the lands in the Community Pasture that are proposed to be transferred to the State. Those lands, which are basically higher elevation lands that are alkali desert scrub, greasewood, and sagebrush/perennial grass, are being transferred to the State for the development and restoration of wetlands. Since there are significant wetlands already associated with this area, why are they not being used for the restoration of the wetlands in this area instead of the adjacent uplands which are not conducive to wetland restoration and development? Development in this area would then preserve the historic Argenta Marsh that was in this area and would be much more likely to succeed and far less expensive to build.
6. The NWA has purchased water rights in Lovelock Valley for the preservation of the wetlands on the HWMA. To date the District has not allowed those water rights to be delivered to the area. We would like request, that as a condition of the transfer of the proposed federally owned land to the District, that the District agrees to provide the necessary water delivery points to the State for any water acquired for the Toulon Unit of the HWMA, up to a maximum of 10,000 acre-feet. This should be done in such a manner, that such deliveries do not adversely impact the District's water efficiency. The District should also agree not to protest any valid water right transfers to the HWMA from the Lovelock Valley area up to a maximum 10,000 acre-feet.
7. While NWA is very supportive of the transfer of the HWMA to the State, we are somewhat apprehensive that the loss of access to Title 28 dollars will adversely affect the ability of the State to develop and manage the area to its full potential.

If the above comments and concerns, especially number six, can be addressed and agreed upon, then the Board of Directors of the NWA would support moving ahead with the transfer of the Humboldt Project lands to the State of Nevada, Pershing County Water Conservation District, and Pershing and Lander counties.

Sincerely yours,



Norman Saake
Vice-President
Nevada Waterfowl Association

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MAR 31 2005

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

From: Norman Saake, Vice-President, Nevada Waterfowl Association, dated 3/29/05

Comment: Whether or not the State is able to accept those lands proposed in this EIS, we would request that those lands associated with the Jessup area west of highway 95 be added to the Humboldt Wildlife Management Area (HWMA) lease agreement to be preserved and managed for their wetland values.

Response: Under Proposed Action, Humboldt Project lands west of Highway 95 would transfer to the State of Nevada. The State would determine if those lands would be added to the HWMA. Under the No Action Alternative, the lands would remain in federal ownership. The State could pursue a lease agreement with Reclamation for management of these lands.

Comment: Since there appears to be significant errors with figure 3.1 concerning the habitat types of the Humboldt Sink, we request that it be redone. If we can be of assistance with doing this, we would be happy to do so. Some changes also need to be made to Figure 3.3.

Response: Maps in the EIS are provided for general reference only. Habitat information shown in Figures 3.1 and 3.3 were obtained from the U. S.G.S. Gap Analysis

Comment: If the State is unable to accept title to the lands proposed for transfer in this EIS, then we would request that those lands be retained in federal ownership and be managed for the benefit of the public and for their wildlife values. We also request, that if possible, that those lands be managed by the State through a cooperative agreement.

Response: Until Humboldt Project lands are transferred, the Bureau of Reclamation will continue to administer the lands pursuant to federal rules and regulations. The Humboldt Sink area is currently managed by the State under an agreement with Reclamation. This agreement will continue if the land is not transferred to the State.

Comment: We are concerned about the lands in the Community Pasture that are proposed to be transferred to the State. Those lands, which are basically higher elevation lands that are alkali desert scrub, greasewood, and sagebrush/perennial grass, are being transferred to the State for the development and restoration of wetlands. Since there are significant wetlands already associated with this area, why are they not being used for the restoration of the wetlands in this area instead of the adjacent uplands which are not conducive to wetlands restoration and development? Development in this area would then preserve the historic Argenta Marsh that was in this area and would be much more likely to succeed and far less expensive to build.

Response: The lands to be transferred to NDOW are the result of negotiations between the State of Nevada and the District. The lands were agreed upon in the 2001 Letter of Conceptual Agreement (Appendix D).

Comment: The NWA has purchased water rights in the Lovelock Valley for the preservation of the wetlands in the HWMA. To date the District has not allowed those water rights to be delivered to the area. We would like to request, that a condition of transfer of the proposed federally owned lands in the District that the District agrees to provide the necessary water delivery points to the State for any water acquired for the Toulon Unit of the HWMA, up to a maximum of 10,000 acre feet. This should be done in such a manner, that such deliveries do not adversely impact the District's water efficiency. The District should also agree not to protest any valid water right transfers to the HWMA from the Lovelock Valley area up to a maximum of 10,000 acre-feet

Response: *The conditions for transferring the land within the Humboldt Sink to the State of Nevada are set forth in the Conceptual Agreement between the State and District (Appendix D). The District intends to work cooperatively with the State to maintain and improve conditions for wildlife habitat in the Humboldt Sink.*

NWA is a constituent of PCWCD and like all District constituents, they are subject to rules of the District and therefore responsible for their own water takeout structure and delivery ditch to their property line. Currently, NWA wants PCWCD to deliver their water through one of PCWCD's drainage ditches. If this were allowed to happen, it would affect the drainage of other District constituents.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Nevada State Office
P.O. Box 12000 (1340 Financial Blvd)
Reno, Nevada 89520-0006
<http://www.blm.gov>

In Reply Refer to:
8150 (NV-930)
MAR 30 2005

Memorandum

To: Caryn Hunt DeCarlo
Lahontan Basin Area Office
Bureau of Reclamation
705 North Plaza, Room 320
Carson City, NV 89701

From: Deputy State Director
Natural Resources, Lands and Planning

Subject: Humboldt Project Conveyance Draft Environmental Impact Statement (EIS),
January 2005)

Thank you for the opportunity to review and provide comments on the Draft EIS for the Humboldt Project Conveyance. After review of the Draft EIS, the Nevada Bureau of Land Management (BLM) has the following comments.

1. Based on information obtained at the public meeting held in Lovelock on March 14, 2005, we understand the State of Nevada has withdrawn from participation in the proposed conveyance. If this remains the case, will a new and separate draft EIS be issued, or will this be presented in the final EIS? If the State has opted out of participation, what is happening to lands that were originally proposed for conveyance to the State of Nevada? Will another entity be receiving those lands instead?
2. Discussion in the draft EIS reflects the wide array and high sensitivity of important cultural resources known and anticipated in the project area. The BLM has particular concern for the congressionally-designated corridor of the California National Historic Trail. Some impacts to the Trail will be addressed by Bureau of Reclamation as it implements compliance with Section 106 of the National Historic Preservation Act (NHPA), as described in the EIS. However, the BLM strongly agrees with the suggestion in the draft EIS (p. 3-72) to consider other strategies in order to comply with 36 CFR 800.5(a)(2)(vii), including imposition of "adequate and legally enforceable restrictions or conditions" or "leaving or returning certain historically significant properties" to federal ownership in order to ensure long-term preservation of the Trail. Congress' intent under the National Trails System Act to provide for outdoor recreation needs while promoting the preservation of, public access to, travel within, and enjoyment and appreciation of historic resources such as the California National Historic Trail, would be enhanced if such conditions or restrictions could be established.

In addition, the routes of the Trail depicted in figures 2 and 3 appear to be incomplete in some areas. Peggy McGuckian (775/623-1521) or David Valentine (775/623-1766) at the Winnemucca Field Office can be contacted for assistance in clarifying this matter.

3. Issuance of patents for lands "above the high water mark" separately from those "below the high water mark" will necessitate survey to establish that boundary. Please provide legal descriptions of the high water mark for purposes of patent application.

4. The abundant and highly significant paleontological resources in the vicinity of the Rye Patch parcels warrant more discussion in the affected environment and environmental consequences sections.

5. More information should be provided about the results of consultation with Indian tribes.

6. While many sites in the Humboldt Sink referenced on p. 3-71 may be difficult to locate due to burial by flood events or by tamarisk growth, buried deposits may exist. The research design and mitigation measures should take this into account.

7. The BLM's Lovelock Cave Back Country Byway is adjacent to some of the Humboldt Conveyance parcels. There is no mention of this in the draft EIS.

8. The Winnemucca Field Office would like to receive a copy of the cultural resource research design/inventory strategy when it is completed.

9. On page 3-18, under 3.3.2.1.1 Geothermal, in addition to the proposed leasing in Known Geothermal Resource Areas and Prospectively Valuable Areas, there are existing leases. Also, on page 3-18, under Environmental Impacts for the Proposed Action/Prefetred Alternative, all mineral resources, including geothermal, would be transferred in accordance with the Humboldt Project Conveyance Act. This would impact more than just the access to mineral and geothermal leases. Who in BLM was contacted about how to resolve the existing leases and applications?

Thank you again for providing us with the opportunity to review and comment on the Draft EIS. In particular, we have been active in efforts to maintain segments of the National Trails System in Nevada, and we appreciate the opportunity to express concerns for maintaining integrity of the California National Historic Trail.

*Dana
Saidt
Acting*

cc:
FM, Winnemucca (NV-020)

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From: Gene Seidlitz, Acting Deputy State Director, Natural Resources, Lands and Planning, United States Department of Interior, Bureau of Land Management, dated 3/30/05

Comment: Based on the information obtained at the public meeting held in Lovelock on March 14, 2005, we understand the State of Nevada has withdrawn from participation in the proposed conveyance. If this remains the case, will a new separate draft EIS be issued, or will this be presented in the final EIS? If the State has opted out the participation, what is happening to the lands that were originally proposed for conveyance to the State of Nevada? Will another entity be receiving those lands instead?

Response: *The State has not withdrawn from participation in the proposed conveyance. They have stated the following in a February 11, 2005 letter to Reclamation:*

“The Departments of Wildlife and Conservation and Natural Resources as the respective recipients of the acquired and withdrawn lands under the title transfer are unable to absorb both acquisition and restoration costs. Unless a way can be found through mutual negotiations to alleviate our concerns, the State must withdraw from receipt of any and all lands under the Humboldt Title Transfer.”

Reclamation is continuing to include the State of Nevada as a potential recipient of the title transfer in the EIS. Timing of participation in the title transfer by the various entities will be contingent upon available funding. Transfer of the various components of the Humboldt Project could occur in phases at different times.

The EIS analyzes each transfer (including the transfer to the State), and includes an analysis of the cumulative impacts caused by the transfer of lands and facilities to all entities. Transfers to PCWCD and Pershing and Lander counties can take place without the transfer to the State taking place. Each transfer can be considered to be separate and independent from each other [Office of the Solicitor, January 18, 2005]. Public Law 107-282 dictates that Humboldt Project lands transfer only to PCWCD, State of Nevada, and Lander and Pershing Counties.

Comment: Issuance of patents for lands “above the high water mark” separately from those “below the high water mark” will necessitate survey to establish that boundary. Please provide legal descriptions of high water mark for purposes of patent application.

Response: *As directed by P.L 107-750, any required boundary surveys, title searches, cadastral surveys, appraisals and other real estate transactions will be completed prior to title transfer.*

Comment: The abundant and highly significant paleontological resources in the vicinity of the Rye Patch parcels warrant more discussion in the affected environment and environmental consequences sections.

Response: *A discussion of potential paleontological resources in or adjacent to Humboldt Project lands is provided in Chapter 3.10 in the FEIS.*

Comment: More information should be provided about the results of consultation with Indian tribes.

Response: *The FEIS has included an expanded Consultation and Coordination section. The FEIS includes an expanded Consultation and Coordination section based on on-going consultations between BOR and the tribes (see 5.2.3). Government to Government consultation included the following:*

- *Reclamation initiated Government-to-Government consultation with the Lovelock Paiute Tribe, Battle Mountain Band and the Fallon Paiute-Shoshone Tribe via a letter dated January 29, 2004; The Fallon-Paiute Shoshone Tribe expressed no interest in obtaining further information about the project.*
- *Reclamation was contacted by the Lovelock Paiute Tribe following the scoping meetings. The Tribe followed up with a letter to Reclamation (received March 1, 2004) outlining their desire to receive a portion of the lands to be transferred and their concerns about inclusion in the transfer process; Reclamation responded in a letter dated March 24, 2004 to clarify the process and the steps involved in the transfer.*
- *Reclamation met with the Battle Mountain Band on April 29, 2004 to describe the project and the Section 106 compliance process.*
- *Reclamation met with the Lovelock Paiute Tribe on May 13, 2004 to more fully describe the project and discuss their concerns with being left out of the legislation.*
- *The Lovelock Paiute Tribe provided written comments to the Draft EIS on March 21, 2005 to which Reclamation responded in a letter dated April 21, 2005.*

Comment: While many sites in the Humboldt Sink referenced on p. 3-17 may be difficult to locate due to burial by flood events or by tamarisk growth, buried deposits may exist. The research design and mitigation measures should take this into account.

Response: *The current Sample Inventory Design does not consider lands in the Humboldt Sink. As noted above, when the State of Nevada decides to move forward on their portion of the conveyance, an Inventory Design will be developed by Reclamation. Reclamation's intent for that Inventory Design will include consideration of potential buried deposits in the Humboldt Sink. Possible consideration to address the buried deposits could include studies by a geomorphologist to identify sensitive areas, possible backhoe trenching to investigate a sampling of the identified areas, and development of recommendations to SHPO about future considerations for State of Nevada projects that could involve surface or subsurface disturbance. Any inventory proposal for the Humboldt Sink will be subject to SHPO consultation and public comment.*

Comment: The BLM's Lovelock Cave Back Country Byway is adjacent to some of the Humboldt Conveyance parcels. There is no mention of this in the draft EIS.

Response: *As noted the Lovelock Cave Back Country Byway is adjacent to Humboldt Project lands. None of the current or potential future actions associated with the land conveyance is expected to impact this adjacent area.*

Comment: On page 3-18 under 3.3.2.1.1 Geothermal, in addition to the proposed leasing in Known Geothermal Resource Areas and Prospectively Valuable Areas, there are existing leases. Also, on page 3-18, under Environmental Impacts for the Proposed Action/Preferred Alternative, all mineral resources, including geothermal, would be transferred in accordance with the Humboldt Project Conveyance Act. This would impact more than just the access to mineral and geothermal leases. Who in BLM was contacted about how to resolve the existing leases and applications?

Response: *These BLM comments appear to have been made at the Field Office level and not the State Office. A representative within the BLM State Office was contacted in July, 2004 to discuss mineral leases that may be located on Humboldt Project lands.*

Reclamation will quit-claim all acquired lands to the appropriate entity with specific reservations for existing rights of reservations previously granted. The BLM will grant the patents on the withdrawn lands. It would appear that they will reserve all previously granted rights and reservations regarding use authorizations.

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Nevada Archaeological Association



P.O. Box 73145

Las Vegas, NV 89170-3145

Caryn Hunt DeCarlo
 Lahonton Basin Area Office
 Bureau of Reclamation
 705 North Plaza, Room 320
 Carson City, NV 89701

Dear Ms. DeCarlo:

Thank you for the opportunity to comment on the Humboldt Project Conveyance Draft Environmental Impact Statement (EIS). The Nevada Archaeological Association (NAA) is a state-wide group of professional and avocational archaeologists concerned with the preservation of Nevada's prehistoric and historic resources. Although we realize that the Bureau of Reclamation has made a valiant attempt at a difficult task (with probably inadequate time and money), we do have some concerns with the cultural resources sections of the EIS.

First of all, aside from a brief mention in the Paleoindian section of the Cultural History, there is no discussion of paleontological resources in the EIS. Significant paleontological resources are known to exist in the Rye Patch area, and less well known paleontological resources occur in the Humboldt Sink. Paleontological resources are often discussed in other NEPA documents that we are familiar with, especially if they are known to exist in the project area. We would like to see some discussion of the paleontological resources, their significance, and potential treatment.

The importance of the Humboldt River as a travel corridor is not adequately discussed. The prehistoric cultural history section focuses on subsistence and does not mention use of the river as a travel and trade corridor. This carries over into the Euroamerican history, where the California trail is mentioned, but further discussion of importance of the river as a transportation corridor is lacking. The transportation theme is one that is consistent between the three project areas and persists through time to the present--Native American trails, wagon routes, cattle and sheep drives, stage roads, railroads, automobile routes, airways, Interstate Highways, etc.

There appears to be some deficiencies in the history section. For example, the historic section does not mention historic mining, but on page 3-69 it states that mines are known to occur within the project area. What kinds of mines are they? Do they include the salt mining that occurred in the Humboldt Sink and the nitrate exploration and hard rock mining in the south end of the West Humboldt Range?

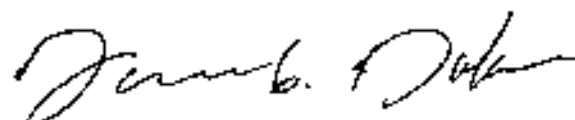
We are also concerned about identification efforts. The EIS mentions that several important sites known to exist in the Humboldt Sink area may be buried by flood deposits or obscured by tamarisk growth and could not be relocated during a recent field visit. Please discuss what kinds of efforts will be made to re-identify and treat significant but potentially buried resources. Also, when comparing maps of the California Trail in the Trails West guide and the EIS, there are some major discrepancies. What efforts are being made to correctly identify the California Trail?

The NAA is very concerned about the transfer of segments of the California Trail. This is a resource of national importance and we are concerned that "adequate and legally enforceable restrictions or conditions" may not be adequate or enforceable. We would prefer that significant California Trail segments be excluded from the transfer.

Since many of the resources along the Humboldt River are significant and of interest to our members and the general public, the NAA also has concerns about the level of mitigation reporting. All too often mitigation reports are confined to the "gray literature" where they are difficult, if not impossible, for many people to access. We would like to see this material more widely distributed. Perhaps reports could be submitted to the Nevada State Museum for publication in their Anthropological Papers series or to our journal *Nevada Archaeologist*. Other potential outreach efforts could include a popular publication distributed through regional museums, libraries, and schools, or some on-site interpretation of resources could be designed and installed.

The NAA would like to be included in further Sec. 106 consultations arising from this project.

Thank you,



Daron G. Duke
NAA Board Member

Cc: Ron James, Nevada State Historic Preservation Office, 100 N. Stewart Street
Carson City, Nevada 89701
Attn: Alice Baldrica

RECEIVED

MAR 30 2005

BUREAU OF LAND MANAGEMENT
CARSON CITY, NEVADA

CODE	PERSON RESP	INITIAL & DATE
100	<input checked="" type="checkbox"/>	
101	<input checked="" type="checkbox"/>	
105	<input checked="" type="checkbox"/>	
110		
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From: Daron G. Duke, NAA Board Member, Nevada Archaeological Association, dated 3/30/05

Comment: There is no discussion of paleontological resources in the EIS. Significant paleontological resources are known to exist in the Rye Patch area, and less well known paleontological resources occur in the Humboldt Sink. Paleontological resources are often discussed in other NEPA documents that we are familiar with, especially if they are known to exist in the project area. We would like to see some discussion of the paleontological resources, their significance, and potential treatment.

Response: *A discussion of potential paleontological resources in or adjacent to Humboldt Project lands is provided in Chapter 3.10 in the FEIS.*

Comment: The importance of the Humboldt River as a travel corridor is not adequately discussed. The prehistoric cultural history section focuses on subsistence and does not mention use of the river as a travel and trade corridor. This carries over into the Euroamerican history, where the California Trail is mentioned, but further discussion of importance of the river as a transportation corridor is lacking. The transportation theme is one that is consistent between the three project areas and persist through time to the present—Native American trails, wagon routes, cattle and sheep drives, stage roads, railroads, automobile routes, airways, Interstate Highways, etc.

Response: *Additional historic information on the importance of the Humboldt River as a travel corridor will be included in the cultural resource reports prepared as a result of the Inventory. Special inventory methods are identified for the California Trail.*

Comment: There appears to be some deficiency in the history section. For example, the historic section does not mention historic mining, but on page 3-69 it states that mines are known to occur within the project area. What kinds of mines are they? Do they include the salt mining in the south end of the West Humboldt Range?

Response: *Additional information and data will be provided in the historic context section of the cultural resources report prepared as a result of the Inventory.*

Comment: We are also concerned about identification efforts. The EIS mentions that several important sites known to exist in the Humboldt Sink area may be buried by flood deposits or obscured by tamarisk growth and could not be relocated during the recent field visit. Please discuss what kinds of efforts will be made to re-identify and treat significant but potentially buried resources.

Response: *The current Sample Inventory Design does not consider lands in the Humboldt Sink. As noted above, when the State of Nevada decides to move forward on their portion of the conveyance, an Inventory Design will be developed by Reclamation. Reclamation's intent for that Inventory Design will include consideration of potential buried deposits in the Humboldt Sink. Possible consideration to address the buried*

deposits could include studies by a geomorphologist to identify sensitive areas, possible backhoe trenching to investigate a sampling of the identified areas, and development of recommendations to SHPO about future considerations for State of Nevada projects that could involve surface or subsurface disturbance. Any inventory proposal for the Humboldt Sink will be subject to SHPO consultation and public comment.

Comment: Also, when comparing maps of the California Trail in the Trails West guide and the EIS, there are some major discrepancies. What efforts are being made to correctly identify the California Trail?

Response: *Reclamation has obtained copies of the Oregon-California Trail Association USGS quad sheets with their inventory data. This information will be used during field work, as appropriate. Informational maps provided in the FEIS are for general reference only.*

Comment: The NAA is very concern about the transfer of segments of the California Trail. This is a resource of national importance and we are concerned that “adequate and legally enforceable restrictions or conditions” may not be adequate and enforceable. We would prefer that significant California Trail segments be excluded from the transfer.

Response: *Public Law 107-282 does not provide for excluding segments of the California Trail from title transfer. Reclamation will consider mitigation proposals suggested by NAA.*

TOiyabe CHAPTER OF THE SIERRA CLUB PO BOX 3096 RENO, NV 89507

March 30, 2005

Caryn Hunt DeCarlo
USDO/BOR
705 No. Plaza St. #320
Carson City, NV 89701

VIA FAX

Dear Ms. DeCarlo,

On behalf of the Toiyabe Chapter of the Sierra Club and our 5,800+ members in Nevada and the eastern Sierra, I am submitting comments on the draft Environmental Impact Statement for the Humboldt Project Conveyance (dEIS). Many of our members are strong supporters of wetlands in general and the restoration of the historic Argenta Marshes in northern Nevada. We are extremely disappointed in the dEIS, which failed to incorporate our public scoping comments (see attached letter), fails to provide a full range of alternatives, and fails to provide an analysis of environmental impacts. In addition, it does assume that the State of Nevada will accept federal lands, responsibility for dam safety, and open-ended transaction costs than in its agreement with DOI.

PUBLIC SCOPING COMMENTS: The Sierra Club provided both verbal comments at the February 19 Open House meeting in Reno and written scoping comments to the BOR for this EIS, concerning wetlands restoration, improvements in grazing management in the Community Pasture area, water for wetlands restoration from federally owned water rights, land acquisition for wetlands re-establishment, protection for this historic emigrant trails, Native American sites, and paleontological resources on lands proposed for disposal along the Humboldt River. The dEIS failed to include a wetlands restoration alternative and to consider all other scoping issues.

RANGE OF ALTERNATIVES: NEPA requires a full range of alternatives. The No-Action and Proposed Action Alternatives do not comply with NEPA.

ENVIRONMENTAL ANALYSIS: NEPA requires BOR to take a hard look at the environmental impacts of the proposed federal action. BOR took essentially no look at environmental impacts, based on a unsupported assumption that "...lands transferred to the PCWCD and NDOV are not anticipated to be commercially developed...", i.e. change in ownership, but no change in land uses. However, there is no commitment discussed in the dEIS that the proposed federal land transfer is subject to a condition or deed restriction limiting future development or disposal of the Humboldt Project lands. The assumption appears to be loosely based upon the feeling that significant changes in land condition and status from further disposals and/or development is "unlikely." The Record of Decision and actual deed should condition any land transfer to current uses only - agriculture and wetlands restoration. The environmental analysis also is incorrect in accepting the PCWCD's claim that grazing management on Community Pasture has been "improved" with no independent verification, since the lands look as degraded now as they've looked since the 1980's. Including a "conditional" transfer in the proposed action because the proposed action does not comply with Section 106 of the NHPA, protecting and preserving cultural resources, both historic and pre-historic, is also highly irregular and is one more reason to abandon this deficient dEIS.

QUESTIONABLE LEGALITY: The dEIS does include as part of the proposed action transfer of lands to the State of Nevada, state assumption of responsibility for dam safety, and a larger share of the open-ended transaction costs which may amount to millions of dollars, than in the original agreement between NDOV and BOR. Since the State of Nevada refuses all of these actions, the proposed action should not have been included the state in the dEIS at this time. We do not believe that the law authorizes piecemeal implementation of the land disposals.

In conclusion, we urge BOR to re-start the NEPA process because the use of a commercial firm, hired by and under the control of the PCWCD, has resulted in a grossly deficient NEPA document. An EIS, using more credible assumptions, incorporating a full range of alternatives, including wetlands restoration, a full analysis of environmental impacts of the proposed Humboldt Project transfer, including actual protection of cultural resources, and a proposed action which is acceptable to the State of Nevada, should be written.

Sincerely,
/s/
Rose Strickland
Public Lands Committee

attachment

From: Rose Strickland, Toiyabe Chapter of the Sierra Club, dated 3/30/05

Comment: Re: Public Scoping Comments – The DEIS failed to include a wetlands restoration alternative and to consider all other scoping issues.

Response: *Development of a wetlands restoration alternative was beyond the scope of this analysis. The purpose of the Proposed Action is to meet the provisions of P.L. 107-282. All scoping comments were individually assessed, then grouped and addressed as appropriate.*

Comment: Will the BOR be issuing a report on public scoping comments, so that we can ascertain if our comments were properly incorporated into the EIS process?

Response: *All scoping comments were considered in development of the EIS. Scoping comments that did not meet the basic Purpose and Need for the Proposed Action were not analyzed in detail in the EIS.*

Comment: RE: Range of Alternatives – NEPA requires a full range of alternatives. The No-Action and Proposed Action Alternatives do not comply with NEPA.

Response: *The Council on Environmental Quality regulations for implementing NEPA requires that alternatives be considered where there are unresolved conflicts concerning alternative uses of available resources. In this EIS, the proposed Federal action implements the provisions of the Conveyance Act. Alternatives (other than the required No Action alternative) that would not implement the Conveyance Act were eliminated during the scoping process as they did not meet the Purpose and Need for the Proposed Action.*

Comment: RE: Environmental Analysis – BOR took essentially no look at environmental impacts, based on an unsupported assumption that "...lands transferred to the PCWCD and NDOW are not anticipated to be commercially developed..." i.e. change in ownership, but no change in land use. However, there is no commitment discussed in the DEIS that the proposed federal land transfer is subject to a condition or deed restriction limiting future development or disposal of Humboldt Project lands. The assumption appears to be loosely based upon the feeling that significant changes in land conditions and status from further disposals and/or development is "unlikely." The Record of Decision and actual deed should condition any land transfer to current uses only; agriculture and wetlands restoration.

Response: *Public Law 107-282 sets forth the conditions of transferring the Humboldt Project to the various entities. The DEIS evaluates future impacts to the environment based on the best available data at this time. PL 107-282 does not preclude future changes on the transferred lands. While receiving entities could sell or commercially develop the lands, there are no known future use changes on lands to be received by*

PCWCD. Known changes in land use (potential wetland development by the State and changes on county lands for Pershing and Lander counties) were analyzed in the EIS.

Comment: The environmental analysis also is incorrect in accepting the PCWCD's claim that grazing management on Community Pasture has been "improved" with no independent verification since the lands look as degraded now as they've looked since the 1980's.

Response: *The District is managing the grazing under guidelines of the 1995 Grazing Management Plan and has made grazing improvements based on the plan. The PCWCD has adopted a grazing program that implements increased pasture rotation, deferred pasture rotation and or pasture resting. An active spray program for noxious weed control has been implemented on the dry land range. Annual pasture stocking rates are determined by annual forage production determined by annual precipitation.*

Comment: Including a conditional transfer in the proposed action because the proposed action does not comply with Section 106 of the NHPA, protecting land preserving cultural resources, both historic and pre-historic, is also highly irregular and is one more reason to abandon this deficient DEIS.

Response: *Reclamation intends to complete a full review and analysis of the affected cultural resources prior to title transfer. The Record of Decision (ROD) for the EIS will identify any environmental commitments that must be met prior to transferring lands to the receiving entities, including compliance with Section 106 of the NHPA. When Reclamation has completed Section 106 on federally designated portions of the Humboldt Project (e.g., Rye Patch Area), transfer of those areas to the receiving entities may occur separately from the other portions. Activities needed for compliance with Section 106 for the title transfer are expected to take several years.*

Comment: RE: Questionable Legality – The DEIS does not include as part of the proposed action transfer of lands to the State of Nevada, state assumption of responsibility for dam safety, and a larger share of the open-ended transaction costs which may amount to millions of dollars, than in the original agreement between NDOW and BOR.

Response: *The Proposed Action does include transfer of lands to the State of Nevada.*

The Proposed Action states that "PCWCD would be responsible for updates to the Standing Operating Procedure Emergency Action Plan as required by the State of Nevada, Safety of Dams Program." After review, it is agreed that the statement should be clearer as to responsibility for Rye Patch Dam after transfer. The following will be added to the Proposed Action description:

At the time of title transfer, the dam safety regulatory responsibility would formally transfer to the State of Nevada, and the dam safety ownership responsibilities would transfer to PCWCD. Liability for the structure and its operation would become the sole responsibility of PCWCD. As stated in Sec. 807(Liability) in P. L. 107-282, "Effective on

the date of the conveyance required by Section 803, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the Humboldt Project, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section shall be considered to increase the liability of the United States beyond that currently provided in Chapter 171 of Title 28, United States Code, popularly known as the Federal Tort Claims Act.”

To date, there have been no agreements executed between the State and Reclamation regarding this title transfer.

Comment: Since the State of Nevada refuses all of these actions, the proposed action should not have been included the state in the DEIS at this time. We do not believe that the law authorizes piecemeal implementation of the land disposals.

Response: *The State has not withdrawn from participation in the proposed conveyance. They have stated the following in a February 11, 2005 letter to Reclamation:*

“The Departments of Wildlife and Conservation and Natural Resources as the respective recipients of the acquired and withdrawn lands under the title transfer are unable to absorb both acquisition and restoration costs. Unless a way can be found through mutual negotiations to alleviate our concerns, the State must withdraw from receipt of any and all lands under the Humboldt Title Transfer.”

Reclamation is continuing to include the State of Nevada as a potential recipient of the title transfer in the EIS. Timing of participation in the title transfer by the various entities will be contingent upon available funding. Consequently, transfer of the various components of the Humboldt Project could occur in phases at different times.

The EIS analyzes each transfer (including the transfer to the State), and includes an analysis of the cumulative impacts caused by the transfer of lands and facilities to all entities. Transfers to PCWCD and Pershing and Lander counties can take place without the transfer to the State taking place. Each transfer can be considered to be separate and independent from each other [Office of the Solicitor, January 18, 2005].

Comment: We urge BOR to re-start the NEPA process because the use of a commercial firm, hired by and under the control of the PCWCD, has resulted in a grossly deficient NEPA document. An EIS, using more credible assumptions, incorporating a full range of alternatives, including wetlands restoration, a full analysis of environmental impacts of the proposed Humboldt Project transfer, including actual protection of cultural resources, and a proposed action which is acceptable to the State of Nevada, should be written.

Response: *The BOR is the lead federal agency for this EIS. BOR and its agents are mandated by law to meet all requirements of NEPA including complying with all applicable laws and regulatory requirements. The action being implemented is a Public*

Humboldt Project Conveyance EIS
Response to DEIS Comments

Law and the legislation was based in part on a letter of conceptual agreement between PCWCD and the State of Nevada.

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TOiyabe CHAPTER OF THE SIERRA CLUB POBOX 8096 RENO, NV 89507

April 15, 2004

Bureau of Reclamation
Lahontan Basin Area Office
705 No. Plaza #320
Carson City, NV 89701
ATTN: Caryn Hunt DeCarlo

COPY

Dear Ms. DeCarlo,

On behalf of the 5,400+ members of the Toiyabe Chapter of the Sierra Club in Nevada and the eastern Sierra, I would like to make additional scoping comments for the Humboldt Project Title Transfer Environmental Impact Statement (EIS) to supplement those made on February 19 at the Open House meeting in Reno, Nevada.

While the Open House used the table-with-experts approach to informing the public and soliciting public scoping comments and while we wrote many comments on scoping issues and alternatives on flip charts at the meeting, we are never confident about how the Bureau of Reclamation and its EIS contractors use this public input. Will the BOR be issuing a report on public scoping comments, so that we can ascertain if our comments were properly incorporated into the EIS process?

In the meantime, we'd like to make several comments again, in written form:

1. The Sierra Club supports a wetlands restoration alternative, with optimal locations for restored wetlands, along the Humboldt River, in seasonally flooded lowlands, and along other natural watercourses. The size should approximate the historic Argenta marsh, recognizing that the marsh expanded and contracted, depending on annual river flows.
2. In other parts of the Community Pasture, grazing management improvements must be made, to correct decades of livestock overgrazing.
3. The restoration alternative and possible mitigation measures for the loss of publicly owned lands and water rights should include sufficient water for wetlands restoration purposes.
4. The restoration alternative should include land acquisition of significant private parcels in areas of biologically optimal wetlands re-establishment.
5. The Humboldt River corridor and associated marshlands have been inhabited for millennia by native people. Before these public lands are privatized, a full survey and inventory of the rich cultural area should be conducted and significant sites and artifacts carefully recorded and preserved.
6. The river corridor and associated marshlands and the meadows around Rye Patch Reservoir were also the traveling routes for early explorers, beaver trappers, pioneers taking the Emigrant Trail routes to California, and railroad workers. Each group of visitors left traces of their passage which should be surveyed, inventoried, and preserved as part of our Western heritage.
7. Surveys, inventory, and preservation of paleontological resources in the disposal areas should be conducted before any title transfer takes place. See *Studies in Archaeology, Geology and Paleontology at Rye Patch Reservoir, Pershing County, Nevada* M. Rusco & J. Davis, June 1987.

Sincerely,
Isf
Rose Strickland, Chair
Public Lands Committee

Attachment: Toiyabe Chapter of the Sierra Club, Rose Strickland, dated April 15, 2004 (Included as an attachment to Comment Letter dated March 30, 2005)

Comment: The Sierra Club supports a wetlands restoration alternative, with optimal locations for restored wetlands, along the Humboldt River, in seasonably flooded lowlands, and along other natural watercourses. The size should approximate the historic Argenta Marsh, recognizing that the marsh expanded and contracted, depending on annual river flows.

***Response:** Development of a wetlands alternative is the beyond the scope of the authorizing legislation [P. L. 107-282]. The location of the Community Pasture lands to be transferred to the State of Nevada, were set forth through a cooperative agreement between the PCWCD, Lander County and the State.*

Comment: In other parts of the Community Pasture, grazing management improvements must be made, to correct decades of livestock overgrazing.

***Response:** The District is managing the grazing under guidelines of the 1995 Grazing Management Plan and has made grazing improvements based on the plan. The PCWCD has adopted a grazing program that implements increased pasture rotation, deferred pasture rotation and or pasture resting. An active spray program for noxious weed control has been implemented on the dry land range. Annual pasture stocking rates are determined by annual forage production determined by annual precipitation.*

Comment: The restoration alternative and possible mitigation measures for the loss of publicly owned lands and water rights should include sufficient water for wetlands restoration purposes.

***Response:** Development of a wetlands alternative is the beyond the scope of the authorizing legislation [P. L. 107-282].*

Comment: The restoration alternative should include land acquisition of significant private parcels in areas of biologically optimal wetlands re-establishment.

***Response:** Development of a wetlands alternative is the beyond the scope of the authorizing legislation [P. L. 107-282].*

Comment: The Humboldt River corridor and associated marshlands have been inhabited for millennia by native people. Before these public lands are privatized, a full survey and inventory of the rich cultural areas should be conducted and significant sites and artifacts recorded and preserved. The river corridor and associated marshlands and the meadows around Rye Patch Reservoir were also the traveling routes for early explorers, beaver trappers, pioneers taking the Emigrant Trail routes to California, and railroad workers. Each group of visitors left traces of their passage which should be surveyed, inventoried, and preserved as part of our Western heritage.

Response: *The proposed Inventory Design is under review by the Nevada State Historic Preservation Office (SHPO) and is expected to be finalized during the summer of 2005. The Inventory Design describes the methods Reclamation proposes to use to identify, document and evaluate cultural resources within the title transfer area. A two, possibly three phase approach is proposed for Battle Mountain Pasture lands being transferred to the PCWCD. The first phase consists of a randomly selected sample be used to develop a model. The second phase will test the model by conducting additional inventory. The possible final phase will inventory areas of high potential if determined necessary in consultation with SHPO.*

The following includes a synopsis of past and future actions for Section 106 NHPA compliance for the title transfer.

- *Section 106 consultation mailings, phone calls and meetings have been held with Indian Tribes, including the Fallon Paiute-Shoshone, Lovelock Paiute, and the Battle Mountain Band. Consultation will continue throughout the 106 process with interested Tribes. A letter from Reclamation initiating 106 consultations with SHPO was sent September 3, 2004.*
- *Reclamation has prepared a draft Sample Inventory Design for a portion of the lands to be conveyed. The current Sample Inventory Design does not cover the State of Nevada portion of the conveyance (an Inventory Design plan will be prepared for the State of Nevada portion of the title transfer as needed when that portion moves forward.). The Inventory Design is under review by the Nevada State Historic Preservation Office (SHPO) and is expected to be finalized with comments provided during the summer of 2005. The Inventory Design describes the methods Reclamation proposes to use to identify, document and evaluate cultural resources within the title transfer area.*
- *Reclamation intends to draft a Programmatic Agreement (PA) with SHPO that will outline how Reclamation intends to complete the 106 process for the Title Transfer.*
- *The ROD for the EIS will include conditional language on Title Transfer that all requirements of Section 106 will be completed prior to transfer.*
- *Inventory surveys and evaluation report will be completed.*
- *Treatment and mitigation will be determined by Reclamation with input from SHPO, interested Tribes and members of the public.*

Comments: Surveys, inventory and preservation of paleontological resources in the disposal areas should be conducted before any title transfer takes place.

Response: *Paleontological Resources are discussed in Chapter 3.10 in the FEIS.*

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03/31/2005

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NV DIVISION OF WILDLIFE → 98848375

NO. 538 D202



KENNY C. GUTHIN
Commissioner

STATE OF NEVADA
DEPARTMENT OF WILDLIFE

1100 Valley Road
Reno, Nevada 89512
(775) 888-1500 • Fax (775) 888-1588

TERRY R. CRAWFORTH
Deputy

GENE WELER
Deputy Director

March 31, 2005

Ms. Caryn Humt DeCarlo
Lahontan Basin Area Office
Bureau of Reclamation
705 N. Plaza, Room 320
Carson City, NV 89701

RE: Comments on the Humboldt Project Conveyance Draft EIS (DEIS).

Dear Ms. Humt DeCarlo:

The Nevada Department of Wildlife (NDOW) is pleased to provide comments on the Humboldt Project Conveyance DEIS. First beginning with a series of general comments followed by more specific comments by section.

As in the Administrative Draft EIS, this document also lacks sufficient detail, is limited in its review of the proposed action, and is inadequate in providing an accurate depiction of the condition of the existing resources. The lack of analysis of cultural resources under the process defined in 36 CFR Part 800.4(b)(1) also continues to be of concern and may leave the final decision open to challenge.

More specifically by section NDOW would offer the following comments by chapter and section:

3.4 Soil Resources

3.4.1 Affected Environment

Paragraph 6 Page 3-19. We would submit that "...significant improvement in the condition of the Community Pasture," is a relative and subjective term, that is not supported by data.

3.5 Biological Resources

3.5.4.1 Habitat Types in the Battle Mountain Community Pasture

Paragraphs 3&4 Page 3-38. We question the stocking rate has been below the carrying capacity and would like to see detailed data incorporated into the EIS.

3.5.5.1.3 Battle Mountain Community Pasture

Paragraph 4 Page 3-43. Vector control issues are beyond the scope of this document. This statement is speculative and should be excluded.

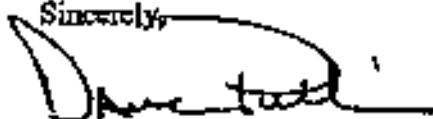
3.7 Socioeconomic

Multiple Sections

Regarding the payment of PILT throughout this section, NDOW is required under NRS to pay PILT to the county at a rate equal to the value that was in place when the property was acquired.

This concludes our comments on the Humboldt Project Conveyance DEIS. Thank you for the opportunity to comment.

Sincerely,



Dave Pulliam, Acting Habitat Bureau Chief
Nevada Department of Wildlife

CODE	PERSON RESP	INITIAL & DATE
100		
101		
105		
110		
400		
700		
800		
900		
450		3/31/05

From: Dave Pulliam, Acting Habitat Bureau Chief, State of Nevada – Department of Wildlife, dated 3/31/05

Comment: 3.4 Soil Resources, 3.4.1 P. 6 Page 3-19. We would submit that “...significant improvement in the condition of the Community Pasture” is a relative and subjective terms that is not supported by data.

Response: *The District is managing livestock grazing under guidelines of the 1995 Grazing Management Plan and has made improvements based on the plan. The PCWCD has adopted a grazing program that implements increased pasture rotation, deferred pasture rotation and or pasture resting. An active spray program for noxious weed control has been implemented on the dry land range. Annual pasture stocking rates are determined by annual forage production determined by annual precipitation.*

Comment: 3.4 Biological Resources, 3.5.4.1 Habitat Types in the Battle Mountain Community Pasture. We question the stocking rate has been below the carrying capacity and would like to see detailed data incorporated into the EIS.

Response: *The following table has been inserted into Chapter 3.5.4.1 of the FEIS.*

<i>Pasture stocking rates from 1995 to present</i>		
<i>Year</i>	<i>No. of Head</i>	<i>AUM</i>
1995	1,805	10,830
1996	2,087	11,478
1997	2,615	14,382
1998	2,703	17,569
1999	2,702	12,159
2000	2,451	11,029
2001	2,703	10,812
2002	2,206	11,030
2003	2,277	8,538
2004	2,174	9,239
2005	2,028	

Comment: 3.5.5.1.3 Battle Mountain Community Pasture. Vector control issues are beyond the scope of this document. This statement is speculative and should be excluded.

Response: *Vector issues will be addressed when the State and County enter into a more formal agreement on wetlands development.*

Comment: Socioeconomics - Multiple Sections. Regarding the payment of PILT throughout the section, NDOW is required under NRS to pay PILT to the county at a rate equal to the value that was in place when the property was acquired.

Response: *NDOW has no legal obligation to make PILT payments for lands acquired from the federal government. This statement was made in error.*

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Comment Sheet for Humboldt Project Conveyance DEIS

The Humboldt Project Conveyance Draft Environmental Impact Statement (DEIS) was released on January 28, 2005.

As part of the public review process written comments are due to the Bureau of Reclamation by close of business Friday, April 1, 2005.

All comments will be come part of the public record.

(Please print clearly)

Name Nelo Mori

Organization and Address 280 ROGERS Road-
LOVELOCK, Nev. 89419

Phone (775) 373-2421 E-mail _____

If you'd like, you may use this form to provide your comments:

MY CONCERNS ARE: _____

Water rights are concentrated in the hands of very few people
which will control not only water delivery but the remainder
of Pershing County Water Conservation lands, such as the
livestock pasture in Battle Mountain.

Most small operators supplement their income with livestock
and the big water users could have an impact as they would
control the voting of any issues that may come up concerning
the use of these lands.

-Attach additional sheets if necessary-

Please mail your comments to the address on the back, or fax your comments to 775-882-7592, or email to chuptidecarlo@mp.subr.gov. Thank you

From: Nelo Mori, Lovelock, Nevada resident

Comment: My concerns are ...Water rights are concentrated in the hands of very few people which will control not only water delivery but the remainder of Pershing County Water Conservation lands, such as the livestock pasture in Battle Mountain. Most small operators supplement their income with livestock and the big water users could have an impact as they would control the voting of any issues that may come up concerning the use of these lands.

Response: *Comment acknowledged. The proposed title transfer would not change ownership of any water rights which would remain status quo. There would be no change in voting power based on the transfer of title of the lands.*

Caryn Hunt DeCarlo
Bureau of Reclamation
705 North Plaza Street, Room 320
Carson City, NV 89701-4015

Dear Ms. DeCarlo:

Thank you for the opportunity to comment on the Humboldt Project Conveyance Draft Environmental Impact Statement.

As a citizen of Lander County I have some concerns by the proposed action that adversely affects the quality of life in Northern Lander County. Past history by the Bureau of Reclamation (BOR) was to run roughshod over the non-beneficiaries of a particular project. Despite NEPA's requirements to analyze the affected environment and disclose the impacts of the critical elements of the human environment and other laws and executive orders. The BOR's intent remains as one to make all means possible to approve the proposed action for the beneficiaries despite the cost to other impacted communities.

It is reported that there are approximately 83,530 acres of federal lands associated with the Humboldt Project that will transfer to another ownership.

- The State of Nevada acquires 31,660 acres in the Humboldt Sink and 5,850 acres in the Battle Mountain Community Pasture among other acreage not calculated above the Rye Patch Reservoir high water mark (this needs to be quantified);
- Lander County would acquire approximately 1,100 acres in the Battle Mountain Community Pasture;
- Pershing County would acquire 990 acres; and,
- PCWCD would acquire 22,500 acres in the Battle Mountain Community Pasture, 8,460 acres of withdrawn land and 12,340 acres of acquired lands in the Rye Patch Dam and Reservoir.

How is it possible that this division of federal lands is considered "equal?" In section 3.9, Environmental Justice, states that

"...fair treatment of peoples of all races, income levels, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulation, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of negative impacts resulting from the execution of federal programs."

The negative impact is losing land once owned by the public to now more restrictive land use owned by a quasi-private entity. Please explain how PCWCD acquiring 22,500 acres in the Battle Mountain Community Pasture while Lander County is given title to 1,100 acres is compliant with the requirements under Environmental Justice. PCWCD is acquiring more than twenty times the amount Lander County would be granted in the Battle Mountain Community Pasture. Title VIII of Public Law 107-282 is considered the legal means to transfer this land to the varying entities, but how can this be constitutional when it disenfranchises a community, and monopolize a major source of water in the desert?

The proposed Battle Mountain Community Pasture under the jurisdiction of PCWCD will be managed and operated for the continuation of grazing purposes. Apparently, the beneficiaries were generous when they agreed to give Lander County a new primitive day-use recreation area and parking lot, and access easements along the Humboldt River. Please explain what a "primitive day-use recreation area" is. As explained in the Memorandum of Agreement between Lander County and PCWCD, there are restrictions on the easement, sections 4.3.1 through 4.3.4. Is this a joke? I will not be able to use a bicycle to access formerly publicly owned lands? The only use is by foot traffic? What about handicapped individuals? Wheelchairs, or other means of handicapped transport are not allowed? Why are horses not allowed when

the community pasture is a continuation of grazing? Pets must be kept on a leash at all times? Cows move indiscriminately and defecate at will. Then section 4.4 Reverter, states that a violation of the restrictions will result in termination of the easement. What will stop an individual from PCWCD to purposely violate these conditions or a rogue individual who has a vendetta against a rural, economically challenged community. The Reverter appears to make the easement destined to fail no matter what the efforts from Lander County.

Why are there sever restrictions on a simple easement a 100 miles (approximate) upstream of the place of use when Rye Patch Reservoir, almost at the place of use, has virtually unlimited recreation use such as boating, fishing, camping, and, heaven forbid even cycling (I've done it before). Cattle are given more rights than members of the public (mostly Lander County residents) in the Battle Mountain Community Pasture. It is appropriate to state in the EIS how the current federal ownership manages public use and contrast it to the public use that will be in place under PCWCD ownership.

Please include in the EIS a discussion on the subsurface estate. Who is the current owner of the mineral estate? Will it transfer out of federal government ownership, if the federal government has current ownership? How will the mineral estate be divided? Will it be as disproportionate as the surface estate? What are the impacts to Lander County with a transfer of the subsurface estate? There is the potential for discovery of a valuable resource on lands to be transferred?

Please consider a nomenclature change. The Battle Mountain Community Pasture is not appropriate. A community means people with common interests living in a particular area. This proposed action will exclude members of a particular community.

How was it determined that 3000 acre-feet is adequate to remain in Rye Patch Reservoir to maintain a fisheries as stated in section 2.2.1.2? This is a small volume for the large area that the reservoir covers. Has there ever been a period when there was that small of a volume in the reservoir and did the fisheries survive?

The document mentions "Battle Mountain Sewer and Water Department." It should be "Battle Mountain Water and Sewer Department."

In section 3.2.1.3, discusses that "[g]roundwater was not developed for use on project lands as part of the Project." I disagree. A common practice of the BOR was to straighten and channelize riverbeds. This can result in a discharge of groundwater into a surface water channel. This is what occurred in the Argenta area. Groundwater was removed from storage and transported downstream. This practice lowered the water table and impacted water users such as the community of Battle Mountain. There is no mention of this.

How come there is no discussion on the gaining and losing portions of the Humboldt River? This is important to understanding the baseline conditions of the affected environment. Some research into this will show that there is indeed groundwater development on project lands.

Section 3.5.4.1, discusses vegetation surveys in the Battle Mountain Community Pasture. Were there any surveys done prior to the draining of the marsh. This is an impact from previous action by the BOR that is not discussed. Draining of the marsh reduced the riparian area and more than likely resulted in a loss of vegetation diversity.


Section 3.5.4.2, discusses wildlife surveys in the Battle Mountain Community Pasture. Were there any surveys done prior to the draining of the marsh. This is an impact from previous action by the BOR that is not discussed. Draining of the marsh reduced the wildlife and fisheries habitat and more than likely resulted in a loss of wildlife diversity.

Section 3.7.2.1.3, there is no discussion on future access to the PCWCD owned lands. Preventing access will decrease the recreation opportunities that residents currently rely on. There should be some assurance that there will be public access as there is now. NDOW is interested in reestablishing a wetlands area.

Why only NDOW? I believe that PCWCD should play a more active role in this endeavor since upstream storage would benefit them. Question 1 grants could be applied to this land transfer to increase recreation opportunities along the Humboldt River, not discouraging interest by limiting public access.

An institutional method by the BOR is to disenfranchise communities that are not the beneficiaries and this Proposed Action does just that. It is a violation of the requirement under Environmental Justice and therefore NEPA. The application of Title VIII of Public Law 107-282 is not consistent with other federal laws and is so biased toward other communities that it should be considered unconstitutional.

Sincerely,

 4/1/05

Jon D. Sturve
625 Brent Drive
Battle Mountain, Nevada 89820
(775)635-3321

RECEIVED

APR 04 2005

BUREAU OF RECLAMATION
Lahontan Basin Area Office

From: Jon D. Sherve, Battle Mountain, Nevada resident, dated 4/1/05

Comment: The State of Nevada acquires 31,660 acres in the Humboldt Sink and 5,850 acres in the Battle Mountain Community Pasture among other acreage not calculated above the Rye Patch Reservoir high water mark (this needs to be quantified). How is it possible that this division of federal lands is considered “equal?”

Response: *P.L. 107-282 requires that the land be divided pursuant to the negotiated agreements between the various entities.*

Comment: Please explain how PCWCD acquiring 22,500 acres in the Battle Mountain Community Pasture while Lander County is given title to 1,100 acres is compliant with the requirements under Environmental Justice?

Response: *PCWCD paid for the value of the lands pursuant to a repayment contract with the Bureau of Reclamation. P.L. 107-282 requires that the land be divided pursuant to the negotiated agreements between the various receiving entities.*

Comment: Title VIII of Public Law 107-282 is considered the legal means to transfer this land to the varying entities, but how can this be considered constitutional when it disenfranchises a community, and monopolizes a major source of water in the desert?

Response: *Water flows through the Humboldt River are established by the Nevada State Engineer's Office through assigned water decrees. The State Engineer is the water rights administrator and is responsible for the appropriation, adjudication, distribution and management of water in the State of Nevada.*

Comment: Please explain what a “primitive day-use recreation area” is.

Response: *Primitive day-use recreation area means there will not be developed facilities or overnight camping.*

Comment: As explained in the Memorandum of Agreement between Lander County and PCWCD, there are restrictions on the easement, sections 4.3.1 through 4.3.4. Is this a joke? I will not be able to use a bicycle to access formerly publicly owned lands? The only use is by foot traffic? What about handicapped individuals? Wheelchairs, or other means of handicapped transport are not allowed? Why are horses not allowed when the community pasture is a continuation of grazing? Pets must be kept on a leash at all times?

Response: *The negotiated restrictions between the County and PCWCD for land they will receive title to and be responsible and liable for are to be put in place to protect the natural environment, the water quality and the right of PCWCD to continue to use the land for grazing purposes.*

Comment: Please include in the EIS a discussion on the subsurface estate. Who is the current owner of the mineral estate? Will it transfer out of federal government ownership, if the federal government has current ownership? How will the mineral estate be divided? Will it be as disproportionate as the surface estate? What are the impacts to Lander County with a transfer of the subsurface estate? There is the potential for discovery of a valuable resource on lands to be transferred?

Response: *The legislation states the United States will transfer all right, title, and interest to the lands and features. This would include the minerals. As of this date there are no use authorizations granted on any mineral estates at Battle Mountain (former Aldous and Filippini Ranches).*

Reclamation will quit-claim all acquired lands to the appropriate entity with specific reservations for existing rights of reservations previously granted. The BLM will grant the patents on the withdrawn lands. It would appear that they will reserve all previously granted rights and reservations regarding use authorizations.

Comment: Please consider a nomenclature change. The Battle Mountain Community Pasture is not appropriate.

Response: *Changing the name of the lands and facilities is not within the scope of this EIS.*

Comment: How was it determined that 3000 acre-feet is adequate to remain in Rye Patch Reservoir to maintain a fisheries as stated in section 2.2.1.2? This is a small volume for the large area that the reservoir covers. Has there ever been a period when there was that small a volume in the reservoir and did the fisheries survive?

Response: *The 3,000 acre-foot minimum pool is the conceptual agreement between PCWCD and NDOW. The 30 year average end of season storage at Rye Patch Reservoir is 74,370 acre-feet. The 3,000 acre-foot minimum operational carryover pool will only come into play during extreme drought conditions. The average end of season storage is expected to continue to be the same as in the past as there are no anticipated changes in operations in the Project. The 3,000 ac/ft minimum pool is not a minimum fishery pool. Previous studies have shown that a minimum pool of 3,000 acre foot will sustain adult fish population. There is an economic benefit to maintain a minimum pool, since any fish that survive do not have to be restocked the following years and increased angler success without rebuilding the fishery.*

Comment: The document mentions “Battle Mountain Sewer and Water Department.” It should be “Battle Mountain Water and Sewer Department.”

Response: *The name has been corrected in the document.*

Comment: How come there is no discussion on the gaining and losing portions of the Humboldt River? This is important to understanding the baseline conditions of the

affected environment. Some research into this will show that there is indeed groundwater development on project lands.

Response: Section 3.2 in the FEIS describes water resources within the project area.

Comment: Section 3.5.4.1 discusses vegetation surveys in the Battle Mountain Community Pasture. Were there any surveys done prior to the draining of the marsh? This is an impact from previous action by the BOR that is not discussed. Draining the marsh reduced the riparian area and more than likely resulted in a loss of vegetation diversity.

Response: When the Marsh was originally drained, it was under the direction of the State Engineer and no surveys were required.

Comment: Section 3.5.4.2 discusses wildlife surveys in the Battle Mountain Community Pasture. Were there any surveys done prior to the draining of the marsh? This is an impact from previous action by the BOR that is not discussed. Draining the marsh reduced the wildlife and fisheries habitat and more than likely resulted in a loss of wildlife diversity.

Response: When the Marsh was originally drained, it was under the direction of the State Engineer and no surveys were required.

Comment: Section 3.7.2.1.3, there is not discussion on future access to the PCWCD owned lands. Preventing access will decrease the recreation opportunities that residents currently rely on. There should be some assurance that there will be public access as there is now. NDOW is interested in reestablishing a wetlands area. Why only NDOW? I believe that PCWCD should play a more active role in this endeavor since upstream storage would benefit them. Question 1 grants could be applied to this land transfer to increase recreation opportunities along the Humboldt River, not discouraging interest by limiting public access.

Response: Current and future lands managed and operated by NDOW are open to the public for access. Lander County will receive an easement along the Humboldt River within Project lands for public access to the river. PCWCD allows public access in the Battle Mountain Community Pasture as long as it does not interfere with grazing activities. There is no requirement in Public Law 107-282 for PCWCD to establish a wetland.

**United States Department of the Interior****FISH AND WILDLIFE SERVICE**

1340 Financial Blvd., Suite 234

Reno, Nevada 89502

Ph: 775-861-6300 ~ Fax: 775-861-6301

April 7, 2005
File No. BR 4-3**Memorandum**

To: Environmental Specialist, Lahontan Basin Area Office, Bureau of Reclamation, Carson City, Nevada (Attn: Caryn Hunt DeCarlo)

From: Field Supervisor, Nevada Fish and Wildlife Office, Fish and Wildlife Service, Reno, Nevada

Subject: Humboldt Project Conveyance Draft Environmental Impact Statement

We have reviewed the Humboldt Project Conveyance Draft Environmental Impact Statement (DEIS). The proposed action would transfer approximately 83,530 acres of federal lands associated with the Humboldt Project to the Pershing County Water Conservation District (PCWCD), the State of Nevada, and Pershing and Lander Counties. The transfer is directed under Title VIII of Public Law 107-282. The Humboldt Project, which is located in north-central Nevada, is a Bureau of Reclamation storage project. The three major features of the project are the Humboldt Sink, Rye Patch Reservoir, and the Battle Mountain Community Pasture. We have the following general and specific comments and recommendations on the DEIS and related issues.

We have been provided a copy of a letter from the State of Nevada to the Commissioner of the Bureau of Reclamation dated February 11, 2005, in which the State indicates that it may withdraw from the agreement to acquire lands to be transferred to it under Title VIII of Public Law 107-282 due to an unacceptable financial burden associated with the transfer. It is unclear at this time whether this will ultimately occur. If the State does not obtain title to lands at Rye Patch Reservoir, near the historic Argenta Marsh in the area of the Battle Mountain Community Pasture, and the Humboldt Sink near Lovelock, the Proposed Action described in the DEIS would become invalid, thereby requiring the preparation of a different DEIS. Because we do not know the outcome of the proposed project, we are providing comments on the DEIS with the assumption that the project will go forward as described.

A cover memorandum with the DEIS from Elizabeth Ann Rieke, dated February 1, 2005, indicated that the threatened bald eagle is the only federally listed species known to occur in the project area and that the proposed action will have no effect on this species. We are unable to concur with the latter portion of this determination without additional information. First, bald

Caryn Hunt DeCarlo

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eagles use Rye Patch Reservoir in limited numbers in the winter, as indicated in the DEIS. The DEIS also states that a minimum pool of 3,000 acre-feet (AF) of water will be maintained in the reservoir to assure survival of a warm-water fishery. Please provide documentation that this minimum pool is sufficient to maintain a fishery (e.g., source of the information and the expertise of the party), and thus is adequate to support limited bald eagle use in the winter. Maintenance of a minimal pool at Rye Patch Reservoir also is important to support wintering waterfowl and waterbird populations, which are part of the forage base of wintering bald eagles. Second, the Letter of Conceptual Agreement from the PCWCD to the Director of the Nevada Department of Conservation and Natural Resources states that "The District will guarantee a minimum pool of 3000 acre-feet in Rye Patch Reservoir for maintenance of the fish." A signed agreement between these two parties is necessary to provide final assurance that the minimum pool will be maintained.

Also, the DEIS indicates that bald eagles are occasional winter residents of the Humboldt River in the vicinity of the Community Pasture. Hence wintering bald eagles may forage on the Community Pasture and the future management approach implemented on this area could potentially affect bald eagles.

GENERAL COMMENTS

We suggest that Chapter 3.0 be divided into two separate chapters, one dealing with the Affected Environment and another covering the Environmental Consequences. Splitting these two major components of the DEIS out will allow the reader to better follow the document.

Given the U.S. Fish and Wildlife Service's (USFWS) management authority for migratory birds under the Migratory Bird Treaty Act, and the many species of migratory birds that potentially occur within the area of the proposed action (as indicated in Appendix I of the DEIS), the DEIS could be greatly improved with regard to the analysis of the effects of the action on these species. We suggest that within both the Affected Environment and the Environmental Consequences portions of the DEIS that there be separate sections under a migratory birds header that directly address these species in greater detail than that presently provided.

In general the DEIS could be improved with regard to the description of effects on biological resources (fish, wildlife, and plants). The cumulative effects portion of the document, with regard to biological resources, is especially in need of improvement.

We have concerns about the proposed action related to the transfer of the Community Pasture near Battle Mountain. The proposed action, as described in the DEIS, would transfer about 80 percent of the Community Pasture to the PCWCD for grazing purposes, and roughly 20 percent of this area to the Nevada Department of Wildlife (NDOW), with the potential for wetland development on part of the area NDOW would receive. Based on conversations with Norm Saake of the Nevada Waterfowl Association, it is our understanding that areas that are currently riparian and wetland habitat occur mostly on the portion to be transferred to PCWCD, whereas the area to be transferred to NDOW are primarily dry upland sagebrush habitat. This observation seems to be consistent with Figure 3.3 of the DEIS (page 3-35). Hence the area that had historically been Argents Marsh would largely be used for grazing/livestock operations. Given

Carya Hunt DeCarlo

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the great benefit that wetlands provide to fish and wildlife species in Nevada we suggest that this alternative be reconsidered.

It would be far more cost effective to restore the part of the Community Pasture that historically had been Argenta Marsh, than to try and convert dry upland sagebrush habitat to wetland habitat. Indeed converting part of the Community Pasture which NDOW would receive to wetland habitat may well be cost-prohibitive. Also given the heightened concern for sagebrush obligate species like sage-grouse and the pygmy rabbit, related to the loss and degradation of sagebrush ecosystems they depend upon, it is not clear why conversion and loss of this habitat should be viewed as beneficial to wildlife. We would also like to make you aware that the Argenta Marsh is a first priority site for major bird habitats in the Coordinated Implementation Plan for Bird Conservation in Nevada that was prepared by the Nevada Steering Committee of the Intermountain West Joint Venture in 2002 under the North American Waterfowl Management Plan. The great value of a restored Argenta Marsh to wetland dependant species in Nevada is also pointed out in the Nevada Partners in Flight Bird Conservation Plan (Neel 1999).

Finally, in discussions with a Ducks Unlimited (DU) biologist from the DU Western Regional Office, we understand that the historic Argenta Marsh site would be a prime candidate for a grant under the North American Wetlands Conservation Act (NAWCA). Under the NAWCA large grants program, as much as \$1,000,000 or more could potentially be obtained to restore Argenta Marsh to historic conditions. Conversely, the likelihood of securing this type of grant to convert upland habitat to wetlands, as would potentially happen under the proposed action in the DEIS, is not likely.

The yellow-billed cuckoo, a federal candidate species, could potentially be present at the project areas that are the subject of the DEIS. Appendix I indicates this is the case for the Humboldt Sink area. This species also could potentially occur at or near Rye Patch Reservoir. Hence you may want to include a discussion of this species in the DEIS and include any data or information you may have about the species in the project areas.

Please note that species lists provided by the USFWS are valid for a period of 90 days. Since the species list last provided by the USFWS was dated March 2003, we suggest you request an updated species list. Also, please note that the Nevada Fish and Wildlife Office no longer provides species of concern lists and hence the information in Appendix H of the DEIS is no longer accurate with regard to these species. Most of these species for which we have concern are also on the sensitive species list for Nevada maintained by the State of Nevada's Natural Heritage Program (Heritage). Instead of maintaining our own list, we are adopting Heritage's sensitive species list and partnering with them to provide distribution data and information on the conservation needs for sensitive species to agencies or project proponents. The mission of Heritage is to continually evaluate the conservation priorities of native plants, animals, and their habitats, particularly those most vulnerable to extinction or that are in serious decline. Consideration of these sensitive species and exploring management alternatives early in the planning process can provide long-term conservation benefits and avoid future conflicts. For a list of sensitive species by county, visit Heritage's website at www.heritage.nv.gov. For a specific list of sensitive species that may occur in the project area, you can obtain a data request

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from the website or by contacting Heritage at 1550 East College Parkway, Suite 137, Carson City, Nevada 89706, 775-687-4245.

SPECIFIC COMMENTS

1.4.1 Humboldt Sink, pages 1-2 and 1-3: The White Plains area that is mentioned here is not specifically identified on Figure 2. It would also be beneficial to show the Humboldt Slough or Canal on Figure 2.

Figure 4 Battle Mountain Community Pasture: We understand that the lands designated to be provided to NDOW generally do not encompass historic wetland areas such as those of the historic Argenta Marsh, which are said to be further downstream. Please provide information in the document showing the location(s) of historic wetlands in this area, both in the text and on a figure and include acreage estimates if available. The lands to be transferred to NDOW are said to generally be uplands in areas where head cutting of the river channel is approximately six feet below the general land surface. Such areas may not be readily conducive to the establishment of wetlands. Please discuss suitability of the lands to be transferred for conversion to wetland habitat.

3.2.3 Water Quality, page 3-10: In the first paragraph, sources of contaminants should also include naturally-occurring inorganics. In the second paragraph, second line, change "Pollution" to "Pollutant." This section should include data from the following reports, all of which were funded, in part, with Bureau of Reclamation monies: Seiler et al. (1993); Seiler and Turtle (1997); Paul and Thodal (2003); and Wiemeyer et al. (2004). The text should include data on the water quality of Toulon and Army Drains, at a minimum, in tabular form, with a discussion of the results. The discussion should include information on the degraded water. The Nevada Division of Environmental Protection also has a web site which contains water quality data for a number of stations of interest. These data should be included in the document.

Table 3.2-4, pages 3-11 and 3-12: Should a range of values be provided for suspended solids for the Lander station instead of just the single value? For footnote **, $\mu\text{g/cm}$ should be replaced with $\mu\text{g/L}$. In footnote ***, NPU should be changed to NTU. Information should be provided as to whether the concentrations are for total (unfiltered) or dissolved (filtered) constituents. It would be helpful to provide means or medians in the tables; extremes are not very useful in detecting differences among stations. See Wiemeyer et al. (2004) for averages for some stations of interest for metals, total dissolved solids, and total suspended solids. A section should be added to the text on compliance with aquatic life standards.

Table 3.2-5, page 3-13: At the end of footnote **, change (N) to (NTU).

3.5.1 Affected Environment, page 3-22: In the paragraph at the bottom of the page Blasmann is spelled differently than in the References.

3.5.2.3 Sensitive Species in the Humboldt Sink, page 3-22: In the last paragraph of the section, the nearest known bald eagle nesting area in Nevada is at Lahontan Reservoir, not Washoe Valley. We are unaware of nesting bald eagles in Washoe Valley at this time. However, they do

Caryn Hunt DeCarlo

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nest around Lake Tahoe, including Marlette Lake, and also in the vicinity of Boca Reservoir. We are requesting that you provide more specific information (e.g., numbers, season of use, etc.) on recent bald eagle use of the Humboldt Sink if at all possible.

Given that the USFWS no longer provides species of concern lists for projects, as per our comments above, we suggest that the last paragraph here be revised and references to USFWS former species of concern be deleted. Since we have partnered with Heritage, with regard to these former species of concern, we suggest that the appropriate context in which to discuss them is in terms of the sensitive species list that Heritage maintains for Nevada.

3.5.3.3 Sensitive Species in the Rye Patch Dam and Reservoir Area, page 3-33: We are requesting that you provide more specific information (e.g., numbers) on recent bald eagle use of the Rye Patch Reservoir area if at all possible. Also, Herron et al. (1985) identifies the Rye Patch Reservoir area as being a traditional wintering area for bald eagles. This reference could be cited in the first paragraph.

As per our comments on 3.5.2.3 above, we suggest that the two paragraphs here be revised with regard to former USFWS species of concern wording.

3.5.4.1 Habitat Types in the Battle Mountain Community Pasture, page 3-34: In the third full paragraph on the page, the definition of an animal unit month should be corrected to include a cow and calf.

3.5.4.3 Sensitive Species in the Battle Mountain Community Pasture, page 3-36: In the first paragraph of the section, the nearest known bald eagle nesting area in Nevada is at Lahontan Reservoir, not Washoe Valley. We are unaware of nesting bald eagles in Washoe Valley at this time. However, they do nest around Lake Tahoe, including Marlette Lake, and also in the vicinity of Boca Reservoir.

Please provide any information you may have regarding use of this area by bald eagles (e.g., numbers, season of use, etc.). Argenta Marsh may have been used historically by bald eagles, due to the availability of abundant food resources (e.g., both fish and waterfowl).

As per our comments on 3.5.2.3 above, we suggest that the first and second paragraphs here be revised with regard to former USFWS species of concern wording.

3.5.5.1.1 Humboldt Sink, pages 3-37 through 3-39: It would be helpful to provide a discussion regarding environmental contaminants in fish and wildlife resources in this area based on the reports of Seiler et al. (1993), Seiler and Tuttle (1997), and Wiemeyer et al. (2004). Future changes in management of water (e.g., Toulon Lake) could have an effect on contaminants in migratory birds.

At the bottom of page 3-38, please see our comments under 3.5.2.3, regarding the distribution of nesting bald eagles. Also, the last sentence on the page implies that a representative (i.e., Chad Mellison) of the USFWS made an effects determination on the project. Mr. Mellison did not make such a statement. Please delete this sentence as it is not accurate. After the USFWS has

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sufficient information from the project proponents with regard to federally listed species, and the proponents provide an effects determination, then we will be in a position to either concur or not concur with that determination.

3.5.5.1.2 Rye Patch Reservoir: At the bottom of page 3-39 and continuing on to the top of page 3-40 is another statement attributed to Mr. Mellison. The statement is not accurate and should be removed as per our comment under 3.5.5.1.1 above.

As per our comments on 3.5.2.3 above, we suggest that the last paragraph here be revised with regard to former USFWS species of concern wording.

3.5.5.1.3 Battle Mountain Community Pasture, page 3-42: In the next to last paragraph, regarding bald eagles, please see our comments under 3.5.2.3. Also, in this same paragraph is another statement attributed to Mr. Mellison. The statement is not accurate and should be deleted as per our comment under 3.5.5.1.1 above.

As per our comments on 3.5.2.3 above, we suggest that the last paragraph here be revised with regard to former USFWS species of concern wording.

3.6.1.1.1 Humboldt Sink, page 3-44: In the third paragraph, it would be helpful to provide additional information on the exact location of the Helena Chemical Company and the types of pesticides that were produced. In the fourth paragraph, additional information should be provided on the locations of the former mining operations and the metals that were elevated. Sellar et al. (1993) provided information on potential sources, including tungsten and arsenic, from mills in the Toulon and Toy areas.

3.6.1.1.3 Battle Mountain Community Pasture, page 3-45: In the first paragraph, it would be helpful to provide the data on elevated concentrations of arsenic and mercury found at abandoned gravel pit sites. Please provide further discussion on this information. At the end of the paragraph, which USBR (1994) reference is being cited (a or b)?

3.6.1.2.3 Recreational Safety, page 3-47: In the second paragraph, which Orr (2004) reference is being cited (a or b)?

3.6.2.1 Proposed Action/Preferred Alternative, page 3-48: Would herbicide use to control invasive weeds continue at the same level as in the past? Would vector control on wetlands to be developed by NDOW in the Battle Mountain Community Pasture area involve the use of insecticides? Please discuss these issues.

Figure 3.4, page 3-50: It would be helpful to provide information in the legend to identify the numbered locations in the map inset.

3.7.1.2 Rye Patch Dam and Reservoir, page 3-51: In the first and last paragraphs, which Orr (2004) reference is being cited (a or b)?

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3.7.2.1.2 Rye Patch Dam and Reservoir, page 3-53: It seems that recreational use of the reservoir would increase at least slightly due to the requirement to maintain a minimum pool of 3,000 AF. This would allow for a more rapid recovery of the fishery following periods of severe drought and thus a more rapid rebound of recreational fishing use. Please provide a more complete discussion of this possibility.

3.7.2.1.3 Battle Mountain Community Pasture, pages 3-53 and 3-54: A brief discussion of the types of increased recreational use on the lands to be provided to NDOW, with the development of wetlands, would be helpful.

5.2.1 U.S. Fish and Wildlife Service: Given our comments under the general comments section above regarding species of concern, you may want to consider revising this section.

8.0 References, pages 8-1 through 8-9: The list of references should be carefully cross-checked with the references cited in the text. For example, the following references were cited in the text, but do not appear here: Autabee (2004) – see page 3-63; Hattori (2004) – see page 3-71; McCuckian (2004) – see page 3-71; Nevada Commission on Economic Development (2000a and b) – page numbers not noted; Plume (1999) – see page 3-7; Plume (2003) – see page 3-10; USBR (1996) see page 3-47; USBR (2001) – see page 3-12; Western Regional Climate Center is cited as 2004 on page 3-5, not 2001. A number of references that are listed here were not noted in the text; however, we did not make a thorough search.

We appreciate the opportunity to comment on this DEIS. Please contact me, Stanley Wiemeyer, or Kevin Kritz at (775) 861-6300 if you have any questions.



Robert D. Williams

cc:

Director, Nevada Department of Wildlife, Reno, Nevada

Manager, Pershing County Water Conservation District, Lovelock, Nevada

Caryn Hunt DeCarlo

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References

- Herron, G.B., C.A. Mortimore, and M.S. Rawlings. 1985. Nevada raptors; their biology and management. Nevada Department of Wildlife, Biological Bulletin No. 8. 114 pp.
- Neel, L.A. (ed.). 1999. Nevada Partners in Flight. Bird Conservation Plan by the Nevada Partners in Flight Working Group. 335 pp. + appendices.
- Paul, A.P., and C.E. Thodal. 2003. Data on streamflow and quality of water and bottom sediment in and near the Humboldt Wildlife Management Area, Churchill and Pershing Counties, Nevada, 1998-2000. U.S. Geological Survey Open-File Report 03-335. 94 pp.
- Seiler, R.L., G.A. Ekechukwu, and R.J. Hallock. 1993. Reconnaissance investigation of water quality, bottom sediment, and biota associated with irrigation drainage in and near Humboldt Wildlife Management Area, Churchill and Pershing Counties, Nevada, 1990-91. U.S. Geological Survey Water-Resources Investigations Report 93-4072. 115 pp.
- Seiler, R.L., and P.L. Tuttle. 1997. Field verification study of water quality, bottom sediment, and biota associated with irrigation drainage in and near Humboldt Wildlife Management Area, Churchill and Pershing Counties, Nevada, 1996. U.S. Geological Survey Open-File Report 97-586. 38 pp.
- Wiemeyer, S.N., P.L. Tuttle, and D.K. Higgins. 2004. Aquatic biota monitoring on the Humboldt River, Nevada, in relation to mine dewatering discharges. U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, Reno, Nevada. 116 pp.

CODE	PERSON RESP	INITIAL & DATE
100		4/7/05
101		
105		
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400		
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900		
450		4/7/05

From: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, Fish and Wildlife Service, Reno, Nevada, dated 4/7/05

Comment: Humboldt Sink, pages 1-2 and 1-3: The White Plains area that is mentioned here is not specifically identified on Figure 2. It would also be beneficial to show the Humboldt Slough or Canal on Figure 2.

Response: *The White Plains area has been identified on Figure 2 of the FEIS.*

Comment: Figure 4 Battle Mountain Community Pasture: We understand that the lands designated to be provided to NDOW generally do not encompass historic wetland areas such as those of the historic Argenta Marsh, which are said to be further downstream. Please provide information in the document showing the location(s) of historic wetlands in this area, both in the text and on a figure and include acreage estimates if available. The lands to be transferred to NDOW are said to generally be uplands in areas where head cutting of the river channel is approximately six feet wetlands. Please discuss suitability of the lands to be transferred for conversion to wetland habitat.

Response: *The lands to be transferred to NDOW are the result of negotiations between the State of Nevada and the District. The lands were agreed upon in the 2001 Letter of Conceptual Agreement. Identifying the historic location and determining the size of historic wetlands in the Battle Mountain area is beyond the scope of this EIS. Assessing the suitability of lands for wetland development is beyond the scope of this EIS.*

Comment: Water Quality, page 3-10: In the first paragraph, sources of containments should also include naturally-occurring inorganic.

Response: *A discussion of naturally-occurring inorganics has been included in Chapter 3.2.3 in the FEIS.*

Comment: In the second paragraph, second line; change "Pollution" to "Pollutant."

Response: *The name has been corrected in the document.*

Comment: This section should include data from the following reports, all of which were funded, in part, with Bureau of Reclamation monies: Seiler et al. (1993); Seiler and Tuttle (1997); Paul and Thodal (2003); and Wiemeyer et al. (2004). The text should include data on the water quality of Toulon and Army Drains, at a minimum, in tabular form, with a discussion of the results.

Response: *A discussion of water quality in the Toulon and Army Drains has been provided in Chapter 3.2.3 in the FEIS.*

Comment: The discussion should include information on the degraded water. The Nevada Division of Environmental Protection also has a web site which contains water

quality data for a number of stations of interest. These data should be included in the document.

Response: *Water quality for selected gaging stations near Humboldt Project lands is provided in Table 3.2-6 in Chapter 3.2.3 in the FEIS.*

Comment: Table 3.2-4, pages 3-11 and 3-12: Should a range of values be provided for suspended solids for the Lander station instead of just the single value?

Response: *The USGS dataset included only a single sample collected on June 2, 1992.*

Comment: For footnote**, µs/cm should be replaced with µg/L.

Response: *Corrected.*

Comment: In footnote***, NPU should be changed to NTU.

Response: *Corrected*

Comment: Information should be provided as to whether the concentrations are for total (unfiltered) or dissolved (filtered) constituents. It would be helpful to provide means or medians in the tables; extremes are not very useful in detecting differences among stations. See Wiemeyer et al. (2004) for averages for some stations of interest for metals, total dissolved solids, and total suspended solids.

Response: *Chapter 3.2.3 (Water Quality) was expanded to include additional background information about the Clean Water Act, TMDLs, and current water quality conditions on or near project lands. Since the title transfer is an administrative action, no changes in water quality are expected. Any existing or future water quality impacts attributable to specific sources would be the responsibility of the owner or contributor of that source of water pollution, whether from federal, state or private entities.*

Comment: A section should be added to the text on compliance with aquatic life standards.

Response: *See response listed above.*

Comment: Table 3.2-5, pages 3-13: At the end of footnote**, change (N) to (NTU).

Response: *Corrected.*

Comment: 3.5.1 Affected Environment, page 3-22: In the paragraph at the bottom of the page Eissmann is spelled differently than in the References.

Response: *Corrected.*

Comment: 3.5.2.3 Sensitive Species in the Humboldt Sink, pages 3-29: In the last paragraph of the section, the nearest known bald eagle nesting area in Nevada is at Lahontan Reservoir, not Washoe Valley. We are unaware of nesting bald eagles in Washoe Valley at this time. However, they do nest around Lake Tahoe, including Marlette Lake, and also in the vicinity of Boca Reservoir. We are requesting that you provide more specific information (e.g., numbers, season of use, etc.) on recent bald eagle use of the Humboldt Sink if at all possible.

Response: *FEIS text changed to read: “Bald eagles, a federally threatened species, have been observed wintering in the Humboldt Sink in small numbers (2-6), with larger numbers observed in flood years that bring an abundance of warm water fish to the sink (NDOW 2003). The only known nesting location in Nevada is at Lahontan Reservoir, approximately 45 miles southwest of the Humboldt Sink project area (NvNHP 2004)”.*

Comment: Given that the USFWS no longer provides species of concern lists for projects, as per our comments above, we suggest that the last paragraph here be revised and references to USFWS former species of concern be deleted. Since we have partnered with Heritage, with regard to these former species of concern, we suggest that the appropriate context in which to discuss them is in terms of the sensitive species list that Heritage maintains for Nevada.

Response: *Reference to USFWS 2003 letter changed to cite NvNHP.*

Comment: 3.4.3.3 Sensitive Species in the Rye Patch Dam and Reservoir Area, page 3-33: We are requesting that you provide more specific information (e.g., numbers) on recent bald eagle use of the Rye Patch Reservoir area if at all possible. Also, Herron et al. (1985) identifies the Rye Page Reservoir area as being a traditional wintering area for bald eagles. This reference could be cited in the first paragraph. As per our comments on 3.5.2.3 above, we suggest that the two paragraphs here be revised with regard to former USFWS species of concern wording.

Response: *FEIS text changed to read: The federally threatened bald eagle has been observed to periodically visit and roost at Rye Patch Reservoir during winter and spring months (Herron et al 1985). The only known bald eagle nesting location in Nevada is at Lahontan Reservoir, approximately 100 miles southwest of Rye Patch Reservoir (NvNHP 2004).*

Comment: 3.5.4.1 Habitat Types in the Battle Mountain Community Pasture, page 3-34: In the third full paragraph on the page, the definition of an animal unit month should be corrected to include a cow and calf.

Response: *The definition of AUM was clarified to state: “The animal unit is defined as one mature 1,000 pound cow and her suckling calf.”*

Comment: 3.5.4.3 Sensitive Species in the Battle Mountain Community Pasture, page 3-36: In the first paragraph of the sections, the nearest known bald eagle nesting area in

Nevada is at Lahontan Reservoir, not Washoe Valley. We are unaware of nesting bald eagles in Washoe Valley at this time. However, they do nest around Lake Tahoe, including Marlette Lake, and also in the vicinity of Boca Reservoir. Please provide any information you may have regarding use of this area by bald eagles (e.g., numbers, season of use, etc.).

Response: *FEIS text changed to read: “The bald eagle is an occasional winter resident of the Humboldt River in the vicinity of the Community Pasture. The only known bald eagle nesting location in Nevada is at Lahontan Reservoir (NvNHP 2004). There are no other federal listed species in the project area”.*

Comment: Argenta Marsh may have been used historically by bald eagles, due to the availability of abundant food resources (e.g., both fish and waterfowl). As per our comments on 3.5.2.3 above, we suggest that the first and second paragraphs here be revised with regard to former USFWS species of concern wording.

Response: *Comment acknowledged. See reference to text changes listed above.*

Comment: 3.5.5.1.1 Humboldt Sink, pages 3-37 through 3-39: It would be helpful to provide a discussion regarding environmental contaminants in fish and wildlife resources in this area based on the reports of Seiler et al. (1993), Seiler and Tuttle (1997), and Wiemeyer et al. (2004). Future changes in management of water (e.g., Toulon Lake) could have an effect on containments in migratory birds.

Response: *Results of the previous water quality studies conducted in the Humboldt Sink area have been added to Chapter 3.2.3. Since the title transfer is an administrative action, no changes in water quality are expected. Future changes in water management are beyond the scope of this EIS. Any existing or future water quality impacts attributable to specific sources would be the responsibility of the owner or contributor of that source of water pollution, whether from federal, state or private entities.*

Comment: At the bottom of pages 3-38, please see our comments under 3.5.2.3, regarding the distribution of nesting bald eagles. Also, the last sentence of the pages implies that representative (i.e., Chad Mellison) of the USFWS made an effects determination on the project. Mr. Mellison did not make such a statement. Please delete this sentence as it is not accurate. After the USFWS has sufficient information from the project proponents with regard to federally listed species, and the proponents provide an effects determination, then we will be in position to either concur or not concur with that determination.

Response: *Water directed to Toulon Lake does not constitute a change in management of water resources. Reports mentioned in comment will be reviewed for potential discussion in the EIS of environmental contaminants. The citation attributed to Mr. Mellison has been deleted.*

Comment: 3.5.5.1.2 Rye Patch Reservoir: At the bottom of page 3-39 and continuing on to the top of page 3-40 is another statement attributed to Mr. Mellison. The statement is not accurate and should be removed per our comment under 3.5.5.1.1 above. As per our comments on 3.4.2.3 above, we suggest that the last paragraph here be revised with regard to former USFWS species of concern wording.

Response: *Comment attributed to Mellison will be changed to reference NDOW Fisheries Biologist Jim French. Reference to USFWS 2003 letter will also be changed to cite NvNHP.*

Comment: 3.5.5.1.3 Battle Mountain Community Pasture, page 3-42: In the next to last paragraph, regarding bald eagles, please see our comments under 3.5.2.3. Also, in this same paragraph is another statement attributed to Mr. Mellison. The statement is not accurate and should be deleted per our comment under 3.5.5.1.1 above. As per our comments on 3.5.2.3 above, we suggest that the last paragraph here be revised with regard to former USFWS species of concern wording.

Response: *FEIS has been modified to indicate nesting locations of bald eagles in relation to Project Lands. Reference to USFWS 2003 letter will also be changed to cite NvNHP.*

Comment: 3.6.1.1.1 Humboldt Sink, page 3-44: In the third paragraph, it would be helpful to provide additional information on the exact location of the Helena Chemical Company and the types of pesticides that were produced.

Response: *The Helena Chemical plant is no longer in operation. Information regarding the types of pesticides that were produced could not be obtained. No additional information was located. As stated in the FEIS, the 1997 inspection did not reveal any violations or concerns.*

Comment: 3.6.1.1.1 Humboldt Sink, page 3-44. In the forth paragraph, additional information should be provided on the locations of the former mining operations and the metals that were elevated Seiler et al. (1993) provided information on potential sources, including tungsten and arsenic, from mills in the Toulon and Toy areas.

Response: *The mills in the Toulon and Toy are located more than one-mile from any lands proposed to be transferred. A discussion of former mining operations at these sites is beyond the scope of this EIS.*

Comment: 3.6.1.1.3 Battle Mountain Community Pasture, page 3-45: In the first paragraph, it would be helpful to provide the data on elevated concentrations of arsenic and mercury found at abandoned gravel pit sites. Please provide further discussion on this information.

Response: *The results of the abandoned gravel pit water analysis are provided in Chapter 3.6.1.1.3 of the FEIS.*

Comment: At the end of the paragraph, which USBR (1994) references is being cited (a or b)?

Response: *USBR 1994a. This has been corrected in the FEIS.*

Comment: 3.6.1.2.3 Recreation Safety, page 3-47: In the second paragraph, which Orr (2004) reference is being cited (a or b)?

Response: *Orr 2004a. This has been corrected in the FEIS.*

Comment: 3.6.2.1 Proposed Action/Preferred Alternative, page 3-48: Would herbicide use to control invasive weeds continue at the same level as in the past? Would vector control on wetlands to be developed by NDOW in the Battle Mountain Community Pasture area involve the use of insecticides? Please discuss these issues.

Response: *An active spray program for noxious weed control has been implemented as a component of the 1995 Grazing Management Plan adopted by the District. The amount and frequency of spraying is dependent on specific need. Vector issues will be addressed when the State and County enter into a more formal agreement on wetlands development.*

Comment: Figure 3.4, page 3-50: It would be helpful to provide information in the legend to identify the numbered locations in the map inset.

Response: *Figure 3.4 has been modified to identify the numbered locations on the map inset.*

Comment: 3.7.1.2 Rye Patch Dam and Reservoir, page 3-51: In the first and last paragraphs, which Orr (2004) reference is being cited (a or b)?

Response: *Orr 2004a. This has been corrected in the FEIS.*

Comment: 3.7.2.1.2 Rye Patch Dam and Reservoir, page 3-53: It seems that recreational use of the reservoir would increase at least slightly due to the requirement to maintain a minimum pool of 3,000 AF. This would allow for a more rapid recovery of the fishery following periods of severe drought and thus a more rapid rebound of recreational fishing use. Please provide a more complete discussion of this possibility.

Response: *The 30 year average end of season storage at Rye Patch Reservoir is 74,370 acre-feet. The 3,000 acre-foot minimum operational carryover pool will only come into play during extreme drought conditions. The average end of season storage is expected to continue to be the same as in the past as there are no anticipated changes in operations in the Project. The 3,000 ac/ft minimum pool is not a minimum fishery pool. Previous studies have shown that a minimum pool of 3,000 acre foot will sustain adult fish population. There is an economic benefit to maintain a minimum pool, since any fish*

that survive do not have to be restocked the following years and increased angler success without rebuilding the fishery.

Comment: 3.7.2.1.3 Battle Mountain Community Pasture, pages 3-53 and 3-54: A brief discussion of the types of increase recreational use on the lands to be provided to NDOW, with the development of wetlands, would be helpful.

Response: *The types of allowable recreational use on lands to be transferred to the State for wetland development are unknown at this time. Currently the public is allowed to use Community Pasture lands for hunting and fishing when such activities do not directly conflict with livestock grazing operations. Types of allowable recreational activities will be addressed when the State and County enter into a more formal agreement on wetlands development.*

Comment: 5.2.1. U.S. Fish and Wildlife Service: Given our comments under the general comments section above regarding species of concern, you may want to consider revising this section.

Response: *Reference to USFWS 2003 letter changed to cite NvNHP.*

Comment: 8.0 References, pages 8-1 through 8-9: The list of references should be carefully cross-checked with the references cited in the text. For example, the following references were cited in the text, but do not appear here: Autobee (2004)- see page 3-63; Hattori (2004)- See page 3-71; McGuckian (2004)- see page 3-71; Nevada Commission on Economic Development (2000a and b)- page numbers not noted; Plume (1999)- see page 3-7; Plume (2003)- see page 3-10; USBR (1996) see page 3-47; USBR (2001)- see page 3-12; Western Regional Climate Center is cited as 2004 on page 3-5, not 2001. A number of references that are listed here were not noted in the text; however, we did not make a thorough search.

Response: *References have been cross-checked and corrected as appropriate.*

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Governor

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ALAN R. COYNER
Administrator

April 12, 2005

Caryn Hunt DeCarlo
Lahontan Basin Area Office
Bureau of Reclamation
705 North Plaza, Room 320
Carson City, Nevada 89701

RE: Humboldt Project Conveyance Draft Environmental Impact Statement

Dear Ms. DeCarlo:

Thank you for this opportunity to comment on the Humboldt Project Conveyance EIS. The draft of the document came to our attention on the final day of comments and the granted extension allowed for the necessary document review.

The responsibility of the Nevada Division of Minerals (NDOM) is the administration of programs and activities to further the responsible development and production of Nevada's mineral resources: minerals produced from mines, geothermal; and oil and gas. The division regulates drilling operations of oil, gas, and geothermal wells; administers a program to identify, rank, and secure dangerous conditions at abandoned mines; and manages the state reclamation performance bond pool. Our request for time to comment on the EIS is based upon the knowledge that there are likely federal mineral leases and associated instruments such as right of ways in effect on the lands which are included in this proposed action of conveyance.

Of specific concern are the geothermal resources within these areas, particularly the Rye Patch area where geothermal development is ongoing, a power plant has been built, and exploration drilling continues. The State of Nevada Senate Bill 372 has mandated a set percentage contribution of renewable resources to the States electrical power portfolio. Geothermal power is one of Nevada's greatest assets for renewable energy. Furthering responsible exploration and development of renewable energy is an important focus for the State of Nevada and the Department of Interior; BLM, the State's partner in land and resource management.

Derrin Bryan, Small-Scale Mining and Prospecting
Julie Chavis, Large-Scale Mining
Patricia Pagan, Geothermal Resources

**Commission on Mineral
Resources**

Fred D. Gibson, Jr., Chairman, Large-Scale Mining

Eugene Kozlowski, Oil and Gas
Jay Parnell, General Public

Ron Parnell, V. Chair, Exploration and Development

The EIS draft addresses the issue of mineral leases and the rights associated with these leases in a very cursory fashion, stating that "The transfer may impact access to mineral and geothermal leases," and further "However, the Bureau of Land Management (BLM) has not yet resolved how they intend to handle these leases." (Executive Summary, page xiv) Impacts to access connote impacts to exploration and development. Impacts to access may be the tip of an iceberg of limitations and restrictions on lessees' rights within federal leases. These compounding impacts should be explored and explained in the EIS.

The lease holders should be considered stakeholders in this proposed action. Mineral leases are held by rental payments and due diligence efforts which are of economic significance to the lessees. The draft EIS has stated that impacts to lease holders are likely to be incurred. Therefore we recommend these lease holders be identified and allowed to comment on the proposed action. Further, if an impact is defined as in this case, mitigating measures should be suggested. No model or procedure for the transfer of mineral leases, right of ways, etc. is discussed. There is no indication that the recipient State and County entities have considered a model or procedure for administering these rights, including and not least, the cost of administration.

We suggest the following actions be taken before the finalization of the EIS:

1. Workable, accurate maps drawn to scale, be developed for each of the defined conveyance areas.
2. Federal leases, right of ways, utility corridors, etc. be accurately defined on these maps, including those which may lie within the vicinity conveyance areas which may be impacted by the proposed action.
3. Stakeholder lessees in the defined conveyance areas or area of impact be notified and allowed to comment on the document.
4. Effort to define the nature of impacts to lessees' rights should be made.
5. BLM should suggest mitigations to the impacts resulting from the proposed action.
6. The State and County recipients of the conveyance should prepare suggestions for the assumption of the administration of mineral leases and associated instruments.

Ms. Caryn Hunt DeCarlo
April 12, 2005

Page 3

Best Regards,



Christy L. Morris
Program Manager
Oil, Gas and Geothermal Program

Attachment
Cc: Richard Hoops, BLM State Office

RECEIVED

APR 15 2005

BUREAU OF RECLAMATION
Lahontan Basin Area Office

From: Christy L. Morris, Program Manager, Oil, Gas and Geothermal Program, State of Nevada, Commission on Mineral Resources, Division of Minerals, dated 4/12/05

Comment: We suggest the following actions be taken before finalization of the EIS:

- Workable, accurate maps drawn to scale, be developed for each of the defined conveyance areas.
- Federal leases, right of ways, utility corridors, etc. be accurately defined on these maps, including those which may lie within the vicinity conveyance areas which may be impacted by the proposed action.
- Stakeholder lessees in the defined conveyance areas or area of impact be notified and allowed to comment on the document.
- Effort to define the nature of impacts to lessees' rights should be made.
- BLM should suggest mitigations to the impacts resulting from the proposed action.
- The State and County recipients of the conveyance should prepare suggestions for the assumption of the administration of mineral leases and associated instruments.

Response: *The following statement is applicable to all State of Nevada, Division of Minerals comments: Prior to the title transfer, any required boundary surveys, title searches, cadastral surveys, appraisals and other real estate transactions will be completed.*

Brad Kelley, Lander County Commissioner: (Oral comment made at the Battle Mountain Public Hearing held March 15, 2005)

Comment: I want to go on the record as adopting the letter written by NDOW on February 11, 2005. The letter reads "The State was not consulted nor allowed to provide input into this new language [subsequent legislation enacted in 2004]. The Departments of Wildlife and Conservation and Natural Resources as the respective recipients of the acquired and withdrawn lands under the title transfer are unable to absorb both acquisition and restoration costs. Unless a way can be found through mutual negotiations to alleviate our concerns, the State must withdraw from receipt of any and all lands under the Humboldt Title Transfer". This development negatively impacts Lander County's ability to work on current projects with the State, particularly water rights sale and purchase between the County and the State.

Response: *Comment acknowledged.*